

CENSORSHIP, sen'sar-ship, in the narrow and original sense of the term, is a system under which official censors must give permission before communications of a specified type can lawfully be made. Such *preventive* censorship may be applied to books, newspapers, and other writings intended for circulation to the public; to movies and stage plays; to private letters flowing through controllable channels, such as correspondence with prisoners and with soldiers in combat zones; and indeed to any communication of a type that, as a matter of practical administration, can be subjected to official scrutiny before completion.

Preventive censorship is not the only way to restrict communication. Specified types of publication such as obscene material and attacks on racial or religious groups, which are deemed by the lawmakers to be contrary to the public interest, may be made criminal. Or they may be barred from government-controlled facilities such as public libraries and the mails. Books and magazines may be subjected to boycott by private organizations, which circulate lists of disapproved publications and urge nonpatronization of merchants who sell them. Such systematic limitations on the individual's access to information or ideas are also, in current parlance, frequently referred to as censorship; and that usage will be followed here, the narrower term "preventive censorship" being applied as indicated above.

Preventive censorship, by definition, can only be imposed by law. It is adopted when the government believes the public interest requires not only discouragement but also complete suppression of information or ideas thought to be dangerous. Its widespread use began shortly after the advent of the printing press in the 15th century opened the way to mass communication. At the time, government by consent of the governed was unknown, and the security and authority of both church and state could be seriously threatened by mobilization of demands for redress of grievances and by propagation of seditious or heretical doubts about the legitimacy of secular or ecclesiastical power. Preventive censorship of all printing therefore became common, and it has endured to the present day, supplemented by similar control of movies, radio, and television as those media appeared, in countries that do not practice full self-government.

Censorship in the broad sense exists to some extent in all parts of the world. In Western democracies relatively few restraints are imposed, particularly by means of preventive censorship. The same is true in India. In the Soviet Union and other European Communist states, on the other hand, governments exercise strict preventive censorship of the press and apply a variety of controls on the work of poets, novelists, and other nonjournalistic writers. As most of these governments control the news media, official disapproval of any item results in automatic suppression. Where private newspapers are tolerated, they are closely supervised by ministries of information. In China and Cuba the press is frankly regarded as an instrument of government.

Somewhat milder, but nevertheless strict, controls are found elsewhere. In Spain, for example, where preventive censorship has been abolished by law, the press is required to print all information distributed by the government without reporting its origin. All Spanish journalists are trained in state-operated schools, and official

rules for their conduct are enforced by a jury of professional ethics directed by the ministry of information. In Pakistan all incoming wire service reports are routed through the information ministry and are subject to automatic censorship.

In many African nations government monopoly is a result of the general economic stringency that makes private financing of news media impossible. Countries that have inherited British traditions tend to show greater respect for the concept of press freedom, but even they exhibit great official sensitivity to criticism. Their governments do not hesitate to manage the press to the extent that political turbulence or other public exigency appears to demand. Politically centralized states such as Algeria and the United Arab Republic control the press either directly or through the dominant political party. South Africa and Rhodesia have private newspapers but exercise the power to ban those that strongly oppose government policy.

JUDICIAL CONTROL OF CENSORSHIP IN THE UNITED STATES

Censorship in the United States and legal restrictions on it developed against a background of previous British practice.

British Background. The evolution of self-government in England through the gradual strengthening of the House of Commons was accompanied by increasing opposition to preventive censorship. In 1644, John Milton attacked such censorship eloquently in *Areopagitica*, a plea for repeal of the Licensing Act of 1643, which forbade the printing or sale of any book without prior official approval. This act survived Milton's assault, but growing resistance to it interrupted its effectiveness until it finally expired in 1695. That date has been said to mark the definite establishment of freedom of the press in England.

Abolition of preventive censorship of printed matter was clearly a great gain for freedom in England, for the conservatism of the official censor had shown itself to be intrinsic. As Milton pointed out, even if a censor is intelligent and broadminded (and it is hard to get such a man to undertake the unpleasant job) it is safer for him to resolve his doubts by ruling against publication. The very fact that he has power to suppress information makes him vulnerable to the inference that failure to do so implies approval—even though the inference is wholly unfair. On the other hand, a suppressed document will not ordinarily come to the attention of those who would object to its suppression, and if it does, the censor can smother objections.

