Literary Obscenities

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If you look into a textbook of chemistry for a definition of *lithium*, you may be told that it is that element whose atomic weight is 7 very nearly. But if the author has a more logical mind he will tell you that if you search among minerals that are vitreous, translucent, grey or white, very hard, brittle, and insoluble, for one which imparts a crimson tinge to an unluminous flame, this mineral being triturated with lime or witherite rats-bane, and then fused, can be partly dissolved in muriatic acid; and if this solution be evaporated, and the residue be extracted with sulphuric acid, and duly purified, it can be converted by ordinary methods into a chloride, which being obtained in the solid state, fused, and electrolyzed with half a dozen powerful cells, will yield a globule of a pinkish silvery metal that will float on gasolene; and the material of *that* is a specimen of lithium. The peculiarity of this definition—or rather this precept that is more serviceable than a definition—is that it tells you what the word *lithium* denotes by prescribing what you are to *do* in order to gain a perceptual acquaintance with the object of the world.

—CHARLES PEIRCE, “SYLLABUS,” CA. 1902

To say, “I know a sea lion when I see one,” is to report that one can identify a sea lion but not that one is now doing so.

—B. F. SKINNER, ABOUT BEHAVIORISM, 1974
I

Given that one of the places twentieth-century U.S. obscenity case law almost ended up was somewhere in the parking lot to B. F. Skinner’s Sea World (“But I know it when I see it!”), it ought to be remembered at the outset that this was not always so, nor is it now the case. In fact, if the statutory and case law involving obscenity could be understood to have tacitly developed its own theory of meaning by the beginning of the last century, then that theory looked a lot more like Charles Peirce’s famous definition of lithium than it did Skinner’s reports of visual certainty. For one thing, the first modern standard for obscenity in British and U.S. jurisprudence framed the problem much more tentatively and operationally than did Supreme Court Justice Potter Stewart’s notorious assertions regarding hard-core pornography in *Jacobellis v. Ohio* (1964).¹ According to Lord Chief Justice Alexander Cockburn in *Regina v. Hicklin* (1868), the test for obscenity involved simply the determination of “whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.”² Commenting critically on this test more than eighty years later in *Commonwealth v. Gordon et al.*, Judge Curtis Bok of the Philadelphia County Common Pleas Court complained that, “strictly applied, this rule renders any book unsafe, since a moron could pervert to some sexual fantasy to which his mind is open the listings in a seed catalogue. Not even the Bible would be exempt.”³ As Bok’s flippancy suggests, this British case from the Victorian era persisted as a much-contested touchstone for obscenity law in the United States well into the twentieth century.⁴ In fact, it was not until the Supreme Court’s decision in *Roth v. United States* (1957) that Cockburn’s test was definitively overturned in this country because it unconstitutionally restricted First Amendment rights.⁵ To be sure, this is a manifestly strange career for a judgment that could not have been produced in a more irreducibly British setting. After all, Cockburn formulated his infamous test for obscenity in response to *The Confessional Unmasked* (1836), an anti-Papist pamphlet that was being clandestinely sold as pornography and had been implicated in several riots in the United Kingdom. Sectarian strife, public unrest, and the hazy boundaries between obscenity and acceptable propagandistic writing informed the most pressing concerns in the *Hicklin* decision. Nevertheless, an attention to the circumstances under which Cockburn put together his test for obscenity does not belie the fact that it quickly migrated far beyond Britain. Within eleven years *Hicklin* was being invoked approvingly by U.S. circuit court judges, and by 1896 the Supreme Court further solidified its applicability to obscenity law here in *Rosen v. United States*.⁶ By 1913 District Judge Learned Hand was forced to admit that “[the Hicklin] test has been accepted by the lower federal courts until it would be no longer proper for me to disregard it,” even though Hand’s opinion made it abundantly clear how much he wished he could do precisely that.⁷ Consequently,
assessing the impact of Hicklin on U.S. obscenity case law requires we do to it what state and appellate courts did: take it out of its British context.

While Hicklin proved to be an easy target for the derision and satirical animus of liberalizing jurists and proscribed writers in the United States for much of the twentieth century, it is nevertheless worthwhile to consider briefly the latent sophistication of its conditional propositions. Implicitly conceived of in Hicklin both as a matter of poetics (of a making, a producing) and a matter of aesthetics (of a sensing, a receiving), obscenity is comprised of a virtual experience activated in a certain kind of encounter with a certain kind of text by a certain kind of reader. In particular, Cockburn’s opinion poses it as a convergence of two immoral inclinations: that of the text (“to deprave and corrupt”) and a complementary one in the reader or viewer (“whose minds [and presumably bodies as well] are open to such immoral influences”). A property neither of a person nor of a text alone, obscenity in Hicklin refers us to a troubling heightening of the commerce between subjects and texts such that the two become morbidly intertwined in a mutual perversion. Obscenity accordingly presents us with a situation in which the singular quirks and kinks of individual readers get identified with the socially undesirable effects latent in salacious texts. Obscenity thus possesses a radical sort of exemplarity, whereby the contingent personal desires of readers blur together with the thoughts, behaviors, and impulses of the characters being depicted in a given obscene text. Perhaps not surprisingly, since obscenity is granted such a hyperbolically effective power to jumble distinctions, Cockburn’s test also implies an intention to manage vulnerable populations through the proscription of obscene texts. After Hicklin, in any case, the prosecution of obscenity in both the United States and Britain often seemed to provide judges, jurists, and lawmakers with a means to carry out any number of governmental, public health, and educational policies targeting a variety of marginalized demographic groups (women, children, adolescents, lower socioeconomic classes) euphemistically covered by the vague advertence to “those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.”

Of course, the administration of obscenity law in both countries was quite different. Whereas authorities in Britain targeted printers, publishers, and booksellers, obscenity prosecutions in the United States primarily focused on distribution and the use of the mails. The relevant British statute in Hicklin was the Obscene Publications Act 1857, which had empowered magistrates with the authority to seize and destroy material they found to be obscene. Conversely, the closest analogues to this in legislation passed by the U.S. Congress at the time were the Comstock Laws (1873, amended 1876), which made obscene materials nonmailable. As these laws and their interpretations developed over the coming century, different concerns and institutional authorities respectively came to the fore. In the twentieth century,
extralegal civic agencies and ministerial departments such as the Home Office increasingly took the reins in the regulation of obscene publications in Britain.\textsuperscript{10} By contrast, the Customs Bureau and the Post Office Department were the primary enforcement agencies alongside the police at the local, state, and federal level in the United States.\textsuperscript{11} An even more significant difference, however, is the fact that during the twentieth century the closer scrutiny of the grounds for regulating obscenity was most conspicuously undertaken by courts in the United States, whereas this role fell chiefly to Parliament in Great Britain.\textsuperscript{12} Notwithstanding these different institutional arrangements and proscriptive foci, however, what the elaborations of \textit{Hicklin} in Britain and the United States nevertheless share are a preoccupation with protecting obscenity’s prospective receivers, howsoever they may be defined.

Yet Cockburn’s single sentence leaves many things unspecified regarding what one has to do in order to create an obscene book or to produce either an obscene experience or an obscene reader. On its own, \textit{Hicklin} offers no ramified account equivalent to Peirce’s experimental methodology concerning the trituration of a particular kind of mineral with lime or witherite rats-bane. Publishers, writers, and laymen could not categorically know how to make—or avoid making—books the occasions for obscenity. What Cockburn’s protopragmatic enframing of obscenity eventually did make possible, however, were a number of interactive cultural and legal processes that have been unfolding for well over a century. Legislators, judges, jurists, publishers, writers, artists, and cultural critics have ended up, howsoever intentionally or inadvertently, putting a lot of time into fleshing out those missing intermediary steps, be it in the interest of re- or deproscribing obscene books. As an example of where all of this collaborative effort has settled for the time being as far as the legal status of obscenity in the United States is concerned, here is the precept for the “obscene” as it is currently defined in the state of Tennessee’s criminal statute, which in turn closely follows the most recent federal standard for obscenity devised by the U.S. Supreme Court in \textit{Miller v. California}: “‘Obscene’ means: (A) The average person applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest; (B) The average person applying contemporary community standards would find that the work depicts or describes, in a patently offensive way, sexual conduct; and (C) The work, taken as a whole, lacks serious literary, artistic, political, or scientific value.”\textsuperscript{13} In short, obscenity today in Tennessee and throughout the country is processual rather than substantive, as it has arguably been since \textit{Hicklin}.\textsuperscript{14} A number of conditions must be experimentally established before obscenity can be legitimately proscribed. A judge or juror has to put the charged object through a threefold test according to which (1) that object’s potentially lascivious solicitations are assessed as a whole in light of an imaginary run-of-the-mill person’s grasp of imagined local norms and customs; (2) this imaginary run-of-the-mill person then makes use of these same
imagined local community norms and customs to determine whether or not the charged object’s representations of sex boldly give offense; and (3) the work itself gets holistically evaluated according to all sorts of heteronomous value judgments, deriving from the sciences, politics, art, and literature.

Consequently, it appears that for both Peirce and an obscenity-defining U.S. juror or judge in the early twenty-first century, meaning itself has come to encompass expansive descriptions (the Tennessee statute goes on to define “patently offensive,” “sadomasochistic abuse,” “sexual conduct,” and “sexual excitement,” among various other words and phrases), nonlinguistic embodied doing (according to later sections of the statute, graphic representations of sexual conduct can indeed lead to actual sexual excitement), and an awful lot of conditional thinking (if and only if all three prongs of the Tennessee precept for the “obscene” are present, then so is obscenity itself). To recur to an earlier, much more famous Peircian definition of what “meaning” means, obscenity in U.S. statutory and case law comes down to a text’s effects and what our notions of that text’s effects happen to be. Or as Peirce himself limpidly puts it in “How to Make Our Ideas Clear” (1878): “Consider what effects, that might conceivably have practical bearings, we conceive the object of our conception to have. Then, our conception of these effects is the whole of our conception of that object.” Although it leaves open a space for taking into account the literary or artistic qualities of a text, legal obscenity in the twenty-first-century United States continues to privilege issues and questions pertaining to a text’s efficacy in evoking prurient and patently offended reactions among its prospective receivers.

Of course, one must nevertheless concede that a rather big difference exists between Peirce’s steps for producing floating specimens of lithium and U.S. law’s thought experiments about the production, dissemination, and reception of obscene texts. If, for a pragmatist like Peirce, meaning involves what everyone has to do to have a perceptual relationship to objects in the world at all, then for our hypothetical obscenity-assessing juror or judge the meaning of obscenity concerns what someone else has to do to orient him- or herself obscenely with respect to the various potentially salacious texts out there in the world. The quality of this other person may, it is true, have shifted in the century and a half since Hicklin from an amorphously conjured obscene reader to that shadowy statistical entity denoted by the Tennessee statute’s “average person.” Still, the sorts of operations Cockburn intimated in his decision remain very nearly the same today. For you, the trier of fact, obscenity is a matter of what happens to other people’s bodies that you presume not only to speak for but also in the place of. Moreover, you insist on this presumption even if your own sensoria and habituated modes of reading occlude the kinds of experiences occasioned by the potentially obscene texts upon which you are called to judge. To be sure, the substance and medium of obscenity can be quite variable:
U.S. statutes and case law on obscenity since the 1860s have prosecuted a wide range of materials—from books, newspapers, pamphlets, and magazines to photographs, films, and advertisements. Nevertheless, the grounds for proscribing these texts have consistently required judges and juries to approach them with impressive speculative scope, particularly in terms of the various contemporary social pressures that inform mass identity itself, whether these pressures tend to dissociate the masses from traditional moral standards, as they did in *Hicklin*, or influence them through dangerous alternative norms, as they do in *Miller*. Obscenity in these instances pertains less to objectionable or possibly harmful objects than to the governance of a variety of public and private experiences, particularly as these relate to moral, social, and aesthetic self-formation. Not simply the freedom of expression and the potential for its suppression are at issue in the modern legal concept of obscenity but also the manner in which human interests, moral capacities, and self-knowledge get shaped by restrictions placed on the behaviors, techniques, and dispositions modeled in putatively obscene works. In short, the issue of legal obscenity raises multiple questions about what sorts of social identities and interpersonal practices obscene texts foster and disseminate within historically changing circumstances.

For contemporary literary critics whose conceptual lexicon is replete with libidinal apparatuses, affects, jouissance, performativity, and confessional depictions of sexuality as they relate to cultural context and artifacts of all sorts, such claims will hardly appear earth-shattering. After all, we have become well accustomed to recognizing and making effective use of the tools of the trade that late twentieth-century literary theory has bequeathed us to interpret bodies, texts, images, narratives, and identities. More surprising, however, is to uncover congruent sorts of moves and concepts within autonomously developed legal discourses that were compelled to account for the unruly claims that twentieth-century books might make on readers’ bodies and self-formation. Yet it is indeed the case that the U.S. case law on obscene books since *Hicklin* constitutes a repository of more or less sophisticated attempts to come to terms with what happens when words printed on a page uncontrollably arouse or affect the readers into whose hands they happen to fall.

