Fanny Hill and the “Laws of Decency”:
Investigating Obscenity in the Mid-Eighteenth Century

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In light of the many other equivocations surrounding the novel’s composition and publication, it is fitting that most readers know The Memoirs of a Woman of Pleasure not under the name that Cleland gave it, when it first appeared in 1748-49, but under the title of another text—namely, the expurgated version that Cleland produced in 1750, a book that few readers today could obtain, even in the unlikely event that they sought a copy.1 Precisely because the confusion of the two titles usefully highlights some of the ambiguities surrounding the first edition, in this essay I adopt the habit of referring to the original text as Fanny Hill. Published under a false imprint, cast as the private correspondence of one woman to another rather than as a public text written by a man for other men, and framed as an epistolary novel in two impossibly long letters that beget no response, the tale was first planned (according to Cleland) some twenty years before it was completed, and was conceived as an effort to describe a woman’s sexual adventures without using the language of pornography. Cleland’s recollection of the book’s origins survives in a manuscript by Boswell and while these notes are fragmentary, they convey the impression that Cleland regarded the proposition as a kind of literary experiment, akin to the one that Georges Perec undertook in his lipogrammatic novel La Disparition, which avoids using the letter e. According to the account reconstructed by Boswell’s editors, Cleland said he wanted “to show the Hon. Charles Carmichael that one could write … freely about a woman of the town without resorting to the coarseness of L’Escole des filles, which had quite plain words.”2

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Yet if this explanation presents the book as the answer to a stylistic challenge, the pseudonymous mode of publication seems to align the text’s effort to avoid “plain words” with legal concerns about avoiding prosecution. The evasions enacted in the imprint, “G. Fenton in the Strand,” offer almost too neat a parallel to the text’s stylistic circumventions, and indeed, Cleland claimed, after his arrest, that Ralph and Fenton Griffiths had assumed they were free from any legal attack, having been misled “by my avoiding those rank words in the work, which are all that they Judge of obscenity by, and made them think the Line was drawn between them, and all danger of Law whatever.”

Yet if the author’s and booksellers’ careful hedging seems to bespeak a concern to skirt the law of obscene libel, closer scrutiny of Cleland’s explanation and of the version that Fenton Griffiths sold in 1749, at his shop in Exeter Exchange on the Strand, casts doubt on that assessment. As others have noted, the letter in which Cleland attempts to draw a line around obscene works is full of other dubious efforts at exculpation. Moreover, Cleland does not actually claim to have been deceived about the law himself, but only that the booksellers were deceived. While perhaps he means to imply that he relied on their beliefs, that assurance cannot have provided the inspiration for the project at the outset; at most, it would explain his willingness to proceed with the manuscript’s publication. Again, Cleland’s statement to Boswell does not suggest that the use of more imaginative language, rather than “plain words,” would remove the book from the same category as L’Escole des filles. Similarly, it is hardly clear that Ralph and Fenton Griffiths expected to conceal themselves with an imprint that merely shuffled the names of the latter and correctly gave his address. A better choice, if they had actually meant to hide the book’s origins, would have been the name “A. Moore,” a customary pseudonym for booksellers who wanted to disguise their identity. The name would have been especially appropriate for Cleland’s novel because of the punning association with “amour.” Far from screening the Griffiths brothers, the semi-pseudonymous imprint calls attention to its pretense at disguise, just as the novel’s equivocations heighten its pornographic status—the feigned epistolary intimacy between women creating a zone enticingly shielded from male intrusion, Fanny’s unanswered letters opening up a space

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5 In fact, the advertisement announcing the publication of the second volume, in February 1749, gave his exact address: “No. 12, in Exeter Exchange in the Strand.” Foxon, *Libertine Literature*, 52.

for the male reader’s response. In striving for a more creative idiom than the one he associated with whores’ dialogues, Cleland displays a literary talent meant to provoke the same effect. One of his contemporaries could praise the novel for precisely this reason, jocularly declaring that Cleland had done “more in the Cause of Venus” than any other writer, “by his inimitable Collection of … pretty Phrases, high-seasoned Metaphors, and inviting Allusions.”

In the event, neither the imprint nor the text’s language gave the authorities any difficulty once they decided to investigate. On November 8, 1749, the Duke of Newcastle, Secretary of State for the Northern Department, issued a warrant authorizing Samuel Gray to “make strict and diligent search for the Author, Printer, and Publishers of a most obscene and infamous book, entitled, the Memoirs of a Woman of Pleasure,” and to “seize and apprehend” them, so that they could be “examined … and further dealt with according to Law.” Gray, a Messenger of the Press, quickly found Cleland and brought him to a house in Dartmouth Street, just south of St. James’s Park, where he was confined as the investigation continued. Cleland soon gave his own account of the novel’s publication, in letters to Andrew Stone, a former schoolmate and now one of Newcastle’s Under-Secretaries of State, and to Lovel Stanhope, Newcastle’s Law Clerk. Summoned to appear before Stanhope on November 13, Ralph Griffiths also testified about his knowledge of the book, which he sought to downplay, insisting that his brother was the person who had negotiated with Cleland and had arranged for the book’s publication. The book’s printer, Thomas Parker, appeared before Stanhope on the same date and confirmed that account. Fenton Griffiths seems to have been the only member of the group who was not called in for questioning. Gray apparently had little trouble unscrambling the “G. Fenton” anagram and locating the men who stood behind it.

Nevertheless, despite this highly incriminating evidence—and despite a second arrest, the following year, after Ralph Griffiths brought out an abridged edition of the book—Cleland and the Griffiths brothers apparently managed to avoid any serious legal consequences. While recent scholars have dismissed John Nichols’s story that Cleland was awarded a pension to save him from yielding

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8 [Philip Carteret Webb], *Copies Taken from the Records of the Court of King’s-Bench* (London: n.p., 1763), 45.

