

The Trial of Ulysses

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Abstract

This paper will look at and analyze the United States v. One Book Called “Ulysses” judgement. It tries to show how this unique judgement was framed by the contemporary legal practices and politics of reception of a text. The paper will specifically analyze the narrative and rhetoric techniques that were employed while the case was being argued.

KEYWORDS : Judgement, Legal Practices, Narrative, Rhetoric, Law and Literature.

Ulysses was released in serialized form in the American journal The Little Review from March 1918 to December 1920. Thirteen instalments of the journal had been released before it was banned in the US. These instalments comprised of the first 13 episodes and parts of the 14th episode of Ulysses. Four of these instalments were seized by the US Post Office on charges of obscenity, which included the following chapters; ‘Lestrygonians’ in January 1919, ‘Scylla and Charybdis’ in May 1919, ‘Cyclops’ in January 1919 and, finally, ‘Nausicaa’ in August 1920.

The first legal prosecution against Ulysses happened as a result of the complaint filed to the District Attorney of New York Country by a prominent New York Lawyer (in 1921) whose daughter ‘accidentally’ stumbled upon the ‘Nausicaa’ chapter in her edition of The Little Review (the journal was known for its subversive tone and publication of sexually explicit writings of the Braoness Elsa von Freytag-Loringhoven). The censors were particularly incensed by the ‘Nausicaa’ episode which shows Bloom masturbating while he looks at Gerty McDowell’s exposed legs. He climaxes himself as the fireworks explode in a nearby bazaar. The complaint was passed on to John Sumner, Secretary of the New York Society for the Prevention of Vice who started the suppression of the novel.

The complaint of obscenity was filed under the ‘Comstock Act’ of 1873 which rendered it illegal to circulate material deemed to be obscene by the US mail. A warrant was issued and the publishers of The Little Review, Margaret Anderson and Jane Heap were fined and convicted. Even though no real trial took place, the novel was also, consequently, banned in the UK. The government of Ireland used a customs loophole which prevented the novel from being allowed into Ireland. Not many publishers were willing to risk their career and so the work was first published as a novel in Dijon, France in 1922 by Sylvia Beach at ‘Shakespeare and Company’ with the guided efforts of Miss Harriet Weaver Shaw. Later, under Beach’s plate, Harriet Weaver published 2000 copies of the book for the Egoist Press in England. 500 copies were sent to New York, which were seized by the US Post Office and other copies of the work were confiscated in the UK. Legally unprotected ‘obscenity’ included anything indecent and United States Post Office and Customs Office decided what was ‘obscene’.

It was in 1933 when lawyer Morris Ernst collaborated with Random House Publishers (US) to import a copy of the novel from France into the US with the intention of having it seized by the customs and a case being registered in the court. As per his own admission, Morris made sure that the allegation was filed against the book and not against the persons involved in importing it. Further, he delayed the trial until it could be heard by Judge Woolsey as he did not want a trial by jury. Wary of the judge's literary inclinations and capacity to appreciate a work of art, Ernst was almost sure that the case is half won when Judge Woolsey agreed to postpone the hearing until he himself has read the novel and some critical works written about it, at least once. The trial, *United States v. One Book called "Ulysses"*, started on 25 Nov. 1933 and took place in the District Court for the Southern District of New York. The ruling, in favour of Random House Publishers and against 'the government's motion for a decree of forfeiture and destruction', was delivered on 6 December 1933.

Four main areas under which the case was to be decided could be derived from Judge Woolsey's ruling. These include the following:

- 1) To determine whether the work was written with 'pornographic intent'.
- 2) To specify what 'obscene' would mean for the contemporary US society.
- 3) To move away from Hicklin Test of obscenity and censorship towards a more liberal understanding of these concepts and adoption of the 'reasonable man' test. And to prove that the work in itself is not obscene.
- 4) To look at the work as a sincere effort of a writer willing to represent the various thought processes of his characters and not as an example of some obscure work written with malicious intent.

II

Margret Anderson and Jane Heap fell victim to the court's conventional test of obscenity whereby 'obscenity' was tested for by using the Hicklin method. This test was first adumbrated upon in another case titled *Regina v. Hicklin*, 1868. According to it, a book could be labelled as obscene even if certain paragraphs or sections of it have the potential to suggest 'thoughts of a most impure and libidinous character' (qtd. in pagnattaro, 217) to readers of either sex. This harsh rule became the nemesis of free-speech advocates. As one outraged court in Pennsylvania observed, this rule, if strictly applied, "renders any book unsafe...not even the Bible would be exempt" (*Commonwealth v. Godon*, 124). However, to the dismay of all, the US Supreme Court seconded the judgement and cases of obscenity were largely governed by this test, until the *United States v. One Book called "Ulysses"* judgement.

