Bogart) examined, in its superficial way, the other side of the ropes—the business enterprise, the dealing in flesh, the corruption—but opted as usual for the confused, victimized pug as the center of the action. I say, let us have no more cauliflower ears.

The real interest in *Rocky* lies off the set. Sylvester Stallone wrote the story and was determined to play the lead. In so doing he ran afoul of the studio moguls, if such there be today, and was obliged to produce the film himself on a modest, indeed impoverished, budget. Such independence of mind is admirable in principle, but compromise in this case might have been the wiser route. Judging from the credits, Stallone seems also to have written some of the songs, filled in as script girl, hired his brother-in-law to hold the lights, and built some of the sets with his own hammer and nails. *Rocky* is a good example of how delicate is the task of producing a play on a bare stage. If corners are to be cut it is probably best to be brazen about it, because in trying to look expensive the meager resources inevitably look cheap. It is painful to watch, and soon the examples are distractingly apparent and abundant.

Scenes are protracted, for example, and usually needlessly. The camera work is awkward. Dialogue drags, and incidental encounters are mercilessly stretched into soliloquies with lingering shots of facial expressions. The Rocky-and-his-girl-friend subplot is beaten to death, and thrown in gratuitously at awkward moments, fatally interrupting what action there is. (Furthermore, it is completely unbelievable. Rocky is a clod, and it is a continual mystery how a good-looking, sharp-dressing, grammatical dame like that could bear to be in the same room with him.) There is one particularly tortuous scene of Rocky in training, filmed silently, running through the park, exercising, sweating, practicing punches and racing through a railroad siding to the accompaniment of an un-synchronized rock masterpiece, all interminable, all unbearable.

As for Sylvester Stallone, it is tempting to crib Dorothy Parker's remark about Katherine Hepburn, namely that he runs the gamut of emotions from A to B. Stallone has one facial expression, dull-eyed with his mouth open, and seems convinced that an aura of silent strength is best conveyed by appearing to be under the influence of depressants. He employs a vaudeville Brooklyn accent to represent a native of Philadelphia. He is convinced, obviously, that he has wrought a cinematic *tour de force*, defying convention, with a bleary eye to the Academy Awards and future triumphs. Well, all that may come to pass, and given the sense of the times, probably will. Star quality, after all, is an elusive and indefinable gift, and comes from the most unlikely sources. Stallone is as good a candidate as any, and seems destined to succeed anyway; he recently told a magazine interviewer that he believes in reincarnation. "I think I was guillotined during the French Revolution," he said. "When I see a movie about a person being guillotined, I have the strangest feeling I know what it was like." I know what he means. I recently burned my hand fixing a carburetor and felt like one of the Oxford martyrs. □

BOOK REVIEW

The First Amendment and the Future of American Democracy
Walter Berns / Basic Books / $12.50

Jeremy Rabkin

In the late 1930s, the Supreme Court largely abandoned its traditional defense of property rights and also gave up its long struggle to maintain a balance in the federal system by keeping Congress within the bounds of the interstate commerce clause. In the decades since, the Court has instead become increasingly vigilant in its defense of noneconomic liberties or, as they are sometimes called, "human rights—presumably to distinguish them from those rights tainted by the inhuman institution of property. First Amendment case law, almost entirely the work of twentieth-century Courts, plainly reflects the new emphasis: almost in proportion as it has come to defer to legislative judgment in the economic sphere, the Court has interpreted the prohibitions on governmental activity implied in the First Amendment more expansively and enforced them more intransigently.