Expiration of the English Licensing Act did not terminate censorship in the broader sense. As late as 1769, Blackstone wrote in his *Commentaries on the Law of England*: "The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no *previous* restraints upon publication, and not in freedom from censure for criminal matter when published." Even preventive censorship was not completely abolished. No play, for instance, could be put on in public without the prior permission of the Lord Chamberlain. Only in 1966, when the Lord Chamberlain suggested that his censorship duties were no longer appropriate, did a joint committee of the Lords and Commons weigh the problem and unanimously recommend an end to the theater licensing system.

In Britain, despite the existence of parliamen-

tary power to impose censorship, a strong tradition against it has resulted in very broad freedom of expression in point of fact. In the United States a similar tradition, reinforced by constitutional guarantees administered by the courts, enables any individual to question the legal validity of official restraints on expression.

The Supreme Court and Free Expression. The 1st Amendment to the Constitution forbids Congress to abridge "the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." The Supreme Court has held that these provisions are made binding on the state and local governments by the due process clause of the 14th Amendment. In a series of decisions beginning in 1927 with *Fiske v. Kansas*, the court interpreted the constitutional guarantees so broadly that freedom of expression probably enjoys more solid legal protection in the United States than anywhere else.

The key idea underlying the court's decisions is that freedom of expression is not merely a personal liberty but is an essential part of the mechanism of government by the people. Their right to vote is not enough by itself to give them effective control of official actions and policies. They must also be able to take part in the formation of public opinion by engaging in vigorous and wide-ranging debate on controversial matters. The political processes whereby new officials are elected to replace old ones and changes in the law are made in response to public demand would not function if the incumbent government could enact and enforce laws stifling criticism of itself. And, should that happen, faith in the justice of the laws and the honesty and competence of government personnel would be so greatly impaired that general civil disobedience and even revolution might ensue. Censorship that hinders peaceable opposition to the government in the short run creates the long-run danger of violent opposition. The Supreme Court, therefore, recognizes that restraints on expression impinge on the broad public interest in preserving an open society.

Justices Oliver Wendell Holmes and Louis D. Brandeis were the first members of the court to articulate this conception of the public value of free expression. In *Abrams v. United States* (1919), Justice Holmes declared it to be "the theory of our constitution" that "the ultimate good desired is better reached by free trade in ideas." This was the first of a series of great dissenting opinions that progressively expounded the connection between freedom of expression and an open society. Justice Brandeis, in a minority opinion in *Whitney v. California* (1927), declared: "Those who won our independence . . . knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones."

Justice Holmes and Brandeis did not maintain, however, that there can be no legal restraints on expression. Their view was that it should be suppressed only in the rare situations where there is a "clear and present danger" that it will lead to serious public harm too rapidly for its harmful

tendency to be dispelled by the "fitting remedy" of further discussion. (The classic illustration is a false cry of "Fire!" in a crowded theater to create a panic.) This clear and present danger test was later adopted by the whole court and has been applied (with some variation to fit special circumstances) in a wide variety of cases involving words which, though not harmful in themselves—as is a libel that destroys personal reputation—are feared because of their tendency to induce illegal conduct. The court has also embraced the underlying Holmes-Brandeis philosophy that public harm can and usually will result from censorship.

Moreover, the court has assumed a special responsibility for protection of the 1st Amendment freedoms. Embracing this idea, it has limited censorship to cases of strong necessity, and even there the court has held its scope to a minimum.

The Mass Media. In *Near v. Minnesota* (1931), the Supreme Court held invalid a state statute that provided for injunction of continued publication of any "malicious, scandalous, and defamatory newspaper, magazine, or other periodical," unless "published with good motives and for justifiable ends." The newspaper that was the object of the legislation had published a series of highly intemperate accusations of corruption in the city administration. The court held that although libelous statements might be punished, suppression of the newspaper was unconstitutional censorship. Newspapers have also been held to be immune from taxation designed to limit their circulation. In *Grosjean v. American Press Co.* (1936), a 2% gross receipts tax on publications having a weekly circulation exceeding 20,000 was struck down as an abridgment of press freedom.

The "Pentagon Papers" case, *New York Times v. United States* (1971) reaffirmed the Supreme Court's reluctance to approve the use of injunctions to suppress publication of politically controversial material. The government sought to prevent newspapers from publishing a large number of secret documents concerning the early years of the Vietnam War, copies of which had been unlawfully released to the newspapers. Most of the justices (a) agreed with the government's contention that the public interest would be damaged if certain of the documents were published; (b) held open the possibility that criminal penalties might be imposed, not only for the initial release but also for the later publication; and (c) recognized that suppression would be justified in more urgent circumstances, such as keeping secret the sailing dates of military transports in wartime. By a vote of 6 to 3, however, the court held that the First Amendment prevented suppression of the documents in question.