As a consequence of the decision in *Regina v. Hicklin*, several complaints were filed in courts across the US to label certain works of literary merit as 'obscene', these included complaints against 'classics' such as Ovid's *Art of Love*, works by Rabelais, Fielding's *Tom Jones*, *Confessions* by Rousseau and so on. Several judges ruled vociferously against such complaints and maintained that classic literature should be immune from prosecution; however, most of these judges did uphold the decision of the US Postal Service vis-a-vis the contemporary works that were being published and circulated. Such an outlook towards the classics and the contemporary literature paradoxically entailed that no additions could be made to the former. An earlier publication of *The Little Review* had also come under the ire of the US Post Office in 1917 when it published Wyndham Lewis's story "Cattleman's Spring

Mate". The story focuses on a young, disillusioned soldier during the First World War who seduces a young girl and ignores her when she gets pregnant. The publication was declared 'non-mailable' under Sec 211 of the US Criminal Code which rules,

Every obscene, lewd or lascivious, and every filthy book, pamphlet writing or other publication of an indecent character is hereby declared non-mailable matter and shall not be conveyed in the mails or delivered from any post office or any letter carrier.

That the 1921 trial was not just about the book but also about the 'kind of people' involved in the publication of the work is only too evident when one considers the reputation of the 'lesbian' publishers and the magazine in which *Ulysses* was published. Margaret Anderson and Jane Heap were known supporters of anarchists such as Emma Goldman and Alexander Berkman who published anti-war statements in *New York Newspapers*. Their support for other radical political figures and publication of subversive works was also known. John Quinn, a renowned lawyer, who represented the publishers at the court is known to have asked them to remain quiet and not testify to anything so that they come across as 'respectable' women. Further, the jury was hesitant to read 'salacious' section of the novel in front of 'young women such as Miss Anderson'. When reminded that she is one of the publishers, one of them argued that she probably didn't know the significance of what she has published.

The work was published because of the consistent efforts of five women; Nora Barnacle - the woman who inspired the novel, Margaret Anderson and Jane Heap- the women who first published the novel in serialized form, Harriet Weaver- the force behind the novel's first print edition and Sylvia Beach – who first published the entire novel at Dijon, France. However, paradoxically, one of the reasons for its ban was that it could corrupt those whose minds are 'open to immoral influences and into whose hands a publication of this sort may fall' (*Regina v. Hicklin*) - women and young people.

While arguing the case, John Quinn commented that he himself "do[es] not understand *Ulysses* – I think Joyce has carried too far". To which the judge replied, "Yes, it sounds to me like the ravings of a disordered mind- I do not see why anyone would want to publish it". John Quinn lost the case and, while leaving the courtroom, admonished Anderson saying "Now for God's sake don't publish any more obscene literature'. He was a lawyer who somehow sided with the views of the prosecutor. Later, he expressed his distaste for his defendants in a letter to Ezra Pound (written in 1920) where he says, "I have no interest at all in defending people who are stupidly and brazenly and Sapphoistically and pederastically and urinally and menstrually violating the law, and think they are courageous." (qtd. in Vanderham, 21).

During the 1920s and 1930s, courts around the US were also beginning to change their outlook towards obscenity in works of literature. An example, as quoted by Pagnattaro, is a case entitled *Halsey v. New York Society*, 1917 where, ruling in favour of a publisher who had published an English translation of Theophile Gautier's *Mademoiselle de Maupin* – a work that was earlier labelled as 'obscene' and hence banned, the judge opined that,

No work may be judged from a selection of such paragraphs alone. Printed by themselves they might, as a matter of law, come within the

prohibition of the statute. So might a similar selection from Aristophanes or Chaucer or Boccaccio, or even the Bible. The book, however, must be considered broadly as a whole.

The importance of this opinion lies in the fact that it refuses to label a work of literature as obscene by a mere reference to certain paragraphs or sections from it, rather, it stresses upon the need to consider the work as a whole. This marks a shift in the way a work of literature would be evaluated under the obscenity statute. Further, other judgements on the like cases were also improvising upon the Hicklin test which was otherwise the accepted norm to judge cases for obscenity. An argument commonly made by such judgements is that it is better to introduce young readers to the issues of sex in a decent language of a writer rather than to allow their curiosity to take on even more harmful manifestations. Considering the contemporary society, the court also took cognizance of the fact that the kinds of words and descriptions that it is trying to suppress are actually always present around us in their more vulgar form – sometimes scribbled on the walls and at others as abuses.

In a decision titled *United States v. Kennerly*, 1913, Judge Learned Hand found the novel in question obscene when he applied the ‘Hicklin test’ to it. However, he added an important clause which became a ‘precedent’ for later judgements. He states,

Indeed, it seems hardly likely that we are even today so lukewarm in our interest in letters or serious discussion as to be content to reduce our treatment of sex to the standard of a child’s library in the supposed interest of a salacious few, or that shame will for long prevent us from adequate portrayal of some of the most serious and beautiful sides of human nature.

