Libel

Policing the Laws of Fiction

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DOI:10.1093/acprof:oso/9780195379990.003.0004

Abstract and Keywords
Despite the often heroic narratives of modernism’s campaign against antiobscenity laws, writers in the period were much more likely to run afoul of libel suits sometimes brought successfully by plaintiffs entirely unknown to them. This chapter surveys the surprisingly rich yet almost entirely unexplored intersection between literature and libel in the period by providing a broad overview of key cases and legal decisions. As writers increasingly experimented with the roman à clef, judges, juries, and eventually legislators in Great Britain struggled to maintain a clear legal conception of fiction—and the consequences were broad and far-reaching. Publishers demanded sometimes vast changes to manuscripts and the inherent conservatism of libel law became, in the words of one commentator, a “terror to authorship.” Following the particularly far-reaching case of *E. Hulton & Co. v. Jones* in 1909, the novel itself seemed to teeter on the edge of illegality as the courts proved almost incapable of meeting both the legal and aesthetic challenges posed by the roman à clef’s ability to broach the public sphere. The chapter concludes with a short digest of key acts and legal decisions in Britain and Ireland.

*Keywords:* libel law, defamation, Hulton v. Jones, modernism, roman à clef, law and literature, censorship

And though no perfect likeness they can trace;

Yet each pretends to know the Copied Face.

These, with false glosses feed their own ill-nature,

And turn to Libel, what was meant a Satire.

—William Congreve, *The Way of the World*

In 1924, Osbert Sitwell published *Triple Fugue*, a small and delicately crafted collection of short stories offering thinly veiled satiric portraits of the snobbish London literary coteries through which he and his siblings moved. Among those savaged were Ottoline Morrell, Aldous Huxley, and Edmund Gosse, all of whom were suitably outraged. In a letter to Arnold Bennett, Sitwell emphasized the roman à clef’s distinctive “aesthetics of detail,” suggesting that it be treated as a scandalous “Book of Characters” structured less by plot than by “anecdote.”\(^1\) Fictional facades seem only lightly to conceal their historical originals. In the foreword to the title story Sitwell even cultivates the roman à clef’s wanton
infectiousness by hinting that “a student of social life” might see the text as a kind of “detective game” to be played “for his own amusement.” Although such a coy introduction certainly generates some ironic distance between Sitwell and these stories of social intrigue, it insists that the reader simultaneously savor the scandalous concoction of gossip, celebrity, and fiction. The initial reviews of the text looked dimly on such pleasures, typically echoing *The Spectator’s* lament that it was symptomatic of “the biographical element in modern literature [which] threatens to become a menace.”

*The Outlook* (p.70) carefully avoided engaging directly in any of the detective work Sitwell’s text invites, and regretted that this otherwise “decorative” prose stylist “preferred the annoyance of his enemies to the case of unicorns.” *The Times Literary Supplement* described the text’s distaste for its own characters, noting the “dislike, contempt, or ridicule” with which they were portrayed. More than just a snide indictment, however, this telling passage from the *TLS* gestures to the legal rather than to the aesthetic risks Sitwell took with these stories. This is because the phrase used by the unsigned reviewer echoes almost precisely one of the most famous definitions of libel in British jurisprudence as articulated by Baron Parke in the 1840 case of *Parmiter v. Coupland*: the expression in a relatively permanent medium of language meant to bring someone into “hatred, contempt, or ridicule.” Sitwell, this review suggests, has done more than violate the rules of literary decorum; he may, in fact, have crossed the thin but nevertheless dangerous boundary that legally separates fact from fiction and thereby exposed himself to civil and even criminal penalties. Here the roman à clef’s anarchic skepticism becomes a legal rather than simply an aesthetic problem, and its consequences for cultural production in the first half of the twentieth century were enormous.
We have become all too accustomed to the dull legal boilerplate that appears in the front matter of most modern fictional works and dryly disavows any kind of connection to the real world and its inhabitants. Typically, it reads something like this: “This is a work of fiction. The characters, incidents, and dialogues are products of the author’s imagination and are not to be construed as real. Any resemblance to actual events or persons, living or dead, is entirely coincidental.” The closer a novel comes to containing some element of historical or biographical truth, the more prominent such disclaimers become, their heightened visibility ironically reassuring the reader that there may indeed be some outrageously scandalous facts for a well-trained social detective to extract. In *Triple Fugue* Sitwell extends his satire to include the often rank hypocrisy of this thin legal assertion of fiction’s complete autonomy, going to far as to indict what Aaron Jaffe calls his own “imprimatur” as a modernist writer. That is, he tests the aesthetic as well as the legal structures underwriting his authorial autonomy as the “sovereign site for artistic consciousness.” To do so, he appends his own mock disclaimer on the recto of the contents page: “In humbly presenting the following tales of the Old and New Worlds I should at the same time wish to warn my readers that any character failing to recognise himself will immediately be prosecuted for libel.” Sitwell here returns his fiction to the novel’s origins in the eighteenth century when, as we have seen, such texts were prefaced by disclaimers that asserted their factual rather than fictional origins. By daring his readers to recognize (p.71) themselves—indeed threatening them with legal action if they fail to see the ways they have been obliquely named yet directly indicted—Sitwell attempts to satirize and thereby disrupt the modern novel’s trajectory toward a facile aesthetic autonomy that coyly effaces its direct investment in the markets for economic profit and personal prestige.

