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# CENSORSHIP IN CONTEMPORARY SOCIETY

JOHN B. SHEERIN, C.S.P.\*

EVERY SOCIETY SEEKS to protect itself. As a French writer said ironically of a government that investigated subversives: "What a strange animal! It strikes in self-defense."

Security means not only protection against military invasion but also suppression of forces within the society that tend to corrupt its fabric. Because the problem of preserving moral standards is a domestic problem, it is oftentimes far more baffling than the task of repelling a foreign invasion. In attempting to conserve its health, a society may take medicines that will prove to be more harmful than the sickness itself.

The question is: how can American society cope with the flood of socially harmful literature and entertainment that is tending to break down the standards of public morality? The easy answer is censorship, but the application of censorship is a task requiring almost infinite prudence and tactfulness. Indiscriminate censorship can wreak havoc with human freedom, rob literature of its inspiration, and paralyze the entertainment arts.

In his "Literature and Censorship,"<sup>1</sup> the Rev. John Courtney Murray, S.J., maintains that the problem of censorship is the problem of striking a right balance between freedom and restraint. To achieve that nice balance, he urges that censorship in the civil order should be a juridical process. He does not mean that civil censorship must be a governmental censorship, but that the aims and premises of a censorship program should be framed to accord with the norms of good jurisprudence. Moreover, the program should be judicial in its forms of procedure and sustained by the consent of the community.

Governmental censorship, of course, must be literally juridical, whether it is state or federal censorship. Literature and entertainment that are socially harmful can be properly punished by government, but government should be prudent in its mode of operation lest it assume a wrong

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<sup>1</sup> Books on Trial, June, July, 1956.

role. The state can punish corruption of public moral standards and overt anti-social acts but it should not attempt to legislate interior morality. The realm of thoughts and desires is the realm of the priest, and of the psychiatrist.



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Moreover, as Father Murray points out, law wisely seeks to maintain a minimum of social morality. It looks to the home, the school and the church and various voluntary associations to add to this minimum. As a result, it tolerates (as far as the law itself is concerned) certain evils it leaves to the good offices of these other forces in the community. Experience has taught the courts that social morality is seldom promoted by the strong arm of the police. If the law attempts to coerce social thinking into a radical change, it will run afoul of popular indignation. That is why the Supreme Court has tried to be moderate in its demands for gradual racial integration. "It is vain to rise before the light."

This is especially true of sexual immorality. If, as many sociologists say, ours is a sex-depraved generation, the law cannot make heavy demands on the ordinary citizen beyond the level of sexual morality that his home, church and school have taught him. While the law must try to maintain moral standards, it is not a fanatical policeman imposing morality through fear.

Controversies over censorship in the arts and literature generally focus on obscenity. At various times in the past, ever since

*Regina v. Hicklin*,<sup>2</sup> American and British courts have proposed variant and at times discordant definitions of obscenity. Recently, however, the Supreme Court of the United States in *Roth v. United States* and *Alberts v. California*,<sup>3</sup> set up a test of obscenity that will become the measuring rod in judging the validity of state and federal censorship statutes insofar as they pertain to obscenity. This test was a disappointment to extreme liberals who had hoped that the Supreme Court would declare that all speech (obscene or not) is protected by the first amendment unless it is "a clear and present danger."

Justice Brennan, in the majority opinion in *Roth v. United States* and *Alberts v. California*,<sup>4</sup> established this obscenity criterion: "Whether to the average person, applying contemporary standards, the dominant theme of the material taken as a whole appeals to prurient interest."<sup>5</sup> He said that the first amendment protects the communication of any and all ideas having "the slightest redeeming social importance,"<sup>6</sup> but that "implicit in the history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance."<sup>7</sup> Justices Douglas and Black dissented, attacking the phrase "contemporary community standards"<sup>8</sup> as too vague and loose, but apparently the majority felt it was specific enough as was the phrase "prurient interest." The majority opinion said that the Constitution does not require extraordinary precision of language for due

<sup>2</sup> L. R. 3 Q. B. 360 (1868).

<sup>3</sup> 77 S. Ct. 1304 (1957).

<sup>4</sup> 77 S. Ct. 1304 (1957).

<sup>5</sup> *Roth v. United States*, 77 S. Ct. 1304, 1311 (1957).