This pattern has been widely applauded, though it finds no clear support in the text of the Consititution. Those who defend it often observe that government has no comparable justification to interfere with free expression as it does with the free market: workers, farmers, stockholders, consumers—all of us would be exposed to needless injury if governmental power were still limited by traditional constitutional doctrines, but no one, it is argued, can really be hurt by forcing the government to keep hands off religion or "free expression." Yet there is, after all, a certain underlying continuity between these broadly divergent approaches, a practical connection made most explicit in the populist rhetoric of a First Amendment "absolutist" like the late Justice Black. Both approaches, in a sense, relieve the Court of the burden of judgment. As it is easier to leave the "reasonableness" of economic regulatory schemes to the presumed wisdom of the legislatures (or the safeguarding of federalism to the presumed prudence of Congress), so it is easier to bar all state intrusion on free speech—or state aids to religion—than to judge in each case the actual constitutional propriety of the challenged measure.

Walter Berns has been a thoughtful critic of the Court's work for more than two decades now, and central to all his criticism has been his insistence that the Court cannot, in the end, evade its burden of judgment. Or at least, it cannot do so without danger to the country. Most emphatically is this true in First Amendment adjudication, he argues, because restrictions on governmental activity in this area are, in the last analysis, quite far from being inconsequential. Berns' latest book, *The First Amendment and the Future of American Democracy*, is sure to be labeled a polemic. And, at least in tone, it is that. But it is a polemic informed by careful study of the writings and practices of the Founding Fathers, as well as by long reflection on the problems of liberal democracy. For the most part, the book draws on arguments and scholarship already published in various articles by Prof. Berns over the past ten years. Nevertheless, he has done us a service by combining the essentials of these scattered pieces into a single integrated study, where his earlier lines of criticism against the Court gain added resonance and clarity in the larger setting.

Berns' book is essentially an attack on the doctrinaire libertarianism that has characterized the First Amendment views of several members of the Court in the last thirty years (most notably Justices Black and Douglas and, in an earlier era, Justice Oliver Wendell Holmes) and has often won over a majority of the justices in the resolution of particular cases. Berns is highly critical of the Court's readiness in these cases to champion liberty in almost absolute terms, without giving sufficient attention to the problem that, in practice, these liberties are contigent on the survival of liberal democracy. He points to the

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Jeremy Rabkin is a graduate student in American government at Harvard.

declining force of religion in American life, the instability of modern families, and the erosion of conventional civilities in public discourse, as among the ominous developments clouding the future of liberal democracy in this country. All of these trends, he argues, have been encouraged by the Court's recklessly expansive interpretation of the First Amendment.

Thus the Court, he insists, was shortsighted (and also confused) in reading the "nonestablishment" clause as erecting "a wall of separation between church and state"; it was scandalously irresponsible in extending First Amendment protection to the pornography industry; it was blind to realities in bringing even abusive or disruptive forms of public "expression" under the constitutional immunity afforded by the First Amendment. Though conceding the danger to be less immediate, Berns also berates the Court for extending First Amendment protection on some occasions to avowedly anti-democratic organizations like the Communist Party.

Giving weight to these criticisms are Berns' extended discussions of the original understanding of the religion and speech clauses of the First Amendment. The Founders, almost without exception, regarded the continued strength of religious belief as vital to the stability of republican government. Berns demonstrates that the Framers of the First Amendment (with perhaps the significant exception of James Madison) were therefore anxious that the language of the "nonestablishment" clause not be taken to imply that government must remain neutral between religion and irreligion, as well as between sects. On the other hand, the Founders did take for granted that the authority of the Constitution, though secular in origin, must—in legal terms—be above the claims of religious opinion. The Founders could not have accepted (nor can Berns) that expansive reading of the "free exercise" clause of the First Amendment which has led the Court in a few recent cases to create, in effect, a constitutionally-based *right* of civil disobedience to otherwise valid and binding laws, solely on grounds of conflicting personal belief. (Berns criticizes in this connection the Amish school decision, *Yoder v. Wisconsin* [1972], and conscientious objector decisions such as *Welsh v. U.S.* [1970].)

