The Trial of Lady Chatterley's Lover
Limiting Cases and Literary Canons

This paper examines certain procedures, legal and otherwise, for classifying texts as literary; that is to say, it concerns the function of certain conceptual categories which, in given conditions, serve as procedures for determining the membership of a text in either the ill-defined class of literary texts or the statutorily defined legal class of obscene publications. It is concerned therefore with the classification procedures whereby textual classes or canons are instituted and maintained, the major source of exemplification being the 1960 case brought in England under the terms of the then new Obscene Publications Act 1959, Regina v. Penguin Books Limited. That the matter of this 1960 trial maintains a certain currency is evident most recently in A.D. Hope's rehearsal of the antithesis between a supposedly living and truly human sexuality (called "bawdy") and a technical or mechanical abstraction of sex (called "obscene" or "pornographic"). This is not the place to comment at length on the clichéd nature of Hope's conservative complaint, nor on the emptiness of his representation of the social, nor even on the way his piece reiterates the usual classification of literary texts into those which simply embody life and those which don't. It is not even a matter of contesting his view that Lady Chatterley's Lover is a "humourless and rather mawkish much-ado about very little"; all that his comments serve to show is that he assumes a literary text is a given which can be classified in the dualistic terms indicated above. My concern, however, is to analyse some of the procedures whereby texts come to be classified — or "recognised," in the more technical, legal sense of the term — as literary. To put the question bluntly: is a text placed in the class of literature simply because it is recognised as literary, or is it recognised as literary as a result of being classified in a particular way?

The 1960 prosecution allows a variation on this question, and to some degree the variation displays the matter in dispute more clearly. To re-pose the issue: could Lady Chatterley's Lover be placed in the legal canon of obscene precedents because it is obscene, or would it become obscene (that is, become the object of a certain form of consumption or reading) by being placed in such a legal canon? In assessing the consequences of the procedures for classifying and reclassifying Lady Chatterley's Lover, there is no need to reconstruct (as was done recently in dramatised documentary form in a BBC television twentieth anniversary commemoration of the trial) those spirited and sometimes comic exchanges in the courtroom at the Old Bailey in October 1960 between a Prosecution which claimed the text for legal obscenity and a Defence (fielding its team of expert literary witnesses) which claimed it for literature by classifying it within the canon of great literary works. Nor is there any reason to reiterate the standard, liberal disapproval of certain gambits by the Prosecution, nor to constitute the outcome of the trial as a major point in the maturation of English
society. It is sufficient to indicate that the trial exemplifies the conjunction of contrasting schemes of classification — and also of distinct conceptual and institutional fields of knowledge (the legal and the literary) — with their different criteria for evidence and different forms of argumentation.

Nevertheless, there is reason not to hypostasise the demarcation by asserting an absolute and enduring difference. The formulation of the 1959 Obscene Publications Act demonstrates adequately that the "legal" and the "literary" are better characterised as relations of partial exchange and overlap than as fields of absolute exclusivity. The legal field — as a zone of evidence admissible under the statutory terms of the new Act, and of argument recognised within the apparatus of the courtroom — is the formal and institutional agency of the pastoral functions of censorship and authorisation of published matters; in this instance, the courtroom itself becomes the scene of a determination that "recognises" (that is, classifies) a text as literary. The accomplishment of this function is in part made possible by the introduction into law, as statutory concepts, of categories drawn from the field of literary criticism. This dates back precisely to the 1959 Obscene Publications Act, in which the categories of "literary merit" and "the work as a whole" are established. Section 4, Subsection (2) of the Act provides that "the opinion of experts as to the literary, artistic, scientific or other merits of an article may be admitted in any proceedings under this Act either to establish or to negative the said ground." The ground in question is the "public good" defence which the 1959 Act makes available in cases of prosecution for the publication of obscene items. "Literary merit" thus becomes a statutory concept representative of a value recognised at law as expressive of the public good, just as in copyright matters "fair dealing" becomes available as a "public good" defence against infringements of copyright. What is crucial with the new legislation is that literary criticism is accorded legal recognition, and becomes admissible as expert testimony alongside such knowledges as forensic medicine and ballistics. The changes are in no sense metaphysical, but straightforward institutional revisions of the legal apparatus effected by a disparate conjunction of social, moral, political, economic and cultural determinations. The category of "literary merit" is thus appropriated into law from literary criticism. Once there, it is allocated the quite precise function of redeeming (on the grounds of the public good of literary merit) a work deemed obscene. Strictly speaking, the citation of evidence in expert testimony of literary merit need occur only in a second moment of a trial, that is, after a work has been deemed obscene. This ideal sequence did not manifest itself, however, in Regina v. Penguin Books Limited, despite the Judge's warnings about the precise rules for the ordering of the trial, and despite the reiteration (in the opening and closing addresses for the Prosecution and the Judge's summing-up) of the statutorily defined redeeming function of "literary merit." (It would be interesting to investigate the effect on the apparently diffuse category of "literary merit" of its technical and legal adoption as a de-criminalising mechanism. Does the category preserve an ideal and unchanging identity in this and its other uses?)
A second category appearing in the 1959 Act is that of "the work as a whole." It is unnecessary here to retrace it to a single point of origin in the traditions of literary criticism, such as its currency in the field of New Criticism at the time the Act was formulated. That the text should be read as a whole seems self-evident: indeed, the notion that one should not, or need not, read the whole of a text — particularly a literary text — in order to know it, might even appear scandalous. At least it might seem so to those who have forgotten the elevated idealism of a Crocean aesthetic which did not hesitate to recommend selectivity as a principle of approved readings, or to those who disdain the commercial practices of selective anthologisation or digestion of texts. Within the terms and procedures of recent English legislations on obscenity, however, the function and significance of the category "the work as a whole" merit some comment. Prior to the formulation of the 1959 Act, counsels for the prosecution could gain verdicts of obscenity by the procedure of reading out choice and chosen words, sentences and "purple" passages. Indeed, even though the Act requires that the text be charged as a whole, the Prosecution in the 1960 trial, in his opening address, moves towards this older practice. He invites members of the Jury to turn to page seven of *Lady Chatterley's Lover*, only to meet the Defence objection "to my learned friend's drawing the Jury's attention to any passages in the book before they have read it" (*Trial*, p. 21). They had to read the book as a whole. In fact, at this early point in the proceedings — and quite appropriately, since the charge was brought in part to test the new legislation — an argument ensued about the change in the law whereby selected passages could now be considered only in the light of the book as a whole.

