

THE NEW CENSORSHIP

A hundred years from now the people of the 21st century will look back with bewilderment at the Supreme Court's 1973 decision on obscenity. How a nation of "civilized," "sophisticated," "freedom-loving" people could sit back calmly and accept—and in some cases welcome—this exercise in verbal gymnastics will appear beyond belief.

There are several levels on which the Court's decision can be criticized. The obvious moral objection is that the State has no business telling people what they may or may not read or see. The ostensible legal implementation of this principle is the First Amendment's guarantee of free speech and press. The First Amendment is quite explicit on this point; it says that Congress *shall make no law* abridging the freedom of speech or of the press. Justice Douglas has affirmed repeatedly that when the Constitution says "no law," it means no law, not "no laws except those prohibiting pornographic printing."

But it is not just this moral/legal aspect of the subject that our descendants will marvel at. What will most amuse and dismay the civilized and humane citizens of 2073 will be the seriousness with which scholars, lawyers, and commentators treated the concept of "obscenity." One might think that our modern, secular society would no more widely accept such a patently religious concept than it would accept the idea of witches, or the devil. Yet even the sophisticates among us appear to nod knowingly when a work is called "obscene," as if, like Barry Goldwater and Earl Warren, they "can't define it but know it when they see it."

Yet is there really a general, objective concept of obscenity? WEBSTER'S COLLEGIATE DICTIONARY (admittedly no authority, but sufficiently representative of current usage) defines "obscene" to mean "abhorrent to morality or virtue, specifically: designed to incite to lust or depravity." (But whose morality are we legislating and with what claim to universality?) The same source defines "lust" as "intense sexual desire," or as lasciviousness, a further exploration of which leads to such terms as unchaste, licentious, salacious, and lecherous. The only reality underlying all of this verbiage is sexual desire or sexual activity, sometimes modi-

fied by such terms as "inordinate" (by whose measure?) or "in disregard of legal or moral restraints" (whose restraints?). Depravity, the other aspect of "obscene," is defined in terms of perversion—"aberrant" sexual practice. In other words, judging at least by the dictionary's reflection of current American usage, "obscenity" is material designed to incite sexual desire, which desire runs counter to a particular puritanical moral code.

This interpretation is fully supported by Chief Justice Warren Burger's pronouncements in *Miller v. California*, one of the 1973 obscenity cases. In limiting the scope of acceptable state censorship laws, Burger said they "must be carefully limited" to prohibiting only the depiction of sexual conduct that is "patently offensive." What, pray tell, is patently offensive to the good Justice Burger? According to the decision, the material which meets this test is any depiction of "ultimate sexual acts, normal or perverted"! Just why the depiction of love-making, in all its various forms, should offend Mr. Burger is difficult to fathom, unless he holds to a personal religious view that sex is evil and therefore to be hidden.

Yet the defenders of the Court's decision, such as conservative columnist James Kilpatrick, ignore this religious aspect altogether, acting for all the world as if Burger's view of what is "patently offensive" were patently obvious and universal. Kilpatrick thinks that "the movie *DEEP THROAT* is patently offensive in a way that *THE LAST PICTURE SHOW* is not." But on the face of it, why should scenes of fellatio, the main attraction of *DEEP THROAT*, be any more offensive than scenes of kissing in *AS THE WORLD TURNS*? Again, unless Kilpatrick's own religious morality considers fellatio shameful or evil.

Thus, with scarcely a second thought, Americans are accepting the imposition of religious censorship, all the while believing that something universal called "obscenity" really exists. (This is not to deny that there can be a valid use of such a concept as "obscene." Something that is "abhorrent to morality or virtue" could properly be called obscene relative to that particular moral code; the objection here is to the current attempt to parade one particular version of the con-

cept as a universal, without even identifying the moral code it refers to.)

It would be bad enough if the Supreme Court's version of censorship were an isolated instance. But in the last few months the communications media have suffered two significant attacks on freedom of the press. This spring FCC Chairman Dean Burch threatened radio stations with loss of their licenses for broadcasting talk shows in which the participants candidly discussed sexual problems. Due to the FCC's life-and-death power over station ownership, many stations dropped these programs, including the original of the genre, the Los Angeles-based "Feminine Forum" on KGBS. The stations offered a few weak protests, mostly undercut by admissions of guilt over the programs' content.

