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## The role of the obscenity trials of Grove Press and City Lights Press in liberalising American publishing

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### Abstract

Two American publishing houses that were subject to multiple legal battles and obscenity trials during the 1950s and 60s were City Lights Press and Grove Press. Over time, both houses have become renowned for publishing literary material dealing with drugs, explicit sexual practices and various other examples of illicit content, such as *Howl and Other Poems* by Allen Ginsberg and *The Tropic of Cancer* by Henry Miller.

Opinions were widely divided but equally determined throughout the trials of each publisher, as Pennsylvania Supreme Court Justice Michael Musmanno insisted that *Tropic of Cancer* was “not a book. It is a cesspool, an open sewer, a pit of putrefaction, a slimy gathering of all that is rotten in the debris of human depravity”, while California State Superior Court Judge Clayton Horn argued that *Howl and Other Poems* was of “redeeming social importance”. By closely examining each trial, I intend to argue that as a result of the publishers’ decision to defend their right to publish these titles, the concept of censorship on the grounds of obscenity was no longer so straightforward, as the frequency of books being banned for obscenity began to decrease in the following decades.

**Keywords:** Censorship, Obscenity, Grove Press, City Lights Press, Beat Generation, Trial

## Introduction

The 1950s and 60s were a crucial time for American writers and publishers alike; it was a time of great social upheaval and radical change, with many US lawmakers questioning what was and was not acceptable material for the public to be exposed to, literature being no exception. Two publishing houses in particular that were subject to multiple obscenity trials were City Lights Press and Grove Press. Over time, both houses have become renowned for publishing literary material dealing with drugs, explicit sexual practices and various other examples of illicit content. In this journal article, I intend to examine the obscenity trials of two publications in particular: *Howl and Other Poems* by Allen Ginsberg, published in 1957 and *The Tropic of Cancer* by Henry Miller, published in 1961. Through the legal battles in which each house defended their decision to publish to those in favour of censorship, the American publishing industry underwent a “legal revolution led by a few determined and extraordinary publishers...men who are determined to take a hill even if it takes all summer and chews up half their resources” (Rembar, 1968: vii).

The works that City Lights Press and Grove Press chose to publish included content that led to cases that revolved around literary experts as well as lawmakers attempting to define “what words like ‘art,’ ‘purity,’ ‘religious,’ and ‘obscene’ really mean” (Featherstone, 1961: np), in a seemingly endless back and forth of widely divided, but equally determined arguments, regarding what was and was not suitable reading material for the American public. Each of the trials were essentially an “argument of tradition against the power of reason” (Rembar, 1968: x)

The events sparked by the actions of City Lights Press and Grove Press forced figures of authority within the law to re-examine the very definition of the terms obscenity and literature. By examining the transcripts of the trials, opinions of literary experts who were consulted and the national interest that was sparked from each case, I intend to argue that the publishers who released these works of literature, as well as the booksellers who stocked them, set the precedent that paved the way for the expiration of censorship in the US in the years to come.

### **1957: *Howl and Other Poems* by Allen Ginsberg: Published by City Lights Press**

American poet Allen Ginsberg was one of the founding members of the Beat Generation, a group of writers, musicians and artists that began to emerge in the 1950s, initially meeting in New York, with the central figures, including Ginsberg, then moving to San Francisco. They used their work to illustrate Beat culture, which involved the rejection of politics,

materialism, social norms and expectations, as well as experimentation with drugs and sexuality. Ginsberg's poem "Howl" is one of the earliest and most prominent literary works of this generation, as it deals with both the "sacred and profane" (Senderberg 2012: np), including explicit language and both hetero and homosexual practices, drug use and rejection of social values – issues that conservative Americans would see as objectionable material in a piece of literature. His reading of this poem was the first public manifestation of the Beat Generation when he presented it at the Six Gallery Reading on 7<sup>th</sup> October 1955, a major event in the San Francisco Renaissance (a surge of poetic activity that gave San Francisco its reputation for being a hub of literature and performing arts).