When his second volume of equally satiric stories, *Dumb Animal*, appeared in 1930, however, the limits of this critique became plainly, indeed painfully, evident. The collection’s final story, “Happy Endings,” describes a boy’s education at a military academy just before the First World War and is clearly based upon Sitwell’s own experiences at Ludgrove. The satire takes aim at drunken masters, hopeless students, and a hypocritical headmaster—a “tiresome, rather harmful old
man” who urges the boys to sacrifice themselves to the Empire from behind the safety of his large desk.\textsuperscript{12} The dull routine of the school is only broken by the garden and other splashes of decoration created by the headmaster’s “Madame-Bovary-wife” who “had been compelled to indulge her romantic imagination, walking among these flowers which she alone loved here, seeing herself in a hundred other positions than the one she occupied, and with far more actuality, until her mind had begun a little to suffer.”\textsuperscript{13} The story concludes with news of her son’s death in the war followed by her own mental breakdown. After chaining herself to the Prime Minister’s residence with a sign reading, “Votes for Jesus,” she is confined to a metal institution, her mind shattered by wartime carnage and home-front hypocrisy. Like much of Sitwell’s work, this was tepidly received by the critics, and the various luminaries who had been savaged again refused to pick up the gauntlet. In drawing so closely on his own school experiences, however, Sitwell found himself unexpectedly named in a libel suit brought by Mrs. Welch, the real-life original of the headmaster’s wife, who had herself suffered a painful breakdown during the war. Learning of the writ issued against him, Sitwell became suddenly evasive about his own techniques, writing of Mrs. Welch in a letter to Violet Hammersley, “I hardly know her,” then glibly trying to seek refuge in a kind of Wildean epigram by claiming that “probably the character is, as always with imaginative writing, exactly as she is.”\textsuperscript{14} This reflexive defense, that life must be imitating art, merely conceals the fact, as Sitwell revealed in a subsequent letter to his agent, that he was a good deal more concerned about the financial damage a libel suit could do than his cheeky disclaimer in \textit{Triple Fugue} suggests. Rather than worrying about the status of his authorial imprimatur, in other words, he is far more anxious that a public libel trial might draw enough publicity to the story that Mrs. Welch would be followed by a large number of former masters and students who might also seek disastrous claims for damages.\textsuperscript{15} In the end, the affair was quietly settled by (p.72) the destruction of the 600 copies remaining in stock and the payment of £500 in damages to Mrs. Welch plus costs.
Nor was this Sitwell’s last encounter with the libel courts: he would famously return as a plaintiff, in 1939, winning a suit against a literary critic who claimed that “oblivion” had claimed him and his siblings “and they are remembered with a kindly, if slightly cynical, smile.”16 Two years earlier he had narrowly avoided a far more serious libel charge when his poem “Rat Week,” a particularly nasty satire of King Edward VIII and Wallis Simpson, was pirated and published in \textit{Cavalcade}.17 Sitwell’s critical assault on the conventions of fictional autonomy and his subsequent entanglements with such lawsuits are, in fact, symptomatic of the increasingly complicated legal circumstances that confronted writers in the early twentieth century. Our understanding of the intersection between law and literature in this period, however, has been severely distorted by an almost obsessive focus on the famous obscenity trials of \textit{Ulysses} and \textit{Lady Chatterley’s Lover}, both of which have become part of a liberal romance of art’s ever-expanding freedom. These now iconic texts have assumed a status that exceeds their considerable artistic merit precisely because they fit so well into a progressive historical narrative that couples sexual liberation to artistic innovation.18 Indeed, early editions of both novels were regularly prefaced by the legal decisions that sanctioned them as works of art, redeeming the authorial imprimatur by transmuting it into the coin of contemporary liberal humanism.
The Sitwell libel case, however, provides an important counter-narrative to this swelling romance, one that reveals the complex ways his attempts to renegotiate the news/novel divide were constrained by a body of law that was itself in radical flux throughout the early twentieth century. This period of legal and aesthetic instability begins roughly with Whistler’s legendary 1878 performance in the witness box when he won a farthing in damages from an elderly John Ruskin, who had condemned *Nocturne in Black and Gold*, writing, “I have seen, and heard, much of Cockney impudence before now, but never expected to hear a coxcomb ask two hundred guineas for flinging a pot of paint in the public’s face.”\(^{19}\) As Ruskin’s defense attorney argued in outraged defense of his client, “no artist could attain fame except through criticism” and Whistler expertly manipulated the proceedings to heighten his celebrity through this *succès de scandale*.\(^{20}\) Whistler’s exploits, in turn, likely played a key role in Oscar Wilde’s subsequent decision to name the marquis of Queensbury in his own disastrous libel suit. The roughly four decades between Whistler’s trial and the beginning of the Second World War correspond closely with the rise of aesthetic modernism, and mark a simultaneous boom in the production of romans à clef. Feeding on the rapidly expanding (p.73) culture of mass-mediated celebrity, such texts placed increasing strain on the law’s power to adjudicate cases of libel. Indeed, these same four decades also saw the rapid expansion of defamation law into the realm of art and literature, as individuals who discovered their unauthorized likenesses in books, film, and other ostensibly fictional media turned to the courts for redress. To the degree that modernism itself might be seen, in part, as an experiment in the roman à clef’s resurgent possibilities, then relatively strict temporal boundaries can be drawn around it, beginning with the widely influential Aretmus Jones case of 1909 and concluding with a sweeping reform of libel laws initiated in 1939 and finally enacted as part of the Defamation Act in 1952. Rather than the kind of absolute victory achieved in the more famous obscenity trials of the 1920s and 30s, however, libel cases generated a series of jarring and often complicated negotiations between literature and the law that sharply delimited the horizons of modernism’s possibility.
This chapter tracks the history of libel law as it evolved over the opening decades of the twentieth century in order to reveal the ways in which literary modernism failed in what Pierre Bourdieu calls its “conquest of autonomy.” It examines, instead of a narrative of liberation, the often bitterly fought contest between the roman à clef’s attempt to subsume the real world and the state’s attempt to police a strict boundary between fact and fiction. Modernism’s sudden return to the roman à clef as part of its campaign against Victorian realism led—particularly in Britain—not to aesthetic autonomization, but to a turbulent encounter between literature and the law. The next chapter will focus narrowly on two of the period’s most scandalous and iconic writers, James Joyce and Wyndham Lewis, both of whom structured some of their innovative narrative experiments around the disruptive ambiguities of the roman à clef. Joyce’s *Ulysses* and Lewis’s *Apes of God*, in fact, may have been two of the most libelous texts written in the early twentieth century, when the genre became useful for carrying out often nasty campaigns of literary assassination. Although their schemes for revenge (both grand and petty) can now only be gleaned from biographies and annotations, they nevertheless had profound and often quite damaging consequences for those who found their lives appropriated by works that often passed as pure fictions. Richard Best, for example, who appears in the “Scylla and Charybdis” episode of *Ulysses*, struggled for decades against the portrait Joyce had drawn—one that eventually overwhelmed his otherwise distinguished career as the Director of the National Library of Ireland. When approached by a reporter who wanted to interview him as part of a segment on *Ulysses*, in fact, he could only respond with what must have become a practiced indignation at the book’s unique power over his life: “I am not a character in fiction; I am a living being.” Defamation law exists precisely to cordon reality off from fiction by affording a private individual like Best some protection from the misappropriation of his or her name and biography.
As we will see, modernism’s experiments with the roman à clef cannot be easily accommodated to the ongoing conquest of aesthetic autonomy in which art gains its freedom from social and legal constraint. Instead, this infectious genre becomes so potent a site of narrative experiment in the early twentieth century precisely because it can arrest this historical drift toward isolation, abstraction, and obscurity. Ironically, just as the laws of obscenity that had constrained aesthetic production began to lose their force, libel laws came even more powerfully into effect, insisting that the novel hew to its presumed autonomy and thus surrender any claim to social utility. Joyce and Lewis illustrate the kind of strategies modernist writers pursued in attempting to resist their own evolving autonomy by engaging the laws of libel directly, provoking those very suits that Osbert Sitwell teasingly courted in the disclaimer at the opening of *Triple Fugue*. Though neither proved successful when their works were eventually called to legal account, their scandalous conflation of fact and fiction in the roman à clef provocatively reveals both the limits of modernism’s autonomy and the steep cost such freedom could exact.