<sup>6</sup> *Id.* at 1309.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Id.* at 1323 (dissenting opinion).

process but "sufficiently definite warning as to the proscribed conduct measured by common understanding and practices."<sup>9</sup>

State legislatures, therefore, will probably tailor their obscenity statutes to fit the Supreme Court test. In several cases in the past, the Supreme Court has struck down such statutes on the ground that they were vaguely worded. The legislatures will lop off "filthy, immoral, indecent, etc.," from their statutes and come closer to the wording of the Court's own test of obscenity. Under the Supreme Court ruling, prosecutors will not have to prove that the obscene material led to anti-social acts.

Justices Douglas and Black insisted that obscenity should not be punished unless it could be proved to incite anti-social conduct. But the Court demanded no such proof. It stated that obscenity in itself has no social significance and is not entitled to the protection of the first amendment. It is in itself a corrosion of moral standards.

It is significant also that the Court, in the same week with the *Roth* and *Alberts* decisions, upheld a New York statute authorizing injunctions against the sale and distribution of obscene literature. In *Kingsley Books, Inc. v. Brown*,<sup>10</sup> Justice Brennan objected on the ground that this New York statute provided no trial by jury<sup>11</sup> and Douglas and Black insisted that "free speech is not to be regulated like diseased cattle and impure butter."<sup>12</sup> The majority, however, ruled that in New York State a top city official can start suit for an injunction against a seller or distributor of obscene material. Under the law, the official can

sue to restrain the sale until a hearing is held and decision given. The trial must be held within twenty-four hours after issuance of the injunction and the decision must be handed down within forty-eight hours after the end of the trial.

Thus, other states can avail themselves of a quick remedy for obscenity by framing a statute on the lines of the Court-approved New York law. There are, of course, many other state statutes regulating the sale and distribution of books that can be used validly by the state though in some cases the definition of obscenity will have to be reworded to accord with the test laid down in the *Roth* and *Alberts* decisions. Judge Roger J. Kiley, in his very interesting "Obscenity in Literature,"<sup>13</sup> notes that several states have laws which punish distribution of magazines and books "for refusal to distribute decent books to sellers who will not accept obscene books." This will protect honest book-sellers who have been caught in "package-deal" arrangements and at the same time it will expose those fakers who have lied to church and civic groups about such a "package-deal."

It would be futile to attempt a catalogue of governmental laws of censorship. Suffice it to say that there are many, *e.g.*, Post Office and Customs Department laws, and the many state statutes. Under the principle of subsidiarity, however, governmental censorship should not be employed if obscene books and entertainment can be controlled by non-governmental means. Government should not arrogate to itself functions which can be performed efficiently by smaller and lesser bodies. It is my conviction that the Supreme Court has cleared the way for an increased amount of non-governmental censorship by establishing

<sup>9</sup> *Id.* at 1312.

<sup>10</sup> 77 S. Ct. 1325 (1957).

<sup>11</sup> *Kingsley Books, Inc. v. Brown*, 77 S. Ct. 1325, 1331 (1957) (dissenting opinion).

<sup>12</sup> *Ibid.*

<sup>13</sup> *The Critic*, Oct. 1957.

a specific test for obscenity.<sup>14</sup>

There are in general two types of non-governmental censorship of the arts and literature: voluntary self-censorship by the publishing and entertainment industries and voluntary democratic action by church or civic groups.

The Motion Picture Association of America has its Production Code. The Administrator of the code is Geoffrey Shurlock who succeeded Joseph I. Breen in that role. Shurlock's assistants see advance scripts of film or perhaps the film itself in whole or in part. After consultation with the assistants, the administrator pronounces judgment as to whether or not the film conforms to code requirements. The code was revised in late 1956 and certain subjects previously banned were allowed to be discussed or represented on film. The revision has caused a general liberal relaxation of standards, especially in regard to sex, and as a result more and more daring pictures are receiving the industry's seal of approval. Martin Quigley, however, says that the changes have not altered the essential prohibitions but have added new and important provisions. If that is true (and we must remember that Martin Quigley participated in writing the original code), the new liberal

policy must be attributed to the administration of the code rather than to the code itself.

The television industry has made some interesting ventures in the field of self-censorship. The NBC "censor," for instance, is the Continuity Acceptance Department. It attempts to put on the air programs with a high moral tone. According to reports distributed by the department to network executives some months ago, the censorship has been meeting with popular approval. Fewer complaints about "sex" are being received. The department has been showing an increased concern with racial and religious themes and violence, but apparently it has managed to keep the "sex" element within reasonable bounds.