When poet, liberal activist and City Lights Press founder Lawrence Ferlinghetti heard Ginsberg read "Howl", he immediately offered to publish it along with other shorter poems. The book *Howl and Other Poems* was published in paperback in November 1956, before which Ferlinghetti had already requested and received assurance that the American Civil Liberties Union (ACLU) would defend him, should he be prosecuted for obscenity. It seems his forward thinking was wise, as prior to the publication of "Howl", freedom of expression in America "did not extend to any writing any writing that contained overtly sexual references. No matter how beautifully written or ethical its viewpoint" (Peters, 2006: 5). Consequently, any literary work with explicit reference to sexual acts was viewed as obscene, leading to legal action and was subsequently banned. Sure enough, just a few months later, in March 1957, Collector of Customs Chester MacPhee seized a shipment from England of the book's second printing on the grounds of obscenity, but he was made to release the books when federal authorities refused to confirm his charge. However, this was only the beginning of an on-going legal battle. In June, police raided City Lights Bookstore and arrested store manager Shingeyoshi Muao on the charge of selling obscene literary material, and Ferlinghetti turned himself in on his arrival in San Francisco. The accused faced a five hundred dollar fine and a six month prison sentence. As promised, the ACLU posted bail and secured the services of highly esteemed defence lawyer Jake Ehrlich.

The opinions of the nine literary experts who were called to testify during the following trial varied greatly. Focusing on the content and language in order to deem the books obscene, radio personality and writer Gail Potter stated that "You feel like you are going through the gutter when you have to read that stuff...I didn't linger on it too long, I assure you" (Morgan, Peters, 2006: 206). Not only did she articulate her disgust with the content, she insisted that any work of literary merit should include some form of "moral greatness and I think 'Howl' fails to the nth degree" (Epstein, Friedman, 2010). It seems that in her view, Ferlinghetti was responsible for publishing, and therefore inflicting work that was not only obscene, but fundamentally immoral on American society.

Prosecutor Ralph McIntosh attempted to further diminish the literary value of "Howl" by arguing that its language was not necessary or relevant, and therefore it was senseless in its obscenity and not fit for society. However, when questioned, English Professor Mark Schorer cleverly defended the book and its value among other published works by insisting that it "like any work of literature, attempts and intends to make significant comment on or interpretation of human experience as the author knows it" (Morgan, Peters, 2006: 204). Schorer makes it clear that on this level, Ferlinghetti had published a book no different to any other, despite its controversial content, implying that this the decision to ban it for being senseless is invalid. McIntosh, however, repeatedly attempted to use the poem's confusing language to render it diminish its value:

"Do you understand" he demanded, 'what angelheaded hipsters burning for the ancient heavenly connection to the starry dynamo in the machinery of night means?'  
'Sir, you can't translate poetry into prose,' Schorer answered. 'That's why it's poetry.'  
The audience, among whom were North Beach writers, downtown booksellers...roared."  
(Morgan, Peters, 2006: 204)

Powerful testimonies such as this make it clear that the prosecution's strategy of using the content of the poem against it in order to devalue it in the eyes of the law was extremely narrow-minded and short-sighted, as defence of the poem's content was just as determined and even more articulately argued.

One notable aspect of the case was the significant amount of media attention that it sparked. With press coverage surrounding the trial, including articles in *Life* and *Time* magazine, the book and the publisher had so much attention that by 1958, there were twenty thousand copies of the book in print, while today, there are over a million. Ironically, the lawmakers' outrage over the circulation of such explicit material only led to a dramatic increase in the amount of readers that it reached. Ferlinghetti himself thanked MacPhee pointing out that it would have taken "years for critics to accomplish what the good collector did in a day, merely by calling the book obscene" (Morgan, Peters, 2006: 107). This was the true beginning of the revolutionising Beat Movement that Ginsberg and other notable figures such as Jack Kerouac, William Burroughs (whose book *The Naked Lunch* was later to be subject to obscenity trial) and many other writers and artists were part of. Through the publicity of this case, those who had previously been virtually unknown were emerging in the public consciousness, while other aspiring writers moved to San Francisco,

hoping to have their work published. Far from suppressing the circulation of so-called obscene literary works, the trial only served to illustrate that controversy ensured success.