“Whatever a Man Publishes He Publishes at His Peril”
The concept of defamation as a civil and sometimes even criminal wrong has a complicated history that reaches back into nearly every known system of Western law. At its core, it seeks to regulate the flow of information in civil society by protecting an individual’s right to his or her reputation against publicly circulated lies and insults. Francis Holt in his 1812 study, *The Law of Libel*, traces the offense back to ancient times, locating precedents in Sumerian, Greek, and Roman law before concluding that “an injury ... which affects [someone] in character” is the “next greatest injury” after direct physical harm. In the fifth century B.C.E., Roman law codified the crime of *famosus libellus*, decreeing it so vile as to be punishable by death; and under the *Lex Talonis* of the Anglo-Saxons, a man judged guilty of defamation would have his tongue cut from his head. W. Blake Odgers—whose massive 1881 *Digest of the Law of Libel and Slander* was considered authoritative on British defamation law until the middle of the twentieth century—maintains that “every man has a right to have his good name unimpaired” and that this is “*a jus a rem*, a right absolute and good against all the world.” The written word, because it could be so widely and persistently disseminated, was considered a particular threat to this fundamental right, and within British legal history the first laws of libel emerged almost simultaneously with the arrival of the printing press. As Holt argues, writing itself “no sooner commenced than the abuse [of libel] grew up with it, and therefore in legal intendment, as explained by constant practice, the law to restrain it.” Defamation law, in effect, serves to curtail the limits of free expression by protecting individuals from print’s ability to convey often anonymous and damaging lies.
By 1662 defamation laws had become so well established in England that a book called *Sheppard on Slander* appeared in London describing “thousands” of such cases. The earliest reference to this particular aspect of English law appears in 1275 when “scandalum magnatum”—the deliberate dissemination of insults to peers of the realm—was forbidden as part of an attempt to control seditious statements about noble families. British jurisprudence gradually evolved laws regarding four distinct modes of libel: defamation, blasphemy, obscenity, and sedition. Each covers a particular aspect of written expression and, until the nineteenth century, effectively provided the legal framework that governed the flow of printed information while affording special protection to the Crown, the Church, and the nobility. Thus, until the Reform Act of 1832, it was a generally held principle (in stark contrast to American law) that a libel directed against a public person was considered more dangerous than one directed against a private individual. Furthermore, until 1946, libel trials were conducted exclusively by so-called “special juries” drawn by statute exclusively from the ranks of “bankers, merchants, occupiers of private houses of a substantial rateable value, and esquires,” on the presumption that only men who possessed good names could truly weigh the cost of a plaintiff’s potential loss. The laws governing defamation in Britain are thus largely rooted in an attempt to protect the state, its agents, and its leading institutions from publicly circulated criticism.
This tradition of regulating speech by emphasizing the importance of an individual’s public reputation also accounts for the odd bifurcation of British libel law into two distinct strands: one civil and the other criminal. This chapter focuses largely on the former (called the “tort” of libel), but the crime of libel too has played an important role in modernism’s legal history. The case that ultimately destroyed Oscar Wilde, after all, was *Regina v. John Douglas*—that is, a criminal case brought by the state against a defendant whose alleged crime was so grievous that it threatened a breach of the peace. This particular body of law originated in the fifteenth century when the Star Chamber pursued such prosecutions in order to curtail violent duels among the upper classes. These special, nonecclesiastical courts *(p.76)* defined libel as the publication in writing of a statement that might damage someone’s good name, *regardless of its basis in fact*. Such publication could take the form not only of an article or of a book but of a private letter, a hastily scribbled note, or even a personal diary entry. Unlike civil law, which requires that a libel be published to a third person other than the author or the object of the defamation, criminal law sought to regulate all forms of written and printed matter.
The civil and criminal laws are otherwise similar with one crucial exception: in a criminal case the truth of a libel cannot generally serve as a defense. As Sir Edward, a Star Chamber judge, definitively wrote in the 1609 De Libellis Famosus: “It is not material whether the libel be true, or whether the party against whom it is made, be of good or ill-fame; for in a settled state of Government the party grieved ought to complain for every injury done him in an ordinary course of law, and not by any means to revenge himself, either by the odious course of libelling, or otherwise.”

Until 1793, in fact, juries were permitted only to judge whether or not the document already deemed libelous by a judge had been written or published by the defendant in a case. That is, the matter of interpretation lay beyond legal debate since these insults had the potential to do such terrible damage. Throughout the early nineteenth century, criminal libel charges were thus regularly used to allow an individual to preserve potentially embarrassing or scandalous secrets. Because the author of such information was not allowed to enter any evidence about the truth of his or her statement, the mere fact of jotting it down opened the door to arrest, imprisonment, and suppression. Newspapers and magazines could also be indicted, even if they merely printed verbatim transcripts of trials or government meetings in which the libel was mentioned. Ironically, the considerable protections afforded a plaintiff in such cases meant, as one member of Parliament noted in 1843, that “the prosecution by indictment [that is, criminal libel] is practically an admission of the truth of the libel.”

In an effort to relax these laws somewhat, the Libel Act of 1843 created a crucial exception, allowing defendants to plead guilty with special justification provided that they could prove both that the libel was true and that it had been deliberately published in the public interest. This is the exception that eventually landed Wilde in the dock himself, since it offered the only available line of defense to Queensbury at his 1895 trial. Indeed, Wilde was by no means the first plaintiff who had been deliberately provoked into bringing a libel charge precisely so that the truth of the defamation could be proved in open court.
By the twentieth century, criminal prosecutions had become quite rare, in part because an 1884 case, *Regina v. Labouchère*, made it much more difficult to secure such indictments without prior approval from a government prosecutor. These reforms, however, did little to curtail a growing barrage of civil suits launched in (p.77) response to the mass media’s rapid expansion as information began to flow more freely through the public sphere. Unlike the criminal law, the civil tort of libel developed initially from the Ecclesiastical Courts and, like all torts, it governs that area of law not otherwise covered by criminal statute or formal contracts. Typically, libel cases are complicated and extremely expensive affairs both to prosecute and to defend, as Edith Sitwell’s solicitor reminded her after Peter Ustinov produced a *drame à clef* entitled *No Sign of the Dove* satirizing her and her siblings: “Libel actions, as no one knows better than yourself and Osbert, are wearing things to stage and bring to fruition; wear and tear on nerves, anxieties, time occupied, and a whole host of other irritations are their inescapable accompaniment.”35 The damages awarded by a jury can be quite excessive, though because they are meant to recompense the plaintiff only for the damage done to his or her reputation, they may also be entirely symbolic—like the single farthing awarded to Whistler. Furthermore, because this area of law is so complicated by the patchwork of precedents and Parliamentary reforms stretching back to the seventeenth century, such cases can be incredibly expensive to wage. Very often, the costs alone will exceed even the most significant damages, and unless these expenses are also awarded to the plaintiff even a victory can prove pyrrhic.
The difficulty posed by such suits is further compounded by the fact that the truth can serve as a defense in civil actions, and modern libel trials typically turn precisely on a defendant’s attempt to demonstrate the veracity of his or her claims. Indeed, libel law is nearly unique in this regard, for once a judge has decided as a matter of law that a particular piece of writing might be capable of defamatory interpretation then three legal presumptions follow: “The defendant was presumed to have published in malice, the words were presumed to be false, and the plaintiff was presumed to have suffered damages.” Unlike a criminal trial, in other words, in which a defendant is presumed innocent, in a libel suit he or she is instead presumed guilty and must assume the full burden of proof. That is, it must be conclusively demonstrated to a jury that the defendant’s comments were, in fact, true and that they were not published in a malicious attempt to damage the plaintiff’s business or personal reputation. Thus, as the Sitwells’ attorney argued, there is more to be weighed than just the defense of one’s reputation in filing a writ for libel, since it has the potential to open the most unsavory details of one’s life to very public scrutiny.

