

# Michigan Law Review

---

Volume 91 | Issue 6

---

1993

## Girls Lean Back Everywhere: The Law of Obscenity and the Assault on Genius

Anne E. Gilson  
*University of Michigan Law School*

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Entertainment, Arts, and Sports Law Commons](#), [First Amendment Commons](#), and the [Supreme Court of the United States Commons](#)

---

### Recommended Citation

Anne E. Gilson, *Girls Lean Back Everywhere: The Law of Obscenity and the Assault on Genius*, 91 MICH. L. REV. 1166 (1993).

Available at: <https://repository.law.umich.edu/mlr/vol91/iss6/7>

This Review is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

**GIRLS LEAN BACK EVERYWHERE: THE LAW OF OBSCENITY AND THE ASSAULT ON GENIUS.** By *Edward de Grazia*. New York: Random House. 1992. Pp. xvi, 814. \$30.

This poor old gentleman, in the seventieth year of his life, could not find a lawyer to defend him. If he had poisoned half a dozen nieces and nephews, brothers and sisters, he could have had the best advice of the bar to prove him an innocent man. Because his crime was that he published [Emile] Zola's novels, he could find nobody.<sup>1</sup>

Publishers like the elderly Henry Vizetelly have a passionate and extremely knowledgeable defender in Edward de Grazia with the publication of *Girls Lean Back Everywhere: The Law of Obscenity and the Assault on Genius*. De Grazia<sup>2</sup> has constructed an impressive and unique history of obscenity prosecutions, skillfully blending arguments against censorship with voluminous factual details about the censored works and their creators. A product of eight years of research,<sup>3</sup> this overflowing work is consistently readable and provocative.

De Grazia tells the story of obscenity law through the words of artists, publishers, censors, judges, and politicians, quoting from those most directly involved in the cases. Interspersed among the quotations appear excerpts, often graphic, from the challenged works, ranging in time and tenor from *Ulysses* (pp. 24-26) and *Lady Chatterley's Lover* (pp. 91-93) to the lyrics of 2 Live Crew's rap song "Me So Horny" (pp. 656-57). De Grazia adds his own commentary throughout, but the book is primarily a remarkable collage of other people's words.

Its compelling title comes from the words of a publisher convicted in 1921 for printing a section from James Joyce's *Ulysses* in her magazine, *The Little Review*. In that excerpt, Leopold Bloom becomes aroused at the sight of Gertie McDowell leaning back to watch a fireworks display, playfully exposing her legs. The publisher, Jane Heap, defended Joyce elegantly:

Mr. Joyce was not teaching early Egyptian perversions nor inventing new ones. Girls lean back everywhere, showing lace and silk stockings; wear low-cut sleeveless blouses, breathless bathing suits; men think thoughts and have emotions about these things everywhere — seldom as delicately and imaginatively as Mr. Bloom — and no one is corrupted. [p. 10]

---

1. P. 51 (quoting George Moore, *Literature and Morals*, CENTURY, May 19, 1919, at 124, 127-34).

2. De Grazia has been involved in freeing HENRY MILLER, *TROPIC OF CANCER* (1949) and the Swedish film *JAG ÄR NYFIKEN-GUL* (I AM CURIOUS YELLOW) (Soundrews 1967).

3. P. 689. The "Select Bibliography" alone runs nine pages (pp. 773-81), with still more information packed into the book's copious endnotes (pp. 691-771).

Heap paid a hundred-dollar fine, and *The Little Review* published no more of *Ulysses*.