In radio and television the same full freedom from government control is precluded because the number of broadcasting channels is limited. Some governmental regulation is required, and in the United States it takes the form of licensing by the Federal Communications Commission (FCC), established by statute in 1934. Although the FCC statute specifically forbids censorship, the commission does have the duty, in considering renewal of each 3-year operating license, to evaluate a station's overall performance to determine whether better service to the public might be rendered by a competing applicant. Be-

cause such evaluation may include a review of program content, anticipation of review doubtless has a restraining influence on broadcasters. On the other hand, the commission follows a conscious policy of promoting public access to different viewpoints through its "fairness doctrine," which calls for presentation of contrasting positions on controversial issues of public importance, and by limiting the merger of stations, or of stations and newspapers, into a single ownership.

The licensing system results in materially greater freedom than the alternative system of government monopoly that has been employed in many other countries. Where all broadcasting facilities are owned by the government, full preventive censorship is automatic, though it may be very liberally applied in practice, as it was by the British Broadcasting Corporation (a government agency that held a monopoly until the Television Act of 1954 provided for the licensing of broadcasters by the Independent Television Authority).

The moving picture is the only mass medium that may be subjected to preventive censorship in the United States. Some years after movies made their appearance, the Supreme Court ruled, in *Mutual Film Corp. v. Ohio Industrial Comm.* (1915), that they were predominantly commercial entertainments rather than political expressions and therefore were excluded from 1st Amendment guarantees. State and local censorship agencies were established in many places with power to suppress films or order deletions from them before exhibition. The usual conservatism that characterizes preventive censorship was aggravated in many cases by the makeup of the censorship boards. In Chicago, for instance, the board was for a time composed of widows of policemen.

The Supreme Court subsequently rejected the distinction between "the informing and the entertaining." In 1948 it declared in *Winters v. New York*, a case involving crime literature: "What is one man's amusement teaches another's doctrine." Later the same year, by way of dictum in *United States v. Paramount Pictures*, it said: "We have no doubt that moving pictures, like newspapers and radio, are included in the press whose freedom is guaranteed by the 1st Amendment." In *Burstyn v. Wilson* (1952) it set aside a particular censorship order as unconstitutional, and thereafter it intervened against a number of such orders. Under the impact of these and other rulings in 1973 and 1974, preventive censorship of movies withered. In 1981 the last state movie-censorship agency in the nation ceased functioning when the Maryland legislature refused to continue funding it.

Individual Expression. Constitutional protection is not limited to the mass media. It extends to individuals and groups who, through lack of easy access to newspapers, magazines, radio, and television, must express their viewpoints primarily through pamphlets, handbills, loudspeaker trucks, street-corner speeches, and parades or other public demonstrations. Religious sects (particularly Jehovah's Witnesses) and organizations protesting racial discrimination have often employed these methods. Such activities are typically subject to a wide variety of local regulations, designed primarily to preserve the streets for traffic and the parks for recreation but susceptible to use to prevent the dissemination of unpopular ideas.

The Supreme Court has intervened repeatedly

to prevent the use of these regulations for censorship purposes. In a case involving pamphlet distribution by Jehovah's Witnesses within a city, it has held that such distribution cannot be subjected to licensing by an official such as the city manager if licenses are to be issued or denied at the uncontrolled discretion of the official. The same ruling was made on a New York City ordinance for the licensing of public worship meetings in the streets, where a license had been denied to a person who had previously engaged in "scurrilous attacks on Catholics and Jews."

In 1948 the court held invalid a city ordinance prohibiting the use of loudspeakers without permission of the police chief. But the following year a general municipal prohibition against sound trucks was upheld as a noise control measure, the censorship element being absent because there was no licensing provision enabling a city official to pick and choose among applicants for licenses.

Censorship is not involved in ordinary regulations governing use of the streets and other public places. Thus the courts will not interfere with enforcement of a law that regulates the time and place of parades if the law's intent is only to protect the flow of traffic. But such a law is invalid if, by selective prosecution or other discriminatory administration, it is used as an instrument of censorship. The littering of streets is also a matter of legitimate public concern and can be prohibited; but the Supreme Court has held that because of the great importance of allowing free expression, handbill distribution may not be prohibited in order to prevent littering by persons who receive the handbills and throw them away.