After hearing the testimonies of all nine experts, Ferlinghetti won his case, and Judge Clayton Horn concluded that *Howl and Other Poems* was of “redeeming social importance [and therefore] cannot be held obscene” (Horn, 1958: np). Furthermore, he stated that:

“No hard and fast rule can be fixed for the determination of what is obscene because such determination depends on the locale, the time, the mind of the community and the prevailing mores”.

(Horn, 1958: np)

This statement is crucial in the development of obscenity in the eyes of law-making authorities, as after decades of fixed intolerance and censorship of so-called inappropriate literary work, there had finally come an admission that the definition of obscenity was, in fact, increasingly flexible, and that the enforcement of censorship would possibly become more lenient over time. By publishing and subsequently bringing a staggering amount of attention to *Howl and Other Poems*, City Lights Press had taken the first steps towards bringing the issue of censorship to the attention of the American public.

### **1961: The Tropic of Cancer by Henry Miller: Grove Press**

Regarded as one of the most controversial and important literary works of the twentieth century for its subject matter and portrayal of sex, *The Tropic of Cancer* by American poet and painter Henry Miller was the focus of obscenity laws practically from the moment of its publication. It was banned in America for almost thirty years, ever since its initial publication in 1934 France by Obelisk Press, because of its so-called obscene content. However, Grove Press, an American publisher that was already becoming “famous for publishing books nobody else would touch” (McGrath, 2008: np), published the first American edition of the book in 1961. Although Grove had already faced a fierce legal battle in 1959 after the publication of *Lady Chatterley’s Lover*, this publication would cause “far more trouble” (Rembar, 1968: 168).

Interestingly, it was not until the publication of the paperback copy that the real problems began, for it “provoked, for example, a great roil of police action in Chicago and its suburbs, where the hardcover had been selling peacefully in department stores and bookshops” (Rembar, 1968: 171). Only once the material was within reach of the masses and the

content was made easily attainable, did the furious backlash begin, especially when in one of their briefs, Grove Press boldly stated that it “makes no apologies for offering an acknowledged literary classic to the American public at a reasonable price” (Rembar, 1968: 172). An issue that had preoccupied the minds of intellectuals and upper classes over the decades, not just in America but in the United Kingdom, was fuelling an urgent need to quash the circulation of such a text.

After facing extensive legal battles to publish *Lady Chatterley’s Lover*, Grove Press were skilled in preparing a wealth of evidence through affidavits required to validate the book’s literary worth, taking extreme care with how each of these were presented. For example, poet and critic John Ciardi insisted that the book ““must not be removed from the memories of civilised men. It is both an essential admonishment and an essential exhortation”” (Rembar, 1968: 182). Although an articulate and convincing argument, Charles Rembar, who had defended Grove Press during the *Lady Chatterley’s Lover* case and had experience in obscenity trials, noticed an issue with the final sentence of Ciardi’s statement:

““It is to say that the least of men shall dictate the diet of the best””, believing that the “judges could easily find a note of snobbery in it, and it would not matter whether it was unintended. They might view the affidavit as arguing that *Tropic of Cancer* should be exempt from anti-obscenity laws for the benefit of an elite” (Rembar, 1968: 182).

In a case where Grove Press were attempting to argue that such a literary classic should be accessible to the masses, so as to be appreciated by everyone, such an implication could be catastrophic to their case. Rembar chose to change the final word from “best” to “rest”; with just a minor alteration, the entire tone and reason behind the argument was changed and further validated, as it “made the censors, rather than the readers, the outsiders” (Rembar, 1968: 182). Grove Press was determined that *The Tropic of Cancer* had enough value and merit to be released for the public.