9 In his letter to Andrew Stone, Cleland gave the address as “Mr. Dick’s”; Epstein, *John Cleland*, 68. It was apparently the residence of William Dick (a Messenger to the King, appointed in 1743); see, e.g., *Whitehall Evening Post or London Intelligencer* (May 30–June 2, 1747), 2. It may have also been Gray’s residence, as some have assumed. Samuel Crewe, another Messenger to the King, also lived in Dartmouth Street (see *London Evening Post* [June 1-4, 1751], 1); perhaps they all used the same house.

10 The examinations of Ralph Griffiths and Thomas Parker are reprinted in Lewis M. Knapp, “Ralph Griffiths, Author and Publisher, 1746–1750,” *The Library* 4 (1939): 207-08.
again to “the like temptation,” it remains unclear why he was not tried and sentenced.\footnote{Epstein, \textit{John Cleland}, 82 Gladfelder, \textit{Fanny Hill in Bombay}, 80-81.} That the responsible parties had escaped punishment was sufficiently widely known, at least, that a reform-minded writer could complain in 1752 that “the Printers and Publishers of one of the most lewd and scandalous Libels ever published, [were] discharged without any Prosecution.”\footnote{“A Country Justice of the Peace,” \textit{Serious Thoughts in Regard to the Publick Disorders} (London: Corbett, [1752]), 45-46. For readers unsure which book he meant, the author asterisked the word “scandalous,” identifying the volume as “Memoirs of a Woman of Pleasure.” (Though undated, and given as “1750?” in ESTC, the pamphlet’s date can be established from notices in the \textit{London Evening Post} and the \textit{General Advertiser} on February 22, 1752.)} The question of why Cleland was not brought to trial remains a mystery, which I will not attempt to resolve here. However, considered in the context of eighteenth-century obscenity prosecutions more generally, the case of \textit{Fanny Hill} raises a number of questions about the use of the criminal law and the policing of illicit publications in the eighteenth century, particularly involving the grounds on which these efforts were based; these are the issues I take up in the discussion that follows.

The novel seems to anticipate the possibility of its own prosecution, given the way in which \textit{Fanny Hill} sandwiches her story, in the opening and closing paragraphs, with references to the laws that she defies in the course of the narrative. She proclaims at the outset that she will offer nothing but “stark naked truth, … careless of violating those laws of decency, that were never made for such unreserved intimacies as ours,” and she concludes with an apostrophe to decency, seeking forgiveness for “once more violat[ing] thy laws and keeping the curtains undrawn.”\footnote{John Cleland, \textit{Memoirs of a Woman of Pleasure}, ed. Peter Sabor (Oxford: Oxford Univ., 1985), 1, 181.} But what exactly were these laws? The whole narrative, of course, violates the social conventions of decency, but the legal regulation of decency, in the mid-eighteenth century, was in a state of flux. Recently transposed from the ecclesiastical and prerogative courts to the common-law courts, the laws governing the publication of obscenity were also being reconceived as part of the common law of crimes, with a rationale that would justify this jurisdictional reallocation. Cleland and the Griffiths brothers had no grounds for expecting that they would escape the authorities’ attention, although the latter, at least, may have been aware that enforcement was haphazard, and indeed as Lena Olsson notes, the book was “sold openly for eight months” at Fenton Griffiths’s shop before Newcastle issued the search warrant.\footnote{Olsson, ed. \textit{The Prostitute’s Life}, 81.} (In one of the letters he wrote after his arrest, Cleland claimed that the authorities’ efforts to suppress the book, “after so long a toleration,” would only attract new readers to “a Book, whose sale is exhausted, and dying every day.”\footnote{Cleland to Andrew Stone, Nov. 10, 1745 (PRO SP 36/11/151), quoted in Epstein, \textit{John Cleland}, 75.}) The legal basis for using the criminal law to frame the obscenity charge had been in question at the beginning of the century (for reasons completely unrelated to Cleland’s stylistic
argument) but was settled by the time Fanny Hill appeared. There was, however, serious doubt about the means by which all three were arrested, and especially the means by which Cleland was detained. Within a few decades, this form of warrant and arrest would be repudiated.

**Obscenity as a Crime at Common Law**

As suggested above, the question of obscenity’s place in the criminal law was a relatively new one in the mid-eighteenth century. It is hard to speak definitively about prosecutions of obscene texts, as a distinct category of illicit writing, before the early eighteenth century, because earlier prosecutions generally treated blasphemous or seditious aspects of the same texts as the more prominent offense, and generally regarded obscene writings as illicit insofar as they raised these other concerns. In the sixteenth and seventeenth centuries, the regulation of publications in all of these categories was a matter for the Stationers’ Company. In exchange for their monopoly on access to print, guild members were responsible for keeping illicit works from being published. Those that made it into print, or that circulated in manuscript, fell under the purview of the Star Chamber; alternatively, the issue might be taken up by an ecclesiastical court, which (again) would more likely treat the offense as a matter of blasphemy. In 1641, however, the Star Chamber was abolished and the powers of the ecclesiastic courts were suspended. The latter regained some of their authority in 1660, but increasingly they saw their jurisdiction transferred to the common-law courts over the following decades. Also during this period, the price of books declined and there was a surge in the publication of erotic texts. The first cases in England now regarded as criminal prosecutions for publishing obscene works arose toward the end of the seventeenth century. No one seems to have argued that the criminal law did not apply; however, resort to criminal sanctions was rare and the penalties were usually light.