Before his ruling on *United States v. One Book called “Ulysses”*, Judge Woolsey ruled on another case titled *United States v. One Obscene Book Entitled Married Love* (6 April 1931) where he dismissed the libel. His major argument was that the book is “a considered attempt to explain to married people how their mutual sex life may be made happier”. He offered the definitions of ‘obscene’ and ‘immoral’ from Murray’s *Oxford English Dictionary*:

Obscene 1. Offensive to the senses, or to taste or refinement; disgusting, repulsive, filthy, foul, abominable, loathsome. Now somewhat arch.

2. Offensive to modesty or decency; expressing or suggesting unchaste or lustful ideas; impure, indecent, lewd.

Immoral- The opposite of moral, not moral.

1. Not consistent with, or not conforming to moral law or requirement; opposed to or violating morality; morally evil or impure; unprincipled, vicious, dissolute. (Of persons, things, actions etc.)

2. Not having a moral nature or character, non-moral.

Using the same test he dismissed the libel against another work titled *Contraception* in his ruling of *United States v. One Book Entitled “Contraception”*, by

Marie C Stops (16 July, 1931), a case which had Morris Ernst as one of the defence lawyers. It is thus no wonder that Ernst wanted to present the Ulysses case before a judge who was receptive and sensitive towards works of literature and their possible effect on the readers, and, who was also open to limiting the legal definition of obscenity.

As the judgement makes it evident, much of the case was about proving Joyce as a man of letter and of great literary sensibility and consequently, Ulysses as a classic which should not be judged under the conventional definitions of obscenity. Historically analysing Ulysses, Ernst declared,

Dante wrote the Divine Comedy and Balzac The Comedie Humanie. It remained for Joyce to write the Comedie Intellectuelle. (United States v. One Book called "Ulysses")

To the charge that this is a book which could not be read in a polite gathering or in the presence of women, Ernst argues that the words which the court thinks are 'unmentionable' could actually be seen scribbled anywhere in public places. Perhaps the most persuasive argument in favour of the case was made by Ernst when he tried to explain about a lecture he delivered in the Unitarian Church. To the judge's question about what that lecture has to do with the present case, Ernst replies,

Will your honour let me argue how I was able to plough through it? While talking at church I recalled after my lecture was finished that while I was thinking only about the bank and banking laws, I was infact at the same time, musing about the clock at the back of the church, the old woman in the front row, the tall shutters at the sides. Just as now, judge, I have thought I was involved only in the defence of the book, this one cause – I must admit at the same time I was thinking of the gold ring around your tie, the picture of George Washington behind your bench and the fact that your black judicial robe is slipping off your shoulder. This double stream of the mind is the contribution of Ulysses.

Judge Woolsey: (Rapping on the bench) Now for the first time I appreciate the significance of this book. I have listened to you as intently as I know how. I am disturbed by the dream scenes at the end of the book, and still I must confess, that while listening to you I have been thinking at the same time about the Hepplewhite furniture behind you. (United States v. One Book called "Ulysses")

(And for the next ten or fifteen minutes we discussed antique furniture of which the judge was an authority and collector) (qtd. in Ernst, 8)

Ernst was aware that the trial for Ulysses was more than a trial for a book. It was also a trial of culture, of free-speech, of the liberty to express and an equal liberty to not to associate with 'the kind of people that Joyce portrays'. As he mentions in 'Reflections', Ulysses was deemed dangerous not only because it was believed to be 'immoral' and 'blasphemous' but also because Joyce tries to put down in words "not the sleeping nightmares of men and women but [...] those thoughts and desires which every mortal carries within themselves and which are seldom allowed to come to the surface" (6).

Drawing upon the idea that there is a considerable difference in the way reader's approach a text and the way it would be read in court, most of the critics argued that the passages which are deemed 'prurient' by the court would not be read as such by the general public due to the highly metaphorical nature of the language used. They further argued that readers will see in text only what they have the time, resources, critical ability and the inclination to see, and, a censor would, in this case, prove to be the worst reader of the text with his/her patronizing or restrictively authoritarian attitude. The final judgement delivered by Judge Woolsey, which is labelled as an 'opinion', therefore cleared Ulysses from charges of obscenity by stating that it is not written with pornographic intent and that nowhere in the text could he 'detect the leer of the sensuist'.

As stated by the Newspapers of the time (The New York Times), the book in itself was not thought to be obscene, it was the use of certain words which was considered to be deplorable and deserving punishments. While defending his case, Ernst decided to dig up the etymology of the words labelled as 'obscene' and to show their use in daily conversation. By extension, he wanted to show that these words are actually just another version of those which are frequently used in daily conversation and that their use in a text like Ulysses should be justified. When he got to the word 'fuck', he explained to the court that this is a word which is about "strength in integrity...one of the possible derivations was that the farmer fucked the seed into the soil" (Ernst, 7). Further, he makes a tongue-in-cheek remark upon the US society by describing its tendency to refer to things in a roundabout way and not to mention them directly. The latter, he argues, is a task that is performed by the 'popular books', the result, they are banned for sexual titillation.