Over the following years, several obscenity trials surrounding *The Tropic of Cancer* were to take place, with lawsuits brought against individual booksellers, whilst attempts to have the book banned were made in many states, as authorities launched legal action against over sixty booksellers across the country. For example, the book first came under scrutiny in the case, Attorney General vs. *Tropic of Cancer*, which took place in Boston in September 1961. Grove’s defence lawyer, Ephraim London made sure to defend the validity of both the book and the publisher, stating:

“I think it is relevant to show this is not a publisher of cheap pornographic books. I think it’s relevant to show that the list of books is one of exceedingly high quality.”  
(Rembar, 1968: 184)

Furthermore, three literary experts from universities testified in defence of the value of the book: Mark Schorer of California (who had written the introduction to *Lady Chatterley’s Lover*), Harry Moore of Southern Illinois and Harry Levin of Harvard. While on the stand, Moore stated that the book had “very high literary value...it is splendidly written in an age when not many things are splendidly written” (Rembar, 1968: 185). While defending the work’s literary value, Moore also cleverly emphasized the appeal of the book to the masses, the idea to which those who banned the book were so opposed to, as he told Judge Goldberg that the book’s “seamier passages reflect the life of real people...if this book is obscene, then life is obscene” (Featherstone, 1961: np). In stating this view, Moore put forward the rather Beat-like view that books containing language such as *The Tropic of Cancer* are examples of realism, rather than needless obscenity.

However, those in positions of authority would constantly condemn the book. When prosecuting employees of the Economy Book and Stationary Store for selling the book in 1962, the New York State Court of Appeals ruled four to three *that The Tropic of Cancer* was obscene, making it a misdemeanour for the book to be sold by anyone who was aware of its contents. The court had quoted passages from the novel, although they were “loath to do so” (Kline, 2011: np), and Judge John F. Scileppi’s conclusion was seemingly absolute, as he stated that, *The Tropic of Cancer* did “not fall within the class of publications entitled to constitutional protection” (Scileppi, 1963: np). It was also declared by the court that the book was a “compilation of a series of sordid narrations dealing with sex in a manner designed to appeal to the prurient interest. It is devoid of theme or ideas” (Kline, 2011: np). From this perspective, the book was simply pornography, rather than a worthy piece of literature, and therefore publishing and inflicting it on the American public would be out of the question.

From the publication until 1964, Grove Press faced a staggering sixty trials in the effort for the right to publish *The Tropic of Cancer*, until finally the Supreme Court of the United States declared that the book was not obscene, making it legal to sell the book anywhere in the United States and subsequently overruled any previous decisions to ban the book.

Of course, even this supposed absolute ruling did not entirely end the outrage felt towards the book by certain authority figures. An example of one extreme case of a lawmaker’s fury and disgust toward *The Tropic of Cancer* in light of this decision is the reaction of

Pennsylvania Supreme Court Judge, Michael Musmanno. In the 1961 case of *Commonwealth of Pennsylvania vs. Robin*, the bookstore Robin's Bookstore lost their case, after being put on trial for refusing to remove the book from its shelves. However, after the decision in 1964, the Supreme Court of Pennsylvania was forced to overturn the ban of the novel in the state. Forgoing the level of objectivity and reason one might expect from a judge, Musmanno attacked the book and those who defended it in 1966, declaring that "Cancer is not a book. It is a cesspool, an open sewer, a pit of putrefaction, a slimy gathering of all that is rotten in the debris of human depravity...one wonders why [Miller] is received in polite society" (Musmanno, 1966: np). From such a vicious statement, it is clear that from the viewpoint of particular American lawmakers, censorship was an essential tool needed to shield the public from obscene literature. While publishers believe that the masses are entitled to exposure to such literary works, there were always those who were just as strongly convinced that the masses should be entitled to the exact opposite. However, despite heated protests, there was no real action to be taken, and therefore Grove Press was triumphant in their efforts to protect their right to publish *The Tropic of Cancer* as well as the right of booksellers to stock and sell it.