A temporary suspension of the Licensing Act, between 1679 and 1685, probably helps to account for the run of erotic publications during this period. Some of these books—such as Venus in the

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19 Keymer, Obscenity and the Erotics of Fiction, 134.
Cloister (1683) and Erotopolis, the Present State of Betty-Land (1684)—escaped legal attack altogether. For two prosecutions during this period there are records of the indictments but not of the proceedings that followed. In 1680, John Coxe was indicted at Middlesex Sessions for “maliciously and scandalously” publishing and selling “a most pernicious, wicked and vicious book,” namely The School of Venus or the Ladies Delight, Reduced into Rules of Practice (a translation of L’Escole des filles), “with the intention of debauching and corrupting … young persons.” In 1684 William Cadman (or Cademan) was indicted at Middlesex Sessions, in almost identical terms and with the same intentions ascribed to him, for publishing A Dialogue between a Married Lady and a Maid (a translation of Nicholas Chorier’s Satyra Satadica de Arcanis Amoris et Veneris). The sessions rolls do not disclose the result in either one of these cases. In 1683, John Wickens was fined 40 shillings at Guildhall Sessions for printing and publishing The Whores Rhetorick (a translation of Ferrante Pallavicino’s La Retorica delle puttane). The nature of the charge against Wickens remains unclear; the summary in the State Papers mentions the book’s title and the fine, but not the grounds of the prosecution. In 1688, three booksellers were charged with offenses involving obscenity; again it is not clear how the charges were specified. Francis Leach was arrested for selling Rochester’s Poems on Several Occasions but the case apparently did not proceed to trial. Joseph Streater was charged with printing The School of Venus and A Dialogue between a Married Lady and a Maid; pending trial, he paid a £5 bond that described the books as “obscene and lascivious,” which doubtless reflects the reason for the prosecution, though not necessarily the legal ground set out in the indictment. Benjamin Crayle, charged with selling The School of Venus (and possibly other books), posted a similar bond with a similar accompanying description. At trial, Crayle and Streater were fined 40 shillings and 20 shillings, respectively. The fines did not discourage Crayle and Streater, however, and they were prosecuted again the following year for publishing Sodom or the Quintessence of Debauchery.

Donald Thomas observes that the government seems to have become more concerned about combating obscenity around this time.22 If so, the concern was timely, because the Licensing Act


22 D.S. Thomas, “Prosecutions of Sodom: Or, the Quintessence of Debauchery, and Poems on Several Occasions by the E of R, 1689-90 and 1693,” The Library (5th ser.) 24 (1969), 52.
would lapse for good just a few years later, in 1695, ending the stationers’ regime of pre-print censorship and shifting the burden of control onto the government, at the post-print stage. Streater was evidently exonerated, but Crayle’s case went to trial in January 1690 at Guildhall Sessions, where a jury found him guilty of publishing scandalous and immoral books.\(^\text{23}\) The court fined him £20; unable to pay, he was committed to prison and the court ordered an inventory of his goods.\(^\text{24}\) The following month, the Secretary of State held a meeting with “members of the book trade who had been in trouble with the authorities,” and while it is not clear exactly what transpired, Thomas suggests that the import was unmistakable: “The misdemeanours of men like Crayle … were no longer to be ignored.” This newfound severity, Thomas adds, may have reflected an increasingly pronounced public hostility toward obscene publications: “It is not without significance that [Crayle] was convicted by a jury and that the campaign for the improvement of the nation’s moral standards was to produce the first Society for the Reformation of Manners in 1692.” Elizabeth Latham was prosecuted at Guildhall Sessions a few years later, in 1693, for publishing Rochester’s *Poems on Several Occasions*. On conviction, she was fined 5 marks (about £3)—considerably less than Crayle, Thomas observes, “perhaps because her past record was nothing like as bad.”\(^\text{25}\)

Rochester’s poems figured again in a prosecution in 1698 against one Hill in the King’s Bench for publishing *Poems on Several Occasions by the E of R*.\(^\text{26}\) Rather than answering the accusation, Hill fled the country—a response that testified to his concern about the result of a conviction. Given that the charges were never adjudicated, the case could not, of course, serve as a precedent in favor of the legitimacy of this mode of proceeding, but because Hill appeared to assent to its validity, later commentators would often cite the case for that purpose. In a prosecution against Edmund Curll in 1727, Attorney General Sir Philip Yorke (later Lord Hardwicke) treated the case in precisely that fashion, explaining that Hill had been “indicted for printing … obscene poems, … tending to the corruption of youth; upon which he went abroad … which he would not have done if his counsel had thought it no libel” (i.e., had thought that the charges were not properly laid).\(^\text{27}\) While the latter part of this quotation shows that it represents Yorke’s own description of the case and its significance, some have mistaken the first part for the language of the 1698 indictment, and for that reason have concluded that the case marks the first instance of an obscenity prosecution unambiguously

\(^{\text{23}}\) “Librum flagitiostum et impudicum,” in the words of the indictment. Ibid., 53.

\(^{\text{24}}\) As Thomas notes, “Though this inventory obviously relates to his inability to pay the fine, it would incidentally enable a check to be made as to the nature of the rest of his stock.” Ibid.

\(^{\text{25}}\) Ibid.

\(^{\text{26}}\) Some have speculated that this may have been Henry Hills junior, known in the early eighteenth century for his piratical practices; see Thomas, “Prosecutions of *Sodom*,” 51; Jim McGhee, “Obscene Libel and the Language of ‘The Imperfect Enjoyment,’” in *Reading Rochester*, ed. Edward Burns (Liverpool: Liverpool Univ., 1995), 50.

\(^{\text{27}}\) R. v. Curl (1727), 1 Stra. 788, at 790. Because Strange spelt Curll’s name with one l, I use that spelling when referring to the case.
formulated as such. The available evidence simply does not allow us to tell, with certainty, whether any of the defendants in these late seventeenth-century cases were charged with obscenity, or were charged on another ground that might have been assumed, at the time, to include it. Obscenity was emerging as a subject of legal attention during this period, but does not seem to have been isolated as a distinctive issue, separate from the other concerns (religious, political) that had typically accounted for efforts at suppression.

