

Ian Mitchell's Ireland-related BOOK RECOMMENDATIONS

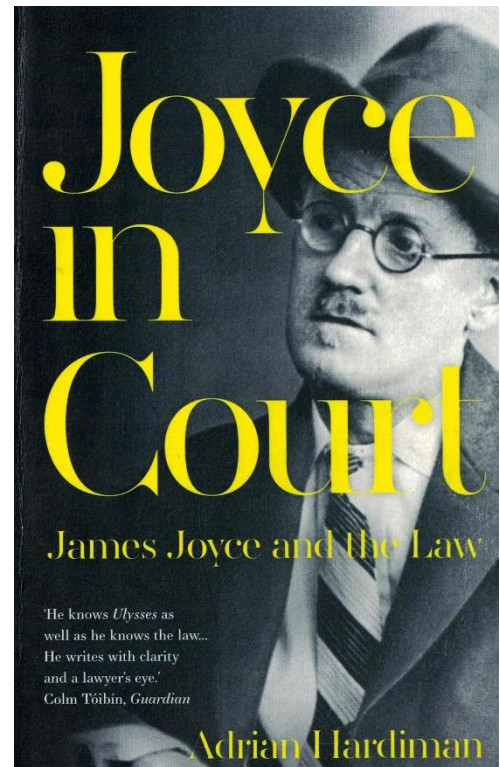
32 – *Joyce in Court*
(10 January 2019)

JOYCE IN COURT: James Joyce and the Law

Author: Adrian Hardiman

Publisher: [Head of Zeus](#), 2018 ppbk
(available on *Amazon*, [click on cover image for link](#))

Descriptor: Analysis by an Irish Supreme Court judge of the overlooked theme of law in *Ulysses* and other books by James Joyce, plus reflections on the murky treason trial of Robert Emmet in 1803.



Rus&RoL relevance: *The clash between British imperial STATUS and Irish dreams of constitutional CONTRACT at both ends of the nineteenth century, and some ways in which that clash was represented in law, literature and the mythology of semi-sectarian nationalism. How Britain abused the rule of law when apparent emergency threatened.*

Reasons to read: Three main ones, in order of interest:

1. The Appendix, entitled “**The Trial of Robert Emmet**”, tells the story of how organised imperial STATUS defeated a nascent and disorganised campaign for government by some form of CONTRACT in 1803. Emmet was an ascendancy Protestant who had come to see that Ireland could not flourish as it might while under British rule, especially after the ill-starred Act of Union of 1801. He led a half-hearted uprising, which quickly failed, and was put on trial in the court of the notorious Lord Norbury. The American War of Independence was still in everyone’s mind. Britain did not want the French to intervene again and help a colony establish its independence, as it had tried to do during the rising of the United Irishmen in 1798. Napoleon once promised Emmet help but, by 1803, had lost interest in West Britain. London was determined to crush all “internal” opposition—not only in Ireland—and reacted to Emmet’s tiny and ineffectual demonstration by reviving some of the more savage features of the ancient **law of treason**. Practice in England had moderated since the seventeenth century. In particular, a jury had been allowed to determine the motivation of the accused in the famous, and in some ways parallel, trial of the leaders of a constitutional movement in England in 1794. But Emmet was not given that consideration, partly because the law had been strengthened by William Pitt in the aftermath of those events. “In the *Irish* state trials between 1798 and 1803 a much broader

definition of treason than that available at *English* common law was used.” (p. 331, emphasis added) Not only that, the government rigged Emmet’s trial, with the result that he was found guilty by the jury in a minute and a half (they did not even retire from the court to consider their verdict). Emmet made a famously indignant speech from the dock, and was then sentenced to an old-style traitor’s death by a weeping Lord Norbury. “All the prisoners hanged in September 1803 were taken to a place near the scene of their participation in the rebellion or alternatively to the vicinity of their own houses, which were sometimes burned down in front of them. There they were hanged [in public] on makeshift scaffolds, and by the [slower and crueller] strangulation method, since there were no facilities for a drop” (p. 339)