In recording the historical nature of this legal recognition of "literary merit" and "the whole text" as categories drawn from the "elsewhere" of literary criticism, there is no question of arguing that an amelioration occurred, and that a technical domain — the law — was improved or reformed by the incorporation of a previously lacking ethical or aesthetic element, seen as a sort of supplement in the form of categories such as "literary merit." To insist upon the localised historical nature of the legal existence of these borrowed categories within the apparatus of the law is important because, just as they enter at a clearly definable point, so too they might exit. What I have in mind is the fact that the recent Williams *Report of the Committee on Obscenity and Film Censorship* recommends that "literature" or the written word be recognised as immune to any charge of obscenity. If the recommendations of the Williams Committee were to be transformed into legislation, in other words, literature in England would be deemed henceforth to be statutorily incapable of what now counts as "obscenity." Unlike film, or live acts, literature here attains a final decency, a confirmation at law of its thorough innocuousness. Nothing written (as opposed to filmed or performed) would be able to give offence to "the reasonable man." It is not the place or purpose here to develop at any length the questions raised by Williams' use of the category of "the reasonable man" in order to represent — as a general good — ethical values of the community. Evidently, the transcendental category of "the reasonable man" allows Williams to construct a
particular, that is, philosophical ground for the legislation recommended by his committee. But it is clear that quite other grounds could have been constructed, for instance by employing sociological entities such as “community standards” or “the will of the majority,” appropriately surveyed. The Williams Report can be read, therefore, as a statement of how the legal possibility for literature to provoke sexual or other outrage is lost. However hard a latter-day Lawrence might try, he or she could not write anything that could qualify, legally, as obscenity. Nothing written could go too far. So Lady Chatterley’s Lover, or any other written text, is eligible for a legal reading as obscenity only for a limited time. It would be interesting, no doubt, to develop the implication (in my earlier jibe at Hope) that the category of the “obscene” is itself an effect of a historically specific statutory act of definition, and not an unpressed outburst of a supposedly authentic humanity. To argue this would also be to deny the casual anthropology of a literary representation of obscenity (or “bawdy”) as an effect of a life force, whether degenerate or generative. Such a denial marks a break with the habitual elaboration of readings of the obscene, whether dystopian (in the manner of A.D. Hope and the Festival of Light) or utopian (Kristeva and Lawrence), both of which attribute transcendental value to obscenity, either negative or positive as the case may be. Notions of obscenity as an essence are mocked by the evidence that, in the conditions of post-Williams law, Lady Chatterley’s Lover could not be argued by even the most prudish Prosecution to be obscene, however explicit or extended the development of (say) the novel’s instance of anal intercourse. In these conditions, the text could no longer be charged with scandal, because it would lack the specific element that the law could recognise: not sex, but cinematic imagery; not a literary, but a live act.

