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THOUGHT CONTROL

Part II

What is the purpose of the anti-obscenity legislation? The present Supreme Court decisions attempt to camouflage the issue by alleging that the purpose is to protect the nation from "antisocial" (i.e., criminal) actions. But the Supreme Court decision in the Roth case is more candid: it states clearly and openly that the purpose is not the control of action, but the control of thought.

In addition to the trial judge's definition of obscenity, the Roth decision quotes with approval a definition given in an earlier case, which holds material to be obscene if it has "a substantial tendency to deprave or corrupt its readers by inciting lascivious thoughts or arousing lustful desires." (Emphasis added by Justice Brennan.)

This is an unequivocal declaration and an official endorsement of the tenet that sex as such is evil.

Observe that that statement does not refer to some sorts of sexual aberrations or abuses; it does not refer to the conventional censure of extramarital sex; it makes the sweeping declaration that any "lustful," i.e., sexual, desire (presumably, even toward one's spouse) constitutes depravity and corruption.

Immediately following that quotation, the decision mentions the objection of those who hold that such rulings violate constitutional guarantees "because convictions may be had without proof either that obscene material will perceptibly create a clear and present danger of antisocial conduct, or will probably induce its recipients to such conduct." Justice Brennan disposes of this objection by declaring that "in light of our holding that obscenity is not [constitutionally] protected speech," it is unnecessary for the courts to consider such issues. In other words, the government's purpose in anti-obscenity cases is not to prohibit criminal conduct, but to prohibit thought - sexual thought.

"However," the decision continues, "sex and obscenity are not synonymous. Obscene material is material which deals with sex in a manner appealing to prurient interest" - and adds a footnote: "I.e., material having a tendency to excite lustful thoughts." The adjectives "prurient," "lustful," "lascivious," "lewd," etc. are repeated over and over again in court decisions in obscenity cases, as if these adjectives were clear, sufficient definitions. But if you want to make a linguistic experiment, look up the definitions of these adjectives in a good, unabridged dictionary. You will find yourself on a hopeless chase, being pushed from one word to another to another, in as bad an example of circularity as any which a class in freshman logic would teach you not to

commit - and, buried somewhere along the way, as definition No. 2 or 3, you will find the words: "sexual desire."

Apparently, the Roth decision considers discussions of sex permissible (particularly, as it points out, "in art, literature and scientific works"), but prohibited if they appeal to sexual interest or arouse sexual desire. I submit that a work of art or literature which deals with sex without appealing to such interest, is guilty of lousy craftsmanship.

The attempt to prohibit thought - any kind of thought on any subject - is grotesquely futile. It is worse than grotesque in this country: it means that the Constitution guarantees us freedom of speech and of the press, but not freedom of thought.

To make matters still worse, the author of material claimed to be obscene is held responsible and punished not for his own thoughts, but for the thoughts his work might arouse in others. Who can tell what thoughts (or feelings) a book - on any subject - would arouse in a reader? Logically, it is possible to tell what thoughts a given book should arouse - if a reader is faultlessly logical. How many such readers are there today? And, for that matter, how many faultlessly logical authors? In a Kantian-Hegelian age, logic is the most unfashionable discipline. When men are trained to use words as meaningless sounds, as emotional grunts, or as tools of deception, who can tell which book will inspire whom to what?

Many people believe that the obscenity rulings apply only to pornography. But the Supreme Court has repeatedly admitted its inability to draw a line between pornography and other kinds of writing. And the Supreme Court does not deal with concretes - it deals with principles which establish legal policy. The principle of suppressing a book and punishing its author on the basis of the thoughts or feelings it might arouse in readers - is a monstrous notion, irreconcilable with the Constitution and with all constitutional guarantees. (Yet this notion is being voiced today outside the field of law and is being applied to issues other than pornography - as I shall discuss later.)

Justice Harlan, who dissented in part, states explicitly that the Roth majority decision attempts to prohibit thoughts. "Under the federal definition [of obscenity] it is enough if the jury finds that the book as a whole leads to certain thoughts. In California, the further inference must be drawn that such thoughts will have a substantive 'tendency to deprave or corrupt' - i.e., that the thoughts induced by the material will affect character and action." Justice Harlan points out that there is no proof of such a causal connection. He quotes from a document issued by the American Law Institute: "...regulation of thought or desire, unconnected with overt misbehavior, raises the most acute constitutional as well as practical difficulties." He declares: "The Federal Government has no business, whether under the postal or commerce power, to bar the sale of books because they might lead to any kind of 'thoughts.'"

But Justice Harlan undercuts his case and destroys the meaning of his dissent by granting this power to state governments. "Since the domain of sexual morality is pre-eminently a matter of state concern, this Court should be slow to interfere with state legislation calculated to protect that morality." And: "Congress has no substantive power over sexual morality. Such powers as the Federal Government has in this field...are not of the same nature as those possessed by the States, which bear direct responsibility for the protection of the local moral fabric."

The Supreme Court's best defender of intellectual freedom, in the Roth case

as well as today, is Justice Douglas. His uncompromising dissent (with which Justice Black concurs) opens with the words: "When we sustain these convictions [of the defendants in the Roth case], we make the legality of a publication turn on the purity of thought which a book or tract instills in the mind of the reader. I do not think we can approve that standard and be faithful to the command of the First Amendment, which by its terms is a restraint on Congress and which by the Fourteenth is a restraint on the States."