This need not be a crude way of suggesting that obscenity law is a straightforward reflection of contemporaneous developments in modern literary studies, despite the prominent use of a number of New Critics and academics from university English departments as "experts" in obscenity trials in the middle of the last century. It simply means that more is to be made of obscenity case law and the texts proscribed by it than has necessarily been registered in recent work by legal scholars, for whom the questions and problems that obscenity law continues to raise (particularly as it relates to literature and art) have provided the occasions to do one of four things: (1) argue that we deprioritize the prosecution of obscene works
altogether on the grounds that such prosecutions entail an unwise use of limited institutional resources,\(^{18}\) (2) account for the ways in which obscenity law is or is not equipped to handle the problem of moral harm it nominally seeks to address,\(^{19}\) (3) debate whether or not obscenity and pornography are indeed instances of speech in the first place,\(^{20}\) and (4) disclose how the third prong in the *Miller* test tacitly codifies a view of what counts as literature and art (namely, works possessing “serious” literary or artistic value) that no longer seems to apply to the literature and art actually being produced and consumed today.\(^{21}\)

In reassessing the relationship between early twentieth-century law, writing, and culture in the United States, I wish to emphasize instead the interactions of all three of these fields in mutually defining this thing called “obscenity.” Just as obscenity in *Hicklin* is dynamically a matter of texts, readers, and experiences, so too here it ought not to be understood simply as the reified object of legal thought. Obscenity, rather, is the collaborative, mutable product of overlapping cultural, literary, and legal positions concerned with a wide variety of works. Only through close attention to their interaction can we begin to understand the assorted processual grounds given for justifying or refuting the proscription of salaciously offensive texts.

Moreover, early twentieth-century obscenity in the United States should likewise be interpreted through relevant statutory and case law *without* recourse to censorship logics or concepts, no matter how nuanced these may have become in much of the recent work produced on obscene writing by scholars in the New Modernist Studies.\(^{22}\) It bears repeating that there is a lot more to obscenity in the early twentieth century than censorship forces and their artful subversion by a stylish canon of modernist innovators, be they ever so high (James Joyce) or late (Vladimir Nabokov). To be sure, this particular narrative of a “bad modernism” is credible as far as it goes, but it is easy to overlook all of the ways in which it insinuates that modernism’s badness here is perhaps not something peculiar to modernism as such insofar as it betrays latent affinities of English-language obscene modernist books to various literary and artistic movements (particularly decadence) of the 1800s, during which ignobility, ugliness, decay, and disorder increasingly became the preoccupations of texts that did not necessarily cast these things in an unflattering light.\(^{23}\) In this respect, it is useful to refer to the ambivalent reception of “modern literature” in the work of Lionel Trilling, for whom early twentieth-century modernism was merely the “apogee” of a period that began “in the latter part of the eighteenth century.”\(^{24}\) Notably, in place of the more celebratory views of “bad modernisms” often offered in the New Modernist Studies, Trilling’s engagement with “modern literature” tended to foreground misgivings about the effects of the embrace of adversary cultures, nonethical forces, and anticivic comportments that he believed to be essential to such literature. For Trilling, these misgivings were most apparent when it came to teaching works of “modern
literature,” for which merely formal analysis “went against the grain of [modern] authors themselves—structures of words they may indeed have created, but these structures were not pyramids or triumphal arches, they were manifestly contrived to be not static and commemorative but mobile and aggressive, and one does not describe a quinquereme or a howitzer or a tank without estimating how much damage it can do.” 55 Two things are worth noting. First, Trilling’s anticipation of New Modernist Studies’ “bad modernisms” already read them like U.S. case law was disposed to read works of obscenity: in terms of their (potentially harmful) efficacy on readers. Second, “obscene modernism” is shown here to be a misnomer only so far as it blinds us to the ways in which the obscene writing undertaken by canonical modernist writers is part of a longer historical continuum and vaster range of literary-artistic movements than are customarily encompassed by “modernism” when it is posed as a phenomenon neatly contained between the late nineteenth century and the early twentieth century. In any case, we as modernist scholars and critics have gotten too used to telling just one kind of story about modernism and obscenity, and that story remains doggedly rooted in an assumed background of puritanical suppression, which in turn allows us to assumptively esteem modernism for its singular transgressivity. 56

To be sure, in the hands of its best recent expositors, this narrative of transgression and subversion tactfully abstains either from making visionary heroes out of prosecuted modernist writers or from allocating to social purity movements, the British Home Office, and the U.S. Post Office the cartoonish role of hypocrite, philistine, or villain. Instead, most scholars working on early twentieth-century writing and obscenity have been quite attentive to heeding the lessons learned from both the “end of obscenity” free-speech movement in the 1960s and the far-reaching critiques of pornography made by second-wave feminists such as Kate Millett, Catharine A. MacKinnon, and Andrea Dworkin in the following two decades. Gingerly skirting the fraught political dimensions of obscenity that proved so explosive to its prospective feminist censors and its freedom of (bodily) expression spokespersons, the story of modernist transgression that we tell and retell ourselves instead tends to focus on the largely formal properties and reassuringly historical problems posed by early twentieth-century obscene books. Neither the revolutionary activation of new communal sensoria nor the reliably patriarchal means of violently dispossessing women of their agency and access to authentic subjective experiences, obscenity has instead become just another evocative modern phenomenon, like advertising or fascism or fashion or speed or little magazines, attachable to canonical modernist texts seemingly in need of more and more recovered historicist content, which critics, scholars, and teachers have been supplying at an impressively rapid clip in recent decades. Obscenity has thus made visible a variety of hitherto occluded networks, archives, material objects,
institutions, and figures. Armed with these, we have been able to undertake the meritorious intellectual labor of resituating literary modernism in terms of actually existing censorship forces and their uneven influences on the genesis of indisputably important modernist texts such as *Ulysses*, *Lady Chatterley’s Lover* (1928), or *Orlando* (1928), to take but three notable examples. We have freshened up the hoary old narrative of modernism’s implicit transgressivity by elaborating upon the ways in which “obscene modernism” incorporated and transformed various censorship discourses (both official and unofficial) through an analyzable set of sociocultural relationships and compositional procedures.

Celia Marshik’s *British Modernism and Censorship* (2006), for instance, makes a strong case for understanding literary modernism in Britain as having devised a number of its most familiar formal features—self-reflexivity, fragmentation, irony, and satire—in response to the institutionalized pressures of censorship forces. For Marshik, the encounters that Virginia Woolf, James Joyce, and Jean Rhys respectively had with censors required these particular writers to negotiate between the claims of total expressive freedom and the sorts of resistance actually evinced by all kinds of offended readers, such that the texts produced by each of these eminent modernists were qualitatively impacted by these encounters. In many instances, the repressiveness of early twentieth-century censorship practices threw a number of major contemporary writers back on their heels and forced them to make ever more complicated texts in order to get around the looming threat of their potential suppression, either in seats of governmental power or in the offices of their own publishers. Consequently, the censorship of obscenity did not merely proscribe books; it also helped to shape the dense formal structures of many canonical modernist texts along with the estranging compositional methods used by seminal modernist authors either to conceal or exacerbate the offensively prurient qualities of their writing. Obscenity censorship, in other words, played an important role in the creation of difficult works, long prized as a determinate characteristic of most Anglo-American modernist writing.

From this perspective, therefore, censorship’s repressive measures all proved to be creatively—if no less improbably—generative, suggesting that accounts such as Marshik’s owe more than a little to Leo Strauss (in terms of shared interpretive framework at least, if not political commitments). In *Persecution and the Art of Writing* (1952), after all, Strauss argued that there can be no such thing as censorship if we understand that term to refer us to the absolute silencing of free expression, because the persecution of writing “cannot prevent independent thinking. It cannot prevent even the expression of independent thought.” According to Strauss’s provocative rereadings of the works of preeminent medieval Jewish philosophers such as Moses Maimonides and Baruch Spinoza, the effect of censorship on writing simply leads to the development of a variety of compositional strategies that make any given text by
a persecuted author more elaborate and obscure: “For the influence of persecution on literature is precisely that it compels all writers who hold heterodox views to develop a peculiar technique, the technique which we have in mind when speaking of writing between the lines.” It does not seem much of a stretch, therefore, to observe that for most recent literary modernist scholars, like Marshik, the impulse informing the story we tend to tell about “obscene modernism” has been precisely this Straussian one of reading between the lines of exemplary modernist texts, both to find the more or less deeply buried traces of censorship forces and to disclose the artful subversion of those same forces by these definitively modernist—and, correlative, difficult—works. In this widely shared view, the novelties of form and content in so much proscribed British and U.S. modernist writing betoken the creative functions indirectly served by nominally repressive forces, whether they were to be found in social purity movements, commercial publishing houses, printing presses, or branches of national governments themselves.

Notable recent attempts to deviate from this mode of reading do little more than invert the Straussian paradigm. For instance, according to Florence Dore’s The Novel and the Obscene: Sexual Subjects in American Modernism (2005), sexually graphic modernist fiction did not overcome censorship logics and forces so much as it performatively enacted them: “American modernists do represent divergent forms of desire, I argue, but only in castrated subjects—their desire construed as a prohibitive, negative aspect of civic identity.” “For American modernism,” Dore goes on to contend, “bodily coherence requires participation in a social order—the very social order these authors seek to challenge in their explicit opposition to obscenity law. The discovery of phallic logic in these laws and in these novels suggests that we should continue to cultivate skepticism wherever the body appears to have at last been revealed.” What the difficulties of modernist writing continue to disclose for Dore is not creative ingenuity so much as the disciplining omission of non-phallocentrically sexualized bodies, leading her to demand of modernist novels over and over again: Habeas corpus!

Thus, in the favored story we tell ourselves about obscenity and early twentieth-century English-language writing, all roads invariably start with and lead unerringly back to literary modernism. Modernist writers and what they wrote always win, while the organizations that tried to be modernism’s censors always end up playing invaluable (if involuntary) parts in its victory. As a result, historical censorship forces have been consistently made to pay their obeisance to a modernism triumphant in the image projected by its own champions and the beliefs that these same champions have compensatorily generated of social and cultural resistances not only confronted but also epically overcome. Conversely, even when a more glum reckoning is required, as in Doré’s bracing work, modernist prejudices still carry the day. For instance, according to The Novel and the Obscene,
Theodore Dreiser, Willa Cather, and Richard Wright are all modernist writers. In a single introductory paragraph, an entire century of criticism that has posed them as canonical naturalist writers gets effaced willy-nilly because Dore “takes modernism as a general term encompassing—and emphasizing overlap among—the distinct literary movements of the twentieth century. . . . If ‘social criticism’ began as a naturalist goal, it came to fruition as a modernist presumption.” For Dore, if it is an early twentieth-century book published in the United States that is still worth reading and thinking about today, then it is best approached in terms of literary modernism. In sum, all of the attention we modernist scholars have lately been devoting to obscenity seems to have demonstrated but one thing: much like Supreme Court Justice Potter Stewart, we know literary obscenity when we see it in and as an exemplary instance of literary modernism.

II

Instead, U.S. case law ought to be calling the tune when it comes to the study of book obscenity. Such a shift in orientation has several merits, starting with the fact that it foregrounds a number of obscene works and writers not often considered by the more exclusive canons of either “obscene modernism.” A comparative study of the cultural, literary, and legal contexts of modern U.S. obscenity law reveals that modernism’s centrality in the narrative of twentieth-century obscenity is, for all of its popular and scholarly appeal, historically unwarranted. Embarrassingly persistent expressions of literary naturalism, much more so than emergent or consummate articulations of “modernism” per se, comprised the primary book targets for obscenity prosecutions in the United States well into the middle of the last century. In the legal realm, one might say, modernist obscenity is derivative from, or even parasitic upon, the cultural work done by naturalist provocations against community norms.