The Writers' Guild of America has objected to the Code of the National Association of Radio-TV Broadcasters as well as to the Hollywood Production Code. It claims that while the courts are liberalizing censorship laws, the television and motion picture industries are increasing their self-censorship. With due respect to the claims of literature, it can be fairly said that the Writers' Guild is looking at the question from the standpoint of the writer rather than from that of the public good. In assailing all forms of burgeoning industry self-censorship, the Guild complained that "the public is not seeing the professional skill of the writer but the erratic beliefs, the arbitrariness of other people." Despite the complaints of the Guild, it seems probable that the radio-television industry will continue to operate within its code, and that the networks will continue to maintain their own "censors" in their continuity and acceptance departments.

In the publishing field, the only notable endeavor to impose self-censorship is that

<sup>14</sup> The supreme authority of the state ought, therefore, to let subordinate groups handle matters and concerns of lesser importance which would otherwise dissipate its efforts greatly. Thereby the state will more freely, powerfully and effectively do all those things which belong to it alone because it alone can do them: directing, watching, urging, restraining, as occasion requires and necessity demands. Therefore, those in command should be sure that the more perfectly a graduated order is preserved among the various associations, in observance of the principle of "subsidiary function," the stronger social authority and effectiveness will be, and the happier and more prosperous the condition of the state. *Quadragesimo Anno*, para. 80, FIVE GREAT ENCYCLICALS 147 (1953).

of the Comics Magazine Association of America. In 1954 a Senate Subcommittee on Juvenile Delinquency discovered in comic books a situation that cried out for remedy. The frightful filth, violence and perversion represented in these books were convincingly condemned by Dr. Fredric Wertham in his *Seduction of the Innocent*. In the book he told of his prolonged clinical study of the effects of comic book reading on the adolescent mind. The brooding pre-occupation of these books with sex, morbidity, blood and violence was shown to have a pernicious influence on the child's imagination and his attitude towards authority. He called for legislation to bar the sale and distribution of such books to children.

To appease an indignant public, the publishers framed the Code of the Comic Magazine Association of America. Judge Charles F. Murphy, a New York City magistrate, was chosen as Administrator of the Code. The code aimed to bar horror, vulgarity, sexiness, sadism and other perverse elements from the comics. Judge Murphy did a good job and the comics improved very considerably under his aegis. However, the industry is in need of constant self-surveillance if it hopes to continue relatively free of restrictive legislation.

In addition to voluntary self-censorship by the industries involved, there is also another general category of non-governmental censorship. It includes semi-official bodies such as boards of regents, library and school boards who have the responsibility of evaluating literary material. There are also the license commissioners who can effectively act as censors in refusing licenses to entertainers. Then there is that vast assortment of civic and church organizations which keep a vigilant eye on books

and movies. Opponents of censorship tend to dismiss such organizations as "bands of Philistines," "vigilantes" and "Comstockians." Yet they do play a necessary role in democratic society. The democratic pattern presumes that the people will not shift all sense of responsibility for the common good to the shoulders of public officials.

The National Legion of Decency is under the authority of the Bishops' Committee on Motion Pictures. It was organized in the early 1930's when the moral standards of the motion picture industry had virtually collapsed. As a result, the industry was in great popular disfavor and in financial difficulties. The establishment of the Legion helped Hollywood to set up its Production Code on a firm footing.

Contrary to common opinion, the Legion is not "a pressure group." It simply issues lists of ratings given to films. A Legion list is not a Church law but a series of recommendations to help a Catholic to form his conscience in regard to specific pictures. The Legion is very judicious and careful in making its classifications which are arrived at after mature and earnest discussion by a staff of lay and clerical judges.

It is not intended as a mere guide to private conscience but to social responsibility as well. As Avery Dulles, S.J., says in "The Legion of Decency,"<sup>15</sup> "It aims to register a Christian protest against films which undermine religious values and weaken the moral fabric of society." Due to the fact that the number of unobjectionable pictures dropped sharply in 1955, while the objectionable-in-part pictures increased, the American hierarchy asked Catholics to focus greater attention on the Legion ratings.

<sup>15</sup> America, June 2, 1956.

The Legion is unjustly blamed for boycotts and picketing and other forms of organized pressure. It issues the lists of ratings and distributes them throughout the country. If certain organizations choose to organize protests on the strength of these classifications, it is surely not the responsibility of the Legion. The Legion does not claim infallibility in its judgment but it does claim that a minority group has a right to single out for members of its own group motion pictures it considers objectionable. No reasonable man could quarrel with that proposition.

As to the methods employed by certain organizations to register a protest against Legion-condemned films, we would have to judge each case on its merits. John Courtney Murray, S.J., would approve methods of persuasion and peaceful argument. He would judge prudent the activities of organizations that would request the cooperation of producers, theatre owners and distributors in reducing obscenity. He does not question the civil right of Catholic citizens to boycott a movie but he questions its prudence. "The chief danger is lest the Church itself be identified in the public mind as a power-association."