Organizational Activity. The constitutional policy against censorship has also been extended in another way. In the United States, one of the major modes of participating in public controversy is through support of private organizations that seek to influence public opinion and governmental action. The proliferation of such organizations is a notable aspect of American life. Some concentrate on a specific field, such as birth control; some deal with problems such as racial discrimination or world peace, which have wider ramifications; and some are broad-spectrum organizations, such as political parties, which cover the whole range of social and economic issues. These organizations provide a medium for opinion expression by the many people who lack the time or the knowledge or the courage to speak or write themselves. By donating money they finance the operations of the organization's spokesmen, who share their values and objectives and who in effect serve as their delegates.

Some of these organizations have been frequent targets of censorship efforts because they provide attractive channels for the expression of unpopular viewpoints on highly charged issues. The customary anonymity of rank and file supporters provides shelter against such reprisals as discharge from employment, eviction from homes, withdrawal of credit, and verbal or physical attack.

Constitutional guarantees against such censorship have come into play on two levels. One level concerns the question of whether the organization as such or its leaders may be punished for words without deeds—that is, for advocacy of unlawful acts such as revolution or sabotage to achieve the organizational objectives. It is well

settled that any objectives whatever, no matter how extreme and radical a change of the existing order they involve, may lawfully be advocated so long as illegal methods are not urged. The doctrine was upheld in *Fiske v. Kansas* (1927) in respect to advocacy of state socialism, and in *Stromberg v. California* (1931) regarding display of a red flag as a symbol of opposition to organized government. When illegal methods are advocated, however, the clear and present danger rule is applied. In *Dennis v. United States* (1951), the Supreme Court thus upheld the convictions of 11 persons who reorganized the Communist party of the United States after World War II, on evidence that they had conspired to promote revolution, in violation of the Smith Act (1940). In the context of the Cold War, which created an appreciable possibility that a revolt might be supported by the great military power of the USSR, the clear and present danger test was deemed satisfied even though immediate revolution was not shown to be contemplated. Relaxation of the usual immediacy requirement was held justified by the gravity of the danger, the secrecy of the party's activities, and its rigid discipline over its members. But the convictions of 14 second-string party leaders, based on a finding that they had conspired to advocate revolution "as an abstract doctrine," were set aside in *Yates v. United States* (1957). In 1961 the court upheld the Subversive Activities Control Act of 1950, which in effect outlawed the party itself as a foreign-controlled revolutionary organization.

The second level of constitutional protection concerns the question of whether the government may weaken opinion organizations by discouraging people from supporting them. Official attacks have usually taken that indirect form because of the difficulty of satisfying the clear and present danger rule in proceedings against the organizations themselves. Most of the litigation involving censorship problems in this area has arisen from legislative investigations leading to (a) public identification of individuals connected with organizations thought to be subversive and (b) compilation and publication of lists of such organizations. Federal and state legislative committees, particularly the House Committee on Internal Security (formerly the House Committee on Un-American Activities), have engaged in both operations. Since 1948 the attorney general has published lists of subversive organizations. Some states have compelled disclosure of membership in secret oath-bound organizations, such as the Ku Klux Klan. In the deep South many official investigations have aimed at identifying supporters of such civil rights groups as the National Association for the Advancement of Colored People.

The Supreme Court has repeatedly been asked to hold that legislative investigations conducted for the purpose of exposing and thereby discouraging membership are unconstitutional abridgments of freedom of expression. In the field of subversive activities, the court declared in *Watkins v. United States* (1957) that investigation for the sole purpose of exposure (and not for the usual purpose of learning the need for proposed legislation) is beyond the constitutional competence of the legislature. But it also held, in *Barenblatt v. United States* (1959), that the motivation of Congress and its committees is not a proper subject of judicial inquiry, and it therefore refused to excuse witnesses from answering

questions about Communist party membership on the broad ground that the exposure purpose of the investigation rendered it unlawful. Even so, witnesses were accorded substantial protection. Through restrictive interpretation the court reversed all but a few of the contempt convictions arising out of refusal to answer committee questions on 1st Amendment grounds; and it upheld the refusal of witnesses who claimed their privilege against self-incrimination under the 5th Amendment.