While a complete list of such proscribed works is probably impossible to compile without inadvertently omitting some texts, and while a number of important obscenity cases from this period were unreported, it is worth considering the following list of books that were prosecuted on grounds of obscenity in the United States and resulted in court opinions between 1900 and 1950:

      Elinor Glyn, *Three Weeks* (1907)  *Buckley*, 200 Mass. 346
1913  Daniel Carson Goodman, *Hagar Revelly* (1913)*
1915  Margaret Sanger, *Family Limitation* (1914)*
1918  Theodore Dreiser, *The "Genius"* (1915)*
      William Sanger, 154 N.Y.S. 414
      *Dreiser*, 171 N.Y.S. 605
<table>
<thead>
<tr>
<th>Year</th>
<th>Author</th>
<th>Title</th>
<th>Publisher and Case References</th>
</tr>
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<tbody>
<tr>
<td>1920</td>
<td>Théophile Gautier</td>
<td>Mademoiselle de Maupin (1835)</td>
<td>Halsey, 180 N.Y.S. 836</td>
</tr>
<tr>
<td></td>
<td>Anonymous</td>
<td>Madeleine, the Autobiography of a Prostitute (1919)</td>
<td>Brainard, 183 N.Y.S. 452</td>
</tr>
<tr>
<td>1922</td>
<td>Théophile Gautier</td>
<td>Mademoiselle de Maupin (1835)</td>
<td>Halsey, 234 N.Y. 1</td>
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<tr>
<td></td>
<td>James Branch Cabell</td>
<td>Jurgen (1919)</td>
<td>People v. Holt, McBride and Company et al., Court of the General Sessions of the Peace in and for the County of New York, October 19, 1922</td>
</tr>
<tr>
<td>1924</td>
<td>Arthur Schnitzler</td>
<td>Casanova's Homecoming (1918)</td>
<td>Seltzer, 203 N.Y.S. 809</td>
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<tr>
<td>1929</td>
<td>Radclyffe Hall</td>
<td>The Well of Loneliness (1928)</td>
<td>Friede, 233 N.Y.S. 565</td>
</tr>
<tr>
<td>1930</td>
<td>Arthur Schnitzler</td>
<td>Reigen (1900/1903)</td>
<td>Pesky, 243 N.Y.S. 193</td>
</tr>
<tr>
<td></td>
<td>Mary Ware Dennett</td>
<td>The Sex Side of Life (1919)</td>
<td>Dennett, 39 F.2d 564</td>
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<td></td>
<td>Theodore Dreiser</td>
<td>An American Tragedy (1925)</td>
<td>Friede, 271 Mass. 318</td>
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<td></td>
<td>D. H. Lawrence</td>
<td>Lady Chatterley's Lover (1928)</td>
<td>DeLacey, 271 Mass. 327</td>
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<td>1931</td>
<td>Marie Stopes</td>
<td>Married Love (1918)</td>
<td>One Obscene Book Entitled &quot;Married Love,&quot; 48 F.2d 821</td>
</tr>
<tr>
<td></td>
<td>Marie Stopes</td>
<td>Contraception (1923)</td>
<td>One Book Entitled &quot;Contraception,&quot; 51 F.2d 525</td>
</tr>
<tr>
<td>1933</td>
<td>James Joyce</td>
<td>Ulysses (1922)</td>
<td>One Book Called &quot;Ulysses,&quot; 5 F. Supp. 182</td>
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<td></td>
<td>Erskine Caldwell</td>
<td>God's Little Acre (1933)*</td>
<td>Viking Press, Inc., 264 N.Y.S. 534</td>
</tr>
<tr>
<td>1934</td>
<td>James Joyce</td>
<td>Ulysses (1922)</td>
<td>One Book Entitled &quot;Ulysses,&quot; 72 F.2d 705</td>
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<td></td>
<td>Donald Henderson Clarke</td>
<td>Female (1934)</td>
<td>Berg, 272 N.Y.S. 586</td>
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<td>1935</td>
<td>Gustave Flaubert</td>
<td>November (1842)</td>
<td>Herman Miller, 279 N.Y.S. 583</td>
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<tr>
<td>1936</td>
<td>André Gide</td>
<td>If It Die (1924/1926)</td>
<td>Gotham Book Mart, Inc., 285 N.Y.S. 563</td>
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<tr>
<td>1940</td>
<td>Maurice Parmelee</td>
<td>Nudism in Modern Life (1927)</td>
<td>Parmelee, 113 F.2d 729</td>
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<tr>
<td>1945</td>
<td>Paul Bowman Popenoe</td>
<td>Preparing for Marriage (1938)</td>
<td>Walker, 149 F.2d 511</td>
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<td></td>
<td>Lillian Smith</td>
<td>Strange Fruit (1944)*</td>
<td>Isenstadt, 318 Mass. 543</td>
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<tr>
<td>1946</td>
<td>Serge G. Wolsey</td>
<td>Call House Madam (1942)</td>
<td>London, 63 N.Y.S.2d 227</td>
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<tr>
<td>1947</td>
<td>Serge G. Wolsey</td>
<td>Call House Madam (1942)</td>
<td>Rodd, 165 F.2d 54</td>
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<td></td>
<td>Edmund Wilson</td>
<td>Memoirs of Hecate County (1946)</td>
<td>Doubleday, 71 N.Y.S.2d 736; and Doubleday, 297 N.Y. 687</td>
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<td></td>
<td>Calder Willingham</td>
<td>End as a Man (1947)</td>
<td>Vanguard Press, Inc., 84 N.Y.S.2d 427</td>
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This inventory helps make clear at least two things. First, the prosecution of obscene books in the first half of the twentieth-century United States was often a recursive undertaking. Just because a text got off clean on obscenity charges in one state in one year (as Erskine Caldwell’s *God’s Little Acre* did in New York in 1933) did not mean that it was thereafter exempt from prosecution in another state (as in fact happened to Caldwell’s novel in Pennsylvania in 1949 and then again in Massachusetts the following year). Therefore, the legibility of potentially obscene books was not always punctually linked to the date of original publication, and the legal strategies for re- or deproscribing them from state to state or year to year were variably responsive to evolving sociocultural forces. For instance, as we will see later, the belated attempts to proscribe *God’s Little Acre* in the 1940s have as much to do with the contemporary boom in mass-market trade paperbacks as they do with the caricatural organ grinding of Caldwell’s Walden family. Furthermore, this recursivity is a built-in feature of Western legal systems insofar as the proscription of obscene books in lower courts is almost always appealable, which accounts for the multiple appearances on this list of Edmund Wilson’s *Memoirs of Hecate County*, a novel that was deemed obscene in two New York appellate courts in 1947 before it later led to a split decision in the U.S. Supreme Court. (Justice Felix Frankfurter recused himself from participating in the deliberations concerning the book due to his friendship with Wilson, and the court went on to affirm the lower court decisions in its curt two-sentence opinion the following year.)

<table>
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<tr>
<th>Year</th>
<th>Author</th>
<th>Title</th>
<th>Note</th>
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<tr>
<td>1949</td>
<td>William Faulkner</td>
<td><em>Sanctuary</em> (1931)</td>
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<td></td>
<td>James T. Farrell</td>
<td><em>The Studs Lonigan Trilogy</em> (1932–35)*</td>
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<td></td>
<td>Erskine Caldwell</td>
<td><em>God’s Little Acre</em> (1933)*</td>
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<tr>
<td></td>
<td>James T. Farrell</td>
<td><em>A World I Never Made</em> (1936)*</td>
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<tr>
<td></td>
<td>William Faulkner</td>
<td><em>Wild Palms</em> (1939)</td>
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<td></td>
<td>Calder Willingham</td>
<td><em>End as a Man</em> (1947)</td>
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<tr>
<td>1950</td>
<td>Erskine Caldwell</td>
<td><em>God’s Little Acre</em> (1933)*</td>
<td>The Book Named “God’s Little Acre,” 326 Mass. 281</td>
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This list also makes visible the degree to which canonical works of English-language literary modernism (e.g., the exhaustively studied examples of *Ulysses* or the various proscribed novels of Lawrence and Faulkner) recede into the background while other modes of writing come to the fore. The collected works of Voltaire, erotica (Glyn and Wolsey), contraception and sex health manuals (Sanger, Dennett, Stopes, and Poponoe), autobiographies (*Madeleine* and Gide), works of fin de siècle Viennese decadence (Schnitzler), a historical romance (Winsor), a work of lesbian realism (Hall), an ornate comic allegory (Cabell), a fictional exposé of the book publishing industry (Gorham), pseudoscientific nudist propaganda (Parmelee), a popular collection of satirical short fiction on sex in suburbia and New York City (Wilson), an account of sadism at a Southern military academy (Willingham), and pulp fiction (Clarke, Robbins, and Cain) were all prosecuted for obscenity in this period, and all (with the exception of Flaubert’s juvenilia and Gide’s memoir) are not easily subsumable within existing modernist frames of reference. Even more saliently, however, works of literary naturalism appear over a longer period of time than any other single genre, mode, or type of writing on this list (see the starred [*] entries above). Far from indexing the startling innovations of subversive modernist writing practices, obscenity case law presents us instead with the unruly, salacious, and offensive appeals evoked by the obstinate remainders of a nineteenth-century mode of writing often assumed to have been surpassed by literary modernism itself. In short, if we take en masse the kinds of books most often proscribed by obscenity case law as a useful archive from which to draw our generalizations, then early twentieth-century book obscenity in the United States would seem to persist in rubbing our faces in the lower depths noisomely explored by works of literary naturalism, a mode that likewise faced obscenity prosecutions as it spread throughout Europe in the late nineteenth and early twentieth centuries. What we have here, then, are not modernism’s naughty self-reflexive monoliths so much as a naturalist preserve of sorts.

By recognizing literary naturalism’s rival claims to primacy as an object of concern for U.S. courts in this period, we fundamentally readjust the accepted understanding of modernism’s relationship to legal obscenity. Far from being the typical or exemplary target of obscenity prosecutions in the early twentieth century, modernism instead should be more precisely understood to comprise a variably articulated cultural field in early twentieth-century Europe, Britain, and the United States, according to which past modes and forms of art were subjected to various negative procedures (cancellation, allegorization, negation, irony) in order to pose art as a problem to itself. In countless interpretations of the art and cultural objects of this period, the delaying, discrediting, and negating of preexisting genres, modes, and forms in a particular work of art have long persisted as one of the key identifying features for both modernism and the historical avant-garde. While pathbreaking early twentieth-century visual artists were in the midst of calling into
question the significance of rules of perspective through a belabored emphasis on the flattened surface of the canvas, and while inventive composers were unsettling the values usually assigned to fundamental compositional elements such as tonality, a similar project of literary innovation through critical self-reflection sought to upend the coherence of inherited realist narratives and (in some cases) narrative altogether. At their most extreme, the more properly avant-garde of these practices—such as the assault that Duchamp’s ready-mades waged on art exhibition in the second decade of the century—could call into question the very possibility of art altogether, such that at the end of his life Theodor Adorno was still credibly able to observe that art, in order to survive, “must turn against itself, in opposition to its own concept, and thus become uncertain of itself right into its innermost fiber.”

By the beginning of the twentieth century, art could no longer afford to ignore its own “impossibility” as it came to be increasingly governed by heteronomous forces and arrangements in which the art-object’s claims to exceptional status with respect to market relations and dominant modes of social organization looked more and more like the mutterings of a lyrically dissolute basket case. At the very least, such was the polemical thrust of the frame narrative in F. T. Marinetti’s “The Founding and Manifesto of Futurism” (1909), in which the pointedly decadent trappings of the opening paragraph (replete with filigreed mosque lamps and “opulent oriental rugs”) get exuberantly discarded (goodbye to all that!) in favor of automotive sprees that end in collisions with muddy, womb-like ditches.

Understandably, then, the words most often used to describe the highly stylized and deforming compositional maneuvers carried out by innovative early twentieth-century writers on realist narratives and on narrative itself tend to circle around procedures characterized by negation or negativity. Perhaps the most prominent English-language expositor of such a position, Fredric Jameson has more than once in his career disputed the novelty of modernist fiction by describing that writing instead as “rather something like a canceled realism, a realism denied and negated and aufgehoben in genuinely Hegelian fashion.” Analogizing it to the relationship of consumer capitalism to classical capitalism, Jameson posits that modernism was not the demiurgic expression of unfettered creative self-reflexivity unleashed upon an unsuspecting mass culture so much as it was a second-order articulation of an older and long-accredited mode of narrative (realism) with which early twentieth-century writers and critics had simply become tired. Blanket boredom—not a feat of superhuman originality or the inspiration of a singular genius—is said by Jameson to comprise the fountainhead of modernist writing, which in the main sought to liven up the old realist way of telling stories by making nearly illegible the representational codes on which such narratives had usually tended to rely. According to this influential account, the strange and off-putting surfaces that modernist fiction presents to the world obfuscate the continued existence of realist
narrative structures somewhere beneath the superficial pyrotechnics and hyperstylizations of such writing. All that the cancellation of realism did was simply move realism from text to subtext, as it were, in modernist novels and short stories. In Jameson’s disenchanted readings, the transgression of convention and its reaffirmation remain inextricably affiliated activities. As a result, we ought not be too easily impressed by the subversive claims that authors and critics have happened to make on modernist writing’s behalf, because realism still persists as the operative norm or measure. In departing from realist systems of representation, modernist writers could not help but continue to feed off of them.

Seen in this light, “obscene modernism” is better suited not to account for the primary objects of early twentieth-century obscenity prosecutions but rather to describe a period in which the value, identity, and very existence of obscene books themselves became subjected to protracted, inconclusive arguments between judges, jurists, and writers. In this view, modernism refers us to a broad set of dispositions painfully marked by doubts about the possibility for art and writing as these had been traditionally undertaken. Crucial for any interpretation of the relationships between modernism and obscenity, in turn, is the corollary recognition that similar doubts manifested themselves as well in the case law on the obscene writing of this period. Keeping this in mind, consider the following remarks on and definitions of obscenity produced by U.S. judges in the period between 1896 and 1950:

Swearingen v. United States (1896)
The words “obscene,” “lewd” and “lascivious,” as used in the statute, signify that form of immorality which has relation to sexual impurity, and have the same meaning as is given them at common law in prosecutions for obscene libel.