In *Miranda Prorsus* (The Remarkable Inventions), Pope Pius XII, on September 8, 1957, discussed mass communication media. He pointed out that they can prove to be a blessing if rightly used, a curse if abused. Declaring that it was necessary to supervise films, radio and television to prevent them from depraving morals, he called upon bishops throughout the world to establish committees on films, radio and television. Apparently he envisions an expanded Legion of Decency to supervise the three arts by handing down classifications of programs. The trade tabloid,

*Variety*, on September 18, 1957, said that the television networks are adopting a wait-and-see attitude toward this proposed global Legion of Decency for the three arts. Some network executives, according to *Variety*, are scary about the effect an adverse rating by this super-Legion might have on sponsors of programs.

Arthur Hull Hayes, president of CBS Radio, has frequently reminded Catholic audiences that the radio listener is "the program director."<sup>16</sup> Stations broadcast what the listeners want and they know what they want as a result of continuing surveys made by research houses. So it is the people who determine broadcasting fare and it is the people who can control the quality of programs by a mere flick of the dial. No one can object to this type of censorship. The difficulty lies in educating listeners to exercise this censorship. Church and civic groups could be helpful in convincing the listening public of their responsibility in this quarter.

In the field of literature, the Catholic Bishops of the United States set up the National Organization for Decent Literature. Formed in 1938, its purpose is to activate the moral forces of the country "against the lascivious type of literature which threatens moral, social and national life." In April, 1955, a national office was set up in Chicago and the organization's name was changed to The National Office for Decent Literature.

It is a service organization providing information to civic, religious and social organizations that request it. It is definitely not "a pressure group." It neither directs nor dictates the policies of these organiza-

<sup>16</sup> *Radio and Education*, address by Arthur Hull Hayes, National Catholic Educational Convention, April 26, 1957.

tions that use its material. It prints each month a list of comic books, magazines and pocket-books which it has judged to be objectionable. It does not review cloth-bound books as it is concerned with books easily available to adolescents at a low price. It does not judge adult reading.

In "N.O.D.L. States Its Case,"<sup>17</sup> the Executive Secretary of NODL explains its relation to police action. Monsignor Thomas Fitzgerald shows that the organization has never recommended or encouraged any arbitrary coercive police action; but he hopes that legislators throughout the country will acquaint themselves with the NODL lists. At the same time he reaffirms the right of citizens to protest in a legal manner against the sale of objectionable books. The NODL regulations say that committees protesting to newsdealers are *not* to issue threats.

The NODL has been the target of vicious criticism. Most newsworthy of all the attacks was that of the Civil Liberties Union on May 5, 1957. The charge bore the signatures of one hundred and sixty-two luminaries in the arts and literature. It said that the activities of NODL "constitute censorship" that deprives other Americans of an opportunity to read certain literary works. It alleged that NODL employs boycott and economic pressures to achieve its ends. The blast showed that both the Civil Liberties Union and the signatories of the charge were ignorant of NODL rules.

John Fischer, editor of *Harper's*, assailed the NODL in the October, 1956, issue of that magazine, and the Civil Liberties Union broadside probably derived from Fischer's attack. "This campaign of intimidation," said Fischer, "has no legal basis."

He alleged several instances in which teams of Catholic laymen armed with NODL lists threatened merchants with boycott unless they removed objectionable books.

To discredit NODL Fischer quoted Father John Courtney Murray as representing a sane Catholic attitude. "No minority group has the right to impose its own religious or moral views on other groups through the use of methods of force, coercion or violence." Then Fischer listed the conclusions that flow from Father Murray's teachings; and leading the list was that "N.O.D.L. should stop immediately its campaign of threats; blacklisting and boycott." Whereupon Father Murray replied via *America* that Mr. Fischer had misstated the role of NODL and that by a reading of NODL literature he could find out that the NODL warns that "the list is not to be used for purposes of boycott or coercion." At the same time, Father Murray advised NODL that it should register a protest if police use the list to threaten, coerce or punish dealers.

I have already mentioned the fact that NODL addresses itself only to *juvenile* literature, *i.e.*, comic books, pocket-books and magazines that are easily available to adolescents at a cheap price. The Supreme Court last February struck down a Michigan law which had made it an offense to publish or sell books to the general public that could "incite minors to violent or depraved or immoral acts. . . ."<sup>18</sup> Justice Frankfurter in his opinion, said that such a law reduces adults to reading only what is fit for children. In thus protecting the child and robbing adults, you "burn the house to roast the pig."<sup>19</sup> From now on, therefore, civic

<sup>17</sup> *America*, June 1, 1957.

