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BOOK REVIEWS

THE SMUT RAKERS: A Report in Depth on Obscenity and Censors. By EDWIN A. ROBERTS, JR., Silver Spring: The National Observer. 1966. Pp. 143. \$2.00.

Obscenity today is an ethical, social, political and economic issue which has brought into focus the tensions in our society's efforts to achieve a balance between moral and secular objectives. Discussions of erotica have moved from the smoking rooms of yesteryear to the dinner table and cocktail hour of today. Americans are troubled about obscenity, and how it can be controlled.

Recently, California was the forum for vigorous debate on an initiative proposal to amend present laws controlling the distribution of obscene material. A so-called anti-obscenity initiative sponsored by Clean, Inc. (California League Enlisting Action Now), Proposition 16 on the November 8, 1966 ballot, was defeated by a substantial majority. That campaign brought home to Californians, and perhaps to the nation, the existence of a problem—the solution of which admits of no easy, simple answers.

The Smut Rakers, by Edwin A. Roberts, Jr., subtitled, *A Report in Depth on Obscenity and the Censors*, published by *The National Observer*, as a "NEWSBOOK," offers a generalized discussion of obscenity. Written without scholarly pretense, and in nonlegal language, this collection of articles will serve as the point of departure for an inquiry into the nature of obscenity and all of its ramifications. After contrasting the state of the law today with the excesses of book burning that occurred during the reign of Anthony Comstock, Roberts succinctly states the case:

Thus, the nation has come a long way from the Comstock era. But the basic problem remains, because most people in a free society do not want their society so free that there are no restraints on panders to the sex urge.

It would be pleasant if an absolute construction of the First Amendment could be supported by logic, because it is always simpler to argue from a black or white position than from some point in the fuzzy in-between. And the in-between in the obscenity controversy is so vexingly fuzzy that the most judicious among us can be tempted into an injudicious position.

The nation that would ban nothing is the nation prepared to see block-long enlargements of French postcards along Broadway, or

smaller obscene poses on roadside billboards. The nation that would ban all candid sex in words and pictures, however, is a nation ready to divorce itself from life. The fuzzy in-between is the only position for a society that has the problem in focus (p. 24).

The eleven chapters in this up-to-date newsbook were written after the March, 1966 decisions of the United States Supreme Court in the now famous cases of *Ginzburg v. United States*¹ and *Mishkin v. State of New York*.² Starting with legal definitions, the author accurately sets forth the rules of the *Roth v. United States* and *Alberts v. State of California*³ cases decided in 1957, with refinements from the later cases up to *Ginzburg*:

In reviewing questionable material, a court must consider "whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole" appeals to "prurient interest." This test was later amplified to make those "community standards" national in character, so that a publisher would not be jeopardized by the strict "standards" of a particularly conservative community.

In succeeding years, too, the *Roth* test was expanded to include "patent offensiveness." Thus, the *Roth* test stands on three legs: To be obscene, material must be patently offensive, utterly without redeeming social importance, and the dominant theme of it must appeal to prurient interest (p. 15).

*Ginzburg*⁴ and *Mishkin*⁵ expand the amplified *Roth-Alberts*⁶ test, giving prosecutors new tools for the enforcement of obscenity statutes. To the definitional concept of obscenity is now added a so-called contextual approach which enables the courts to view the conduct of the defendant, in promoting the publication, as probative of the nature of the material. Exploitation of erotica, solely for the sake of its prurient appeal constitutes pandering; hence, the defendant's actions may themselves be sufficient to move material not otherwise obscene into the area of proscription.

The author traces the law on obscenity from its English origins down through the most recent United States Supreme Court pronouncements in such a clear, narrative style that the general reader, without legal training, should be able to grasp the difficult abstractions in this area. Both the student and counsellor will profit from

¹ *Ginzburg v. United States*, 383 U.S. 463 (1966).

² *Mishkin v. State of New York*, 383 U.S. 502 (1966).

³ *Roth v. United States*, *Alberts v. State of California*, 354 U.S. 476 (1957).

⁴ 383 U.S. 463 (1966).

⁵ 383 U.S. 502 (1966).

⁶ 354 U.S. 476 (1957).

the clarity of the text, even though the author's gloss necessarily obscures the intricacies of the law.

Preoccupation with written obscenity ought not to blind us to pictorial attacks upon the community's sense of ordered morality. For example, nudist magazines have undergone an interesting transformation since the 1958 *Sunshine Book Co. v. Summerfield*⁷ case, wherein the Supreme Court inferentially held that the portrayal of the human body without adornment was not obscene per se. Official publications of various nudist societies showing families happily cavorting in the buff, amongst the lilies of the field, are not prosecutable. But, under the umbrella of court-created immunity, there now flourishes a rank growth of nudist magazines featuring artfully-posed, professional models whose lubricious charms are portrayed in alluring, unretouched detail. In *The Smut Rakers*, Roberts describes the production of these magazines, complete with interviews of the models. Prior to *Ginzburg* and *Mishkin*, this breed of magazine generally was beyond the reach of the prosecutor. Today, however, with the contextual approach, prosecutions of these magazines may well be successful.