United States v. Kennerley (1913)
I hope it is not improper for me to say that the rule as laid down [in Hicklin], however consonant it may be with mid-Victorian morals, does not seem to me to answer to the understanding and morality of the present time, as conveyed by the words, “obscene, lewd, or lascivious.”

If there be no abstract definition, such as I have suggested, should not the word “obscene” be allowed to indicate the present critical point in the compromise between candor and shame at which the community may have arrived here and now?

To put thought in leash to the average conscience of the time is perhaps tolerable, but to fetter it by the necessities of the lowest and least capable seems a fatal policy.
Anderson v. Patten, Postmaster (1917)

Few would, I suppose, doubt that some prevention of the mailing of lewd publications is desirable, and yet no field of administration requires better judgment or more circumspection to avoid interference with a justifiable freedom of expression and literary development.\(^\text{50}\)

I have little doubt that numerous really great writings would come under the ban, if tests that are frequently current were applied, and these approved publications doubtless at times escape only because they come within the term “classics,” which means, for the purpose of the application of the statute, that they are ordinarily immune from interference, because they have the sanction of age and fame, and usually appeal to a comparatively limited number of readers. It is very easy, by a narrow and prudish construction of the statute, to suppress literature of permanent merit.\(^\text{51}\)

Halsey v. New York Society for the Suppression of Vice (1922)

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 from the Bible. The book, however, must be considered broadly as a whole.\(^\text{52}\)

United States v. Dennett (1930)

An accurate exposition of the relevant facts of the sex side of life in decent language and in manifestly serious and disinterested spirit cannot ordinarily be regarded as obscene.\(^\text{53}\)

United States v. One Obscene Book Entitled “Married Love” (1931)

In Murray’s Oxford English Dictionary the word “obscene” is defined as follows:

“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.”\(^\text{54}\)

United States v. One Book Called “Ulysses” (1933)

The meaning of the word “obscene” as legally defined by the courts is: Tending to stir the sex impulses or to lead to sexually impure and lustful thoughts. Whether a particular book would tend to excite such impulses and thoughts must be tested by the court’s opinion as to its effect on a person with average sex instincts—what the French would call l’homme moyen sensuel—who plays,
in this branch of legal inquiry, the same role of hypothetical reagent as does
the “reasonable man” in the law of torts and “the man learned in the art” on
questions of invention in patent law.\(^55\)

_Highlights of United States v. One Book Entitled “Ulysses” (1934)_

It is settled, at least so far as this court is concerned, that works of physiol-
ogy, medicine, science, and sex instruction are not within the statute, though
to some extent and among some persons they may tend to promote lustful
thoughts. We think the same immunity should apply to literature as to sci-
ence, where the presentation, when viewed objectively, is sincere, and the erotic
matter is not introduced to promote lust and does not furnish the dominant
note of the publication. The question in each case is whether a publication
taken as a whole has a libidinous effect.\(^56\)

_Parmelee v. United States_ (1940)

Probably the fundamental reason why the word obscene is not susceptible of
exact definition is that such intangible moral concepts as it purports to con-
ote, vary in meaning from one period to another. It is customary to see, now,
in the daily newspapers and in the magazines, pictures of modeled male and
female underwear which might have been shocking to readers of an earlier
era. An age accustomed to the elaborate bathing costumes of forty years ago
might have considered obscene the present-day beach costume of halters and
trunks. But it is also true that the present age might regard those of 1900 as
even more obscene.\(^57\)

_Commonwealth v. Isenstadt_ (1945)

A book is “obscene, indecent or impure” within the statutory prohibition
if it has a substantial tendency to deprave or corrupt its readers by inciting
lascivious thoughts or arousing lustful desire. It also violates the statute if it
“manifestly tends to corrupt the morals of youth.”\(^58\)

_Commonwealth v. Gordon et al._ (1949)

I assume that “obscenity” is expected to have a familiar and inherent meaning,
both as to what it is and as to what it does. It is my purpose to show that it has
no such inherent meaning; that different meanings given to it at different times
are not constant, either historically or legally; that it is not constitutionally
indictable unless it takes the form of sexual impurity, i.e. “dirt for dirt’s sake”
and can be traced to actual criminal behavior, either actual or demonstrably
imminent.\(^59\)
A book cannot be a present danger unless its reader closes it, lays it aside, and transmutes its erotic allurement into overt action. That such action must inevitably follow as a direct consequence of reading the book does not bear analysis, nor is it borne out by general human experience; too much can intervene and too many diversions take place.⁶⁰

**Attorney General v. The Book Named “God’s Little Acre” (1950)**

Viewing the book as a whole we find ourselves unable to agree with the conclusion of the trial judge that the book was not obscene, indecent, or impure as those words have been defined in our decisions. The book abounds in sexual episodes and some are portrayed with an abundance of realistic detail. In some instances the author’s treatment of sexual relations descends to outright pornography. Nothing would be gained by spreading these portions of the book on the pages of this opinion.⁵¹

What these various definitions of obscenity in this selection from relevant case law over half a century should make clear is that it is anything but simple to negate a received tradition. It proved as tricky for a liberalizing judge eager to deprescribe book obscenity once and for all as for a modernist artist responding critically to an inherited set of forms, narratives, and generic conventions. Thus, in the years between 1930 and 1950, we end up with a number of attempts either to reaffirm or to do away with Cockburn’s notorious processual account of obscenity in *Regina v. Hicklin*. On the one hand, book obscenity in these two decades is said to be both too amorphous and too unreal to warrant legal oversight or restriction anymore. On the other hand, as described in those Massachusetts cases where precedential continuity was more explicitly valued, obscenity in this same span of time is what Cockburn always said it was—depraving and corrupting—even if new considerations have entered the picture since 1868, such as the concession that books ought to be judged now “as a whole” and that the readers most in need of protection belong to youth demographics. As with Jameson’s modernist “cancellation” of realist narratives, the very legal postulates being canceled by later rulings linger as norms long after they were supposed to have been overcome or surpassed.

In this view, then, what modernist literary studies meaningfully contribute to critical work on legal obscenity in the early twentieth-century United States is attention to negative processes rather than to singular events or acts of negation. This period confronts us not with the end of book obscenity (that had to wait until the U.S. Supreme Court’s decision in *Miller v. California* in 1973) but rather with the **beginning** of the end of book obscenity, the undertaking of a protracted labor of negation. Consequently, Woolsey’s much-mythicized opinion in the *Ulysses* case
was part of a much longer sequence that both started well before 1933—his redefi-
nition of obscenity in terms of holistic interpretations was first expressed by Judge
William S. Andrews in Halsey, a 1922 case involving Théophile Gautier’s historical
romance from the previous century, Mademoiselle de Maupin—and unfolded across
decades of further litigation well after him. In fact, following Woolsey’s revisions
to Cockburn, there began a forty-year period in the United States in which there
was too much obscenity law. Before the early 1930s, the Cockburn test in Hicklin did
effectively comprise the obscenity law of the land; after Woolsey, new tests (some
slightly different, others extremely so) started to appear, making determinate assess-
ments as to what constituted legal obscenity in the United States more and more
of a rebarbative task. The Supreme Court itself soon enough realized this when its
1957 opinion in Roth v. United States set off a cavalcade of new decisions, tests, and
opinions on obscenity over the next fifteen years.  

What this means for the comparative study of law and literature is that any
attempt to coordinate a modernist frame of reference with early and mid-twen-
tieth-century obscenity case law must stress a provisional open-endedness. We
should be cautious not to read backward from the achieved end of book obscenity
so as to conclude that the complicated twists and turns of the case law were leading
inevitably toward greater freedom. Instead, there were books, opinions, and jus-
tifications along the way that startlingly impeded, detoured, and sometimes even
effaced this long-term trajectory. For instance, both Lillian Smith’s Strange Fruit and
Erskine Caldwell’s God’s Little Acre were proscribed in 1944 and 1950, respectively,
because of the direct application of Woolsey’s Ulysses test. Moreover, we would
do well to resist the temptation to interpret these later applications of Woolsey’s
decision as misappropriations of his widely admired standard. If anything, our
modernist frame of reference in this instance should put us on the lookout for
how subsequent proscriptive uses of the Ulysses test reveal the ways in which that
standard—much like literary modernism itself with respect to realism—continued
to rely upon Cockburn’s much-reviled and supposedly suspended definition of
obscenity in Hicklin. Taking the modernism of legal obscenity in this period seri-
ously demands nothing less.

III
The negative processes slowly unfolding across the early twentieth century in lit-
erary texts and courtrooms also sensitize us to the anxieties evoked by obscene
texts and “provocative” literary naturalist ones, both of which straddled the shifting
boundaries between literature and paraliterature. Cockburn, it will be remem-
ered, quite pointedly demurred from making an exception on behalf of works
of high literary value in his test for obscenity in Hicklin. Just because an obscene
Getting Off the Page

text possessed literary merit did nothing to detract from or otherwise qualify its capacities to deprave and corrupt those whose minds were open to such influences and into whose hands such a work might have happened to fall. Fittingly enough, then, throughout this period books frequently found themselves proscribed on grounds of obscenity alongside religious pamphlets, advertising circulars, photographs, contraception guides, sex manuals, nudist magazines, and instruments of abortion, among other apparently nonliterary objects of legal disapproval.

The first effective legal challenge to this lack of distinction between obscene works and literary ones did not take place in the United States until 1894, when Anthony Comstock, the head of the New York Society for the Suppression of Vice, opposed the sale of a collection of books as part of the assets of the recently insolvent Worthington Company. Included among these assets were Jean-Jacques Rousseau’s *Confessions* (1782–89), Henry Fielding’s *The History of Tom Jones, a Foundling* (1749), the collected works of Rabelais, Boccaccio’s *The Decameron* (circa 1353), and Ovid’s *The Art of Love* (1 c.e.)—all of which Comstock claimed were examples of “immoral literature” that were so far beyond the sanction of New York state law that they could not be offered for sale within its borders. The members of the New York Supreme Court, however, were ultimately unconvinced by Comstock’s bold assertions:

> It is very difficult to see upon what theory these world-renowned classics can be regarded as specimens of that pornographic literature which it is the office of the Society for the Suppression of Vice to suppress, or how they can come under any stronger condemnation than that high standard literature which consists of the works of Shakespeare, of Chaucer, of Laurence Sterne, and of other great English writers, without making reference to many parts of the Old Testament Scriptures, which are to be found in almost every household in the land. The very artistic character, the high qualities of style, the absence of those glaring and crude pictures, scenes, and descriptions which affect the common and vulgar mind, make a place for books of the character in question, entirely apart from such gross and obscene writings as it is the duty of the public authorities to suppress. . . . A seeker after the sensual and degrading parts of a narrative may find in all these works, as in those of other great authors, something to satisfy pruriency. But to condemn a standard literary work, because of a few of its episodes, would compel the exclusion from circulation of a very large proportion of the works of fiction of the most famous writers of the English language.

Tactically calling into question not only the scope of Hicklin’s test but also its methods of proscribing entire texts on the basis of brief or isolated passages, *In re Worthington*
Company set an important precedent for taking into account the literary merit of a charged book by defending the classics and “standard literary work[s]” against obscenity prosecutions in the state of New York.

While the Woolsey test articulated in United States v. One Book Called “Ulysses” in 1933 may be the most famous instance of a lower court judge extending this carefully observed distinction between legal obscenity and literature to a contemporary book, it was Judge Augustus Hand’s affirmation of Woolsey’s opinion and ruling in United States v. One Book Entitled “Ulysses” the following year that even more trenchantly expressed the growing sense among liberalizing judges and jurists that whatever obscenity may have once consisted of, it was probably not going to include the literary anymore: “We think the same immunity should apply to literature as to science, where the presentation, when viewed objectively, is sincere, and the erotic matter is not introduced to promote lust and does not furnish the dominant note of the publication. The question in each case is whether a publication taken as a whole has a libidinous effect. The book before us has such portentous length, is written with such evident truthfulness in its depiction of certain types of humanity, and is so little erotic in its result, that it does not fall within the forbidden class.” At least two things are worth noting here. First, because it was (on the whole) long-winded, frank, and not very titillating, Ulysses was almost certainly a specimen of literature, meaning that it was not to be mistaken for an instance of obscenity since literature was literature and obscenity was obscenity. Second, the immunity prospectively extended to literature by Hand was expressly modeled after exceptions made earlier on behalf of scientific works, thus securing the recognition of literature as its own field by way of the immunity already granted to a wholly different one. The story of literary value in U.S. obscenity case law, therefore, should not omit the interdisciplinary pressures exerted by science on literature and vice versa. Given the foundational appeals to “scientific” values in naturalism—starting with Zola’s programmatic essay, “The Experimental Novel” (1880)—a shift in focus from the texts of modernism to those of literary naturalism becomes all the more exigent.