The book documents American and British courts' struggle with obscenity law, leading us through what de Grazia sees as its highlights.<sup>4</sup> De Grazia's history begins with an early English case<sup>5</sup> that lays out the following test: "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."<sup>6</sup> The U.S. Supreme Court explicitly rejected this test as "unconstitutionally restrictive of the freedoms of speech and press."<sup>7</sup>

Though the U.S. Supreme Court ruled in 1957 that obscenity was not protected by the First Amendment,<sup>8</sup> it has since wavered on its definition of obscenity. Justice Brennan, in a 1964 opinion, set out the standard de Grazia champions throughout *Girls Lean Back Everywhere*: "a work cannot be proscribed unless it is 'utterly' without social importance."<sup>9</sup> In the Court's 1967 per curiam decision in *Redrup v. New York*,<sup>10</sup> the Justices could not agree on a rationale but held that, under any standard, certain books and magazines were protected by the First and Fourteenth Amendments. The Court later summarily reversed lower court decisions that found books obscene, citing only to *Redrup* (p. 518). However, the Supreme Court ultimately retreated from its permissive analysis. In the 1973 case *Miller v. California*,<sup>11</sup> Chief Justice Burger declared that a work would be denied First Amendment protection if, "taken as a whole, [it] lacks *serious* literary, artistic, political, or scientific value."<sup>12</sup>

De Grazia makes an effort to justify the works to which he cites under this more stringent standard. In doing so, his book ultimately outdistances its pointed subtitle, "The Law of Obscenity and the Assault on Genius." Although many of the artists de Grazia defends so passionately *are* arguably geniuses, ranging from James Joyce to Robert Mapplethorpe, the book's arguments against censorship are clearly

4. Lawyers wishing to find the cases de Grazia discusses will be frustrated; he cites to one of his books which compiles the leading cases, EDWARD DE GRAZIA, *CENSORSHIP LANDMARKS* (1969), instead of official reporters.

5. *Regina v. Hicklin*, 3 L.R.-Q.B. 360 (1868).

6. 3 L.R.-Q.B. at 371.

7. *Roth v. United States*, 354 U.S. 476, 489 (1957).

8. 354 U.S. at 485.

9. *Jacobellis v. Ohio*, 378 U.S. 184, 191 (1964). De Grazia, in fact, dedicates his book to Justice Brennan, "the one person above all others who is responsible for the only real gains that have been made, over the past one hundred years, in the freedom with which authors and artists are able to express themselves." P. xiv.

10. 386 U.S. 767 (1967) (per curiam).

11. 413 U.S. 15 (1973).

12. 413 U.S. at 24 (emphasis added).

meant to extend beyond these artists' works. De Grazia would also free from censorship such sex-pulp books as *Sex Life of a Cop*, *Gang Girls*, *I Am a Lesbian*, *Suite 69*, *Campus Mistress*, *Cult of the Spankers*, and *Dance with the Dominant Whip* (pp. 324, 341, 440, 498, 501). De Grazia describes the "Pubic Wars" between *Penthouse* and *Playboy* after the former was the first to publish photographs showing women's genitalia in 1971 (pp. 577-79) and laments the suppression of those magazines from 7-Eleven convenience stores (pp. 600-04). In his analysis, then, de Grazia does not differentiate between the censorship of Theodore Dreiser's *An American Tragedy* and the removal of *Penthouse* from the shelves of a convenience store chain. This makes his arguments less persuasive.

De Grazia does capitulate to the Court's requirement of "serious" value in an attempt to validate many of the works he describes. Some of the defenses of genius de Grazia includes are unintentionally very funny because they are so inapposite. For instance, de Grazia places the expert testimony of a learned English professor in between two extremely graphic passages from William S. Burroughs' *Naked Lunch*. The reader is thrown from a string of raunchy images like "Mary . . . strapping on a rubber penis" to the serious statement that the book acts as "a two-fold portrayal of the addict's existence and of the society which draws its energy from values and relationships for which addiction becomes a metaphor" (p. 490). Though de Grazia laments how long it took courts to appreciate the artistic value of many of the works he discusses, like Joyce's *Ulysses*, that is not really his chief concern.

De Grazia also complains about courts and censors' refusal to examine the artistic works as a whole.<sup>13</sup> However, *Girls Lean Back Everywhere* is full of excerpted sections from books, and this makes it impossible for the reader to see and judge them as a whole. It is tough to get a sense of the quoted works because the excerpts selected are most often the more risqué passages that led to the book's challenge by censors.