Despite these difficulties, however, the tort of libel nevertheless plays a vital role in regulating the public sphere. As James Scarlett argues in *Cooper v. Wakley* (1828), “every man in England is at liberty to publish what he pleases,” but such freedom “would become the source of the most bitter tyranny that ever an unhappy country laboured under, unless in those instances in which that freedom is abused some constitutional tribunal did exist to correct it.” At its core, then, the civil tort of defamation provides a legal forum where truth can be separated from fiction and where those who use the mass media’s power to disseminate lies can be called publicly to account. As Lennard Davis demonstrates in *Factual Fictions*, libel laws played a vital institutionalizing role in the novel’s rise during the eighteenth century, effectively creating a set of legal definitions designed to separate political discourse from fictional invention. A series of Parliamentary laws and legal decisions beginning with *Queen v. Hart* (1711) and culminating with Fox’s Libel Act (1792) “made it more difficult for narratives to rest in some grey area between fact and fiction. Those narratives that bore too close a resemblance to the world, that were too factual, ran the risk of being legally actionable; those narratives that clearly asserted their
fictionality and that bore little resemblance to the world were unharmed.” This legal distinction between fact and fiction created the consensus upon which the growing autonomy of the nineteenth-century aesthetic sphere was staked, consequently forcing, as Davis concludes, “writers who wished to write about the world away from such overtly political modes as the one offered by the newspaper and toward a more protected form of writing” such as the novel (100). This consensus, however, began to collapse at the end of the nineteenth century as writers used the roman à clef to extend their work into that long-suppressed and potentially anarchic “grey area.” As a consequence, the laws of libel entered a new period of instability and flux as writers experimented with an infectious and “conditional fictionality” capable of breaking down the legal boundary between the novel and the news. Indeed, as Eric Barendt argues, libel does not simply regulate the production of literature, it effectively becomes a part of “the law of literature” every bit as significant as copyright. Just as copyright provides the structures of ownership governing the dissemination of printed matter in a capitalist society, so too the tort of defamation—by legally separating fact from fiction—provides the framework through which a particular piece of writing is presumed to be pure invention and thus without financial, legal, and moral consequence for living individuals. Despite that fact that libel thus essentially constitutes the law of fiction, however, its importance in shaping modern literary production has been almost entirely ignored.

“It Does Not Signify What the Writer Meant”
This critical gap in our institutional histories of modernism is all the more striking because the rules of evidence in a defamation case effectively transform the (p.79) courtroom into an impromptu literature seminar where jurors weigh alternative interpretations of a particular text. Libel trails are so expensive to wage, in part, because a complex body of law has developed since the seventeenth century governing quite narrowly the kind of evidence that can be introduced, the methods of argumentation that are permitted, and the standards of reason and good judgment by which a final, definitive interpretation can be produced. The most important such principle—and certainly the one with the most far-reaching consequences—explicitly rules the intentions of an author entirely inadmissible in a jury’s attempt to determine the meaning of a potentially defamatory text. “The question,” according to the 1885 decision Bolton v. O’Brien, “is not what the defendant, in his own mind, intended by [his] language, but what was the meaning and inference that would be naturally drawn by reasonable and intelligent persons.” Long before William Wimsatt founded modern literary criticism on the cornerstone of the intentional fallacy, in other words, British and American libel courts had already been struggling to build a mode of interpretive practice based on the absence of an authorial guarantee. The final arbiters of a text thus are the members of the jury themselves who constitute a community of ideal readers, a representative public sphere in which meaning can be debated and adjudicated. This is the central principle governing defamation cases, and its effects came into full force in 1852 when it was judged that no court of appeal could ever reverse or undo a jury’s judgment about the meaning of a text. “After a verdict for the plaintiff,” Odgers writes, “the defendant can no longer argue that it does not sufficiently appear to whom the words relate.” Appeals, in other words, can only be based on points of law or courtroom procedure since the meaning of a text is entirely a matter of fact and as such can only be settled by a jury.
As we will see in a moment, this empowerment of the jury as ideal readers and the complete invalidation of authorial intention had far-reaching consequences for novelists in the early decades of the twentieth century and eventually prompted some of the key reforms set in place by the 1952 Defamation Act. There is, however, a second crucial component of libel law regulating the kind of interpretations admissible in court, one of particular importance to the roman à clef’s resurgence and the extreme skepticism it deploys to thrust art into the mass-mediated public sphere. The deliberate encoding of real people and events within an apparent fiction, after all, means that even the most insulting and pernicious libels may well be invisible to anyone but those who possess, or even simply believe themselves to possess, the proper interpretive key. Thus, the same narrative mechanism that generates the roman à clef’s anarchic uncertainties simultaneously affords its authors a vital degree of legal protection, since a defendant may always simply claim that allegedly defamatory works do not refer to the plaintiff. In the 1848 case of Le Fanu and another v. Malcolmson, however, the British courts found such a defense insufficient, noting that “whether a man is called by one name, or whether he is called by another, or whether he is described by a pretended description of a class to which he is known to belong, if those who look on know well who is aimed at, the very same injury is inflicted, the very same thing is in fact done, as would be done if his name and Christian name were ten times repeated.” In the absence of authorial intention, however, proving such “conditional fictionality” means not only that a single text must be capable of multiple interpretations, but that additional, contextual knowledge is required by the jury.
In filing a libel suit, a plaintiff introduces such material as part of what is called the “colloquium”: a thick collection of documents describing the text’s reception based upon witness depositions, letters, and other such supporting materials. “It is not essential,” Peter Carter-Ruck writes in his modern study of libel, “that there should be anything in the words complained of to connect them with the plaintiff if, by reason of facts and matters known to persons to whom the words were published, such persons would understand the words to refer to the plaintiff.” The colloquium thus typically provides statements from witnesses who claim that they have recognized a portrait of the plaintiff in the text and descriptions of the way in which it has damaged or altered their opinion of the person. These materials, however, cannot by themselves prove definitive, for British courts have also held that even when two interpretations of a passage are possible, juries are under no obligation to decide that the defamatory one holds sway. They should not, as Odgers writes, “dwell on isolated passages,” but instead “consider the whole of the circumstances of the case, the occasion of publication, the relationship between the parties, &c.” Like good scholars, in effect, jurors are asked not only to ignore the intentions of an author, but to form an interpretation of the text based upon close reading of individual passages—supported by the wealth of historical context provided in the colloquium—while nevertheless balancing such local reading with a global view of the text itself. Sounding very much like a philologist rather than a lawyer, Odgers writes that within a text the “insinuation may be direct, and the allusion obscure ... the language may be ironical, figurative, or allegorical,” but in the end “if there is meaning in the words at all the Court will find it out, even though it be disguised in a riddle or in hieroglyphics.” Libel courts have thus developed their own modes of textual interpretation that are surprisingly congruent with those used by contemporary literary critics. Furthermore, these legal procedures operate explicitly to enforce a particular kind of aesthetic autonomization: judges and juries weigh ambiguous texts in order to adjudicate their status as either fact or fiction, thereby arresting the roman à clef’s destabilizing interruption of these categories.
The sudden expansion of a mass-mediated celebrity culture at the end of the nineteenth century, however, placed new pressures on the social and legal conventions that helped establish the news/novel opposition so essential to the realist novel’s consolidation. The sudden increase in literacy rates following the Education Act of 1872, coupled with improvements in printing technology like the introduction of bitonal printing, for example, meant that a wider array of reading materials became cheaply available to an audience of widely diverse tastes and interests. The 1881 Newspaper and Libel Registration Act also had a particularly profound effect on cultural production, limiting the legal liability of newspapers in defamation cases and thus laying the foundation for the New Journalism. The legislation itself had been designed to moderate one of the more extreme consequences of common law precedents, which held that each publication of a libel was a new and unique offense. Thus a newspaper or magazine, for example, could not report directly on many legal proceedings (including libel and divorce cases) or even on some government meetings and Parliamentary debates for fear of deliberately (or even unintentionally) publishing a libelous statement. The reform legislation granted properly registered newspapers that met specific conditions the freedom to cover such events and simultaneously required that the Director of Public Prosecutions first issue a formal indictment before allowing any criminal libel case to be filed against such periodicals. This new provision did serve to reduce cases of criminal libel, but it produced a subsequent jump in civil suits as an array of new tabloids began to trade on the newly opened market for scandal and gossip. Henry Labouchère, in particular, proved adept at exploiting these new legal provisions, wielding his scandal-ridden newspaper Truth as a political weapon while proudly displaying an overflowing box of legal writs outside his office door.