Although the literary value test broached here would ultimately win out forty years later in Miller v. California, the 1930s and 1940s were hardly a period in which this view ended up getting seamlessly ratified court by court and state by state. For instance, in the notoriously censorious Commonwealth of Massachusetts, which made “banned in Boston” a household phrase, an especially subtle appropriation of holistic tests occurred in the 1940s, albeit with the important difference that questions of literary merit ended up being evaluated in an entirely different way. In Commonwealth v. Isenstadt, for instance, the Massachusetts Supreme Judicial Court argued that literary value was not all that relevant to determining whether or not a given text was proscribably obscene: “It is possible that, even in the mind of the general reader, overpowering sincerity and beauty may sometimes entirely
obscure or efface the evil effect of occasional questionable passages, especially with respect to the classics of literature that have gained recognized place as part of the great heritage of humanity. The question will commonly be one of fact in each case, and if, looking at the book as a whole, the bad is found to persist in substantial degree alongside the good, as the law now stands, the book will fall within the statute.”

In proscribing Lillian Smith's naturalist antilynching novel, *Strange Fruit*, the Massachusetts Supreme Judicial Court reminded judges, jurists, and writers everywhere that obscenity was indeed not *not* literature, because it was impossible to distinguish salacious literature from the claims of indecency, impurity, and corruption effectively mounted by obscene works more generally. In fact, if anything, the beauty and sincerity of good writing provided authors with the means of camouflaging the unruly claims of their obscene passagework, making certain parts of their texts all the more indecent, impure, and corrupt. The literariness of literary works potentially made them more, not less, obscene.

Since the late nineteenth century, however, literary naturalism in the United States had provided reliable occasions to doubt the self-sufficiency of “literature” as a meaningful category in the reception of fiction. Just as Stephen Crane's *Maggie: A Girl of the Streets* (1893) had presented itself as being of a piece with the urban ethnographic and psychological analyses inaugurated by Jacob Riis's *How the Other Half Lives* (1890), Theodore Dreiser quite self-consciously described his early fiction as metaphoric reappropriations of Herbert Spencer's materialist metaphilosophy, particularly as it was expressed in *First Principles* (1862). Likewise, in the return of naturalist fiction in the interwar period, sociological and eugenic discourses came more to the fore, particularly in the novels of James T. Farrell and Erskine Caldwell, respectively. More recently, Christopher L. Hill has made the compelling case that this confusion of literary naturalism with other “non-literary genres of social knowledge” was indispensable to its development not only in the United States but also in other countries: “The rise of naturalist schools around the world was the result of the circulation of multiple genres, literary and otherwise, through distinct paths whose intersections were enormously varied but mutually reinforcing in the aggregate. Naturalist fiction would have been unlikely to travel so widely without these other genres, or they without it or each other.”

Not purely literary by nature, literary naturalism has always constituted itself as an alloyed mode of writing in which sociological, psychological, evolutionary, physiological, criminological, and other extraliterary discourses have been adopted and transformed by self-identified naturalist writers the world over.

Following the attacks mounted against it in the first half of the century and the structural analysis that it subsequently underwent, literary naturalism fittingly enough became a privileged object of study for the New Historicism. After all, the interpretive procedure of structural homology, most forthrightly put into practice
in Walter Benn Michaels’s *The Gold Standard and the Logic of Naturalism* (1987) but also implicit in June Howard’s *Form and History in American Literary Naturalism* (1985), is predicated upon a refusal of context: nothing is background because everything is foregrounded. For instance, nothing in Caroline Meeber’s milieu or situation “explains” her in *Sister Carrie* (1900). Instead, everything about her, her milieu, and her situation can be transformed into everything else. Consequently, the same entanglement plays itself out again and again in New Historicist criticism: “literature tries to distinguish itself with respect to other social and cultural formations and fails.”

Not revolt, but cooptation is the paradigmatic story told by New Historicism, and the fact that literary naturalism already collapses the literary and the social into one messy heap meant it was a ready-made venue for critics in the 1980s to explore—rather than traduce—the ramifications of this unconsoling worldview.

Among many early twentieth-century critics, however, U.S. literary naturalism’s uncomfortably close associations with nonliterary discourses were cause for disdain rather than for doubts about the possibility of adopting an oppositional stance in the first place. A notable expression of this is Malcolm Cowley’s “Naturalism in American Literature” (1950), which poses the tradition of naturalist writing in the United States—from Frank Norris, Crane, and Dreiser through to Farrell, John Steinbeck, and Richard Wright—as one bound together principally by a spirit of rebellion against gentility and orthodoxy. Glumly assessing the pseudoscientific objectivity of naturalist writing in terms that emphasize its fundamental misapprehension of scientific materials and methods, Cowley contends that one of the manifest shortcomings of the naturalist tradition in the United States has been its tendency “always to explain the complex in terms of the simple: society in terms of self, man in terms of his animal inheritance, and the organic in terms of the inorganic. The result is that something is omitted at each stage in this process of reduction. To say that man is a beast of prey or a collection of chemical compounds omits most of man’s special nature; it is a metaphor, not a scientific statement.”

By confusing figural language with the presentation of facts and the procedures used to test the validity of those facts, naturalism manages to evacuate literature of its own authentically literary forms, functions, and effects, including—most troublingly in Cowley’s estimation—the ability to tell credible tragic narratives:

This scientific weakness of naturalism involves a still greater literary weakness, for it leads to a conception of man that makes it impossible for naturalistic authors to write in the tragic spirit. They can write about crimes, suicides, disasters, the terrifying, and the grotesque; but even the most powerful of their novels and plays are case histories rather than tragedies in the classical sense. Tragedy is an affirmation of man’s importance; it is “the imitation of noble actions,” in Aristotle’s phrase; . . . for the naturalists, however, men are “human
insects” whose brief lives are completely determined by society or nature. The individual is crushed in a moment if he resists; and his struggle, instead of being tragic, is merely painful or ironic, as if we had seen a mountain stir itself to overwhelm a fly.\footnote{75}

A year before “Naturalism in American Literature” appeared, Philip Rahv voiced a similar dissatisfaction with the lack of tragic potentials in literary naturalism: “The world of naturalist fiction is much too big, too inert, too hardened by social habit and material necessity, to allow for that tenacious self-assertion of the human by means of which tragedy justifies and ennobles its protagonists.”\footnote{76} Not the protagonists but the social and natural worlds themselves were the real heroes of naturalist writing, and with this dehumanizing displacement of agency from character to setting, in Rahv’s view, tragedy had been well and truly lost to U.S. fiction for a time.

According to Cowley, from beneath the thin conceptual protection provided by its pseudoscientific cover story, literary naturalism had thus spent the past half century traducing the dignity of humanism. People in naturalist fiction were little more than abstractly composed formulae, “the blind result of conditions, forces, physical laws, or nature herself.”\footnote{77} Therefore, literary naturalist authors may indeed have deserved credit for having “immensely broadened the scope of American fiction” by integrating materials, social classes, and subject matter hitherto marked off-limits.\footnote{78} However, in doing so they had relied far too much on “the meanest of everything they describe,” with the result that this widening of subject matter likewise represented a watering down of U.S. fiction.\footnote{79} When mankind as a whole was not being thoroughly proletarianized in the pages of a naturalist novel, it was undergoing a grotesque ordeal of devolution and degeneration before the reader’s very eyes, of which Frank Norris’s Vandover and the Brute (1914) still provides the most famous (but by no means the only) example: “All in an instant [Vandover] had given way, yielding in a second to that strange hallucination of that four-footed thing that sulked and snarled. Now without a moment’s stop he ran back and forth along the wall of the room, upon the palms of his hands and toes, a ludicrous figure, like that of certain clowns one sees at the circus, contortionists walking about the sawdust, imitating some kind of enormous dog.”\footnote{80} For Cowley and most other mid-twentieth-century critics, the overmastering preoccupation of such naturalist writing with the bestial and the brutish betokened not a serious reflection upon species-being so much as it did an act of juvenile delinquency on the part of the guilty naturalist writers, who could be seen to be gleefully doing the dirty on mankind’s self-image in the name of a mechanistic and filth-obsessed materialism that could only be called, in the words of Oscar Cargill, “pessimistic determinism.”\footnote{81}

To be sure, not all literary critics at the time were so quick to view naturalism’s representations of the world quite so reductively. For one thing, as Charles Child
Walcutt hastens to point out in *American Literary Naturalism: A Divided Stream* (1956), the deterministic philosophies so comprehensively excoriated by contemporaries such as Cargill and Cowley do not have to be taken at face value. Just because the ideology espoused by the narrator or by a character in a given naturalist work appears to be mechanistic in the extreme does not necessarily indicate that this same novel is bereft of the means of contradicting or otherwise inflecting this overly simplistic account of the world. In other words, apathy and “mass insensibility” are not the ineluctable results of our reading a novel whose ethos is supposedly consistent with that of literary naturalism. Instead, according to Walcutt, the naturalist novel in the United States constitutes a complex linguistic artifact informed both by progressive idealism and scientific determinism, the two currents that make up the divided stream of his book’s title.

Due to this animating antagonism between intuition and empirical investigation, naturalist fiction in this country is said to have insinuated itself into all sorts of extraliterary discourses, running the gamut from pure speculative science to the social sciences and on to public policymaking. The result of this scrambling of discourses and institutional authorities is that any sufficient reading of a given naturalist text first has to evaluate the claims and appeals being made by that work within its various interdisciplinary and social contexts. In other words, if a naturalist novel rather conspicuously deprives characters of agency or will, then that deficit is probably being made up for somewhere else. In particular, Walcutt argues that in so graphically denying volition and effective intentionality to the subjects it sets forth, naturalist fiction more often than not ends up transferring intentionality and volition from its characters to its readers and—correlatively—to society itself. If a given work of literary naturalist fiction is in fact correct about the situations it so implacably and gloomily depicts, then society and readers of naturalist fiction are now in a better position to do something about it. Much like Peirce’s processual account of lithium, in which the act of defining lithium gets equated with the activities one has to undertake in order to produce real existing specimens of lithium, naturalist novels in Walcutt’s view have the potential to self-reflexively elaborate the steps by which naturalist milieus and characters get themselves produced off the page and in the real world. Therefore, unlike the pitiless machinations of fate, naturalism’s gruesomely reductive determinisms need not bar the possibilities for amelioration or even revolutionary transformation. Not only mortified but also *edified* at the sight of the impending mountain, Cowley’s poor fly could, in a collective effort with other like-minded flies, potentially overwhelm *it* instead: “The more helpless the character [in naturalist writing], the stronger the proof of determinism; and once such a thesis is established the scientist hopes and believes that men will set about trying to control the forces which now control men. . . . Thus can the scientists’ ‘optimistic’ purpose be served by a ‘pessimistic’ novel.”
In this way, the antihumanist cul-de-sac condemned by Cargill, Cowley, Rahv, and many other mid-twentieth-century critics of U.S. literary naturalist fiction could be meaningfully transformed by bringing out the incipient activist, reformist, and humanist impulses underlying the violence, brutishness, and implacability in all sorts of naturalist works.

Despite the ingeniousness of his reading, however, Walcutt never quite convinces himself that naturalist fiction actually works this way. Instead, he goes on in *American Literary Naturalism: A Divided Stream* to insist that “whatever its ultimate social intent, naturalist fiction does not exhort the reader to action.” As he quite disenchantedly points out: “If some of Zola’s best novels are still read it is because of their logical, integrated, relentless movement toward disaster—not that *L’Assommoir* will discourage drunkenness, or *Germinal* usher in the Revolution, or *Nana* apprise us of the evils of sexual license in a decadent society.” For Walcutt, therefore, the implicit contradiction between a faith in human progress and a commitment to mechanical determinism in literary naturalist fiction is less an index of unquestioned social optimism through unfolding scientific processes than it is an expression of “a profound uncertainty as to whether science liberates the human spirit or destroys it.” Offering in effect a protodeconstructive interpretation of literary naturalism’s relationship to its putative first principles, Walcutt’s book seeks not merely to undermine the operativity of deterministic philosophies and science in naturalist novels but also to explore the affective terrain on which such things could be erected. According to Walcutt, U.S. literary naturalism’s foundations were originally constructed on fear and doubt in the face of the disturbingly ambiguous effects that modern science was having on human existence at that time. Consequently, once these same scientific developments had successfully started to make inroads into everyday life and even into the subjective interiorities of the masses, the matrix of uneasy affects that had made naturalist writing possible in the first place ceased to exist: “When science has brought us to a moral relativism that substitutes therapy for personal responsibility, the last trickle of the stream of idealism has disappeared, and the divided stream of naturalism has lost a vital half of itself.”

Walcutt’s book accordingly argues that the popularization of science is responsible for the end of naturalism. Inadvertently echoing Wyndham Lewis’s attacks in the 1920s on the utility of cutting-edge scientific research as a means of ideological warfare in the relativization of social, moral, and cultural values, Walcutt contends that the most widespread insights of early twentieth-century science—from the Oedipus complex to the theories of general and special relativity—had become elements of general culture by the first decade of the Cold War, with the result that there no longer seemed to be absolutes on which the doubts and fears of literary naturalism might continue to corrosively act. Instead, existentialism and orthodox
Christianity were now the more timely expressions of the persistence of an idealist faith in nature. Correlatively, now that its affective wellspring had been depleted, literary naturalism in the 1950s was said to be “[spread] out so far that it covers the whole literary landscape—but very thinly.” Naturalism no longer existed as an independent mode of writing, though that did not belie the likelihood that all U.S. fiction would continue to bear a naturalistic impress for some time.