Within a few years, however, a pair of cases arose—both involving theatrical performances, and both tried before Chief Justice John Holt—that did present obscenity charges, though with inconclusive results. The Society for the Reformation of Manners—the moral crusaders whom Thomas mentions in connection with the Crayle prosecution—were particularly hostile to the theater, and tried various tactics, including litigation, to regulate the stage. Their most successful effort in that regard was a prosecution initiated in 1701, alleging that Thomas Betterton and seven other actors had staged “obscene, profane and pernicious” performances at Lincoln’s Inn Fields in 1700 and 1701, when acting Congreve’s Love for Love, Ravenscroft’s The Anatomist, or the Sham Doctor, and Vanbrugh’s The Provoked Wife. (The charges related specifically to these performances, not to language in the printed texts of these plays.) On being convicted, the actors were fined £5 each. The legal basis for the allegations is unclear. The Society may have proceeded under a statute concerning profanity on the stage; none of its provisions involved obscenity, but those charges may simply have been tacked on and then left unchecked. Though he would gain a name as a “steadfast enemy of the anti-vice
societies,” Chief Justice Holt allowed the prosecution to go forward without questioning its basis. According to a newspaper report of the trial, the evidence showed that the actors had used “the most Abominable, Impious, Prophane, Lewd, and Immoral Expressions.” The Society issued a celebratory broadside to publicize the conviction, noting that Holt “declar’d to the Jury the ill Consequence of such Prophane Wicked Speeches.” One might conclude from these accounts that Holt directed the jury to consider both the blasphemy and obscenity charges, rather than separating the two on the ground that only the blasphemous language could fall within the ambit of the criminal law. However, the evidence turned primarily on blasphemous expressions, not obscene ones. Moreover, considering its source, the broadside should be taken with a grain of salt, and likewise the newspaper report, which also seems to have come from a member of the Society. Neither of these sources noted that the Attorney General, in arguing the case, and Holt, in directing the jury, emphasized that the prosecution was “not to suppress ye Acting of Plays” but was specifically aimed at the “Reformation of ye Stage.”

The trial may show that Holt was willing, at this time, to assume that the criminal law extended to public expressions of obscenity, but without more information, it is difficult to tell.

While the case against the Lincoln’s Inn Fields actors was pending, the Society also proceeded, unsuccessfully, against a group of Drury Lane actors, in a case that seems to have focused entirely on obscenity. According to a newspaper report, the charges involved “some Immoral Expressions contain’d in the Plays” (Jonson’s *Volpone*, Baker’s *The Humour of the Age*, and Crowne’s *Sir Courtly Nice*). The jury acquitted the defendants. It may be significant that the actors were charged only with immorality and not with blasphemy, the issue that dominated the other trial. Possibly, Holt’s directions to the jury made the case sound weaker, or perhaps the jurors were reluctant to convict simply for “immoral expressions.”

In any case, Holt did allow both cases to go to the jury, but he would later take a much less hospitable view about the use of the criminal law to suppress obscenity. In 1707, Holt again presided over an obscenity trial, this time of John Read and Angell Carter for publishing *The Fifteen Plagues of a Profaneness,* 8 & 9 Will. III c. 32 (1698), but it, too, covers only religious offenses.

34 *The Proceedings and Tryals of the Players in Lincolns-Inn-Fields, Held at the King’s-Bench Bar at Westminster, on Monday the 16th of February, 170½* (London: Richardson, 1702). Milhous and Hume, for example, call it a “gleeful puritan description.” *The London Stage, 1660-1800*, 53.
Maidenhead. Holt sent the case to the jury, who returned a guilty verdict. However, Read was exonerated on appeal because the bench, which included Holt, unanimously held that obscene publications were not criminally actionable. Holt said that he could find “no precedent” for a criminal prosecution, and he insisted that “if we have no Precedent, we cannot punish.” This statement may appear odd, in light of the prosecutions of the previous twenty-five years; Holt probably considered those cases irrelevant because in each instance the court simply took it for granted that it had the authority to treat the defendant’s behavior as a crime, but never sought to establish that point. At Read’s trial, for example, Holt had not addressed the jurisdictional issue, but evidently he had no qualms about setting the conviction aside once the issue was presented on appeal.

Justice Powell agreed with Holt, observing that while Read was trafficking in “stuff not fit to be mentioned publickly,” that could not justify a criminal conviction: “if there should be no Remedy in the Spiritual Court, it does not follow there must be a Remedy here. There is no Law to punish it, I wish there were, but we cannot make Law; it indeed tends to the Corruption of good Manners, but that is not sufficient for us to punish.” On this view, the common-law courts may not step in to maintain good order and public morals as a general matter; rather, the criminal law applies only when an individualized harm is coupled with these larger issues, and only when that harm takes the form that criminal law had conventionally recognized, involving injury to someone’s person or property, or an attack on the government. Perhaps Read’s counsel knew of the Chief Justice’s distaste for morals offenses, and correctly predicted that Holt would welcome this opportunity to exclude them from the ambit of the criminal law. Around the same time as Read’s trial, John Marshall had been prosecuted and found guilty of obscene libel for publishing Sodom and The School of Love (and possibly also an edition of Pietro Aretino’s I Modi); those convictions were also set aside.

Read seems to have reduced the appetite for prosecuting obscene works, over the next two decades, but the indefatigable efforts of Edmund Curll finally brought matters to a head in the mid-1720s. Publisher of numerous titles wearing “a bawdy Countenance” and aimed at “allowing for wide

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38 R. v. Read (1707), Fort. 98, 92 Eng. Rep. 777. The appeal seems to have been heard shortly after the trial. Read was tried in Easter term, 1707 (PRO KB 28/21/18), and Fortescue’s report of the appeal is dated in the same term (Pasch. 6 Ann.). The version in the Modern Reports (which gives the defendant’s name as “Rudd”) assigns the case to the late fall or winter of 1707 (“Mich. Term, 1707”); see 11 Mod. 136, 142.