2. This theme is “pretinued” (if I may coin a word) in the first 305 pages of the book. Arguably they would be better read in the light of the Robert Emmet story, though that would shift the focus away from James Joyce. But there is much of interest here, including Hardiman’s evident relish at the way **Joyce attacked the beatification of Emmet’s memory** by nineteenth century nationalists. In *Ulysses*, “Joyce took one of the most sacred events in Irish history, the immortal speech Emmet made [from the dock] and mocked it. His hero, Bloom, farts his way through a reading of the final words of the speech; the execution is reduced to a carnival and, worse still, the leading lady of the whole affair, Sarah Curran, is deprived of tragic status.” (p. 220)
3. The government case against Emmet was so weak that they resorted to “dirty tricks” against him. His counsel at trial was a **paid informer**, working for Dublin Castle, and the accused himself was threatened with implication of his beloved girlfriend in his plot if he did not co-operate in his own conviction by accepting a one-sided trial without resisting. This gross abuse of the **rule of law** reflects the way **Stalin** got so many confessions from innocent people in the show trials of the 1930s. Assertions of STATUS are, of course, completely incompatible with the supremacy of law.

Incidental interest: There is also the interesting and quite separate story of the noisy, public banning and unbanning of *Ulysses* in the United States, by means of court judgements and, at the same time, the more discrete way in which the book was surreptitiously excluded from Britain and then quietly allowed by senior civil servant to seep back in again. Hardiman comments about the American change of judicial heart: “In part, these conflicting decisions reflect changing public opinion: the first case [banning] coincided with the institution of Prohibition in the US and the second [unbanning] with its repeal.” (p. 254) As Ian Hamilton said in *The Justice Factory*: “**Show me the judge and I’ll tell you the law.**” That comment illuminates the whole history of obscenity law, as it does Emmet’s trial—and much else.

Thought provoked: The history of the **law of obscenity** in both Britain and the United States was not only relevant to the publication of *Ulysses*, it also illuminates an ominous modern trend. Hardiman describes its development from the mid-nineteenth century when Lord Campbell, the Chief Justice of England (a son of the manse from Cupar¹), was scandalized by a jury’s acquittal in a particularly lurid case. He responded by bringing forward the Obscene Publications Act (1857). This made the sale of

¹ Amongst other celebrated works, Lord Campbell wrote a vehement history of judicial malfeasance in England: *Atrocious Judges: Lives of Judges Infamous as Tools of Tyrants and Instruments of Oppression* (1856). The first chapter is on Roger le Brabancon who used legal chicanery to deny Robert de Brus (father of Robert the Bruce) the legal title King of Scots, after which Edward I rewarded him with the office of Chief Justice. The Wars of Independence were the indirect result.

obscene material a statutory offence in England, and therefore Ireland, for the first time, and gave magistrates the power to destroy books they deemed objectionable. “To facilitate this, the authorities, in various English port cities, maintained a ‘**King’s chimney**’ where books considered obscene by the local bench could be burned.” (p. 246)

Lord Campbell’s aim was to ban books *intended* to be pornographic; it was not meant to be a catch-all measure. But soon another judge dramatically widened the scope of the law. *R v Hicklin* (1868) was a case against the publisher of a pamphlet criticising what it described as depraved questioning of females at the Catholic confessional. It was certainly not Lord Campbell’s intention to ban serious, discursive material, but that was the outcome when the Appeal came before his successor as Chief Justice, another colourful Scot, Sir Alexander Cockburn.² He changed the definition of an obscene book from one which the *average* reader might find so to one in which *anyone*, even a child, might be disturbed by.

That was to become the standard on both sides of the Atlantic until 1934 when a Federal Appeal Court in New York delivered judgment in the splendidly named case: *United States v One Book Called “Ulysses”*. That overturned the so-called “**Hicklin test**” and restored the “average” reader standard, while adding other mitigating factors like context, artistic merit and so on. That was the start of a liberal reaction which lasted until the 1970s.

Today that trend is being reversed, and on a much wider basis than merely with pornography. We call it political correctness, and it has revived the Victorian standard through what might be called the “**snowflake test**”. Anyone who might find anything offensive can expect powerful, though non-legal, support. The critical difference, at least as far as the **rule of law** is concerned, is that due to the lack of a democratically-agreed definition in law of offensive material and the decay of generally-accepted “common law” standards (such as existed prior to Lord Campbell’s statue) we no longer have a *judicial* standard, but a personal one. Any reader/viewer/hearer etc. is now a judge of what constitutes an *actionable* offence at least if it is a popular complaint and there are *enough complainers*. It is the **rule of the mob**, provoked by pharisees and aided by the police—if they bother to act. Hamilton’s Rule might be re-stated: “Show me the cop and I’ll tell you the law.” That, of course, is the beginning of a police state.