As a result, the problem for critics was increasingly that of recognizing literary naturalism when they saw it. Every writer and critic of naturalism in this period appeared to have his or her own sense of how to define it, and no consensus seemed to be evolving from this clash of informed opinions. Arguably the best expression of literary naturalism’s elusiveness as a concept at this time is to be found in an audio lecture recorded by Erskine Caldwell entitled “Naturalism and the American Novel” (1953). Using the talk mostly to get in some jabs at the same literary critics who had spent the past decade calling into question his worth as a writer of fiction, when they were not simply ignoring him altogether, Caldwell starts by admitting that the “critical man of letters” is “by reason of heritage, birth, and environment, . . . a man far superior in mind and morals, and a man who can outtalk a mere writer of fiction anytime, anywhere.” Consequently, as “a mere writer of fiction,” Caldwell himself must be whatever it is these men of letters say he is. Unfortunately, it seems that these vastly superior men of morality and knowledge cannot quite make up their minds as to what to do with him: “Some critics have called me a realist, and I came to believe them. Other critics have called me a romanticist, and I came to believe them too. Now, if I am to be called a naturalist, I shall no doubt believe that as well, but I can’t be all things, and until the question is resolved for once and for all, I would be content to remain just what I thought I was: a writer of fiction, a storyteller from Georgia.” Despite the sarcasm here, however, Caldwell is emphatically not content to remain a Georgian teller of tales, because the charge of being a naturalist has gotten under his skin like a hookworm, leading him to go on in this audio essay to determine just what “the meaning of such a term as ‘naturalist fiction’” might credibly be.

Caldwell’s principal stalking horse throughout his lecture is American Idealism (1943), in which Floyd Stovall ranged U.S. writers under four headings: Idealists (Ralph Waldo Emerson, Walt Whitman, and Thomas Wolfe), Romantic Realists (Willa Cather, Ellen Glasgow, Edna Ferber, Sinclair Lewis, Steinbeck, and John P. Marquand), Sometimes Naturalists or Realists (William Dean Howells, Crane, Hamlin Garland, Norris, John Dos Passos, and Ernest Hemingway), and Undisputed Naturalists (Jack London, Dreiser, Faulkner, Farrell, and Caldwell). Discovering himself placed among the “Undisputed Naturalists,” Caldwell claims to be “somewhat surprised and well-taken-back too.” Whatever naturalism happened to be ultimately, its widespread use as a label of disapproval among most contemporary
critics in the United States leads the world-famous author of *Tobacco Road* (1932) and *Gods Little Acre* to quip, “I find that all comfort and peace of mind has been taken from me.”

The remainder of Caldwell’s lecture attempts to cope with this satirically presented dark night of the soul by shifting the shortcomings of literary naturalism from the texts of naturalism to the critics of naturalism themselves. Instead of agreeing with the Cargills and Cowleys of the world in finding literary naturalism to be an unduly pessimistic mode of writing, Caldwell calls the definitional efforts of these same scholars to be “pessimistic to an extreme.” Not naturalist fiction itself but interpreters of naturalism such as Cargill are to blame for its supposed cynicism, doubt, and gloom. Similarly, Cowley is singled out for propagating the erroneous notion that naturalism somehow constitutes the subtraction of all human responsibility from fiction in the United States. Consequently, it is the detractors—and not the writers—of literary naturalism who are said to be proceeding far too deterministically, irresponsibly shutting down the kinds of experiences and ideologies that naturalist fiction can be made to embody or represent in the act of reading itself. According to Caldwell’s lecture, the violent and the ugly, as well as the poverty and class conflicts of life, often exist side by side with “spasms of laughter, the horseplay of humor, and the enjoyment of living” in literary naturalist fiction like his own. Therefore, instead of approaching literature as a “laboratory frog to be sliced, pickled in a jar, and labeled *this, that, and the other thing*,” literary critics in this country in the mid-twentieth century would better serve their reading communities by treating creative writing as if it were “an untamed, rampaging creature ranging the land” and in need of guidance perhaps but not the proscriptions or finicky classifications of a group of men wholly out of touch with the world. Naturalist archetypes thus end up mediating Caldwell’s cheeky account of contemporary writing and the burgeoning Cold War industry of academic literary criticism. Whereas fictional texts are said to constitute the Jack London–esque wolves shiftily roaming the literary landscape in this country, its critics are apparently unprepared to confront or otherwise account for these undomesticated beasts because they are too much like Zerkow, the miserly rag-and-bone man of Norris’s *McTeague* (1899), fussily coveting and hoarding those objects that have long outlived their use: “Next to a dull novel,” Caldwell observes, “I don’t know anything more depressing than a critic who has mewed himself up from the world, and especially a naturalistic critic.”

IV

These thematic problems and issues raised by U.S. literary naturalism for its mid-century critics ought to make more salient the degree to which the period’s arguments over the criminally libidinal appeals of writing encompassed more than
just the relationships embodied by chance between mute words and their presum-
ably lewd readers. Literary naturalism was no more depraved, corrupt, offensive,
or prurient than any other contemporary mode of writing, though its constitutive
incorporation of extraliterary forms of social knowledge and its attention to the
impact of societal forces upon personal identity made it better suited than most to
reflect upon the putative uses—normal and aberrant—to which writing’s effective
force could be put. If early twentieth-century readers really were so in thrall to their
somatic responses that books needed to be prohibited for their illicit solicitations,
then the threats evoked by the potential manipulability of irrational consumers
grew well beyond masturbatory gratification.

This concern over the embodied subsumption of identities gets trenchantly
thematized throughout the three volumes of James T. Farrell’s *Studs Lonigan*, which
details the deleterious impact of mass urban life in the early twentieth-century
United States on historical consciousness, particularly that of its titular protagonist.
In fact, as the frightening exemplification of these effects, William “Studs” Lonigan
has “no language and no experience, whether societal, personal, or physical, which
he can genuinely call his own.” Depicting modernity in the first decades of the last
century as an impoverishment not just of language but of experience, *Studs Lonigan*
again and again calls into question the operativity of literature as an autonomous
sphere of human activity by ranging all writing within the context of mass culture,
the nature and functions of which prove to be far from affirmative.

Frequently, the anxieties and concerns evoked by this get expressed in satiri-
cal episodes like the mission sermon described in the twenty-first chapter of *The
Young Manhood of Studs Lonigan* (1934), where Father Shannon declaims against
a number of writers on the grounds that their books are “vile,” as are the sins to
which they tend to lead their readers:

> And if I met the authors of the books I shall mention, I should tell them to
their faces (his voice rose, almost to a shout): “Your books are vile. In order to
make a sale for them, you fill them with spiritual poison, with all the resources
of your filthy and putrid minds. For thirty pieces of silver, you sign your names
to oozing immorality. You are worse than dogs! You are the vilest of the vile,
the most vicious of the vicious, lower than snakes, you rats who write books
to rob youth of its shining silvered innocence!”

And just who are these Judas-like “rats who write books”? Father Shannon singles
out Sinclair Lewis, whose novel *Elmer Gantry* (1927) is said to make a mockery
of “the most sacred profession that man can enter”; Judge Ben Lindsey, whose
*Companionate Marriage* (1927), “like the anarchistic, atheistic Bolshevists in
unhappy Russia, says (his arms flung out in a gesture): ‘Away with the holy bonds
of Matrimony!”; H. L. Mencken, whose articles spread the gospel of nihilism and blasphemy to American youths who thereafter “think themselves (sneering) smart”; H. G. Wells, whose popularization of evolutionary outlooks marks him out as an egotist and materialist of the lowest kind; and the various propagandizing writers of birth control pamphlets, who do nothing but instigate a lack of sexual continence throughout the United States (SL, 437–40). Suitably, the result of all these bad influences—together with “Filthy movies. Newspapers. The doctrines in universities aimed to destroy morality” (SL, 441)—threatens nothing less than the end of the United States of America because “vile” books such as these are said by Father Shannon to be leading not just good Catholic men and women but in fact all Americans toward “that drastic, terrible fate which befell the proud and mighty empire of Rome” (444). Since they appear to be especially efficacious instruments of a degrading mass culture, books are therefore more than an affront to Catholic or American morals; more importantly, they are also potentially a mortal threat to all nations, no matter the time or place.

As shrill as Father Shannon’s attacks on “vile” books manifestly are, it would nevertheless be a mistake to read Farrell’s cunning pastiche of the fire-and-brimstone histrionics of the retreat described in the third chapter of James Joyce’s A Portrait of the Artist as a Young Man (1916) as a straightforward send-up of the overwrought fears of crumbling religious and moral orders in a modern secular society. For one thing, Father Shannon’s attacks on mass culture get complicated by the fact that his fellow clergymen are in the midst of successfully co-opting various media outlets of contemporary mass culture itself. In the final volume of the trilogy, Judgment Day (1935), Father Moylan hosts a popular radio program in which he casually throws around Red-baiting quips and obliquely anti-Semitic references as if he were a bona fide demagogue. At one point, Studs Lonigan’s father asks him, “What does Father Moylan say? He tells what the bankers are doing. Loaning American money to Europe. If they had kept American money in America where it belongs, there wouldn’t be any depression” (734). Unpacking Father Moylan’s views a bit more fully, his father goes on to observe:

America was a fine country. And all these foreigners came here to take jobs away from Americans who have a right to them. And now we got too many men for the jobs we got. Well, I know what we ought to do. Put all the foreigners we got taking jobs away from Americans, pack them in boats, and say to them, “Now, see here, America belongs to Americans. You get back where you belong.” And if we did that, we wouldn’t have these Reds here agitating to overthrow the government. Say, you know what those dirty Reds are doing now? They’re exciting the niggers down in the Black Belt, telling them they’re as good as white men and they can have white women. I tell you, Bill, some day
American people have got to wake up and take things into their own hands. (734–35)

It is presumably because of bigotries and xenophobic insights such as these that Studs Lonigan’s father can then claim that Father Moylan is “one of the finest and smartest men in America, and he tells the people what’s what” (735). Furthermore, it is because of demagogic appeals such as these that Ann Douglas has been able to demonstrate how the social and spiritual functions of Catholicism are inextricably linked to those of mass culture throughout *Studs Lonigan*: “At best, Studs’ parents and their friends go to church in much the same spirit Studs and his gang go to the movies, to have their prejudices reinforced and their discontent siphoned off in fantasy.”

*As Judgment Day* also reveals, however, Father Shannon’s complaints about mass culture are not simply reactionary or hypocritical; they are, it seems, quite well founded. At the beginning of the tenth chapter, Studs kills time by aimlessly walking around an urban street while erratically trying to distract himself from thinking about a fight he has recently had with his fiancée, Catherine. After getting hassled by a cop for looking like “a suspicious character,” Studs wanders off down a street and overhears a bit of music from “Piccolo Pete” (*SL*, 659–61): “Radios all over. And he hated that damn song. But women, now, they never did seem to know their own minds, or what they wanted, so how could a guy know it? Even so, and even if he was in the right, still, he needn’t have been so goddamn mean to her. Yes, he was kind of sorry about it.” Unable to make up his own mind because the women in his life cannot seem to make up their minds, Studs moves farther on down the street and “stopped at a window of a book store and rental library, looking from a stack of greeting cards to books piled up and spread around the window, with their bright jackets, reading the titles, *Lumber, Jews Without Money, The Women of Andros, The Crystal Icicle, Iron Man, The Mystery of Madame Q, Bottom Dogs, Arctic Quest*. Sometime he might rent one or two of the books they had and do a little reading, he reflected, turning away from the window” (*SL*, 661). Instead of doing a little reading, however, Studs starts to admire some young women (“not at all bad on the eyes”) passing by him before he moves on to a corner drug store (*SL*, 662). In the drug store, he almost calls Catherine’s home, but ends up deciding against it:

He laid the slug on the counter, picked up his nickel, stopped by the magazine rack near the door and thumbed through a copy of an art magazine, looking at the pictures of naked and veiled women. Hot babies, but why the hell didn’t it show them in different positions to give the whole works. He set the magazine back and selected a copy of *True Confessions*, opening it at a photograph of a dishevelled girl. Her dress was torn down one shoulder as she gripped a door
knob, her face trapped in fear, with a man looking beastly, lurching toward her, his shirt torn, his face scratched and bleeding. Studs quickly skipped through the story, written in the first person, coming upon the scene represented in the paragraph where the girl was attacked. He hoped the fellow would succeed, and it would be described. But she escaped, and his eagerness sapped away.

*Now, I learned my lesson.*

The clerk stared at him with cold suspicion. He replaced the magazine and left the drug store. Girls weren’t always so lucky as the gal who’d written the story.

Glaring “idly and half-interestedly” at the headlines of the papers displayed at a nearby newsstand, Studs decides finally to go home for lunch and figure out just what the hell it is he is going to do with the rest of his day (*SL*, 663). After all, maybe Catherine has left a message for him with his folks.