Also, including so many of these titillating excerpts makes de Grazia vulnerable to the same criticism he levels teasingly against anti-pornography conservatives: "It appears to be characteristic of obscene-literature vigilantes to collect and circulate the stuff" (p. 588). For instance, de Grazia sets out three full pages of the drily narrated description of the movie *Deep Throat* contained in the Final Report of Attorney General Meese's Commission on Pornography (pp. 589-91).

---

13. The Chief of Police in one Chicago suburb showed page 5 [of Henry Miller's *Tropic of Cancer*] to the [city] juvenile officer, village manager, and corporation counsel. Everybody agreed it was "vulgar and obscene" and so they went out and visited all the vendors in town and asked them to remove the book from their shelves. No one had ever read the whole book. Page 5 was enough for the police. P. 374.

He also gives the example of what he calls the "Justice Fortas Obscene Film Festival," with Senator Strom Thurmond as its projectionist (p. 538). As an Associate Justice, Fortas voted to free many sexually oriented books and films (p. 532) and, to counter his ultimately unsuccessful nomination to the chief justiceship, those opposed held frequent and well-attended showings of the films.

Besides the generous array of literary excerpts, the book also contains an extraordinary quantity of factual detail. This abundance leads the reader to wonder, on a few occasions, whether de Grazia's editor was paying full attention. De Grazia relates, for example, which songs the organist played at Theodore Dreiser's funeral and the type of wood of his casket (p. 162). In addition, Shigeyoshi Murao, a clerk in the City Lights bookstore, was arrested with Lawrence Ferlinghetti for selling copies of Allen Ginsberg's wild, beat generation poem *Howl*, and de Grazia relates: "For the trial [Murao] wore a cheap, light blue summer suit with a white buttoned shirt and a black knit tie" (p. 335). We also learn that writer Radclyffe Hall and her lover Una Troubridge "did not care for the meals at the English-run hotel in St.-Tropez that Colette had recommended to them, so they moved into the more palatial Golf Hotel at Beauvallon" (p. 204). Finally, Chicago poet Paul Carroll relates that Allen Ginsberg's lover Peter Orlovsky drove the two of them to Chicago in Ginsberg and Orlovsky's van to give a marathon poetry reading. Strangely, de Grazia feels compelled to drop a footnote: "According to Allen Ginsberg, *Big Table's* assistant editor, John Fles, actually drove them in his car" (p. 358).

Fortunately, such uninteresting digressions are rare. Almost all of de Grazia's anecdotes and gossipy details are well worth inclusion. While not strictly relevant to obscenity law, his minibiographies of Theodore Dreiser, Allen Ginsberg, William Burroughs, Lenny Bruce, and Robert Mapplethorpe, as well as Justices Abe Fortas and William Brennan, make this book funny and fascinating.

*Girls Lean Back Everywhere* is filled with marvelous images that punctuate its legal analysis. We can vividly picture Lenny Bruce's unavailing performance of his comedy routine in front of a federal appeals court panel consisting of Judges Paul Hays, Henry Friendly, and Thurgood Marshall (pp. 450-52). Another anecdote seems to typify the confidence prosecutors felt in obscenity cases early in the development of obscenity law. At oral argument in front of the Supreme Court, the District Attorney prosecuting Edmund Wilson's *Memoirs of Hecate County* said simply: "The New York statute is valid. A reading by this Court of the book will demonstrate the factual finding of obscenity is reasonable. The judgment of the New York courts below should be affirmed" (p. 227). Then he sat down. The Justices divided equally on the issue and thereby left the lower court conviction standing.

The details splendidly develop the book's "characters" as well. We learn that an aging Henry Miller, author of the much-challenged *Tropic of Cancer*, would "sometimes play his dearly loved game of Ping-Pong, from a wheelchair, and regularly beat his opponents, some of them unclad females" (p. 433). In 1963 then-law clerk Richard Posner, now an extremely prolific appeals court judge, wrote a memorandum for Justice Brennan advising him how to rule on certain obscenity cases before the Court; it was 218 pages long (p. 420).