<sup>18</sup> *Butler v. Michigan*, 352 U.S. 380, 381 (1957).

<sup>19</sup> *Id.* at 383.

or church groups who request legal action on bad books must show that the books are objectionable for adults.

This raises a grave problem for parents and public-minded citizens generally. The most they can hope for is legislation to bar the sale of bad books to adolescents. Yet it is hard to prevent a child from buying objectionable books in such places as drug-stores. It imposes upon parents a heavier responsibility than in earlier times. Unaided except for help from church and school, they have the duty of shielding children from the sadistic violence, sexual stimulation and erotic pre-possessions of much contemporary juvenile literature. The problem was summarized by Arthur T. Vanderbilt, Chief Justice of the Supreme Court of New Jersey; "Our greatest concern with the oncoming generation, I submit, relates to the perversion of young minds through the mass media of the movies, television, radio and the press, especially so-called comics."<sup>20</sup>

In this paper I have discussed censorship of obscenity almost exclusively. Space limitations prevent me from dealing with censorship pertaining to political and religious matters and communism. Yet in these areas there is the same need of consulting the public welfare. The good citizen is loyal to his country and to his religious belief. Citizens should protest any utterance that casts discredit on patriotism or attacks religious faith. But they should express their complaint with "sweet reasonableness"; and they should withhold it altogether if the complaint unduly increases community tensions unless in the case of a grave emergency.

There are civic and church groups here

<sup>20</sup> Vanderbilt, *Impasses in Justice*, 1956, WASH. U. L. Q. 267, 302.

and there that persuade individuals to telephone or write a television station protesting against a program. This kind of censorship seems altogether healthy and democratic; yet it should be exercised with prudence and discretion. A furore was caused in Chicago in the latter part of last December when WGN scheduled a showing of the film *Martin Luther* for its television premiere in the United States. Catholics swamped the station with postcards and telephone calls and the film showing was cancelled. Thereupon Protestants and Jews deluged the station with protests and the National Council of Churches and a Civil Liberties Union representative bewailed it as an outrage. I think the bitterness might have been avoided if more complainants had explained that they were not objecting to a film on Martin Luther but to a film that they considered a falsification of history.

The episode did not help to improve Catholic-Protestant relations. Yet it seems to me that it would be wrong to blame the complainers. Each had a "democratic" right to protest, and yet it is unfortunately true that the accumulated complaints did tend to disrupt community harmony. Later the Chancellor of the Chicago Archdiocese announced that the archdiocese would not object to the showing, and the film was shown over WBKB. He said that the honest expression of a religious viewpoint is indispensable to a democracy. This statement is significant. It illuminates the correct Catholic attitude towards freedom in mass communication.

Several times in recent years Catholic writers have suggested that an alternative to censorship could be an aroused public opinion or public indignation. These suggestions seem too intangible to be helpful. George Thomas in *America*, August 20,

1955, takes issue with this notion. He says that popular indignation may produce some intemperate results and make unreasonable demands on publishers. The overtly obscene magazines can be prosecuted but what of the marginal magazines? They are not deliberately pornographic and yet they are harmful. If censorship boards are sometimes incompetent judges, the general public would be even less competent to judge the merits or demerits of a book.

To sum up, censorship is necessary to conserve essential values of the American way of life. Opposition to censorship seems to be based on the assumption that freedom is the highest of all values. Yet freedom, after all, is negative. It is not an end in itself. It is a naked concept that must be clothed with positive virtues. As Secretary of State Dulles once pointed out, America was born as a rebellion against despotism; but after becoming free, the founders of America did not wander about in irresponsible freedom. They set up a code of virtue, a democratic charter that even put government itself under restrictions

so that it would not interfere with rights derived from the Creator. Foes of censorship should realize that freedom is not the highest value, that it exists for the preservation of purity, truth and justice and those other ideals that make up Western culture.

At times official censorship may be imperative due to the pressure of special circumstances, but ordinarily censorship by voluntary agencies is to be preferred. Government should not usurp functions that can be performed as efficiently by non-official agencies and, moreover, the heavy hand of governmental censorship tends to reduce the margin of personal freedom. Censorship by the lesser agencies would embrace not only self-censorship by the press and entertainment industries but also censorship by private agencies peacefully and prudently working towards voluntary reform. Individuals in these private agencies, whether church or civic groups, should act judiciously lest they prosper what they want to prevent and yet they should act with an unflagging zeal for the common good.

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