Sharper limits have been imposed on local investigations of civil rights organizations. In 1958, in *NAACP v. Alabama* and *Bates v. Little Rock*, the court denied the right of officials to demand NAACP membership and contributor lists, declaring that there is a "close nexus" between freedom of speech and associational privacy. Even where NAACP lists were demanded as an aid to investigate possible Communist infiltration into that organization, the court (observing that the NAACP is a "wholly legitimate organization") held the demand unlawful in *Gibson v. Florida Legislative Investigation Committee* (1963).

Libel. For a long time it was thought that no problems of censorship were presented by laws protecting individuals from words damaging their reputations. Enforcement of criminal libel laws and the award of damages for false and defamatory utterances did not seem to involve the danger of suppressing public discussion of controversial issues.

In the ordinary defamation case this is still true. But in 1964 the Supreme Court found the evils of censorship to exist in the award of damages for innocent but erroneous charges of misconduct by public officials. The *New York Times* had carried a paid advertisement complaining of wrongful repression of Negro protest by the police of Montgomery, Ala., in the bitter racial struggles of 1960. The police chief, on proof that a few out of a long list of factual charges were inaccurate, obtained a \$500,000 damage judgment. The Supreme Court set it aside in *New York Times v. Sullivan*, holding that contrary to the usual rule in libel cases, a charge of official misconduct is not actionable unless made "with knowledge that it was false or with reckless disregard of whether it was false or not." The decision was compelled by the danger that the press might otherwise be deterred from quick and full coverage of controversial issues and cease to function as a watchdog against misgovernment. In 1967 the same rule was extended in *Associated Press v. Walker* to statements about private persons participating in public controversy.

A special problem is raised by group libel statutes, which penalize attacks on racial and religious groups and thus, unlike the usual libel laws, are not limited to defamation of identifiable individuals. In 1952, in *Beauharnais v. Illinois*, the Supreme Court upheld a state group libel statute over a vigorous dissent which called it "expansive state censorship." Inasmuch as hostility to minority groups does hamper the just operation of a democratic system based on majority rule, there is a public interest in minimizing race hatred. But the question of whether censorship for that purpose is constitutional cannot be considered settled, in view of the more recent decisions such as the *Sullivan* case, which reflect increasing emphasis on the protection of open controversy in all fields including intergroup relations.

Free Press v. Fair Trial. Perhaps the most extreme application of the constitutional policy against censorship has been made in cases involving claims of interference with judicial proceedings. Particularly in jury cases there is a possibility that adjudication will be influenced by mobilization of public opinion on behalf of one of the parties, or by publication of facts, such as the past arrests or convictions of an accused defendant, that are not admissible in court but may affect the jurors. Even in non-jury cases, judges (particularly elected judges) may be affected by criticism.

Although the Supreme Court sets aside convictions infected by widespread publicity against the defendants, as in *Sheppard v. Maxwell* (1966), and recognizes the validity of statutes penalizing courthouse demonstrations, as in *Cox v. Louisiana* (1965), it denies the power to punish, as a contempt of court, criticisms of judicial behavior even in pending cases, as in *Wood v. Georgia* (1962), unless there is clear and present danger of obstructing justice.

Creative Expression. The forms of censorship heretofore considered have related almost exclusively to direct participation in public affairs through statements of fact and opinion. But works of fiction can also convey powerful messages on social problems. The Greek regime that took power by a military coup in the spring of 1967 recognized the dangerous potentialities of the theater by imposing rigid censorship. Such books as *Uncle Tom's Cabin*, *Huckleberry Finn*, *Oliver Twist*, and 1984 have played their part in molding public opinion on slavery, poverty, crime, and authoritarian government. The Holmes-Brandeis philosophy, which relates free expression to preservation of an open society, therefore clearly applies to novels, movies, plays, and art.

Censorship problems have arisen mainly in two areas: books and movies thought to convey an antisocial message; and obscenity.

In the first area the Supreme Court has uncompromisingly held that censorship may not be based on the substantive content of the message. In *Burstyn v. Wilson* (1952) it reversed an order suppressing an Italian film entitled *The Miracle*, which portrayed the Nativity in a manner found by the New York State censorship agency to be sacrilegious and offensive to Roman Catholics. A similar ruling was made on the French film *Lady Chatterley's Lover*, which had been censored on the ground that it glorified sexual immorality. In *Kingsley International Pictures Corp. v. Board of Regents* (1959) the court held there was no clear and present danger that the film would incite the commission of adultery.