As he certainly is throughout the remainder of the trilogy that bears his name, Studs Lonigan in this passage proves to be unduly responsive to the conflicting stimulations and cues provided to him by his surroundings, with the result that he is never really quite sure how he comes to do the things he finds himself doing. The books glimpsed through the window of the bookstore and rental library, for instance, catch his eye not so much for the words they contain as for “their bright jackets,” which lead to the short-lived notion that he really ought to get around to “do[ing] a little reading” sometime soon. Rather than check out a book or two, however, he eventually finds himself inside a drug store skimming through magazines. The sight of the books gets intermingled with his ogling of passing women on the street in such a way that both impulses get displaced onto another activity that combines the two in the drugstore, where Studs can critically appraise the “naked and veiled women” in an art magazine before being deprived of the rape he wants to see verbally depicted in the issue of *True Confessions* (1922–present). The supposedly “vile” desires once satisfied by the “vile” books described in Father Shannon’s mission sermon are now apparently more readily fulfilled by nonliterary means: visual culture and the luridly exhibitionistic moralism (“*Now, I learned my lesson*”) of early twentieth-century confessional magazines.

As pictures, movies, illustrated book covers, and (later) comic books increasingly supplanted the libidinal appeals of mere words on a page as the primary targets of criminal prosecution and legislative oversight in the United States, writing itself gradually became an outmoded way of delivering salacious or patently offensive experiences to prospectively obscene consumers, for whom books seemed to be little more than supplements to the supposedly more provocative and immediate stimulation provided by their paperback covers. Appropriately enough, therefore, the interest of Studs in this particular confession in this particular confessional magazine hinges upon the “photograph of a dishevelled girl” that accompanies
it. Very much a seeker after the sensual and degrading parts of a narrative, Studs hastily shuffles through the woman’s story to the paragraph that seems most like the caption to the photo. Regrettably, to his mind at least, it does not follow through on the rape fantasies this image first stimulated in him.

In effect, then, the reading habits of Studs Lonigan in the 1930s would mark him out as a prototypically obscene reader in the estimation of the Massachusetts Supreme Judicial Court in the 1940s. For Studs, words on a page are not to be read consecutively as a whole but instead are just a series of holes, of more or less suggestive lacunae either to be manically skipped over or to be scrutinized lasciviously. Whereas the judges in 1894’s *In re Worthington* and in the two *Ulysses* cases of the early 1930s were quite certain that literary books reliably tended to call forth the properly literary modes of reading them, the notoriously proscriptive opinions in Massachusetts countered that there were in fact no innate linkages between literary texts and literary reading practices. Instead, putatively literary books could in fact be read obscenely—that is to say, selectively, with an eye and a body attuned to maximizing self-arousal at the prospect of graphic descriptions and actions isolated from the unitary frames or forms put around them in a text.

Studs Lonigan thus helps to call into question the holistic prejudices of Woolsey’s test (obscene works are obscene as a whole) and to muddy the distinction between literary and obscene texts. For instance, an issue of *True Confessions* may not have been “literary” the way *Ulysses* eventually was in the minds of its contemporaries, but it was no less deserving of being read as a whole than Joyce’s novel happened to be. Writing in the 1950s, George Gerbner assessed the social functions performed by U.S. confessional magazines—including *True Confessions* and Bernarr Macfadden’s *True Story* (1919–present)—and concluded that despite the garishness of most of the “true” narratives published in them, these confessions ultimately served moralistic functions when read as a whole:

The social appeal of the confession story pivots around the heroine’s human frailties in a bewildering and punitive world she cannot fully understand. The “truth” of this world is brought home through the inevitable encounter and the final coming to terms—resigned and tragic—with the code of society. The dynamic power of respect and sympathy for confused victims struggling in a web they cannot avoid or escape, or really comprehend, is harnessed to the cause of individual restraint. The flame of rebellion is first kindled, then controlled in scope or divorced from its broader social context, and then doused in jet streams of remorse, sacrifice, and compromise.

While Studs Lonigan’s salacious reading of a *True Confessions* story briefly alludes to this tendency toward restraint and self-control in such types of periodicals (“Now, I
learned my lesson"), the moral of his own encounter with the confession of this particular “dishevelled girl” appears to be that there are reading practices that not only show a complete lack of self-control or restraint but also nullify whatever restraint or self-control a text may be immanently claiming for itself through either its contents or forms. In other words, if Studs ever really did get around to checking out Edward Dahlberg’s Bottom Dogs (1929) or Mike Gold’s Jews Without Money (1930), then he would likely not be reading them for their plot or ideological consistency so much as skimming through them rapidly for the naughty, juicy bits. Similarly, one readily imagines that Gerty MacDowell might have caught Studs’s eye and imagination as one hot babe as well, should a copy of Ulysses have ever fallen into his hands before his premature death from heart failure in the last volume of the trilogy bearing his name.

Furthermore, the separability of text from social context gets undermined altogether in Judgment Day because by the end of the tenth chapter in that book, Studs finds himself within a real unfolding True Confessions–style narrative. After losing money on every horse race at the gambling establishment run by his brother-in-law, a luckless housewife solicits Studs and three other men to come back to her apartment for sex. Studs agrees, and after lots are drawn, he gets to go first:

> Grinning foolishly, Studs walked down the hall, opened the bedroom door. “All right?” he asked.
> “Come in,” she said.
> He entered the small, neat bedroom and saw her, naked, her black hair falling down her back, reclining on a high poster bed, with feminine clothes and a copy of True Stories magazine on a chair beside it.
> “Well, I suppose we better get started,” she said coldly. (SL, 679–80)

With a confessional magazine in place beside the bed to recursively mark the culturally mediated nature of his imminent sexual encounter, Studs is presumably in a position to realize the sort of ending he sorely felt the lack of in the True Confessions narrative he skimmed through earlier in the day. Now, he himself is cast as the relentless sexual predator, while the housewife plays the role of the “dishevelled girl” who ought not to have been quite as lucky as she ended up being.

Instead of being jubilant following this opportunity to enact his rape fantasies, however, Studs “was disappointed, because it had all happened so quickly.” Leaving the woman’s apartment, he is altogether confused as to how to account for what he has just done or how he feels about it:

> All over so quickly. He wanted more, but she’d said no encores without another two and a half [dollars]. And he’d rather go back alone some morning than now with the others there.
He felt lazy, too, and he thought of how when he went back it would be better. She was nice, and he remembered her naked on the bed when he'd entered the room. But a married woman and mother who'd do such a thing, lower than a snake. What was the difference between her and a whore? None. And what a chump and a sap of a husband she must have.

Catherine didn't know about it, and what she didn't know wouldn't hurt her. If she wanted to be tough, as she had last night, let her, and then she could see what she was going to lose. Lighting a cigarette, he thought that this was a just revenge on her. (SL, 680)

The street was alive with people, women rushing through their last-minute marketing, people coming home from work. Suppose one of these men coming along was George Jackson. Nice surprise for Georgie.

And now that the day was finished, he had to get through the night. Christ, things sometimes got dull for a guy.

But maybe [Catherine would] call up after supper, and he'd go over and see her. He thought she would. She really cared for him. Maybe when he got home there would already be a message for him from her. (SL, 681)

An overgrown lab rat traversing a maze with no goal, center, or exit, Studs Lonigan reacts to his own “true story” in ways that closely follow the well-worn habitual grooves embedded deep within his body and mind by the world around him. After leaving open the prospect of an encore performance with the housewife on some future morning, he immediately refers back to Father Shannon's mission sermon in the previous volume of the trilogy. Like Sinclair Lewis, Judge Ben Lindsey, H. L. Mencken, and H. G. Wells before her, the housewife is said to be “lower than a snake,” which makes evident yet again the impoverishing quality of Studs Lonigan's experiences. After all, the very language he uses to make sense of his encounters in the world around him is made up largely of citations he unreflectively produces on the spot in response to present or recent stimuli. A button is pressed, and other people's words start to spool out of his mouth or to cycle through his head.

Unfortunately for Studs, however, these reactions tend to overlap and frequently contradict one another, leading him to carry out a series of conflicting responses that leave him endlessly deferring either an assertion of willpower or the actualization of an intention. The housewife is desirable and should probably be pursued by him again sometime later. Then again, the housewife is a cuckolding whore, and her husband a sap. On the one hand, Catherine does not need to know about what Studs and the housewife-whore did together. On the other hand, even
if Catherine were to find out somehow, it would serve her right because she would only be getting what she has coming to her. George Jackson, the housewife’s husband, sure is a sap. Maybe Catherine has left a message with Studs Lonigan’s folks so that they can make up and he can put this enervating day behind him by spending the night out with her instead. Much like the heroines of early twentieth-century confessional magazines analyzed by Gerbner, Studs Lonigan is a confused victim struggling in a web he cannot avoid, escape, or really comprehend. Unlike them, however, there is no final reconciliation with existing social codes in his future, just a premature death.

No doubt, John B. Watson would have found Studs Lonigan to be an excellent case study for why societies, governments, and businesses badly needed behaviorists to take the reins in educating men, women, and children if human beings were ever going to start realizing their evolutionary potentials as a species. Both professionalizing and transforming the study of psychology by grounding it in physiologically observable behaviors, habits, and reactions, this “founder” of behaviorism popularized the notion in the early twentieth century that humans were little more than complexly arranged stimulus-response mechanisms that could be streamlined and made to run more effectively once comparative psychologists had experimentally determined the protocols by which we all functioned: “In a system of psychology completely worked out,” Watson wrote, “given the response the stimuli can be predicted; given the stimuli the response can be predicted.”

Accordingly, Watson went on to submit that behaviorism ought to be a science that prepares men and women for understanding the principles of their own behavior. It ought to make men and women eager to rearrange their own lives, and especially eager to prepare themselves to bring up their own children in a healthy way. I wish I could picture for you what a rich and wonderful individual we should make of every healthy child if only we could let it shape itself properly and then provide for it a universe in which it could exercise that organization—a universe unshackled by legendary folklore of happenings thousands of years ago; unhampered by disgraceful political history; free of foolish customs and conventions which have no significance in themselves, yet which hem in the individual like taut steel bands.

Without this unshackling of human behaviors from irrational—but no less resilient—customs, and without correlatively transferring governmental control from democratic institutions to the oversight of behaviorist scientists themselves, contemporary social environments would continue to produce subjects with erratic behaviors as well as unreliable response mechanisms. No business or governmental agency would ever be able to effectively anticipate or control the actions of such
mass populations, because the individuals making up these populations would be too much like Studs Lonigan.

From this point of view, then, English-language book obscenity at this time brought out the degree to which words on a page were potentially reducible to mechanical stimulation and the reader to an unduly responsive automaton. As a result, to insist that readers were not really just creatures of habit and that literature was actually separable from obscenity implied that literary writing was without sensory content, a claim that behaviorists, illiberal judges, and I. A. Richards alike were rather reluctant to grant.\textsuperscript{104} In the mid-1920s, Richards conducted a famous experiment with his Cambridge students (mostly undergraduates) in which he asked them to write “protocols” in response to thirteen decontextualized poems. The students knew nothing about each work’s author, title, or date of publication beforehand; all they had to go on were the words in the poem itself.

In part, Richards’s purpose in undertaking this study was to carry out “a piece of field-work in comparative ideology” that would be of use to those seeking to improve pedagogical methods and to elucidate obstacles to proper literary criticism.\textsuperscript{105} Among the obstructions expansively itemized and analyzed in \textit{Practical Criticism} (1929) were the “stock responses” found throughout the written protocols his students produced. Stock responses, according to Richards, “have their opportunity whenever a poem seems to, or does, involve views and emotions already fully prepared in the reader’s mind, so that what happens appears to be more of the reader’s doing than the poet’s. The button is pressed, and then the author’s work is done, for immediately the record starts playing in quasi- (or total) independence of the poem which is supposed to be its origin or instrument” (\textit{PC}, 15–16). For example, in one of the protocols responding to the most disliked of the thirteen assigned poems, Henry Wadsworth Longfellow’s “In the Churchyard at Cambridge,” Richards discovered that a student found “again only stock material and stock treatment.” According to this anonymous student, “the poet has attempted to describe a quiet contemplative mood. He has not felt it. These are just a few commonplaces about Death the Leveller uttered with an ill-feigned naïvete which cannot pass for sincerity. The poem is like the oft-delivered sermon of a preacher who knows what he ought to say. Hence all its conventional tricks—‘a lady of high degree,’ ‘vanity and foolish pomp,’ ‘Christian charity,’ ‘failings, faults and errors’—he might have added ‘trespasses’—and above all ‘the village churchyard, the conventional setting for ruminations upon death’” (emphasis original). Although the student actually went to the trouble of quoting from the poem, he cited these passages mostly as proof of what he already assumed was the case with the poet and his intentions or state of mind. Like a hypocritical preacher, this shabby poet had merely used ready-made conventions to sham sincerity in the descriptive expression of “a few commonplaces about Death the Leveller,” leading
Richards to voice “doubt [as to] the closeness of [the student’s] reading” insofar as this protocol revealed more about the student’s stereotyped expectations than it did about the meanings of the assigned poem (PC, 164).