Nevertheless, between the 1959 Act (in which certain categories entered the law on obscene publications) and the putative date of the implementations of the Williams Report, particular conditions will have obtained in which it is possible for literature to break the law and thus disturb the legal order of things. With Williams, this capacity to transgress (and the notion of such a capacity is reproduced in statements like Hope’s) will become impossible, having become the exclusive property of the cinema and the night-club.

The 1960 case can be represented as a confrontation between two claims: a Prosecution claim to recognise the grounds for placement of the text within the legal canon of obscene precedents, and a Defence claim to recognise the grounds (literary merit for the public good) for placement of the text in the aesthetic or moral canon of literary works of note. The confrontation was resolved of course by a finding in favour of the latter, following expert testimony on the literary merit of the text as a whole. More detailed analysis shows that the procedures of the Defence argument include a number of other conceptual categories familiar in literary critical practice, but which (unlike “literary merit” and “the text as a whole”) do not make the passage into statutory recognition in the 1959 Act. It is notable that some of the procedures of the expert literary testimony
mobilised by the Defence involve categories specifically excluded by the statutory definitions of admissible evidence in obscenity proceedings. Most obvious in this regard is the category of authorial intention which, whilst central to a major literary critical tradition, is excluded from legal recognition: the business of the court is to judge not an intention established prior to the text, but rather an effect produced subsequent to a reading of it, namely evidence of a tendency to deprave and corrupt a reader. Obscenity is represented, therefore, as an effect coming after the reading of the text. The Bench and the Prosecution were quite clear on this point, and resisted initially any move by the Defence to claim the text for literature by references to the author's intention that depictions of sex in the novel were to serve a variety of moral and aesthetic purposes. This is one of the ways in which the Defence rescued the text from placement in the legal category of obscene precedents, and enabled it to be recognised in law as a member of the class of works of literary merit.

Of the available procedures for placement in the class of literary works employed by the Defence, it is sufficient to distinguish four: the representation of an authorial intention; the representation of an authorial corpus or oeuvre in which the text was placed; the performance of allegorical readings, represented as grounded in expert knowledge of an authorial intention; and the representation of a literary tradition in which the text was placed. None of these procedures (nor the arguments derived from them) is particularly interesting or surprising, as they are standard practice in secondary and tertiary English teaching, in literary reviews in newspapers and journals, and even in casual conversation. What is interesting in the 1960 prosecution of Penguin Books Limited is that these mechanisms are employed (by the Defence) in conditions quite other than the normal, namely in the statutorily defined conditions of the courtroom operating within the specific terms of the 1959 Obscene Publications Act. Short of a takeover by literary critics of the legal apparatus, nothing could have guaranteed in advance the admission of *Lady Chatterley's Lover* to the class of texts having literary merit (that is, to the class of literary texts), the more so since certain procedures of the literary expert testimony — standard in literary criticism — cut against the terms of the 1959 Act. The fact of this difference between the literary and the legal fields, however, is itself to be set against evidence of an overlap occasioned by the appearance of literary categories (“literary merit” and “the text as a whole”) as statutory legal concepts, as well as by the new admissibility of literary criticism as expert testimony. To a greater or lesser degree, each of the four specified procedures for claiming a text for literature was contradicted by the court's statutory terms of operation, which ruled inadmissible any statement about Lawrence's intention, or about works other than *Lady Chatterley's Lover*. In other words, what could be said and recognised as evidence in one field (that of the English Department) was not recognised as evidence in another (the courtroom). As an instance of the conditional nature of evidence, at least in principle, this is eminently citable.

Little more need be said on the first of the four procedures: the representation of an authorial intention. That such a representation was
made in court — at times against the objections of the Prosecution and the
directions of the Bench — can be read as one of the contradictions in the
1959 legislation. Whilst the new availability of a "public good" defence
allowed expert (literary critical) testimony on the matter of literary merit,
it did not anticipate that an inevitable procedure of such expert knowledge,
at that time, was the representation of an authorial intention precisely
inadmissible as evidence under an Act which defined obscenity in terms of
an effect. Although the Act foresaw the admission of literary expert
testimony, it did not foresee that one of its cardinal procedures for
representing the qualities of literary texts stood in a relation of
contradiction to the definition of obscenity embodied in the same Act.
Inevitably, once in court (and despite the warnings of both Judge and
Prosecution), the literary expert testimony adopted the procedures
available to literary criticism, including a dogged recourse to an account of
authorial intention.