Smile(s): In 1936, Whitehall learned that a limited edition of *Ulysses* was about to be offered for sale at Foyle’s bookshop in Charing Cross Road. The civil servant concerned with such matters decided to take no action, reporting that “I have had a preliminary word with the Director of Public Prosecutions along the lines that a book costing £6/6/0 was not likely to get into the hands of anyone likely to be corrupted by it.” (p. 301)

Negative issue(s): Hardiman seems a fair-minded author in most things except when he comes to the sort of Briton that the more righteous sort of Irish nationalist likes to blame for their country’s past misfortunes. In terms of historiography, that is an occupational risk; special pleading is the first cousin of exceptionalism. But it is alarming to think that a member of the Irish Supreme Court Bench, as Hardiman was, considers it to be fair comment to observe that people like the civil servant who made

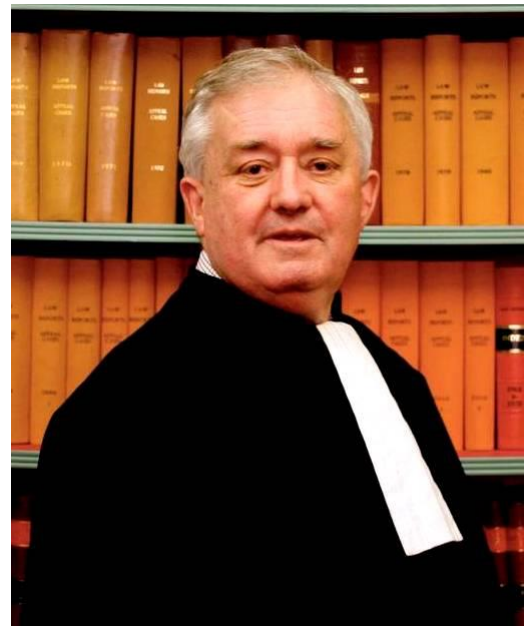
² Cockburn was actually born in Romania, to the British Minister there (who had previously been one of Tam Dalyell’s predecessors as MP for Linlithgow). Sir Alexander was clever, ambitious and a noted womaniser. He never married, and had several illegitimate children. When nominated for a peerage, Queen Victoria refused to permit it due to his “bad moral character”. It is ironic that the person who turned Britain’s obscenity laws into a restrictive and hypocritical farce was himself something of a rake.

the point about Foyle’s sale of *Ulysses* had no counterparts in the starched, repressed, church-dominated Ireland of De Valera, the Blueshirts and Archbishop McQuaig. “It is irresistible for an Irish man ... to remark that it would be difficult to think of an Irish politician or opinion-former of the time who would express views quite as rigid as those of Bodkin [DPP] and Joynson-Hicks [Home Secretary]... I do not think that any Irish minister or high civil servant of the 1920s or 1930s would have left on record views quite as peculiar as those quoted in this chapter.” (p. 304) Tell that to Flann O’Brien, I say!

Style: The writing is well-informed but badly organised. Hardiman has the confusing habit of jumping back and forward in time, which interrupts the narrative flow and blunts many of his arguments. The fact of Emmet’s trial being at the end illustrates this, but it is not the only example.

Publishing quality: Fine, until you start trying to consult the internal references. Without specifically looking for them, I found three that were totally misleading. Those on pp. 242 and 287 referred to pages dealing with something completely different, and the reference on p. 254 takes you to two blank pages!

Author: Adrian Hardiman was a Judge on the Irish Supreme Court from 2000 till his death in 2016. He had a pedigree that was similar to many of his colleagues on the Bench—as noted in *The Supreme Court*—Belvedere College, University College Dublin and membership of Fine Gael. He was called a “colossus of the legal world” by the current Chief Justice and “one of the great legal minds of his generation” by the current President of the Republic.



Link(s): You can see a short but interesting film about the Emmet trial in which Hardiman discusses the issues with the Trinity College historian, Professor Patrick Geoghegan, who has himself written a life of Emmet: <https://www.youtube.com/watch?v=Jl6MyTQBIf4>

Overall recommendation level: HIGHISH overall, but VERY HIGH on the Emmet trial

About the reviewer: Ian Mitchell is the author of four books, including *Isles of the West* and *The Justice Factory*. He is writing a comparative study of Russian and Western constitutional history to be called *Russia and the Rule of Law*—hence the “Rus&RoL Relevance” section at the top. He can be contacted at: ianbookrec@gmail.com. For other reviews in this series, see [Ian Mitchell’s Book Recommendations](#).