In addition to his stories of authors and judges, de Grazia relates several cautionary tales of bad lawyering in obscenity prosecutions. The proprietor of a Cambridge, Massachusetts bookstore was convicted for selling D.H. Lawrence's *Lady Chatterley's Lover* after his lawyer stated that the book was "not fit for publication or circulation" (p. 91). In 1902 Ida Craddock was prosecuted for her book, *The Wedding Night*, containing explicit suggestions for having satisfying intercourse. Her lawyer said, "no woman in her right mind would write such a book." The judge would not let jurors see another of Craddock's works because, as he told them, it was "indescribably obscene" (p. 5). The poor defense of Henry Vizetelly, who had published Zola's novels, was appropriately undertaken by Mr. Cock Q.C. (p. 49). Mr. Cock advised Vizetelly to throw himself on the mercy of the court in order to "dispose of the distasteful matter as quickly as possible" because there "could be no defense."<sup>14</sup> The elderly Mr. Vizetelly spent three months in jail. Occasionally the client was reluctant to help in the defense of a work; when asked to assist the French publisher of *Lolita* when it was challenged, Vladimir Nabokov refused to participate in what he called the "lolitigation" (p. 262).

While the book's anecdotal style of commentary-by-quotation makes it readable, diverse, and entertaining, and de Grazia's slant on the subject of obscenity is rarely hidden, his voice tends to get lost on specific issues.<sup>15</sup> De Grazia predictably disagrees vehemently with the views of such antipornography feminists as Catharine MacKinnon and Andrea Dworkin that pornographic material degrades women, perpetrates their subordination, and should be removed from the marketplace. However, he uses other people's words to push his point and thus leaves the extent of his own position unclear. For example, he quotes Anne Rice, speaking of MacKinnon and Dworkin: "I think they're fools. The legislation they're proposing [about pornography] is absurd" (p. 617).

De Grazia similarly hides behind a statement made by Norman

---

14. P. 49. The attorney also stated that "he could not go on with the case because to do so he would have to read the books with their immoral passages." P. 51 (quoting Moore, *supra* note 1, at 127).

15. It is difficult, for example, to know quite how to understand de Grazia's intentions when he quotes Norman Mailer as saying, "De Grazia was a slim elegant Sicilian . . . [who] bore a pleasant resemblance to the way Frank Sinatra had looked, ten years earlier." P. 392.

Mailer in response to Linda Marciano's statement that, as Linda Lovelace, she was tortured both physically and psychologically while making *Deep Throat*. Mailer says flippantly, "I was always dubious about the Linda Lovelace exposé. I had this feeling that she protested a little too much. I did see the movie. She didn't look like she was in much misery" (p. 587). And does de Grazia really mean to echo Hugh Hefner's charge that "[t]he Meese Commission trundled out a parade of born-again basket cases, antisex feminists and fun-hating fundamentalists [whose] testimony was sad, misdirected — even pathetic" (p. 586)?

One issue where de Grazia's opinion comes through clearly is that of government funding of allegedly obscene art. The book's final chapters center on nonliterary works — the art of controversial performance artists Holly Hughes and Karen Finley and photographers Andres Serrano and Robert Mapplethorpe. De Grazia argues that "there should be little doubt that the deliberate rejection of applicants seeking assistance for the creation and exhibition of . . . 'indecent' or 'disrespectful' art would violate freedom of expression and therefore be unconstitutional" (p. 681). The book's leap from advocating nencensorship to describing a constitutional right to receive funding for potentially offensive art is not well executed.

The strength of *Girls Lean Back Everywhere* lies in its author's eye for truly interesting detail. Though de Grazia's use of anecdotes and quotations to argue his points effectively does falter on occasion, he does not let our attention go to waste. After drawing the reader in with its sexy material, the book remains persuasive, thought provoking, and entertaining.

—Anne E. Gilson