39 Ibid.

40 Most histories of obscenity credit Marshall only with the first two titles; see, e.g., Foxon, Libertine Literature, 13; McGhee, “Obscene Libel,” 51; Colin Manchester, “A History of the Crime of Obscene Libel,” Journal of Legal History 12 (1991), 38. (The School of Venus, like A Dialogue between a Married Lady and a Maid, was a translation of Chorier’s Satyra Sotadica). A newspaper report, however, stated the prosecution against Marshall (described only as “a certain Dissenting Bookseller in Grace-Church-street”) also charged him with publishing “Aretine’s Postures.” London Post Boy (Jan. 3-6, 1708), 1.
latitude in prurient speculation,” Curll evidently stepped up his efforts in that direction after the Read decision. He was prosecuted in the King’s Bench, in 1725, for publishing *A Treatise of the Use of Flogging in Venereal Affairs: also of the Office of the Lains and Reins … To which is added, A Treatise of Hermaphrodites* (1718) and *Venus in the Cloister, or the Nun in Her Smock* (1724), both charged as obscene libels. Curll was found guilty at trial, and his lawyer appealed, insisting that under Read, there could be no penalty at common law, but only in an ecclesiastical court. The composition of the King’s Bench, however, had completely changed in the intervening period, and the court now repudiated the earlier decision. In striving to justify the legality of the prosecution, Attorney General Yorke mentioned the Hill case (discussed above) and contended that the common-law courts could impose criminal liability on any act “destructive of morality in general,” because “destroying that is destroying the peace of the Government, for government is no more than publick order, which is morality.” Chief Justice Robert Raymond seems to have adopted this view, though he expressed it more elliptically when he explained that whatever “reflects on religion, virtue, or morality, if it tends to disturb the civil order of society, … is a temporal offence.” The result was to uphold Curll’s conviction, which carried a recognizance of £100 for good behavior for a year, an hour in the pillory, and a fine of 25 marks for each of the offending publications (plus another 20 marks for a seditious publication, amounting to roughly £47 in all).

The government was now armed with a legal basis for conducting obscenity prosecutions. In a direct reversal of Read, the court adopted a theory that afforded a broad scope for the policing of moral offenses, abolishing the requirement of a specifically targeted harm as well as the distinction between moral injury and injury to persons and property. Both constraints had to be removed, because the first one, if left in place, would have foiled most efforts at prosecution, permitting the government to act only on behalf of those for whom exposure to the book in question constituted a harm. Most of the customers for obscene books, presumably, were already depraved and could hardly be characterized as requiring the aid of the criminal law to protect them. The premise that obscenity had a generally harmful effect spared the prosecution from the need to seek out innocent victims. That premise carried with it the assumption—spelled out more than a century later in the Hicklin test—that

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42 McGhee writes that Curll thought the decision gave him “carte blanche to publish whatever Rochester poems he chose, without fear of prosecution,” with the result that his 1714 edition of Rochester’s *Works* was “considerably expanded.” McGhee, “Obscene Libel,” 53-54.
43 Although dated 1725 on the title page, the book was apparently published in August 1724; see Baines and Rogers, *Edmund Curll*, 156; as they note, “Curll could have argued that *Venus in the Cloister* had already been translated into English and published without complaint in 1683; but at this stage he was apparently unaware of the fact, and only brought up this defence near the end of the legal proceedings.” Ibid., 352 n. 29.
44 *Curl*, 2 Stra. at 790.
obscenity included whatever had “the tendency … to deprave and corrupt” the vulnerable reader.\textsuperscript{45} \textit{Curl} already presents this standard in nascent form, in Raymond’s observation about writing that “tends to disturb the civil order” and in Yorke’s comments about writing that is “destructive of morality in general” (as well as his retroactive characterization of \textit{Hill} as involving poems “tending” to corrupt the young). Indeed, virtually any plausible rationale for criminalization would have explained the harm in terms of its tendency rather than the form of words in the text, thus depriving Celand of the objection that “rank words” supplied the law’s only means of “[Judg[ing] … obscenity.” On the logic that \textit{Curl} adopted, the diffuse nature of obscenity’s harm matches the diffuse nature of its basis, allowing courts to attach corrupting effects to various writings because of what the texts do, rather than because of the particular words they use.

According to Celand’s reconstruction of the events, he devised his “plan” for \textit{Fanny Hill} just a few years after the \textit{Curl} decision, in 1729 or 1730.\textsuperscript{46} His work for the East India Company involved a significant amount of legal business; however, these transactions were primarily commercial in nature.\textsuperscript{47} Thus he would have had little reason to study criminal law, let alone the recent jurisprudence on obscene libel. Conceivably, Celand or one of the Griffiths brothers might have found the \textit{Curl} case in the brief version included in Thomas Bernardiston’s reports, first published in 1744, but this seems improbable.\textsuperscript{48} Perhaps, given Curl’s notoriety, one of them might have learned about the prosecution from the newspapers or from another member of the publishing business. Still, none of these sources would have justified the belief that a writer could protect himself by avoiding “rank words.” If Celand did believe (as he implied when offering excuses on behalf of the Griffiths brothers) that only explicitly obscene works could be criminally prosecuted, he was probably relying on some kind of folk knowledge rather than a legal source. Yet while he had no basis for challenging the treatment of \textit{Fanny Hill} as an obscene work, he might have challenged his arrest and detention under a general warrant. Whereas the generality of obscenity’s effects explained why the government could undertake a criminal prosecution, the generality of the general warrant would, within a few decades, provide the basis for invalidating this instrument of law enforcement.