Whether literary merit — and the consequent attribution of texts that
have it to the class of literature — is itself to be represented in terms of
certain supposedly "uplifting" or "improving" effects of reading, or in
terms of certain supposedly "integral" or "essential" qualities of the text
(including an inherent, authorial intention) is always a worthwhile
question. In the courtroom at the Central Criminal Courts in 1960 it is
clear that the Defence argument for literary merit drew preponderantly on
the latter option. It sought to establish *Lady Chatterley's Lover* as a
member of the class of works of literary merit, on grounds internal to the
text-authorial intention schema; it did not want to consider the external
relations of the text to modes of distribution and conditions of reading.
The latter move was left very largely, if not exclusively, to the Prosecution.
Whether or not these two lines of argument are construed as mildly or
absolutely contradictory is also a worthwhile question, provided that the
conditions for posing and answering it are clearly recognised. In an English
classroom, for instance, these might be seen as different yet mutually
enriching perspectives, but in the courtroom they were diametrically
contradictory. Both Judge and Prosecution tried to define and apply the
terms of what was after all a largely untested piece of legislation, reminding
the literary expert testimony of the inadmissibility under the Act of matters
of authorial intention, and of the inappropriateness to the statutorily
organised work of the Court of a classroom procedure whereby literary
criticism habitually claims works for literature. It is not the case, however,
that problems of definition and admissibility pertain only to the
intentionalist practice of literary criticism. Where the matter of effects is
concerned, it is unclear what sort of evidence could be advanced as proof of
the text's tendency to deprave and corrupt. In the 1967 prosecution of *Last
Exit to Brooklyn*, a former English test cricketer, the Reverend David
Sheppard, and a publisher, Sir Basil Blackwell, both testified that the work
had tended to corrupt them. Beyond the ridiculousness of such
confessional antics, it is apparent that other supposedly more systematic
apparatuses (such as psychological investigations of changed mental
states, or physiological and neurological investigations of changed bodily
states) have obvious problems of their own, not the least of which is that a
changed bodily or mental state would first have to get itself recognised as a
criterion for what would count as evidence of depravity and corruption.

Despite direction from the Judge that only Lady Chatterley's Lover
(and moreover only the effect of reading that work) could be in question
within the terms of the Act, the expert literary testimony had recourse to
the procedure of citing other works by Lawrence, typically the more
established novels and not, for instance, the erotic graphic works. Thus
Raymond Williams testified that Lady Chatterley's Lover “is one of
Lawrence's four major works, the others being the three novels Sons and
Lovers, The Rainbow and Women in Love. I think Lady Chatterley's
Lover is clearly a book of that substance and would be ranked with those
other three” (Trial, 133). This procedure is entirely familiar within the
practices of English literature study: it understands itself as a means of
retrieving Lady Chatterley's Lover from the class of obscene works which
instrumentally exploit a mechanical simulation of sexual effects, and also
of placing the novel within the established Lawrence oeuvre by citing other
titles from it and instancing their critical reputations. Within the practices
of literary study and criticism, this procedure is so familiar as to be reflex;
within the terms of the Act, however, it is not clear that any mention of a
"Lawrence" is admissible, other than as a convenient and specific means of
naming the work in question.

The Defence representation of a Lawrence literary oeuvre and of the
placement therein of Lady Chatterley's Lover appears to have functioned
successfully as a redeeming operation. Nevertheless, to recall an earlier
question, it remains to be asked whether this placement is an effect of
recognising the self-evident literary merit of the text, or whether the
attribution of literary merit is not somehow consequent upon its being
placed in the category of the oeuvre, and read accordingly. Together with
the superposing of a representation of a specifically literary intention upon
the text, and the allocation of the text to a specifically literary category or
oeuvre, the procedure of performing allegorical readings that claim to say
what is really said in what is said operates to "literarise" the text. This is
particularly the case in relation to the depictions of sex. By means of
allegorical readings, depictions which invite recognition of the text as
obscene can be rewritten into empty figures or appearances masking the
supposedly "real" meanings of the novel. Characteristically, this operation
involves a rewriting of sexual actions into terms of moral intentions. Thus
Dame Rebecca West demonstrated to the court how to recognise and read
depictions of sex as moments in "a return of the soul to the more intense
life . . ." (Trial, 67). In principle, no depiction could resist this
procedure: it is reworked into the quite different depiction — (re-)constructed in the expert literary testimony — of a founding intention of
the text, which "was designed from the first as an allegory," where "sex" is
read as "soul" (Trial, 67). Like other allegorical equations, this was
presented as resting upon a fact of authorial intention. In practice, it would
have been interesting to see whether the procedure of retrospective
allegorisation could have handled the depiction of anal intercourse
between Connie and Mellors, or whether this depiction would have
resisted the ambitions of Dame Rebecca and other expert witnesses to establish the author's moral commitment in all his works to a full and mutual sexual exchange between men and women. The Prosecution might have been on a winner here in 1960, but could not bring himself to name the thing, although he clearly saw its presence and read the relevant passage for the first time in his closing speech (Trials, 221: Rolph observes that "this unexpected and totally unheralded innuendo visibly shocked some members of the Jury"). Defence arguments for recognition of the novel's literary and allegorical merits as a public good were countered instead by scathing comment on their excessive and improbable nature, presumed acceptable in the hot-house atmosphere of university English Departments, but scarcely likely to be recognised as other than nonsense by the lads on the factory floor, who knew an obscene book when they saw one. The usual liberal accounts of the Prosecution's philistinism, insensitivity and buffoonery fail to note that what happened in the courtroom, in the process of claiming the text for literature, was the staging of a lesson in allegorical reading by the expert literary testimony. As with the representation of an authorial intention, the procedure of performing a desexualising allegorical reading — said to be legitimised by expert knowledge of authorial intention — is in contradiction with the definition of obscenity (as an effect) in the Act. Once in court, however, the procedure served to argue the appurtenance of the text to the literary canon, and not to the legal canon of obscene precedents.