Relaxed libel laws were one of many institutional factors that contributed to the expansion of celebrity culture in the nineteenth and twentieth centuries, but the near simultaneous rise of new media forms, including photographs, film, radio, and tabloid journalism, created new legal problems. Strictly defined, the term “libel” refers only to written documents and was sharply distinguished from slander, a spoken form of defamation that, because it could be uttered in the heat of the
moment and could not survive this initial articulation, was presumed to be far less damaging. The cinema and other such modes of mechanical reproduction, however, bedeviled this founding distinction since they granted once seemingly ephemeral expressions a new permanence. It was not until the passage of the 1952 Libel Act that defamation protections were definitively extended to any medium other than speech. Some of the most influential libel trials of the early twentieth century, in fact, turn precisely on media other than print, such as the precedent-setting 1934 case of Youssoupoff v. Metro-Goldwyn-Mayer Pictures Ltd. In this widely followed test of defamation law’s extension to film, a jury initially awarded the astounding sum of £25,000 in damages to an aggrieved plaintiff following the release of Rasputin, the Mad Monk, a 1932 film about the start of the Russian revolution. This cinematic adaptation luridly suggests not only that one of the Romanov princesses was seduced by Rasputin, but that her brother helped kill him out of a desire for revenge. Prince Youssoupoff, a member of the Russian royal family living in exile when the film appeared, was generally assumed to have taken part in the assassination, though there was little evidence tying him directly to the act. In making the film, the producers carefully chose actors who looked nothing like the Russian royals and took the added precaution of changing the family name to Chegodieff. The ensuing libel trial turned precisely around these changes as the solicitor for the defense argued that “the Producer was obviously playing fast and loose with history.” As a consequence, he concluded, the film should be seen entirely as a fiction in which it would be “rather ridiculous to try to assign a historical counterpart to every character.” The film’s producers thus tried to inject a critical degree of skepticism by turning it into something like a roman à clef, hoping its ambiguity would afford a degree of legal protection—despite the movie’s quite obvious references to real people and events. The fact that the case focused on royal scandal and touched on the film industry meant that it drew a great deal of attention from the popular press; it was also closely watched by cultural producers and legal theorists who correctly saw it as a watershed case within the burgeoning field of entertainment law. The outcome, after all, would have far-reaching consequences for any writer or producer who sought to cross the line between fact and fiction in a still rapidly evolving medium. A series of appeals consistently supported the claims of the plaintiffs and, though
the case was finally settled out of court, it effectively set a clear boundary around the production of fictional narratives. Although the dead have no rights in common law—and thus cannot be libeled—the deliberate attempt to disguise real events as fiction was finally judged defamatory and carried in this case a particularly large financial penalty sure to discourage other similar attempts. As we will see, the same principles structured the field of literary production as well, where cases brought against the works of both Joyce and Lewis were also decided in favor of the plaintiffs, effectively rendering illegal some of modernism’s most daring experiments with the roman à clef.