\textbf{Celand’s Prosecution and the Fate of the General Warrant}

\textsuperscript{46} Gladfelder, \textit{Fanny Hill in Bombay}, 16.
\textsuperscript{48} Bernardiston summarizes the case as holding that “Religion was Part of the Common Law; and therefore whatever is an Offence against that, is evidently an Offence against the Common Law. … Morality is the Fundamental Part of Religion, and therefore whatever strikes against that, must for the same Reason be an Offence against the Common Law.” R v. Curl, 1 Barn. K.B. 29.
“Any reader scanning the titles of an eighteenth-century library,” James Turner has observed, cannot fail to recognize an “affinity between the novel of private life, the prurient observation of secret matters, and the techniques of espionage.” Many of these novels “are in fact about devices for making secret feelings and discourses visible”—devices such as framing narratives in which someone gains access to private documents or overhears confidential conversations, and physical devices such as the “magic ring ... that makes the genital organs speak” in Diderot’s Les Bijoux indiscrets. Among the legal devices used for similar ends, during the seventeenth and eighteenth centuries, was the general warrant, a means of licensing wide-ranging searches into citizens’ houses, papers, and effects, even when the authorities lacked any well-founded basis for investigating a particular suspect. Initially left relatively unchallenged, the general warrant would become the object of intense criticism in the eighteenth century for many reasons, including one that recalls the compelled speech in Diderot’s story—namely, the objection that “the disclosure of intimate secrets through the seizure of personal papers” amounted to the compulsory “self-incrimination of the victims.” Lord Camden, in explaining why general warrants were impermissible, observed that “the law obligeth no man to accuse himself, because the necessary means of compelling self-accusation” would target “the innocent as well as the guilty.” The general warrant, with its indiscriminate ambit, had the same effect, and therefore should be “disallowed upon the same principle.” Like the ring in Diderot’s tale, which invariably elicits a confession regardless of where it is pointed, the legal device could make a criminal of anyone it was applied to.

As noted above, after the Secretary of State issued a warrant, Cleland was detained by Samuel Gray, a Messenger of the Press. Within a few decades the warrant would be struck down, but at the time of Cleland’s arrest, the messenger’s office itself was of doubtful legality. The position had been created in the 1662 Licensing Act, which conferred search and seizure powers on both the Secretary of State and the Stationers’ Company, to be implemented through “Messengers of the King’s Chamber,” when supported by a warrant. Aimed at ensuring that only duly licensed publications would be publicly circulated, the statute provided “for the better discovering of printing in Corners without License” by authorizing “the Messengers of his Majesties Chamber” to proceed, with a warrant, “to search all Houses and Shops where they shall knowe or upon some probable reason suspect any [unlicensed] Books or Papers to be printed bound or stitched,” and if the suspicions proved correct, “to seize upon so much thereof as shall be found imprinted togeather with the several Offenders and to bring them before one or more Justices of the Peace whoe are hereby authorized and required to commit such Offenders to Prison.” The messengers received a salary from the government, but were

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51 Entick v. Carrington (1765), 19 St. Tr. 1029, 1073.
52 14 Car. II. c. 33, s. 14, original at:
also paid by the Stationers’ Company.\(^{53}\) Seen as agents of the guild, the messengers were assistants who helped to ensure that it could carry out its mandate; seen as agents of the Crown, the messengers were checks on the stationers’ commitment to that mandate and their consistency in executing it, and a means of preventing them from engaging in self-dealing.

To modern ears, the statute’s warrant provision may sound as if it involves a familiar and legitimate legal device, requiring something akin to probable cause as the basis for a search or arrest. However, these warrants were notable for their failure to specify the individuals or locations to be searched: they were “general” in the sense that they simply named the offending publication and deputized the messenger to seek out whoever was responsible. In fact, according to the prevailing practice in the seventeenth century, even a warrant identifying a particular book was not required. Philip Hamburger notes that the government authorized the messengers “to search all printers’ houses at will.” Moreover, the messengers could initiate prosecutions themselves, which was easy enough because they “had only to rummage through the tables and shelves and grab any generally antigovernment book that lacked an imprimatur.”\(^{54}\) Most of the obscenity prosecutions discussed earlier were conducted by Robert Stephens (better known at the time as “Robin Hog”), a notoriously corrupt figure who was fired in 1684 because he had taken bribes in exchange for declining to prosecute offenders (only to be restored to office in 1689).\(^{55}\) While Stephens was largely successful in the cases he prosecuted (for seditious libel as well as obscene libel), this does not show that he held himself to a standard of probable cause before commencing a search. John Locke, whose opposition to the Licensing Act in the 1690s is usually associated with concerns about the guild’s monopoly on access to print, also found it appalling that “the gent[ry], much more … the peers of England, came … to prostitute their houses to the visitation and inspection of anybody, much lesse a messenger upon


pretence of searching for books.”

When the Licensing Act lapsed, in 1695, the government and the stationers lost their basis for authorizing this mode of investigation. At a meeting with the Lords Justices in May 1695, the King’s Counsel opined that “a gen[eral] Warr[ant] could not now be granted to Search houses for Printing Presses, But it must be done upon Particular Informations upon Oath.” While in theory, the office of the messenger might be severed from the statutory warrant provision, the implicit message was that neither could be sustained: the Attorney General and Solicitor General advised that “the Properest Way for discovering the authors & Publishers [of illicit works] would be to employ some fit Persons to be Conversant among them and give them Suitable Rewards.” The suggestion, in short, was to move to a system in which undercover informers gathered information. The Secretary of State, however, ignored this advice. The practice of issuing general warrants continued until 1765, when the King’s Bench declared that they were illegal, and the office of the Press Messenger continued into the early nineteenth century.

As interpreted by the government, the statute’s expiry meant only that the messengers had lost their unilateral authority to instigate a prosecution, and instead “had to send the book to a secretary of state or a secretary’s agent for perusal and a decision about whether it was criminal, a decision that usually required extensive consultation with the Attorney General.” Except for this one procedural alteration, the messengers carried on as before, maintaining their search and seizure powers through sheer momentum of practice. With the end of the pre-print licensing era, however, there was a rapid rise in the volume of published material; coupled with the increased caution about determining which books could be prosecuted, this development made the press messengers’ job harder and less effective.

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56 The Correspondence of John Locke, ed. E.S. de Beer, 8 vols. (Oxford: Clarendon, 1976-89), 5:790; see also Johns, The Nature of the Book, 132; Raymond Astbury, “The Renewal of the Licensing Act in 1693 and its Lapse in 1695,” The Library 5 (1978): 308-09. Astbury notes that “in 1681 Locke’s papers had been confiscated along with those of his master, the first Earl of Shaftesbury, at the climax of the Exclusion crisis,” and hence that Locke’s indignation “would appear to have its origin in [his] personal experience.”