## Conclusion

In the decades following the legal battles faced by City Lights Press and Grove Press, America has still had the issue of censorship in terms of literature – banned books have not been a particularly uncommon occurrence, particularly in the more conservative states. However, I believe it is not an overreaction to suggest that many of the books that have been published or had bans lifted, despite their controversial content, were accepted at least partly as a result of the verdicts of these court cases. The court's rulings and the publishers' determination that *Howl and Other Poems* and *The Tropic of Cancer* were of literary value and should be available to the public proved a milestone in redefining people's views on what constituted as quality literature.

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## References

- (1958). *THE PEOPLE OF THE STATE OF CALIFORNIA Plaintiff VS. LAWRENCE FERLINGHETTI Defendant*. Available: <http://mason.gmu.edu/~kthomps4/363-s02/horn-howl.htm>. Last accessed 28th February 2013.
- (1963). *PEOPLE STATE NEW YORK v. MARGUERITE FRITCH (07/10/63)*. Available: [http://ny.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19630710\\_0042716.NY.htm/qx](http://ny.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19630710_0042716.NY.htm/qx). Last accessed 21st March 2013.
- Featherstone, Joseph. (1961). *Critics Testify for 'Tropic of Cancer'*. Available: <http://www.thecrimson.com/article/1961/9/27/critics-testify-for-tropic-of-cancer/>. Last accessed 28th February 2013.
- Howl. 2010. Film. Directed by Epstein, Rob. Friedman, Jeffrey. USA: Werc, Werk, Works
- Kline, Susan. (2011). *Henry Miller's Tropic of Cancer: The Local Connection*. Available: <http://library-blog.syr.edu/scrc/2011/11/18/henry-miller%E2%80%99s-tropic-of-cancer-the-local-connection/>. Last accessed 28th February 2013.
- Musmanno, Michael. (1966). *Commonwealth v. Robin, Appellant. Commonwealth v. Grove Press, Inc., Appellant. Supreme Court of Pennsylvania*. Available: [http://scholar.google.com/scholar\\_case?q=218+A.2d+546&hl=en&as\\_sdt=2,21&case=13585194723221516700&scilh=0&safe=active](http://scholar.google.com/scholar_case?q=218+A.2d+546&hl=en&as_sdt=2,21&case=13585194723221516700&scilh=0&safe=active). Last accessed 21st March 2013.
- McGrath, Charles. (2008). *Publisher Who Fought Puritanism, and Won*. Available: <http://www.nytimes.com/2008/09/24/movies/24obsc.html>. Last accessed 28th February 2013.
- Morgan, Bill. Peters, Nancy J. (2006). *Howl on Trial: The Battle for Free Expression*. USA: City Lights Books.
- Morrison, Ewan. (2009). *Book Of A Lifetime: Tropic of Cancer, By Henry Miller*. Available: <http://www.independent.co.uk/arts-entertainment/books/reviews/book-of-a-lifetime-tropic-of-cancer-by-henry-miller-1719362.html>. Last accessed 28th February 2013.
- Raskin, Jonah (2006). *American Scream: Allen Ginsberg's "Howl" and the Making of the Beat Generation*. USA: University of California Press

Rembar, Charles (1968). *The end of obscenity: the trials of Lady Chatterley, Tropic of Cancer and Fanny Hill*. America: Random House.

Senderberg, James. (2012). *The Howl Obscenity Trial: Historical Essay*. Available: [http://www.foundsf.org/index.php?title=The\\_Howl\\_Obscenity\\_Trial](http://www.foundsf.org/index.php?title=The_Howl_Obscenity_Trial). Last accessed 28th February 2013.