The authentic moral concerns that were claimed to underlie the Lawrence oeuvre, and to constitute the meanings intentionally embodied in the sexually active personifications identified in allegorical readings of Lady Chatterley's Lover, were themselves susceptible to an even higher level of contextualisation. The immunity of Lady Chatterley's Lover to the charge of obscenity was enhanced by two specific procedures. First, the construction of a tradition in which certain moral values are commemorated perpetually, and a canon of major works of English literary writing which express those values; and secondly, by representing that tradition as underpinning the writings of Lawrence, and binding them into that class of other literary works whose merit, supposedly, is established once and for all. Access to such works, therefore, would be incontestably for the public good. As the tactical advantages of this procedure are clear enough, a single example of its operation in the 1960 prosecution will suffice, namely the attempt to place Lady Chatterley's Lover in the mainstream of puritanism, and to represent it as a text in the canon of that tradition. The following exchange between Mr Griffith-Jones (cross-examining for the Prosecution) and Richard Hoggart (expert witness for the Defence) will serve:

"You described this book as highly virtuous, if not puritanical" [said Mr Griffith-Jones]. 'Please do not think that I am suggesting it with any bad faith against you. That is your genuine and considered view, is it?' — 'Yes' [responded Mr Hoggart].

'I thought I had lived my life under a misapprehension as to the meaning of the word "puritanical". Will you help me?' Mr Hoggart
took this as a genuine cry for help. 'Yes,' he said, 'many people do live their lives under a misapprehension of the meaning of the word "puritanical". This is the way in which language decays. In England today and for a long time the word "puritanical" has been extended to mean somebody who is against anything which is pleasurable, particularly sex. The proper meaning of it, to a literary man or to a linguist, is somebody who belongs to the tradition of British puritanism generally, and the distinguishing feature of that is an intense sense of responsibility for one's conscience. In this sense the book is puritanical.'

'I am obliged for that lecture upon it. I want to see a little more precisely what you describe as "puritanical". Will you look at page 30? On page 30 there is a description of the second "bouf", if I may again borrow a word, with the man Michaelis. Do you see towards the bottom of the page: "He roused in the woman a wild sort of compassion and yearning, and a wild, craving physical desire. The physical desire he did not satisfy in her; he was always come and finished so quickly, then shrinking down on her breast, and recovering somewhat his effrontery while she lay dazed, disappointed, lost. But then she soon learnt to hold him, to keep him there inside her when his crisis was over. And there he was generous and curiously potent; he stayed firm inside her, giving to her, while she was active... wildly, passionately active, coming to her own crisis. And as he felt the frenzy of her achieving her own orgasmic satisfaction from his hard, erect passivity, he had a curious sense of pride and satisfaction. 'Ah, how good!' she whispered tremulously, and she became quite still, clinging to him. And he lay there in his own isolation, but somehow proud.' Is that a passage which you describe as puritanical?" — 'Yes, puritanical, and poignant, and tender, and moving, and sad, about two people who have no proper relationship.'

'Again, I do not want to stop you if you have something further to say, but the question is quite a simple one to answer without another lecture. You are not at Leicester University at the moment. Just look down the page a little... (Trial, 99-100)'