Even more significant for writers of all sorts, however, was the 1909 case of *E. Hulton and Co. v. Jones*. It upset the legal foundations of the novel by exposing the pervasive infectiousness of the roman à clef within a mass-mediated culture. The case began when the Paris correspondent for the *Sunday Chronicle* wrote an article on “Motor-Mad Dieppe” about the social scene surrounding the city’s auto races in 1908. Adding a spicy flourish to the piece, the author introduced a fictional playboy named Artemus Jones, a normally quiet and conservative man who, when in France, becomes “the life and soul of a gay little band that haunts the Casino and turns night into day, besides betraying a most unholy delight in the society of female butterflies.” Though plainly an invention, as the publishers of the *Sunday Chronicle* would doggedly argue, a real man named Artemus Jones, who was otherwise unknown to the author, claimed that the piece was a scurrilous libel and sought legal redress even after a formal (albeit somewhat sarcastic) apology had been printed. After Jones introduced witnesses who claimed that they had indeed confused him with the character in the article, the entire burden of proof fell on the paper, which contended that the portrait was entirely fictional and had no connection to a real individual. Because statements of intention were inadmissible, however, the paper could not mount much of a defense and the jury took only fifteen minutes to return a guilty verdict and award damages of £1,705.
It quickly became clear that this decision had enormous consequences for the suddenly collapsing news/novel divide, since writers and publishers alike were held liable when readers confused fact with fiction. The initial verdict traced a complicated path through the appellate courts, but the initial ruling was finally upheld by the Law Lords, despite its widely acknowledged threat to all forms of print culture. Lord Goddard, writing as a member of the Court of Appeal, noted that the decision “added a terror to authorship” and could alter fundamentally the field of literary production.\(^{56}\) The bar against authorial intention, after all, so empowered individual readers that even the most obvious fictions could be interpreted as factual descriptions since the final power of adjudication always lay with the whims of a jury. As Barendt argues in his attempt to introduce some reform, this power was so extensive that once a plaintiff claimed some reasonable connection with an apparently fictional character then “the author of a fiction has no defence.”\(^{57}\) After all, since the work on its face claims to be a fiction, the defendant could not then resort to the standard defense against a libel claim by asserting that the publication was true. The law, in effect, simply could not accommodate the concept of “conditional fictionality,” and as a consequence it insisted that juries make rigid distinctions between fiction and fact. At the same time, it acknowledged that fictions could reach deeply into the public sphere in ways entirely unrecognized and unintended by their creators.
In the course of the appeals following the initial jury verdict, British jurists quickly began to develop the concept of “unintentional libel” to describe precisely those cases in which fact becomes accidentally or contingently infected with fiction. This did not free writers, printers, or publishers from libel suits, but it did at least limit their financial liability—provided they made a good-faith effort to renounce any inadvertent intrusion into the public sphere. Contracts thus increasingly required authors to warrant that they had not committed libel and were willing to indemnify the publishing houses against lawsuits. Similarly, the now standard legal disclaimers guaranteeing the novel’s fictional nature became widespread. These statements in themselves provided no direct defense against libel but did evince a genuine attempt to regulate a text’s reception and thus mitigate the roman à clef’s anarchic powers. Ironically, as Sitwell’s own satiric version demonstrates, they often served only to make readers even more curious about the possible scandalous secrets a seemingly fictional work might encode. The relatively stable boundary between fact and fiction that had emerged in the eighteenth century thus came under increasing legal pressure from the rapidly expanding institutions of a mass-mediated culture of celebrity. New consumers of printed texts, furthermore, could not be counted on to sustain what Barendt describes as the consensual view of fiction, which holds that “readers can, or at least should be able to, distinguish works of fiction from factual reporting, and that, therefore, they are most unlikely to identify characters in the former with real people whom they know and whom they know of.” As chapter 1 argues, however, this is far from an obvious or common-sense assumption and is instead merely one contingent mode of reading that was only tenuously consolidated in nineteenth-century realism. In the early decades of the twentieth century writers and readers alike strained this consensus as the roman à clef began to proliferate within the formal and informal institutions of a mass-mediated culture.

Because the law invested ordinary readers empanelled as part of a jury with so much power, libel cases instantiate the kinds of interpretive regimes operating beyond those sanctioned by trained authors and critics; and we discover in them a far riskier literary field, where fact and fiction are deeply intertwined. The concept of unintentional libel as articulated...
in the Artemus Jones case, in particular, reveals the extent to which the novel could and did impinge on the historical world—even in those cases where authors did not intend for it to do so. By confusing fact and fiction in ways individual authors and publishers could neither intend nor anticipate, readers themselves resisted the conditions of aesthetic autonomization while exposing the still anarchic skepticism supposedly arrested by the novel’s rise. Faced with this crisis, libel law frantically struggled to isolate fictional works (p.85) from the real world by holding individuals financially accountable for their instability, thereby enforcing a stark division between fact and fiction. Throughout the early twentieth century, however, the law was pushed to increasingly absurd and untenable conclusions. The Youssoupoﬀ case, after all, made it basically impossible to create historical fictions while any of the actors were still alive and the Jones case meant that nearly every novel ran some risk of creating a character that might be confused with a real person. By the late 1930s, however, this trend began to abate as the implications of such precedents were narrowed. In the 1938 case of Canning v. William Collins and Co. Ltd., for example, a stockbroker sued a publisher for unintentionally using his name in a satiric novel entitled People in Cages. As in the Jones case, the plaintiff introduced witnesses claiming they had mistaken the fictional character for a real man named Mr. Canning, but judge and jury alike were convinced by the defense’s rhetorical claim during cross-examination that such a claim was “utterly and absolutely ridiculous, that this is a perfectly inoffensive novel with one character in it that does not bear the slightest resemblance to you except that the authoress has called him Captain John Canning.”60 A quick decision was returned in favor of the defense (though it was partially premised on the idea that a stockbroker’s “good name” had little intrinsic value). The growing unease with the reach of libel law into the realm of fiction evident in this decision culminated that same year in the appointment of a special commission to reform the law. Though adjourned during the war, it eventually recommended a lengthy series of changes designed to accommodate mass mediation and new media forms, most of which were passed as part of the 1952 Libel Act.
That the period roughly between the Artemus Jones (1908) and Canning (1938) cases coincides with the rise and consolidation of literary modernism is by no means coincidental. Far from conquering autonomy, as Bourdieu contends, the modern novel’s status as a discrete aesthetic object came under intense pressure as the boundary between fiction and fact became increasingly blurred within the mass-mediated cultural marketplace. The sheer contingency upon which the Artemus Jones case turned dramatically revealed just how inadequate the laws governing the circulation of printed information in Britain had become. The readers empanelled as a jury, as well as a series of appellate judges, all held steadfastly to legal and moral concepts initially articulated in the late eighteenth century that imposed an absolute divide between history and the novel. That the author of “Motor-Mad Dieppe” knew nothing of the historical Artemus Jones was finally deemed immaterial, since the text itself—if only by sheer accident—had damaged his reputation. Only thirty years later, however, when Canning filed a case based almost exactly upon the same set of circumstances, an entirely different decision emerged; the jury implicitly (p.86) acknowledged that fiction could impinge upon the public sphere without necessarily doing the kind of damage libel law intends to redress. In the narrow gap between these two decisions, literary modernism flourished, in part, by using the roman à clef to explore this same set of legal and epistemological contradictions.
Aware that nearly any text could land them in costly legal troubles, printers and publishers became increasingly concerned about libel just as authors like Woolf, Joyce, Lewis, Lawrence, and many others began to experiment with risky assaults on the critical and legal bars separating fact from fiction. A number of these writers eventually ran afoul of the law. Lawrence’s Women in Love, for example, faced a number of potential libel suits, and his letters and manuscripts reveal deft attempts to skirt these charges. George Orwell similarly faced such accusations, as did Evelyn Waugh who, like Sitwell, deliberately provoked them in the typescript preface to Vile Bodies, which he decided not to publish: “BRIGHT YOUNG PEOPLE AND OTHERS KINDLY NOTE THAT ALL CHARACTERS ARE WHOLLY IMAGINARY (AND YOU GET FAR TOO MUCH PUBLICITY ALREADY WHOEVER YOU ARE).” Rich though the period may be with such cases, however, the next chapter abjures cataloging them in order to focus instead on the symptomatic struggles of James Joyce and Wyndham Lewis. Though we typically think of them as the “Men of 1914,” their modernism is shaped not simply by narrative experimentation and aesthetic difficulty, but by a direct and provocative engagement with libel as “the law of literature.” By writing deliberately defamatory works lightly cloaked in the roman à clef’s “conditional fictionality,” they exploited the genre’s potential to disrupt the legal, moral, and aesthetic compromises that underwrote the novel’s rise in the eighteenth century. Like the laws of obscenity and copyright that Joyce and Lewis also incorporated and critiqued in their works, so too does defamation play a vital role in their exploration of the limits of fiction and the legality of literature.