57 Calendar of State Papers, Domestic Series (May 30, 1695).

58 Ibid.

59 The rejection of general warrants is discussed below. According to Robert Bucholz, “The Master Index of Court Officers” (http://ecommons.luc.edu/courtofficers/17), the last two press messengers were Edward Gordon, Sr. (appointed 1796) and Edward Gordon, Jr. (appointed 1829); see also Commons Journal 84 (1829), 529, which specifies the salary for a “Messenger of the Press and Assistants”; J.C Sainty and R.O. Bucholz, Officials of the Royal Household, 1660-1837, Part I (London: Univ. of London, Institute of Historical Research, 1997), 111, which suggests that the office expired in 1837. An updated version of this index is online at http://www.british-history.ac.uk/report.aspx?compid=43789.

As John Feather notes, Robert Stephens (who stayed in office until 1697) “could not keep track of all publications, especially when the multiplication of newspapers increased the flow to a flood.” Indeed, “there were never enough messengers for all the work that had to be done,” and the early to mid-eighteenth century saw numerous proposals to suppress illegal publications, “whether by new legislation or by increasing the establishment of law enforcement officers, but none was ever adopted.” As a result, the authorities limited themselves to “prosecut[ing] the more outrageous publications.”

This state of affairs may help to explain the relatively haphazard pattern of obscenity prosecutions, both in period leading up to Read, in 1708, and in the wake of the Curl decision in 1727. Even when obscenity prosecutions became more numerous, in the later eighteenth century, they were dwarfed by the volume of prosecutions involving seditious writings. Paul Hyland’s account of the messengers’ activities during the crisis over the royal succession around 1712-16 makes this abundantly clear: he observes that the government used the messengers to “search for anyone who was associated with the publication of a [political] libel,” even when there was “little or no substantial evidence” as to any particular suspect. “If, after a little rough treatment at the hands of a messenger, the confiscation of goods and papers, a gruelling examination or two, a stay in Newgate, and a bill for the confinement, the offender still remained belligerent, the whole procedure could be repeated many times.” Robert Mawson, publisher of a Jacobite paper called the Newsletter was a particular irritant, whom the government silenced in 1715 by having him “chased half-way around London by messengers of the press every time he set foot out in the street,” ensuring that “the paper could not survive for long.”

A helpful guide to the messengers’ efforts is provided by a collection of warrants gathered by the government’s counsel during the Wilkes litigation in 1763, and designed to establish the legitimacy of the warrant procedures under attack in that case. Dating back to the Restoration, the collection consisted of warrants issued by Secretaries of State, instructing the messengers to search out and arrest various persons and to seize contraband. Out of the 110 warrants issued since the beginning of the eighteenth century, approximately ninety were related to illicit publications (newspapers, books,

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61 John P. Feather, “From Censorship to Copyright: Aspects of the Government’s Role in the English Book Trade 1695-1773,” in Books and Society in History, ed. Kenneth E. Carpenter (New York: Bowker, 1983), 187, 183-84. In the 1720s, for example, the under-secretary charged with monitoring libels recommended “that a new officer should be appointed, who was ’skill’d in the Law,’ and that a messenger should obtain a copy of every new publication and take it to tis officer,” but the recommendation was ignored. Ibid. 183.


63 P.B.J. Hyland, “Liberty and Libel: Government and the Press during the Succession Crisis in England, 1712-1716,” English Historical Review 101 (1986), 865, 867; see also p. 886, which reprints a fill-in-the-blank “open warrant,” providing for the search and seizure of printing presses and their operators, wherever the government authorities thought they might be found.

64 Webb, Copies Taken from the Records.
pamphlets, songs, ballads, and prints) of which all but five or six were described as seditious, scandalous, treasonable, or traitorous (or some combination of these). Thus about eighty-five of the warrants involved politically offensive publications, and more than a third of those were “general” in the sense that applies to the warrant for Cleland’s book: they named no person or location, but only an illicit work, for which (usually) the “Author, Printers, and Publishers” were to be detained. Even those that named an individual would typically identify one person, while also directing the messenger to search out anyone else associated with the publication, and hence the vast majority were general in effect. Perhaps the most remarkable was one of the few relating to obscene works: issued in 1755, it stated that “certain lewd and infamous Books and Prints are daily published and sold at Shops and other Places, within the Cities of London and Westminster,” and directed the recipient to search the “Houses, Warehouses, Shops, and other Places, of which you shall have Notice,” where these publications might be found.65 One might think that the final clause served to restrict the messengers’ efforts until there was better information, with a more specific foundation, but this seems to have been a formulaic phrase that had no such effect and did nothing to postpone the implementation of the warrant. Perhaps the authorities had become especially alarmed about obscene publications at this time; the overall pattern, however, indicates that the messengers devoted most of their attention to ferreting out seditious works, not obscene works.

This pattern probably helps to explain why it took the better part of a year before the government proceeded against Cleland at all. The only warrants involving obscene texts, out of the whole collection, are two for Cleland’s book (one each for the first edition and the abridged version), the extremely vague one described above, and a pair of warrants, both issued on the same date in 1745—one involving A Compleat Set of Charts of the Coasts of Merryland, and the other involving The School of Venus and an edition of Aretino. Other Merryland texts had been circulating for several years,66 again suggesting an apathetic attitude towards prosecuting these works. That attitude would continue to prevail for decades: as Donald Thomas notes, when John Morgan was prosecuted in 1788 for publishing The Battles of Venus, “there had not been a prosecution involving a newly-written piece of pornography since 1750,”67 except for the 1765 prosecution involving the Essay on Woman—itself doubtless prompted more by political motives than by concerns about morality. This apparent lack of interest in prosecuting obscenity may also help to explain why Cleland’s case was not brought to trial—although given the resources that had already been devoted to finding and interrogating him, it is hard