The citation demonstrates the procedure whereby a transcendental moral value — puritanism — is established as the ground of a canonical tradition of literary writings (the cross-examination moves on to mention, for example, Paradise Lost). The same procedure allowed the placement of Lady Chatterley's Lover in the canon of English literature, alongside The Canterbury Tales, Hamlet, The Bible and Ulysses, formulated alternatively as a recognition that "[Lawrence] stands... with Virginia Woolf, James Joyce, Conrad and Mr E.M. Forster... as among the major novelists in this century" (Trial, 158). Once again, however, it is pertinent to comment on this operation of placement in the literary canon. The accuracy of the placement — the evaluation of the relative merit of Lady Chatterley's Lover, and its claim to be recognised as part of the lineage of great literature (or even, in the first instance, as literature) — is
not in question. Rather, it is a case of observing that this operation of canonical placement is specific to a literary critical practice. That this is so is evidenced by the quite different placement operated by a legal representation of the novel, for instance in Geoffrey Robertson's Obscenity. Here, *Lady Chatterley's Lover* is not located in the category of works carrying the signature "Lawrence" nor in the category of classical texts in the English literary tradition. Instead, it appears in the legal canon of precedent obscene works, together with *The Quintessence of Birch Discipline*, *The Confessional Unmasked*, *The New Lady's Tickler*, *Lady Bumtickler's Revels*, *Colonel Spanker's Experimental Lecture and Rape on the Railway: A True Story of a Lady who was First Ravished and then Flagellated on the Scotch Express*, as well as *My Life and Loves, Here Lies John Penit* and *The Philanderer* (only the last of these texts, an object of prosecution in 1954, was actually cited in the course of the 1960 case).

There is no question in this legal canon of citing the titles of the rest of the Lawrence *oeuvre* or of discoursing on other works which record human strivings after truth and goodness. The alternative lineage constructed here for *Lady Chatterley’s Lover* recognises neither an authorial presence regularly reproduced in literary criticism, nor transcendent values represented by that criticism as embodied in an unbroken (if perhaps always threatened) literary tradition. In Regina v. Penguin Books, the latter can be cited only to effect a literary capture of a challenged or doubtful text. In place of authorial presence and unbroken tradition, precedent determinations (resulting from legal judgements on obscene publications) organise the legal canon of exemplary obscenities — texts that produce an effect of depravity and corruption.

Within the context of the courtroom, two quite different and competing placements are available: the legal and the literary. It would be interesting to pursue the consequences of a text's shifting between them. For the present, however, I want simply to reiterate in summary form the four procedures whereby the literary institution, as mobilised by the Defence, claimed membership for *Lady Chatterley's Lover* in the class of literary works, thus redeeming it from membership in the class of texts deemed legally obscene:

(i) the representation for the text of an authorial intention (as opposed to the normal anonymity of pornography);
(ii) the representation of an authorial *oeuvre* in which the text is placed (as opposed to the isolation of a pornographic work);
(iii) the performance of allegorical readings, represented as grounded in expert knowledge of an authorial intention (as opposed to the literal and non-expert readings of pornography); and
(iv) the representation of a literary tradition in which the text is placed (as opposed to the placement of the pornographic text in the historically particular contexts of different legislations on obscene publications).

In noting this demarcation between the literary and the legal fields, it is possible to develop some limiting observations on the notion of a continuous or universal tradition, particularly in formulations (perhaps not statutory, but yet quite regular in their adoption and functioning) such
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as “perpetual contemporaneity,” “perpetually central” or “survival . . . without discontinuity.” Suggesting the possibility of recording enduring truths and values across changing historical contexts, these terms are proper to the enterprise of constructing and maintaining the concept of a class of texts whose merit is guaranteed in advance of every reading. In the literary instance, these terms are very much analogous to Eliot’s formulations of an imperial literature with a universal language, an ideal literature and a literary ideal supposedly foundational to all phases in the history of our culture. Comparable positions are staked out in Auerbach’s *Mimesis*, in Curtius’ *European Literature and the Latin Middle Ages* (with its continuous tradition of a transcendentally yet progressive human will to know more and better) and in Gombrich’s *Art and Illusion*.10

There are evident advantages in recognizing tradition as a complex of permanent values, which are perpetually available for manifestation in particular realizations, but are not reducible to any of them. These include of course the adoption of this “recognition” as a procedure for claiming texts for literature. But there are also problems, in particular that form of reductionism whereby quite different textual productions are represented as expressions of a common source, theme or unified tradition. That such representations are to be taken as instances of particular practices of knowledge (indexing particular institutional functions and organisational strategies) is implied by counter examples which show that same tradition or unity as an effect of such practices rather than their foundation:

The notion of tradition . . . is intended to give a special temporal status to a group of phenomena that are both successive and identical (or at least similar); it makes it possible to rethink the dispersion of history in the form of the same; it allows a reduction of the difference proper to every beginning, in order to pursue without discontinuity the endless search for the origin; tradition enables us to isolate the new against a background of permanence.11

Here it is suggested that the construction of a tradition is reductive of specific historical differences — in much the same way, ironically, as it is asserted habitually that technical disciplines such as linguistics or sociology are reductive of the inexhaustible wealth of human experience which, allegedly, is represented, remembered and re-experienced in the canonical works of a literary tradition that remains identical and unchanging across its different manifestations.