"Larger Than Life," the chapter on movies, points up the distinctions between the Hollywood-filmed production, the foreign art movie and the 16-millimeter film strip offered in sidewalk peep shows. This latter category of movies is produced at small cost and returns a handsome profit. In recent months, however, their distribution and exhibition have resulted in a number of arrests, prosecutions and convictions locally and State-wide. The absence of any story line and the dreariness of bumps and grinds performances in themselves demonstrate that the material is "utterly without redeeming social importance."

Of particular interest to all those who read *The Smut Rakers* will be those chapters which deal with Citizens for Decent Literature and other anti-smut groups. One such group, headed by Reverend E. R. Barnes, a minister in the Southern Baptist church and a State assemblyman from San Diego, does not escape the author's attention:

During an interview, Mr. Barnes will anchor a reporter with a 12-inch stack of speeches, news clippings, and pamphlets. This wins for the assemblyman a captive audience because the reporter, so weighted down with documentation, can hardly rise out of the

⁷ *Sunshine Book Co. v. Summerfield*, 355 U.S. 372 (1958), *reversing* 249 F.2d 114 (D.C. Cir. 1957).

chair. Mr. Barnes tops things off by emptying a brief case full of paperback sex novels on top of his desk (p. 32).

The activities of Chaplain Barnes and State Superintendent of Public Instruction Max Rafferty, in opposition to the distribution of a publication of the Thomas Y. Corwell Company entitled *Dictionary of American Slang*, receive particular attention. In 1963, this book became a cause célèbre. From its 20,000 definitions of American slang words from sports, teenage life, show business, crime, and sex, a list of definitions as they appeared in the dictionary was mimeographed and distributed throughout the State:

To strengthen his point, Mr. Barnes had mimeographed and distributed to the press a list of slang-word definitions as they appear in the *Dictionary*. These little compilations had the desired effect—they shocked the recipients. But in fairness to Crowell, it could be argued that when Mr. Barnes made his own choice of slang words and expressions, he was no longer accurately representing the *Dictionary* (the Supreme Court says works must be considered as a whole); he had in fact put together a kind of sub-dictionary that might be far less acceptable to the average man than the original volume with its 20,000 entries on various subjects (p. 32).

Citizens for Decent Literature, perhaps the most prominent anti-smut group, has performed an outstanding service to prosecutors in the United States through compilation and distribution of various publications. One CDL work, *Commentaries on the Law of Obscenity*, presents a careful analysis of court decisions, and has aided the prosecutor who may be new to the complexities in this field of the law. CDL's activities in the education of prosecutors, and its insistence upon working within the framework of due process of law, are a real contribution toward controlling the distribution of objectionable material. However, CDL activities are not limited solely to this area of endeavor. Local youth groups have been organized and work vigorously in giving talks before other groups of youngsters.

The author's description of the 1965 CDL convention, including the emotional oratory of Justice Michael A. Musmanno of the Pennsylvania Supreme Court, belies the calm, reasoned approach of CDL's *Commentaries*.⁸ The author points out that the CDL statistical assertions, utilized to show the effects of pornography, are frequently made up of whole cloth. For example, pornography as being a "\$500,000,000 business." Two of the movies distributed by CDL

⁸ Justice Musmanno is quoted as saying "the pornographic combine is a billion-dollar industry."

allege that the business is worth \$2 billion. However, *The Smut Rakers* points out that:

The "\$2 billion" reference, which is, of course, manifestly preposterous, is so regularly used by the Citizens for Decent Literature and similar groups that we have made some effort to determine its origin. . . . Nobody knows an accurate figure, of course, partly because nobody knows what CDL means to include in its notion of pornography, but a reasonable figure for the broadest definition would perhaps be on the order of \$25,000,000 (p. 116).

Mr. Roberts notes that lighthearted treatment of facts and figures is typical of Citizens for Decent Literature. He remarks that however well meaning most of its members may be, and however moderate and intelligent its leaders, CDL is an organization mired in profound naiveté:

The story of CDL is a story of good intentions, an efficient use of the law, imaginary statistics, repeated inconsistencies, and overheated metaphors. In general, its rambunctiousness is not likely to attract the more thoughtful members of the community. And its use of adolescents to parrot the CDL line is downright disturbing (p. 117).

The Smut Rakers concludes with a brief chapter on "The Ordeal of Geri Turner Davis," the author of a controversial play entitled *A Cat Called Jesus*. The entire sorry episode demonstrates that plays, like books, when touched with a bit of alleged obscenity, receive far more publicity than they deserve.

The Smut Rakers will not be a permanent edition to one's library. The reader may, however, spend a useful hour with it to his enlightenment, and I think, pleasure. At the very least, the book will bring home to the reader a basic understanding of the moral-secular conflict which confronts all thoughtful Americans. Armed with this foundation, the reader may then develop a philosophy that will enable him to weigh ideas which may be hateful or distasteful to him, which he, as a member of a free society, must tolerate. Conclusions in this area may not be stated with logical certainty. Indeed, the area itself, as the author points out, is the "fuzzy in-between." On one side is absolute censorship, and on the other side is complete freedom to publish without restraint. The ultimate control of obscenity rests in the development of healthy, wholesome attitudes toward sex. The family, the church, and the school must play a responsible role in leading youth to this end. The eventual control must contemplate

the enactment of legislation controlling the distribution of harmful material to minors while recognizing that the right of adults to read may not be proscribed, except for material which is utterly without redeeming social importance. I am persuaded that these approaches will lead us toward meaningful control of obscenity within the framework of due process of law.

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