He declares: "By these [California's] standards punishment is inflicted for thoughts provoked, not for overt acts nor antisocial conduct" - and insists that "speech to be punishable must have some relation to action which could be penalized by government." And: "To allow the State to step in and punish mere speech or publication that the judge or the jury thinks has an undesirable impact on thoughts but that is not shown to be a part of unlawful action is drastically to curtail the First Amendment."

Justice Douglas, properly, objects to the Roth trial judge's standard of defining obscenity, which he finds more inimical to freedom of expression than various other criteria. "The standard of what offends 'the common conscience of the community' conflicts, in my judgment, with the command of the First Amendment that 'Congress shall make no law...abridging the freedom of speech, or of the press.' Certainly that standard would not be an acceptable one if religion, economics, politics or philosophy were involved. How does it become a constitutional standard when literature treating with sex is concerned?" Further, he points out that "the test that suppresses a cheap tract today can suppress a literary gem tomorrow. All it need do is to incite a lascivious thought or arouse a lustful desire. The list of books that judges or juries can place in that category is endless."

These arguments are unanswerable. So is the following, for which I applaud Justice Douglas: "The tests by which these convictions were obtained require only the arousing of sexual thoughts. Yet the arousing of sexual thoughts and desires happens every day in normal life in dozens of ways. Nearly 30 years ago a questionnaire sent to college and normal school women graduates asked what things were most stimulating sexually. Of 409 replies, 9 said 'music'; 18 said 'pictures'; 29 said 'dancing'; 40 said 'drama'; 95 said 'books'; and 218 said 'man.'"

I would like to add that whenever a young man shaves or a young girl makes up her face, or either of them puts on attractive clothes, it is done for the implicit purpose of arousing sexual thoughts and desires - which does not mean the intention of rushing to bed with every stranger, but merely the wish to be admired, to receive a tacit acknowledgment of one's sexual value qua man or woman. This type of acknowledgment creates the heightened interest, the excitement, the color, the personal enjoyment in human relationships with the opposite sex. There is only one ideology that would condemn it - the ideology that opposes man's enjoyment of his life on earth and holds sex as such to be evil - the same ideology that is the source and cause of anti-obscenity censorship: religion.

For a discussion of the profound, metaphysical reasons of religion's antagonism to sex, I refer you to my article "Of Living Death" (The Objectivist, September-November 1968), which deals with the papal encyclical on contraception, "Of Human Life." Today, most people who profess to be religious, particularly in this country, do not share that condemnation of sex - but it is an ancient tradition which survives, consciously or subconsciously, even in the minds of many irreligious persons, because it is a logical consequence implicit in the basic causes and motives of any form of mysticism.

Justice Brennan's decision in the Roth case indicates the religious source

of anti-obscenity legislation. Defending the tenet that obscenity is not protected by the First Amendment, Justice Brennan writes: "As early as 1712, Massachusetts made it criminal to publish 'any filthy, obscene, or profane song, pamphlet, libel or mock sermon' in imitation or mimicking of religious services. ...Thus, profanity and obscenity were related offenses."

Justice Douglas acknowledges this connection by saying: "I can understand (and at times even sympathize) with programs of civic groups and church groups to protect and defend the existing moral standards of the community. I can understand the motives of the Anthony Comstocks who would impose Victorian standards on the community." But he does not think that government "can become the sponsor of any of these movements" or that government "can throw its weight behind one school or another."

Some day, in a better, i.e., more philosophical age, someone will convince the Supreme Court that anti-obscenity legislation is unconstitutional because it represents an act explicitly forbidden by the Constitution: an establishment of religion - an attempt to enforce a purely religious doctrine.

The Supreme Court has been struggling from case to case, seeking to protect freedom of speech, but unable, apparently, to resist the perennial pressures clamoring for censorship. That struggle offers an important lesson on the consequences of clinging to or compromising with any irrational - i.e., indefinable, unprovable and indefensible - notion. The Roth decision explicitly admitted the intention to control thought, but still attempted to preserve a semblance of legal objectivity by demanding a national "community standard." The present Supreme Court gave up this attempt as impossible and opened the gates wide to the worst possible form of wanton, collectivist tyranny: judgment by local "community standards."

And, in order to justify the unjustifiable, in order to claim that the purpose of censorship is to prohibit "antisocial" actions, not thoughts, the conservative Chief Justice Burger was willing to propound a doctrine with a far more destructive potential than that of any smutty films or filthy post cards: the doctrine of a government's right to legislate on the basis of unprovable assumptions.

(To be continued.)

Ayn Rand

OBJECTIVIST CALENDAR

On Saturday, December 29, Ayn Rand will appear as one of the guests on Larry Cole's radio program in New York City. Station WRVR-FM (106.7), 10-11 A.M.

The following starting dates have been scheduled for the tape lectures of Dr. Leonard Peikoff's course, Modern Philosophy: Kant to the Present. Winnipeg, January 15 (contact Ellen Moore, 204-253-1630); Toronto, January 23 (Edmund West, 416-661-1777, after 8 P.M.).

B.W.

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