Similarly, Berns demonstrates that the Founders never regarded the right of free speech as unlimited. They did not, for example, believe that the right of free speech extended to those attacking the self-evident truths of the Declaration of Independence. In his elaborate discussion of the controversy over the Alien and Sedition Acts in 1798, Berns shows that even the Jeffersonians did not oppose, in principle, the suppression of seditious or anti-republican speech. Nor did the Founders ever imagine that obscene or indecent speech, or abusive forms of expression, were entitled to constitutional protection. They understood free speech as a necessary element in the process of self-government, but for this very reason they did not believe that speech threatening to public morals or to orderly discussion should ever be immune to governmental restraints.

Berns does not argue for extensive censorship. In his view, the First Amendment must be understood as protecting all forms of political speech, so long as they are expressed in decent language. He insists, however, that it should not prohibit the government from penalizing or restraining anti-democratic *organizations* (like the Communist Party), whether they now pose a serious threat or not. Likewise he argues that the government should be allowed to restrain indecent or abusive forms of expression, whether they are likely to provoke violent response (in effect, the Court's present test) or not. Berns acknowledges that governmental authorities must act with prudence in these areas, as in the suppression of pornography, an action he strongly favors. In the end, he is willing to rely on the case-by-case judgment of the courts to see that the lines of prohibition are fairly drawn.

In the same way, Berns would presumably rely on the judgment of courts to see that his narrower interpretation of the "non-establishment" clause is not squeezed into insignificance. For he does place a heavier burden on the courts in this area when he argues that the promotion of religion in general (i.e., on a nonsectarian basis) is a legitimate end for governmental action, because it has a *secular* purpose—promoting the moral restraints inculcated by religion. It is easy to imagine how this new principle might be abused in states or localities dominated by only one or two sects and as easy to imagine how it might become a source of emotional community conflict. In general, it is somewhat curious how much Berns would rely on the judgment of the courts, given his very dim view of some of the judgments they have recently displayed. But perhaps he thinks the prevailing secularist and libertarian biases of the judiciary would render his own interpretations of the First Amendment safe in their hands.

Overall Berns does make a persuasive case for his narrower—and, as he demonstrates, more traditional—approach to the

First Amendment. With respect to the particular Court decisions he singles out for discussion in this book, his criticisms also seems to me, in almost every instance, quite well taken. But one cannot help feeling that the book *is* somewhat marred by its excessively polemical tone.

Thus Berns tells us that "it is no longer respectable for academics and 'intellectuals' to say" that Communist Party membership is incompatible with American citizenship "because it is no longer respectable in the law of the Constitution." At another point: "...vulgarities expressed publicly...have become an accepted mode of discourse. We have been taught by the law that they are not illegitimate and the legitimacy follows as a matter of course." And in like fashion, Berns suggests that the Court's "wall of separation" approach to the "non-establishment" clause is not only wrong in principle (certainly a plausible enough argument) but has somehow been a very significant factor in the decline of religion; this, notwithstanding the rather flexible application of the "wall" metaphor which has allowed the Court to sanction tax exemptions for church property and a variety of indirect financial aids (though, of course, not all that have been attempted) to religious institutions. Still Berns concludes that "the cultivation of those virtues [decency and self-restraint] is not readily accomplished in a liberal democracy and *it cannot even be attempted* [emphasis supplied] until the Supreme Court is persuaded to forego its doctrinaire attachment to 'freedom of expression' and to complete separation of church and state."

Berns is persuasive when he argues that the law acts by influencing opinion as much as by coercing conduct, but I doubt that many fair-minded observers will attribute *this* much influence to decisions of the Supreme Court. Yes, the decline of religion is a disturbing phenomenon for friends of liberal democracy and yes, the much celebrated revolution in sexual mores has some disturbing political implications. Yes, the vulgarity and at times the abusiveness of public discourse is cause for concern and yes, so too is the greater tolerance sometimes accorded extremist groups in the past decade. It should be said at once that Berns is not simply displaying crankiness or rigidity in warning about these trends; indeed he speaks quite soberly and sensitively about the dangers they each pose for the health of our democracy. But it is one thing to criticize the Court for closing its eyes to these trends and another to suggest that the Court somehow is complicit in them. The root causes, as Prof. Berns himself well knows, run much deeper. In fact, almost all these alarming trends of the late '60s seem to have lost ground in recent years and the social atmosphere is perhaps now healthier, the prospects for American democracy now brighter than for some time past. On the other hand, the Supreme Court in recent years has also thought the better of some of its earlier, more extreme First Amendment decisions (as it did in redefining the scope of First Amendment protection for pornography in 1973); yet I doubt whether Prof. Berns would give (and I doubt more strongly whether he would be right to give) the Court, itself, much credit for the improvement in the nation's political climate.