65 Ibid., 55.


67 Thomas, A Long Time Burning, 117.
to understand why the authorities would have abandoned the case at that point.

The government’s prosecution against John Wilkes finally brought the legitimacy of the general warrants into question. Reacting to criticism of the administration in Wilkes’s paper, the North Briton, the Secretary of State issued a general warrant for the arrest of its authors, printers, and publishers, and the seizure of their papers. In executing the warrant, officials ransacked Wilkes’s house and at least four others, arrested forty-nine people (most of whom had little connection to the paper), broke hundreds of locks, and appropriated thousands of books and manuscripts. In an action of trespass, Wilkes sued Robert Wood, the Undersecretary of State, who had overseen the execution of the warrant. It was in this context that Webb gathered the many general warrants issued since the Restoration, to document the longstanding history and presumptive legitimacy of the practice. In defending the procedure in court, Webb argued that his many examples amounted to proof of a widely accepted custom that had been “till this case unimpeached,” and if it were “so contradictory to the constitution of this country, [it] could never have remained to this time.” The jury, however, rejected Webb’s argument, in a verdict that served in retrospect to cast doubt on the validity of these earlier examples as well. The warrant for Cleland’s arrest, rather than helping to legitimate the practice, formed part of the case for rejecting it. Several years later, a letter to the North Briton would derisively characterize Webb’s collection as the fruit of his “learned labours,” one copy of which had survived Webb’s efforts to ensure that all copies were returned to him. The author added, “This book I send to you, Mr. North Briton, so that you may re-print it for the public view,” particularly because “the precedents are no less curious than alarming.”

The investigation served, of course, to drive Cleland’s book underground and to deprive Ralph Griffiths of the significant profits he might have earned. As Hal Gladfelder notes, Nichols’s claim that Griffiths made £10,000 from sales of the book is wildly implausible: taking into account the typical costs of publication, with a retail price of six shillings he could not have earned profits of that magnitude unless he sold thirty thousand copies (representing thirty to forty print runs, given that the typical size was 750 to 1000 copies). Thus, although doubtless he “did profit from sales of the Woman of Pleasure, these profits were liable to have been in the hundreds rather than tens of thousands of pounds.” Indeed, Griffiths probably could not have made anything close to Nichols’s estimate even if the book had not been prosecuted.

A tentative count of surviving eighteenth-century editions of Fanny Hill puts the total at twelve, plus two editions that seem to have left no remnant. Henry Spencer Ashbee describes six editions published in the eighteenth century (1749, 1777, 1781, two from 1784, and an undated one), five of

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69 Wilkes v. Wood (1763), Lofft 1, at 9.
70 “W.F.,” Letter to the North Briton, no. 122 (26 Aug. 1769), 143. The letter has been attributed to John Almon.
71 Gladfelder 142.
which claimed to have been printed for “G. Fenton in the Strand.”72 James Raven adds two more (1755, 1779) bearing the name of “G. Fenton,” and two others (1755, 1766) giving, respectively, “E. Mullins” and no one.73 The ESTC identifies another (claiming 1749 but assigned to 1760) bearing a “G. Fenton” imprint. An apparently unique copy of yet another edition, lacking any imprint and tentatively dated to 1780, recently sold at auction.74 As to the two fugitive editions, one is associated with a bookseller named Langham: in a punning effort to capitalize on the vogue for elegant literary extracts characterized as “beauties,” he announced the publication in 1783 of The Beauties of the Memoirs of a Woman of Pleasure; or, The History of Fanny Hill.75 It is impossible to tell whether the book adopted the method of Cleland’s 1750 abridgment or selected the passages that were excluded from the expurgated edition, because there are no remaining copies; perhaps the book never actually appeared. In 1795, a Dublin newspaper reported the conviction of Christopher Boylan “for selling … two obscene books,” one of which was Nature Displayed, or the Memoirs of Miss Frances Hill.76 Again, in the absence of any surviving copies, one can only speculate about the contents of a book that shows such propriety in naming the heroine, while joining it to the subtitle of Aristotle’s Master-Piece. Assuming these last two books once existed, this list would account for fourteen editions, and the recent appearance of the 1780 text suggests that more may remain to be found, and that others have not survived. Yet unless the extant copies correspond to only a third of the total number of eighteenth-century editions, even the net earnings of all the book’s publishers could not have amounted to the total that Nichols gives.

The list is also striking, of course, for its frequent reiteration of the imprint that appeared on the

73 James Raven, British Fiction, 1750-1770 (Newark: Univ. of Delaware, 1987), 55.
74 Christie’s, Highlights from the Erotica Library of Tony Fekete (London: Christie’s, 2014), item 56; the description differs from Ashbee’s undated edition.
75 Felix Farley’s Bristol Journal (Dec. 13, 1783), 2. The advertisement specified that the book was “printed in Two Pocket Volumes” for five shillings. The same advertisement appeared a month later, in the London Morning Herald and Daily Advertiser (Jan. 22, 1784). Langham specialized in salacious publications, including reports of adultery trials and The Bawd: A Poem (London: printed for the author, 1783), which he advertised in the Morning Herald on February 14, 1783, adding that he also sold Harris’s List of Covent Garden Ladies; see also Janet Ing Freeman, “‘Jack Harris and ‘Honest Ranger’: The Publication and Prosecution of Harris’s List of Covent-Garden Ladies, 1760–95,” The Library 13 (2012), 438, n.66. He appears as “J. Langham” in The London Book Trades 1775-1800: A Preliminary Checklist of Members (Exeter Working Papers in British Book Trade History), and may be the same person as the Joseph Langham listed immediately afterwards.
first edition, now simply a disguise rather than an anagram. Even though Cleland’s case was never adjudicated, others appear to have been well aware of the result, and while prosecutions were rare, as Thomas and others have shown, the booksellers apparently made an effort to be cautious when reprinting *Fanny Hill*. Its publication history thus adds yet another equivocal aspect to the book’s various feints, suggesting that the authorities’ half-hearted and incomplete prosecution of Cleland, for a book that avoided “plain words,” created at least as powerful precedent as the far more public prosecution of Edmund Curll.