Against precisely such a background of immutability, it is possible to pose the question not only of changes in the organisation of the literary curriculum, but also of the substitution and modification of reading lists, even though at first this may seem to bear little relation to the matter of eternal or imperial verities. The question is not unconnected to the fact of competing canons in the trial of Penguin Books Limited, even though that example of contested classification might be resisted here on the grounds that it traverses institutions (the literary and the legal). However, inside the field of literary knowledge itself there are evident shifts and ruptures which prompt questions on at least three further procedures whereby works or
parts of works are canonised into literary status:

(i) the selection of different parts of the same text as exemplary of the
    same canonical tradition;
(ii) the selection of different texts as exemplary of the same canonical
    tradition; and
(iii) the indication of different representations of what is to stand as the
    "literary," these different representations being themselves
    exemplified either by texts that are canonical and particular to the
    one representation, or by texts that are canonical to more than one
    representation of the "literary."

An example of the selection of different parts of the same text as exemplar of the same canonical tradition is provided by the *Divine Comedy*, that encyclopaedic compilation of doctrinal and didactic dissertations on theological questions of virtue and sin, technical discussions of the cosmos and its workings, historical descriptions of the state of Florentine politics, programs for imperial adventures, as well as lyric poetry. At various times, different parts of the *Divine Comedy* have been advanced as exemplary of the one literary tradition. This variant selectivity has been thematised, for instance, within the terms of the idealist criticism of Benedetto Croce, according to which the permanence of the lyrical (expressive of the transcendental truths of spirit) must be distinguished from the historically specific limitations of the doctrinal or theoretical (which are delimited by their particular historical concerns, and therefore need explanatory footnotes to make them intelligible to those same later readers who are held to be perpetually competent at recognising the timeless truth of lyricism). This is the problem of anthologisation, whether for idealist lyricism, for students of dogmatic theology, for the pragmatically determined needs of school children, or for the conventionally determined norms of such adult readership as that of *Reader's Digest*. In its turn, anthologisation raises the several problems of textual extraction. What is the mode of signification of a fragment? What are the criteria for determining that a fragment has representative value? What are the principles of inclusion and exclusion operating in particular anthologisations of portions, pages or chapters? Certainly the fragment, like the anecdote, would seem to have its particular and variable conditions of use, even its ideology. For instance, in the specific context of that English tradition of resistance to systems and total schemas, Terry Eagleton has been moved to observe recently that at Oxford "reading [literature] was a genteel pursuit which simply took the form of opening the book and turning the pages sensitively until you got to the end. You could then have a good chat about which bits you liked and which you didn't and finish off the sherry bottle."13

Decisions to include and exclude different texts in and from reading lists mark the most familiar forms of change in the curriculum. Sometimes such changes are propelled by crude shifts in the current market value of a text in competition with others; sometimes by more complex shifts in the whole apparatus that teaches literary reading. This is the place where the larger work of reforming the curriculum is undertaken, perhaps with some
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...
highest level the elusiveness of human character in the figure of the
Prince riven by an inner conflict of impulsiveness and reflection.
Against this representation of character and inner conflict as the irreduc-
ible bedrock of the text called Hamlet can be distinguished the repre-
sentation given (or giveable) by the Greimas tradition of structural-
semantic textual analysis. This would treat the psychological bedrock of
character conflict as simply one of several possible manifestations of what
is depicted as the fundamental text, namely a set of semantic relations
between components of an elementary structure of signification. What is
now to be called Hamlet is representable in such terms as (S1→S1) or
(S1→S2), that is as formal relations between semantic entities supposedly
apprehended prior to their lexicalisation into either (Passion→
Indifference) or (Passion→Reason). These formal “deep” structures, so
the argument would run, are thinkable as semantic primitives (conceptual
relata, later to be lexicalised); subsequently, they are invested with
progressively more specific modalities until they reach the point where
the concepts are anthropomorphised into something like a recognisable
character. The foundational claim of this semantic is clear: it is to
know the “text” in terms of certain necessary formal relations that
stand prior to any particular realisation of their potential. Thus, for
Hamlet, the fundamental semantic relation of (Passion→Reason) could as
well be realised in the surface form of an inner conflict within the one char-
acter, as in the externalised conflict between two characters, or indeed be-
tween the Danish and Polack armies on the ice. However, a problem
remains for this structural-semantic tradition: of what are literary texts ex-
emplarily illustrative? To observe that Hamlet might work well enough for
the representation of a deep semantic structure simply poses the question
of what precisely is to count as Hamlet. Casual observation would suggest
that many already established literary classics — Racine, Mallarmé,
Bernanos — have served as exemplary texts for this tradition of semantics.
On the other hand, whilst scarcely adding new texts to the canon, this
tradition (together with other initiatives in the formalist-linguistic domain
of analysis) recognises as canonical those popular and folkloric texts which
are excluded from serious consideration by the psychological tradition, on
the grounds that they have no characterological dimension of any
substance. In this way, Cinderella and Goldilocks can be read as
exemplary for textual semantic analysis by literary students in universities
without either a moment’s embarrassment or a thought of childhood; their
reading has become a linguistic investigation into the mechanisms of
narrative.