In the end, it is perhaps best to admit that we do not know what law governs the spiritual resiliency of nations. And if one is to deal in extreme formulations, there is probably less validity in some of Berns' bitter charges than in the oft-quoted dictum of Judge Learned Hand, who thought he knew at least "that a society so riven that the spirit of moderation is gone, no court *can* save; that a society where that spirit flourishes, no court *need* save; that in a society which evades its responsibility by thrusting upon courts the nurture of that spirit, that spirit in the end will perish." But between the extremes, Berns argues persuasively that the courts need not provide the unhealthier trends in our society with a further push from the bench. Or at the least, he demonstrates that the courts cannot claim to be bound by the historical meaning of the First Amendment when they do so. □

BOOK REVIEW

Mauve Gloves & Madmen, Clutter & Vine
Tom Wolfe / Farrar, Straus and Giroux / $8.95

John R. Coyne, Jr.

You can't summarize Tom Wolfe. Summaries can't adequately deal with style, and when you attempt to peel the style from a Wolfe piece, you take with it great swaths of substance. In most of Wolfe's writing, in fact, style *is* substance. People are what they say and how they say it, what they wear, what they surround themselves with, how they act.

A few samplings. First, "Funky Chic," something that "was flying through London like an infected bat" in 1969:

"So it happened that one night in a club called Arethusa, a favorite spot of the London *bon ton*, I witnessed the following: A man comes running into the Gents and squares off in front of a mirror, removes his tie and stuffs it into a pocket of his leather coat, jerks open the top four buttons of his shirt, shoves his fingers in under the hair on the top of his head and starts thrashing and tousling it into a ferocious disarray, steps back and appraises the results, turns his head this way and that, pulls his shirt open a little wider to let the hair on his chest sprout out, and then, seeing that everything is just so, heads in toward the dining room for the main course."

A year later, "Funky Chic came skipping into the United States...in the form of such marvelous figures as the Debutante in Blue Jeans. She was to be found on the fashion pages in every city of any size in the country. There she is in the photograph... wearing her blue jeans and her blue work shirt, open to the sternum, with her long pre-Raphaelite hair parted on the top of the skull, uncoiffed but recently washed and blown dry with a Continental pro-style dryer (the word-of-mouth that year said the Continental gave her more 'body')...and she is telling her interviewer:

" 'We're not having any "coming-out balls" this year or any "deb parties" or any of that...We're tired of cotillions and hunt cups and smart weekends. You want to know what I did last weekend? I spent last weekend at the day-care center, looking after the most beautiful black children...and *learning* from them.' "

In "The Intelligent Coed's Guide to America," Wolfe lists the criteria necessary for certification as an intellectual in the late sixties, when pride in status had replaced pride in function:

"...by the 1960's it was no longer necessary to produce literature, scholarship, or art—or even to be involved in such matters, except as a consumer—in order to qualify as an intellectual. It was only necessary to live *la vie intellectuelle*. A little brown bread in the bread box, a lapsed pledge card to CORE, a stereo and a record rack full of Coltrane and all the Beatles albums from *Revolver* on, white walls, a huge *Dracaena marginata* plant, which is there because all the furniture is

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John R. Coyne, Jr., an associate of The Alternative, is author of The Kumquat Statement.