Censorship: Government and Obscenity

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the desegregation and subversive-activities opinions. On the other hand, if one laments a trend or common thread running through the Court’s decisions, he may be listed as being overly conservative, overly liberal or otherwise subject to excess in his convictions. Nevertheless, the Supreme Court would be the last institution to abjure responsible criticism. Moreover, unless society is to resort to a constitutional amendment whenever there appears to be an “incorrect” decision or line of decisions, the Court must be amenable to outside evaluation of its work product. Here again, however, as in the case of constitutional amendments, criticism must have more to recommend it than mere majority disapproval of what the Court has decided or written. Majoritarianism, favorable to a good cause at one point in time, is too easily turned to other ends in more difficult times.

It cannot be gainsaid, however, that public beliefs and practices, distilled and aged in the form of public morality and tradition, lack the elements of abruptness and irrationality that characterize mere majority whim, and that the Justices of the Court must, of necessity, pay heed to the context in which their decisions operate. An obligation also exists to give due weight to the reasoned counsel of critics. Finally, the Court must not take refuge in the position that absolute and dogmatic doctrines of Church and State can solve all or most of the problems of pluralism, atheism and agnosticism in the most satisfactory manner. Man-made theories of politics and general welfare have never achieved such unerring certainty; resort must be had to the factual minutiae and social repercussions of each individual decision.

Professor Rice’s volume deserves a reading on this basis, if not complete acceptance, by all who have expressed an interest in, or concern over, the Court’s prayer rulings. As indicated, he has ventured into the sea of Supreme Court controversy in a small, two hundred page vessel. Despite this obvious limitation, he has assembled a series of insights worthy of consideration, if only to formulate a basis for agreeing or disagreeing with the positions stated therein.

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Censorship: Government and Obscenity
by Rev. Terrence J. Murphy
Reviewed by
Charles J. Tobin, Jr.*

A major concern with ponderous legalisms is found among people who have become frustrated in their desire “to do something about” the current proliferation of obscene and immoral movies and publications. Respect for the judicial process, and, in particular, the Supreme Court, has been weakened by the haven which the Supreme Court has afforded the purveyors of such materials.

In this scholarly treatise, Father Murphy has described with care and precision the background which has led us to today’s impasse. His story is told so skillfully that we tend to overlook the thorough scholarship which underlies the work. Reference, from time to time, to the interesting and

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extensive footnotes is a pleasurable part of
the reading and is a stimulant to go further
to learn more about this tragic failure of
our democratic society to develop the legis-
lative and judicial tools to protect freedom
of speech on the one hand and freedom from
obscenity on the other hand.

Every person who wishes to have a com-
plete knowledge of the development of the
law on governmental control of obscenity
should read this book. The material is so
well organized that the book could be an
invaluable aid to persons who are called
upon to discuss or speak about the present
state of the law. In a short and absorbing
few hours the history unfolds and, as it
does, the confusion in our appellate courts
is laid bare.

The author emphasizes the continuing
struggle between the legislature and the
judiciary, on behalf of the public, to find a
means to regulate and control obscenity.
This struggle is evidenced by the continu-
ance in New York State of the Joint Legisla-
tive Committee on Obscene Publications.
First established in 1949 to deal with the
flood of obscene and offensive comic books,
it has been kept busy since that time in pro-
posing changes in the New York Penal Law
to counter each thrust by the courts to
weaken the power of the state to control
these vices. Even at the session of the legis-
lature just completed, the committee made
various recommendations to strengthen ad-
ministration: It is satisfying to note that the
efforts are concerned more and more with
refinements, as we find local law enforce-
ment agencies responding to local demands
for effective enforcement of existing statutes.
Present local drives and convictions have
demonstrated the truth of the author's con-
tention that results will be achieved in this
struggle with obscenity if we concentrate on
local action and legislative effort. Persistent
effort of people to find the appropriate
legal devices to meet the need and to use
these devices will ultimately prevail over
the efforts of courts to license obscenity in
the name of freedom.

One of the principal points made by the
author is the desirability of involving citizen
decision-making in the process of obscenity
control. Legislative effort reflects this ap-
proach, provided it is well-documented
and well-stated. Too often legislative effort
is satisfied with developing a statutory
change without adequately supporting such
effort by thorough hearing processes. Fre-
quently, legislative hearings fail to include
the kind of testimony that would sustain
the statute. More data from men like Sorok-
in should be made available. Committee
reports and legislative findings should be
used as a matter of course in this field in
order to satisfy a reviewing court that the
legislation arises from a determined need.

Linked to this element in the legislative
process is the importance of the use of
juries in the enforcement process. Grand
jury investigation can be a strong enforce-
ment tool. Jury trials in well-prepared cases
will be much more difficult to reverse when
the appellate court seeks to review the lower
court conviction.

Each of these approaches is urged by the
author in the concluding chapters of his
text. He points out that there is a reasonable
consensus in the courts to sustain legisla-
tion to protect children and to prevent dis-
tribution of “hard-core” pornography. It is
in these directions that citizen groups and
governmental officials could profitably con-
centrate their efforts. He believes that
greater effort at the citizen and local level
will leave its ultimate effect upon the courts
and their decisions. We agree fully.