The third of the traditions indicated above is the archetypalist, which
focuses on what are represented as universal symbolic orders. Paradoxi-
cally, the archetypalist tradition shares with structural semantics the
capacity to recognise popular and folkloric texts in which the psycho-
logical tradition is not interested. Beyond this overlap, however, it is
not clear that the archetypalist and the semantic investigations have
anything in common, since the former takes as foundational not ahistoric
semantic relations but ahistoric symbolic forms of the human imagination.
The implications of this particular foundationalism have been developed
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in English studies most fully by Northrop Frye. His *Anatomy of Criticism*, which elaborates the notion of a system of fundamental symbolic forms expressed in "literature," leads to the formulation of criteria for canonicity which recognize popular or para-literature as that in which the symbolic archetypal forms are realised or embodied most directly:

We have associated archetypes and myths particularly with primitive and popular literature. In fact we could almost define popular literature... as literature which affords an unobstructed view of archetypes. We can find this quality on every level of literature: in fairy tales and folk tales, in Shakespeare (in most of the comedies), in the Bible (which would still be a popular book if it were not a sacred one), in Bunyan, in Richardson, in Dickens, in Poe and of course in a vast amount of ephemeral rubbish as well.\(^{15}\)

At least two remarks are in order here. It is evident that Frye's account of archetypes and the eclectic listing of exemplary texts do little to state criteria for selection of canonical texts. Secondly — and paradoxically — I imagine that works like *Raped on the Railway* or *Lady Buntickler's Revels* could return here to constitute a canon of archetypally ideal texts alongside Shakespeare, Bunyan and Dickens.

On looking across these different traditions, each of which can generate its canonical selection of texts to illustrate its specific representation of the "literary," it would seem that no single literary canon excludes all members of other literary canons, and also that texts are susceptible to shifts or oscillations between different canons. Thus, despite all the careful work of expert witnesses in 1960 to capture *Lady Chatterley's Lover* for literature and to segregate it once and for all from the likes of *Lady Buntickler's Revels*, the particular representation of the literary domain by an archetypalist tradition risks bringing Lady B. and Lady C. together again by depicting their respective narratives as manifestations of a common symbolic order.

No analysis that traverses traditions (for instance, the legal and the literary institutional fields) need suggest a synthesis of perspectives into a single unity, nor strict enclosures within the limits of separate traditions, institutions or disciplines. Certain demarcations and discontinuities, and certain incompatibilities and even contradictions, have been noted; but it remains the case that texts both shift and are shifted across limits. The consequences of such movements have been hinted at rather than developed in my remarks on the effects of reclassification. The movement not only of texts but also of concepts has been considered. Thus concepts drawn from literary criticism appear (for the first time in 1959) in the legal field, as this is statutorily constituted by the Obscene Publications Act of that year. The processes of this conceptual shift, however, have scarcely been elaborated. Nothing has been said on the political actions that preceded this shift, and very little on the transformation of aesthetic concepts such as "literary merit" or the "text as a whole" once they become statutory concepts operating in the particular legal conditions of obscenity proceedings. Nor has there been any more than a brief reference to the
possible disappearance of these categories (if the recommendation of the Williams Report were to be adopted), together with the whole notion of a defence of literary merit in the name of the public good, a defence which in the years since 1959 has conferred legal recognition on literary criticism as an admissible expert testimony.

Another unrealised but implied task of this analysis is that of inspecting the literary field or fields. Whilst not statutorily defined in the manner in which the legal domain is organised by the terms of an Act of Parliament, the literary field is ordered nonetheless by the categories and practices — some recently borrowed from elsewhere, others seemingly more indigenous — which, in conjunction with the heterogeneous determinations working on the production, dissemination and reading of texts, institute and regulate that field at any particular time.

A final implication of some of the preceding remarks — and one that requires to be argued out — is that a text becomes a work of literature when it is recognised within this literary field, just as it becomes legally obscene when it is recognised as such within the legal apparatus of the courtroom.

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12 See for example the distinction between poesia (spirit) and letteratura (historical culture) developed by Benedetto Croce in many writings, representative extracts of which are reprinted in his Filosofia, poesia, storia (Milan-Naples: Riccardo Ricciardi, 1951), pp. 52-55 and 267-77. For fuller treatment, see his Poesia e non poesia (Laterza: Bari, 1922).