Hailing Ulysses as a "serious experiment" and drawing upon his own subjective reflections about the text, Judge Woolsey argues that,

Joyce has been loyal to his technique and has not funk'd its necessary implications, but has honestly attempted to tell fully what his characters think about...for his attempt sincerely and honestly to realise his objective has required him incidentally to use certain words which are generally considered dirty words and has led at times to what many think is a too poignant preoccupation with sex in the thoughts of his characters...it must always be remembered that his locale was Celtic and his season spring. (United States v. One Book Called "Ulysses")

According to him, whether or not a text is obscene must be tested by the court's opinion as to its effect on a person with "average sex instincts", the "reasonable man", as the law is only concerned with 'normal persons'. The opinion was not challenged in the Supreme Court within the stipulated ninety day period and hence became a law.

III

On October 27, 1931 Joyce had written to Harriet Weaver that if America ever lifted the ban "...England will follow suit as usual a few years later and Ireland 1000 years hence." Ulysses finally became legal in England in 1937, at the time of Joyce's death in 1941, it was still not allowed in Ireland.

Ulysses was banned in other countries for almost the same reasons. In case of Ireland, any book or periodical was deemed to be in its general tendency 'indecent or obscene' if it advocated, in any sense, abortion of contraception.

Indecent was defined as suggestive of or inciting to 'sexual immorality or unnatural vice or likely in any other similar way to corrupt or deprave. (Driscoell, 147)

When understood crudely, such kinds of censorships wanted to ban any kind of 'kinetic feelings' that a work of art might rouse in the mind of its readers. Apart from the inclusion of 'sexually implicit content', a work was also labelled as obscene if it offended the religious and political sentiments of the people. As an answer to the latter concern of the Irish people, Judge Woolsey had ruled that,

But when such a great artist in words, as Joyce undoubtedly is, seeks to draw a true picture of the lower middle class in a European city, ought it to be impossible for an American public legally to see the picture? (United States v. One Book Called "Ulysses")

Underneath every work of aesthetic lie ethical, political, philosophical and religious convictions and Ulysses was not an exception. Joyce's mastery of words and his clarity about he wanted to present is too clear when one considers the number of times certain episodes were revised or re-written and the careful study that went into the work. He is known to have revised certain sections of Ulysses (which includes the 'Cyclops' episode) while the trial was going on in the US, with the intention of making them even more controversial.

Judge Woolsey's decision could acquit Ulysses only because it was based on a theory of literature which was radically different from that which had traditionally provided the basis for such decisions. His theory became Ernst's defence. Morris defended the novel mainly on the lines of aesthetics according to which if Ulysses is a work of art, it could not influence its readers for ill. In keeping with this view, his stance was not to prove that the moral effect of Ulysses is beneficial, rather, to prove Ulysses as a genuine work of art.

In practical terms, Ernst case hinged on his ability to get Woolsey to adopt the perspective of literary critics who recognized the artistic merit of Ulysses – especially those critics who, like Ernst, were inclined to believe that obscenity and artistic merit could not co-exist. (Vanderham, 10)

Ernst is known to have strategically directed Woolsey's attention to some of the critical works written about the novel, most of which state that Ulysses makes use of certain 'well-intentioned lies' and that the primary intention of an author is the perfection of his/her work (such as articles by the critic Leslie Fielder). That Woolsey did read and interpret them in the way Ernst wanted him to is only too clear when one reads his 'opinion' where he claims that,

the study of Ulysses is a heavy task...where a book is claimed to be obscene, it must first be determined whether it was written with...pornographic intent...if Joyce did not attempt to be honest in developing the technique which he had adopted in Ulysses, the result

would be psychologically misleading and thus unfaithful to his chosen technique. (United States v. One Book Called “Ulysses”)

Ulysses ruling was unique and significant because of Judge Woolsey’s decision to read the work himself. The literary ‘elites’ comprising of critics, authors and journalists lauded the opinion as a work of literary criticism in itself. The judge turned critic and the critics turned judge, praising Woolsey’s aesthetic statements, thereby, blurring the line between the literary and the legal. Moreover, the trial proved to be significant in the way Ulysses has been read by scholars across the world. As the novelist Ford Maddox Ford wrote on its publication, “Certain books change the world. This, success or failure, Ulysses does: for no novelist with serious aims can henceforth set out upon a task of writing before he has at least formed his own private estimate as to the rightness or wrongness of the methods of the author of Ulysses” (qtd. in Parsons, 5).

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