Despite the negative connotations of calling responses such as these “stock,” it ought to be kept in mind that Richards did not view such reactions as simply “wrong” or “bad” in and of themselves. For one thing, humans unquestionably require a vast store of stock responses if they are to function effectively in the world. In particular, according to Richards, “unless an awkward misfit is going to occur, we may agree that stock responses are much better than no responses at all. Indeed, an extensive repertory of stock responses is a necessity. Few minds could prosper if they had to work out an original, ‘made to measure’ response to meet every situation that arose—their supplies of mental energy would be too soon exhausted and the wear and tear on their nervous systems would be too great.” The problem for Richards then became that of determining the contexts in which such reactions would be most appropriate and in response to what kinds of stimuli these reactions would tend to be most apt:

Clearly there is an enormous field of conventional activity over which acquired, stereotyped, habitual responses properly rule, and the only question that needs to be examined as to these responses is whether they are the best that practical exigencies—the range of probable situations that may arise, the necessity of quick availability and so forth—will allow. But equally clearly there are in most lives fields of activity in which stock responses, if they intervene, are disadvantageous and even dangerous, because they may get in the way of, and prevent, a response more appropriate to the situation. These unnecessary misfits may be remarked at almost every stage of the reading of poetry, but they are especially noticeable when emotional responses are in question. (PC, 241; emphasis original)

Richard therefore contended that stock responses in the reading of good poetry deformed it because such poetry always betrayed itself by forcing readers to dispense with many of their expected emotions or accustomed reading habits: “Nearly all good poetry is disconcerting, for a moment at least, when we first see it for what it is. Some dear habit has to be abandoned if we are to follow it” (PC, 254).

Notably, however, Practical Criticism indicated that the obstacles and dangers that stock responses presented to literary interpretation were not really marked by class, gender, educational, or political differences. In fact, these stereotyped reactions seemed to be affecting pretty much all of Richards’s protocol writers, few of whom liked having their responses labeled “stock” by their teacher and mentor:
If we wish for a population easy to control by suggestion we shall decide what repertory of suggestion it shall be susceptible to and encourage this tendency except in the few. But if we wish for a high and diffused civilisation, with its attendant risks, we shall combat this form of mental inertia. In either case, since most of the protocol writers would certainly regard themselves as belonging to the few, rather than the many, were such a division to be proposed, we shall do well to recognise how much of the value of existence is daily thrust from us by our stock responses, necessary though a substratum of stable and routine mental habits may be. (PC, 314)

For Richards in Practical Criticism, this propensity to respond to a diverse batch of poetic stimuli in a limited number of ways was both an asset to governments, businessmen, and educators wishing to behavioristically standardize the repertoire of mass behaviors and a threat to those who did not want to be so easily susceptible to such suggestive lures. For both the many and the few, however, reading at the time was little more than habituation and predictable reaction, free of conscious reflection and certainly free of the tendency to seek out new and unusual meanings. Remarkably, Richards described this reduction of contemporary reading practices to stimulus-response relationships in terms that anticipate Ann Douglas’s assessment of mass culture’s effects on Studs Lonigan: “If we consider how responses in general are formed, we shall see that the chief cause of ill-appropriate, stereotyped reactions is withdrawal from experience” (PC, 246; emphasis original).

Nevertheless, the manifest shortcomings of the interpretations offered by Watson, Richards, and illiberal judges alike principally involve their certainty that particular stimuli reliably elicit equivalent responses. All three tended to be unduly deterministic in their outlooks on the capacity of the sensory content of words to have directly observable effects in the world. If deproscribing judges like Woolsey and Augustus Hand could be taken to task for assuming that literary texts necessarily called forth literary reading methods, then so could the Massachusetts Supreme Judicial Court for insisting upon the obscene efficacy of obscene texts or obscene parts of obscene texts on an imagined obscene reader. Similarly, U.S. literary naturalism was itself no less an object of scorn for early twentieth-century literary critics who, like so many stock responsive automatons themselves, found themselves censuring naturalist fiction for its overly mechanistic representations of the world and the incapacity of its characters to exert any meaningful agency.

However, at least one cogent way out of the apparent determinist impasses of naturalist (and, I submit, obscene) writing and reading has recently been put forward by Jennifer Fleissner. In Women, Compulsion, Modernity (2004), she contends that all of the critical attention devoted to parsing the determinist philosophies in
literary naturalism over the past century has covered up the remarkable degree to which U.S. naturalist fiction at this time approached the relationship between human beings and the forces that shape them in a much more open-ended way. In particular, Fleissner argues that nineteenth-century and early twentieth-century conceptualizations of compulsion better account for how nature and society affect characters and their intentionalities in naturalist texts. Compulsion, for Fleissner, “has the potential to name an understanding of agency in which individual will and its subjection to rationalizing ‘forces’ appear as more deeply intertwined. More specifically, to the extent that nature appears not as the presocial wilderness in these texts but as an important feature within human social life, various everyday rituals taking place around the fact of embodiment (sex, birth, death, illness, cleanliness, etc.) take on new interest, to these novelists just as to the era’s anthropologists, psychologists, historians, and sociologists.” Far from gloomily depicting the implacable dominion of heteronomous forces over subjects without agency, naturalist texts instead continue to present their readers with a more nuanced—if no less totalizing—vision in which nature, society, and individual agency all mutually constitute each other through the habitual forms that embodiment happens to take. Furthermore, the compulsive features of these habit formations foreground nonlinear, repetitive narratives as opposed to the shapely arcs of triumph or decline so commonly ascribed to naturalist novels, suggesting that these novels never really end so much as defer the possibility of closure as such. In effect, Fleissner has attempted to open the black box around the mind that Watson said could not be opened and to elaborate the various ways in which cognition somehow manages to get embodied in naturalist fiction, despite the failure of its deterministic cover stories to be totally in control. In this view, U.S. literary naturalism’s representational breakdowns—and not its intended, predetermined outcomes—end up telling us a great deal about what it actually could (and does) achieve.

Such failure happens to be a hallmark not only of naturalist fiction but also of legal obscenity itself at this time. The difference, of course, is that whereas the study of U.S. naturalist fiction has been revitalized by this shift in emphasis away from determinism and toward compulsion, the collapse of determinist ways of describing obscenity between the 1930s and the 1950s altogether undermined the legitimacy of book obscenity in the opinions of many liberalizing judges. For instance, in Commonwealth v. Gordon et al., which refused to deem Studs Lonigan, God’s Little Acre, Sanctuary, Wild Palms, and three other novels obscene, Judge Curtis Bok insisted that legally obscene books could only be proscribed if they posed a clear and present danger to the community. While readily conceding that public lewdness and seditious speech presented just such a danger, he went on to express his misgivings about lumping books in with these more obvious threats. According to Bok’s opinion, mere words on a page no longer seemed to have as much affective
force as did a treasonous public address or the genitalia of a man exposing himself
to passing women and children on a city street. The problem with allegedly obscene
books was that they did not reliably elicit an observable reaction—good or bad—
from their readers.

In short, obscene books were simply not obscene enough to meet Bok’s pseudo-
behaviorist criteria, insofar as they so often failed to “get off the page” and into the
“real” world in any sort of clear-cut way. The lack of an immediate deterministic
relationship between an erotic stimulus in an obscene book and a lewd response
in its obscene reader thereby called into question whether obscenity itself ought to
exist any longer as a criminal offense. According to Bok, hereafter a book could only
be credibly charged with obscenity “where there is a reasonable and demonstrable
cause to believe that a crime or misdemeanor has been committed or is about to be
committed as the perceptible result of the publication and distribution of the wri-
ting in question: the opinion of anyone that a tendency thereto exists or that such a
result is self-evident is insufficient and irrelevant. The causal connection between
the book and the criminal behavior must appear beyond a reasonable doubt.”

As Bok made clear earlier in his opinion, however, such a causal connection with
respect to book obscenity “does not bear analysis.”

Bok’s doubts regarding literary obscenity later informed the reasoning of many
lower court judges who were themselves ever more skeptical about the legitimacy
of proscribing books. For instance, in Bantam Books, Inc. v. Melko (1953), New
Jersey Superior Court Judge Sidney Goldmann held that the prosecution of Vivian
Connell’s The Chinese Room (1942) “violated the constitutional guarantee of free-
dom of the press,” but not before he discussed at great length the troubles he was
experiencing with legally defining obscenity in the first place:

The problem is to discover, if possible, what “obscene” means. It has been
suggested that the word comes from ob and scena—done off the scene or off-
stage, and hence furtively. Webster’s New International Dictionary (2d ed. 1943)
gives the derivation as obs (ob) and caenum, filth, and then goes on to define
“obscene” as:

“Offensive to chastity of mind or to modesty; expressing or presenting
to the mind or view something that delicacy, purity and decency forbid to be
exposed; lewd; indecent[”]; 2 Bouvier’s Law Dictionary, Rawle’s Third Revision,
page 2396 (8th ed. 1914) gives the definition:

“Something which is offensive to chastity; something that is foul and filthy,
and for that reason is offensive to a pure-minded person. That which is offen-
sive to chastity and modesty.” These and similar reference works provide no
objective standard or formula for determining when obscenity exists. The defi-
nitions all lead to the dead-end of a subjective determination. To paraphrase
Samuel Johnson, the yea or nay saying of the censor becomes the standard of the permissible.¹ⁿ

Not objectively determined processes, but subjective determinations arbitrarily arrived at were all that legal concepts of obscenity had produced over the past fifty years in the opinion of this New Jersey Superior Court judge, who went on to express doubts as to the exigency of proscribing obscene books at all anymore.

Twenty-five years earlier, Morris L. Ernst (the lawyer who defended Random House in the *Ulysses* cases of the early 1930s) and William Seagle famously began *To the Pure . . . : A Study of Obscenity and the Censor* (1928) with an equivalent claim, from which they ended up drawing very different conclusions:

But few words are as fluid and vague in content as the six deadly adjectives—*obscene, lewd, lascivious, filthy, indecent* and *disgusting*—which are the basis of [obscenity] censorship. No two persons agree on these definitions. We shall see that judges differ to such an extent that courts divide by narrow margins, thus justifying the ironic complaint of infallible government by the odd man. Juries disagree with judges and the cynicisms and enthusiasms of lawyers bear a relation to the size of the retaining fees. Authors have to adapt their ideas to an unknown measure and jails invite those who cannot guess the contemporary meaning of obscenity.¹¹¹

“The final refutation of criminal obscenity laws,” Ernst and Seagle went on to claim in the book’s concluding pages,

lies in their futility. Even if a legal sage arose to define with precision the words “lewd,” “lascivious,” “filthy,” “indecent,” “disgusting,” and “obscene,” the ultimate logic of life would remain. Life itself has deep tendencies both toward elevation and corruption. None can escape such forces from the cradle to the grave. Even if sexual excitement were proved to be a fatally vicious influence we could scarcely hope to eradicate it by law or to establish ideals of asceticism by the suppression of every art. Although the censors are often accused of underestimating aesthetic values and the potency of the arts, their actions belie their words. Each assault on the printed word is a confession of a greater potency in art than in life.¹¹²

For Seagle and Ernst, all the proscriptive legal attention that writing had been receiving in the United States in the 1920s sufficed to indicate the power of artfully arranged words on a page to act on and through a world that was no longer as lifelike as art itself. The tautological acrobatics of obscenity-defining judges were thus a
distraction from the more consequential social dimensions indicated by the recent explosion in obscenity cases involving writing, which entailed that books—and the arts more generally—were so vital a force that they ought to be moved beyond the law’s purview. In other words, the fact that there was so much criminal litigation being brought against obscene books only confirmed Ernst and Seagle in their certainty that art and aesthetics could no longer be underestimated by censors, judges, and legislators alike. Obscenity was, in their words, an “index” of writing’s capacity to still shake up a politically free, intellectually open, and progressively secular society.\textsuperscript{113}

As we have been able to see in the opinions of Bok and Goldmann, however, this hyperbolic investment in the vitalistic “potency” of books hardly carried over into subsequent U.S. case law. The difficulties encountered more and more by judges in merely defining obscenity gave rise not to mute awe in the face of writing’s affective powers but rather to grave doubts about writing’s capacity to do anything much of notice in the world anymore. To rephrase Ernst and Seagle, then, the final refutation of criminal book obscenity ended up having to do more with the futility of believing that obscene books could actually still instigate obscene actions than it did with the difficulty of legislators and judges in accounting for the experience of obscenity itself. After all, the U.S. Supreme Court’s definition of obscenity in \textit{Miller} persists to this day, while the prosecution of obscene books effectively does not. The eventual granting of institutionally recognized autonomy to creative writing in obscenity case law hence came about through the conspicuous underestimation of the effective force of the printed word, which was increasingly neutralized by the opinions of deproscribing judges and the arguments of liberalizing jurists in the decades following Woolsey’s ruling in the \textit{Ulysses} case. No buttons are pressed when twenty-first-century Studs Lonigans read today, because it is not all that clear that twenty-first-century Studs Lonigans read books to get themselves off anymore, nor is it likely that any novel, even a thoroughly depraving one, would catch their eye in the first place.