Appendix: A Brief Digest of British and Irish Libel Law

“Fox’s” Libel Act (1792): This legislation conferred on a jury the responsibility to determine whether or not a text was libelous. Previously, this decision rested entirely with the judge, leaving the jury to decide only if the text had been created and/or published by the defendant.

Parmiter v. Coupland (1840): This British decision framed what would become one of the most famous and widely cited definitions of libel: “a publication without justification or lawful excuse which is calculated to injure the reputation of another by exposing him to hatred, contempt or ridicule.”
Libel Act (1843): This act, which would later play an instrumental role in Wilde’s downfall, sought to limit the use of criminal libel charges merely to suppress embarrassing information. It held that in a criminal case, the truth of libel could be used as grounds for a plea of justification, provided that the libel had been deliberately published in the public interest.

White v. Tyrell (1856): This British ruling held that authorial intention was entirely inadmissible in a libel case. See Bolton v. O’Brien.

Newspaper and Libel Registration Act (1881): This reform legislation granted properly registered newspapers limited immunity to print libelous statements read out in court, in Parliament, and in other government forums.

Bolton v. O’Brien (1885): An Irish decision that mirrors Whyte v. Tyrell in ruling authorial intention inadmissible: “The question is not what the defendant, in his own mind, intended by [his] language, but what was the meaning and inference that would naturally be drawn by reasonable and intelligent persons.”

E. Hulton and Co. v. Jones (1909): Described as a “terror to authorship,” this landmark case established that authors, publishers, and printers may be sued even for unintentional libel.

Youssoupooff v. Metro-Goldwyn-Mayer Pictures Ltd. (1934): A precedent-setting case in entertainment law, it extended to cinema the libel protections that had initially been reserved for print media.

Canning v. William Collins and Co. Ltd. (1938): In its particulars, this case is almost exactly parallel to E. Hulton and Co. v. Jones, but it reached the opposite conclusion and created a legal exception for unintentional libel.

Porter Committee (1939): The House of Commons appointed this special committee to recommend reforms of defamation law. (p.88) Its work was delayed during the war and its report was not published until 1948.
Defamation Act (1952): This legislation instituted reforms proposed by the Porter Committee, extending defamation law to cover new media forms, creating a “fair use” exception, loosening some restrictions on newspapers, and codifying the principle of “unintentional libel.”

Notes:
(1) Cited in Philip Ziegler, Osbert Sitwell (New York: Knopf, 1999), 123. Triple Fugue contains satiric portraits of, among others, Ottoline Morrell as Lady Septuagesima Goodley, Edmund Gosse as Professor Criss-cross, and Edward Marsh as Mattie Dean.

(2) Osbert Sitwell, Triple Fugue (London: Duckworth, 1927), 182.

(3) Clipping from The Spectator (July 19, 1924), from the Osbert Sitwell Collection, Harry Ransom Humanities Research Center (hereafter HRHRC), vertical file 16.

(4) Clipping from The Outlook (June 21, 1925), HRHRC, vertical file 16.

(5) Clipping from The Times Literary Supplement (June 19, 1924), HRHRC, vertical file 16.

(6) Parmiter v. Coupland (1840).

(7) From Dorothy Sayers, Murder Must Advertise (New York: Harper Collins, 1993), n.p. This disclaimer appears in most contemporary editions of this still popular novel, which was based upon the author’s experiences working at Pim’s, the London advertising agency. When the book was originally published, however, it contained an “Author’s Note” that read: “If, in the course of this fantasy, I have unintentionally used a name or a slogan suggestive of any existing person, firm or commodity, it is by sheer accident, and is not intended to cast the slightest reflection upon any actual commodity, firm, or person.”
(8) Consider, for example, those many episodes of the long-running American television show *Law and Order*, which are claimed to be “ripped from the headlines” even while they open with the disclaimer that no real people or actual events are being portrayed. This disclaimer only appears at the beginning of the show (rather than being crammed into the closing credits) when lightly fictionalized versions of real events are indeed being portrayed.


(10) Ibid., 20.


(13) Ibid., 264.

(14) Cited in Ziegler, 126.

(15) In the early stage of negotiation, Sitwell’s attorney advised in a letter that “It seems pretty clear Mrs. W. is not in league with Mr. W or any of his masters and there does seem to be a reasonable chance that if it is quietly [disposed of] the others won’t hear of it; while if we attempted to fight Mrs. W. the publicity would have been so tremendous that we should have had his whole pack on our tracks” (Osbert Sitwell Collection, HRHRC, correspondence folder 39.7). The implication here is clearly that Sitwell should avoid publicizing the libel charge lest other people connected with the school also consider legal action.

(16) Cited in John Pearson, *Façades: Edith, Osbert, and Sachervell Sitwell* (New York: Macmillan, 1978), 338. The case against Hilton Fyfe was successful because his comments concerned only the Sitwells’ reputation and had nothing to do with the book he was reviewing. Thus, they were not protected by the legal exceptions carved out for criticism and fair comment.
(17). This infamous poem roundly condemned the king’s friends for abandoning him when his affair with Wallis Simpson (then married) became public and was circulated only privately before being obtained by Cavalcade. The magazine planned to publish a bowdlerized version anonymously (leaving out any reference to the king), essentially daring the author to come forward. Sitwell thus found himself in a troubling predicament. If he launched a copyright suit to claim his authorial rights (and thereby suppress the poem), he would simultaneously expose himself to a series of libel suits. Eventually, he prevailed though an out-of-court settlement on the copyright case. For a full history of this complicated affair, see Osbert Sitwell, Rat Week: An Essay on the Abdication (London: Michael Joseph, 1986).


(22) . Typescript note, untitled, from the Richard Ellmann Collection, McFarlin Library Special Collections, University of Tulsa, series I, folder 89.

(23) . The quote in the preceding heading is from *Rex v. Woodfall* (1774).


(26) . W. Blake Odgers, *A Digest of the Law of Libel and Slander with the Evidence, Procedure, and Practice, both in Civil and Criminal Cases, with Precedents of Pleadings* (Boston: Little Brown, 1881), 459. Until British defamation law was reformed in 1952, this remained the standard reference work and was dramatically employed by the newspaper editor and M. P. Noel Pemberton Billing in the infamous “Black Book Case” (*Rex. v. Billing*) in 1918. The jingoistic and homophobic Billing wrote in his muckraking newspaper, *The Vigilante*, that German agents possessed a book containing the names of 47,000 British men and women who could be blackmailed because of their homosexuality. The case generated sensational headlines and drew in the actress Maud Allen as well as H. H. Asquith and his wife Margot (the infamous “Dodo”). Billing acted by all accounts with extraordinary talent in his own defense, regularly turning to Odger’s book in order to wage his case. His ever more outrageous claims, however, ultimately proved no match for his command of the law. For more on this case, see Joseph Dean, *Hatred, Ridicule or Contempt: A Book of Libel Cases* (New York: Macmillan, 1954), 19–38.

