

October 2016

## Censorship: Government and Obscenity

Charles J. Tobin, Jr.

Follow this and additional works at: <https://scholarship.law.stjohns.edu/tcl>

---

### Recommended Citation

Charles J. Tobin, Jr. (1964) "Censorship: Government and Obscenity," *The Catholic Lawyer*. Vol. 10 : No. 3 , Article 15.

Available at: <https://scholarship.law.stjohns.edu/tcl/vol10/iss3/15>

This Book Review is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in The Catholic Lawyer by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact [selbyc@stjohns.edu](mailto:selbyc@stjohns.edu).

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.

---

CENSORSHIP: GOVERNMENT AND OBSCENITY  
by *Rev. Terrence J. Murphy*  
Helicon Press, Baltimore & Dublin, 1963. Pp. 294. \$5.50.

*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

---

\*A.B., Yale College; LL.B., Yale Law School; Member of the New York Bar.

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 legislative 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 complete 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 continuance in New York State of the Joint Legislative 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 proposing 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 legislature just completed, the committee made various recommendations to strengthen administration. It is satisfying to note that the efforts are concerned more and more with refinements, as we find local law enforcement agencies responding to local demands for effective enforcement of existing statutes. Present local drives and convictions have demonstrated the truth of the author's contention 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 approach, 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. Frequently, legislative hearings fail to include the kind of testimony that would sustain the statute. More data from men like Sorokin 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 enforcement 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 legislation to protect children and to prevent distribution of "hard-core" pornography. It is in these directions that citizen groups and governmental officials could profitably concentrate 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.