The crackdown on "topless radio" was only the latest instance of FCC censorship of radio and television. More commonly, the FCC's censorship is implemented by means of the "Fairness Doctrine" under which stations are forced to provide opponents of broadcast material with equal time. Until this July, only radio and television were subjected to this kind of harassment, in direct violation of the First Amendment's guarantee of press freedom. Now the newspapers' turn appears to have come. In July the Florida Supreme Court ruled that *THE MIAMI HERALD* must provide equal space for a rebuttal to political candidates whom the paper had opposed editorially. Thankfully, the *HERALD* is appealing the case to the Supreme Court, but the fact that a state's highest court could rule so boldly against the First Amendment shows how far we've come.

Many years ago Ayn Rand was asked at what point she would advise people to cease cooperating with the system and go on strike, as did the heroes of *ATLAS SHRUGGED*. She replied to the effect that despite economic regulations, political outrages, and assorted forms of government coercion, *as long as freedom of speech and of the press remained inviolate*, one should continue to work within the system. By that criterion, it's beginning to look as if the day of decision is close at hand.

ROBERT POOLE, JR.

reason profile

For a libertarian one of the pleasures of living in Southern California is being able to listen to television or radio editorials and occasionally agreeing with them! The organization responsible for introducing millions of people to the term "libertarian" and for presenting these people with a free-market viewpoint on such matters as private postal and fire departments, the draft, and welfare is Libertarian Alternative, one of those "responsible groups" stations invite replies from. An extremely successful and rapidly growing organization, Libertarian Alternative has expanded from its original purpose of only obtaining media time for airing libertarian views and now also serves as a libertarian social organization and forum. Libertarian Alternative is the brainchild of Charles Barr, who has been chairman of the Los Angeles group since its inception.

Born 30 years ago in New York, Mr. Barr received his B.A. degree in history from the University of Georgia. He worked as a newspaper reporter and photographer during college and after coming to Cali-

fornia he worked as a computer operator for I.B.M. He is currently a computer programmer for Metromedia in Los Angeles.

Mr. Barr got turned on to libertarianism by reading *ATLAS SHRUGGED* in 1962 and he continues to be an advocate of Ayn Rand's philosophy, Objectivism. From 1969 to 1971 he published *FOCUS*, a newsletter listing libertarian activities in the Southern California area. He helped found Libertarian Alternative in 1971, is a Charter Member of the Libertarian Party of California, and an Associate Director of the National Committee to Legalize Gold (last Fall, at a press conference, he publicly displayed a 1967 \$20 Canadian gold coin he owns in the hopes of being arrested and thus forcing a court case on the right of U.S. citizens to own gold. Treasury agents were present but failed to rise to the bait). Mr. Barr has contributed articles to *INVICTUS*, *THE INDIVIDUALIST*, and *REASON*, and is currently *REASON*'s movie columnist.

A bachelor, Mr. Barr's interests and



CHARLES BARR

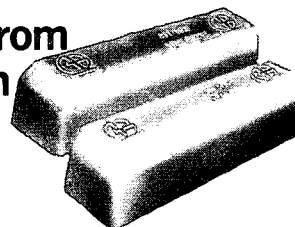
hobbies include movies, the theater (he is a member of a local theater workshop), and chess. He hates exercise and enjoys writing, and is currently learning to write for television. ■

(Book Review continued)

Despite its flaws, *SUPERMAN* is a noteworthy book. If a civilization is to be judged by its aspirations, I find none more praiseworthy than the quest for immortality. Let's fact it, growing old is not fun; being old is not beautiful. Professor Ettinger was one of the first to bring the layman's attention to the incredible possibilities at his doorstep; I join him in his call for more effort, more R&D toward *homo superior*. And despite its shortcomings, I found *MAN INTO SUPERMAN* stimulating and filled with a pro-life, pro-human spirit. The book is roughly analogous to a Koestlerian journal: filled with fascinating ideas, some nonsense, some brilliant. It is hard to forsake a man or a book dedicated to meliorism with a motto of *Never Say Die!* ■

Winston L. Duke received his M.B.A. from Harvard University and has a B.S. in physics and an M.S. in nuclear engineering from Georgia Institute of Technology. He wrote the highly acclaimed lead article on genetic engineering, "The New Biology," in *REASON*'s August 1972 issue.

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