In the United States, defamation law has been locked in a long-standing conflict with the First Amendment’s guarantee of free speech, though it was not until very recently that the Supreme Court partially vitiated libel protections by insisting instead on an individual’s right to privacy rather than to a good name. In two key cases—New York Times v. Sullivan (1964) and Masson v. New Yorker Magazine (1991)—the Court decided that the right to free speech must be given the widest possible latitude, particularly in matters of public interest. Thus, the majority decision from the 1991 case held that “when ... the plaintiff is a public figure, he cannot recover unless he proves by clear and convincing evidence that the defendant published the defamatory statement with actual malice, i.e. with knowledge that it was false or with reckless disregard of whether it was false or not” (Masson v. New Yorker Magazine [1991] 501 U.S. 496, 510). This wide leeway is granted only to writing about a public figure, meaning that this high standard of malice does not apply to private individuals who retain considerable rights to bring an action for libel provided they can demonstrate that their rights as private rather than public figures have been violated.

This particular resolution of the legal tension between the ancient right to a good name and the democratic right to free expression, however, is relatively unique to the United States. The 1937 Constitution of Ireland (Bunreacht na hÉireann), for example, states in article 40, section 3 that “The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen,” thus explicitly granting its citizens protection from defamation. In this, Ireland is much closer to the long tradition of common law precedents that have treated libel as a potentially damaging threat to the operation of a just society.
(29) The Society for the Suppression of Vice in Great Britain helped secure passage of the Obscene Publications Act in 1857. This new law offered one of the first legal definitions of obscenity and effectively severed such publications from the category of libel. Blasphemy remains a part of libel law and is still infrequently invoked. In 1977, for example, a criminal charge was filed following a public reading of James Kirkup’s “A Love that Dare Not Speak Its Name,” a poem suggesting Jesus was gay. This portion of libel law has never been repealed, but has largely been replaced by the Racial and Religious Hatred Act of 2006. The last person imprisoned for blasphemous libel was John William Gott, who served nine months in 1922 for publishing two pamphlets, “Rib Ticklers, or Questions for Parsons” and “God and Gott.”

(30) For a useful summary of changes in British and Irish libel laws over the centuries, see the report by the Law Reform Commission in Ireland entitled Consultation Paper on the Crime of Libel, http://www.lawreform.ie/publications/data/volume10/lrc_65.html (consulted October 13, 2008). This document was prepared as part of an effort to reform the Irish Free State’s constitution and, in part, to help resolve some of the tensions between libel and free speech.

(31) Cited in Joseph Dean, Hatred, Ridicule or Contempt: A Book of Libel Cases, 10.


(33) This question from a debate in the House of Lords is cited in the Consultation Paper on the Crime of Libel, 18 n.51.
In 1927, for example, Captain Peter Wright published a book entitled *Portraits and Criticisms*, which alleged that the deceased Prime Minister, W. E. Gladstone, had consorted regularly with prostitutes. As a matter of law, the dead cannot be libeled, but the outraged family wanted to rebut these claims, so they published an incendiary letter calling Wright “a liar, a coward, and a foul fellow.” As they had hoped, he responded with a libel suit that then afforded them the opportunity to rebut his claims about the former prime minister in a widely publicized case. Wright himself ultimately failed in his own suit and was ordered to pay all costs.


(37) Cited in Dean, 11.


(43) Odgers, 127.
(44) In Ireland similar changes were made by the Defamation Act of 1961. Great Britain again updated its libel and defamation laws with passage of a new Defamation Act in 1996, helping bring some elements into alignment with the European Union.

(45) Cited in Odgers, 128.


(47) Odgers, 26, 113.

(48) Ibid., 91.

(49) This Education Act required municipalities to set up schools supported, in part, by local tax dollars. A decade later, attendance became mandatory for children up to the age of 10, and in 1891 the local boards were required to provide these schools without charge to the students. The result was an explosion of literacy, which, coupled with the political reforms of the 1867 and 1884 Reform Acts, led to a rapid democratization of the public sphere.

(50) New developments in paper and printing technology in the late 1870s and early 1880s led to the widespread introduction of halftone images. This made illustrations relatively cheap and easy to produce, and there was a subsequent boom not only in illustrated magazines, but in the advertisements which helped fund their expansion to a mass audience. For a concise yet detailed history of these innovations and their effects, see the first chapter of David Reed, The Popular Magazine in Britain and the United States: 1880–1960 (Toronto: University of Toronto Press, 1997), 27–49.
(51) The law narrowly defined a registered newspaper as "any paper containing public news, intelligence, or occurrences, or any remarks or observations therein printed for sale, and published in England or Ireland periodically, or in parts or numbers at intervals not exceeding twenty-six days between the publication of any two such papers, parts, or numbers." It also included advertising weeklies, or "any paper printed in order to be dispersed, and made public weekly or oftener, or at intervals not exceeding twenty-six days, containing only or principally advertisements." The full version is online at the UK Statute Law Database, http://www.statutelaw.gov.uk/content.aspx?LegType=All+Primary&PageNumber=91&NavFrom=2&parentActiveTextDocId=1055484&ActiveTextDocId=1055484&filesize=27346 (accessed October 13, 2008).

(52) From the trial transcript, as cited in Dean, 165.

(53) The fear of the serious consequences of libel trials like this one deserves more serious attention from film historians seeking to explain the periodic vogue for historical costume dramas. Particularly in the wake of the Yousoupoff case, it simply became too risky to make films about recent and contemporary historical events.

(54) Cited in Dean, 131.

(55) The newspaper’s apology was somewhat less than sincere, suggesting just how absurd its editors found the action for libel: “It hardly seems necessary for us to state that the imaginary Artemus Jones referred to in our article was not Mr. Thomas Artemus Jones, barrister, but, as he has complained to us, we gladly publish this paragraph in order to remove any possible misunderstanding and to satisfy Mr. Thomas Artemus Jones we had no intention whatsoever of referring to him” (cited in Dean, 131).

(56) Lord Goddard, cited in Dean, 134.

(57) Barendt, 486.

(58) The 1952 Defamation Act essentially codified these judicial opinions, formally creating the category of “unintentional libel” as part of the statute and thereby lifting the most ominous aspect of the “terror to authorship” created by the Artemus Jones case.
(59) . Barendt, 494.

(60) . Cited in Dean, 147.

(61) . Orwell’s Such, Such Were the Joys, for example, was not published until 1968 for fear of potential libel suits. As Bernard Crick notes in George Orwell: A Life (London: Secker and Warburg, 1980), Orwell’s publisher, Victor Gollancz, published Down and Out in Paris and London only after some changes were made to the original text and despite the warning from his reader (Gerald Gould) that the book was “full of possibilities of libel, running to thousands of pounds” (140).


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