In the second area, obscenity, the clear and present danger test has not been applied. Here, censorship efforts are not based on the danger that depiction of sexual acts will incite illicit behavior. (There is grave doubt that it has that effect; respectable authority declares that it usually tends to have the opposite effect because it provides a substitute sexual outlet.) The objection is that the publication itself is harmful.

So far as verbal—as opposed to pictorial—expression is concerned, the Supreme Court has adopted a very liberal test. A book or other publication may not be suppressed as obscene because it may be harmful to such particular groups in the community as adolescents, or because of particular passages (as opposed to the quality of the book as a whole). Rather, "It must

be established that (a) the dominant theme of the material taken as a whole appeals to a prurient interest in sex; (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and (c) the material is utterly without redeeming social value." This test was applied in *Memoirs v. Massachusetts* (1966) to prevent suppression of *Memoirs of a Woman of Pleasure* (commonly known as *Fanny Hill*), written in England by John Cleland about 1750 and banned in numerous countries since then. The book contains explicit descriptions of sexual acts, both normal and abnormal, and the court assumed that it failed to pass the first two branches of the test; but "redeeming social value" was found to exist, on the basis of expert testimony that the book had literary merit and had played a part in the development of the English novel.

It is still possible to censor "hard core" obscenity. On the same day that it decided the *Fanny Hill* case the court, in *Mishkin v. New York*, upheld convictions for selling pulp magazines that depicted sexuality in various deviant forms and that had been found to be of no literary merit. But the court has gone very far to conform obscenity censorship to the modern view that the state should not intervene to protect consenting adults in sexual matters. And in *Stanley v. Georgia* (1969) it was held that a man cannot be punished for keeping a movie film in his own home, for his personal amusement, no matter how obscene it is.

On the other hand, the court has held that even though a book or magazine may not be censorable as obscene by reason of its content, the manner of its sale may be punishable. In *Ginzburg v. United States* (1966), a 5-year prison term was imposed for flamboyant and salacious advertising in the marketing of two periodicals and of a book that, though devoted to sexual matters, would not have been deemed obscene had the defendant not engaged in "the sordid business of pandering."

Material that is unsuitable for children but harmless to adults cannot be suppressed entirely (*Butler v. Michigan*, 1957) but its distribution to children can be forbidden (*Ginsberg v. New York*, 1968).

In the area of pictorial expression, the law is partly unclear. Pictures can bring the observer closer to the sexual act than words, and they have greater capacity to shock. They may also be more susceptible to pandering. Although magazines featuring nudist pictures have been protected against censorship, portrayal of sexual behavior in moving pictures or still photographs may well be vulnerable as constituting a fairly close approach to "peep show" enactment of sexual scenes by living performers. The latter can doubtless be censored as a direct violation of the taboo on public sexual display.

EXTRAJUDICIAL CENSORSHIP

The censorship methods already considered are dependent, in one way or another, on judicial enforcement. For example, a licensing system is backed up by criminal prosecution for unlicensed publication. So courts have been in a position to hold such censorship within the strict limits demanded by the public value of free expression, and, under the Supreme Court's leadership, the limits have become very strict indeed.

The same high standards are not and as a practical matter cannot be enforced where censorship is imposed without the help of courts. Limitation of such censorship depends more on a general tradition of tolerance than on legal safeguards, for the courts can intervene only when someone sues to limit the censors.

Postal and Customs Censorship. When written material flows in volume through a government agency as a matter of routine, censorship can be imposed rather easily. This potentiality was seen by President Washington, who once advocated the free delivery of mail because he feared that imposition of fees would lead to federal control of content; and as Justice Holmes observed in 1922, "Use of the mails is almost as much a part of the right of free speech as the right to use our tongues." Until after the Civil War, postal censorship in the United States was unauthorized by law. In 1835 even Sen. John C. Calhoun of South Carolina opposed a bill to exclude abolitionist propaganda from the mails, declaring that the 1st Amendment would be violated.

In 1865, however, a postal censorship law was enacted. In 1873, largely because of the moralist crusades of Anthony Comstock, the law was broadened and strengthened, particularly for sex literature. Although first-class mail is not subject to inspection, reduced-rate mail such as magazines and newspapers (which have been granted the much lower second-class rates to encourage free circulation of information and opinion, and which in many cases would be financially foreclosed from mass distribution without this indirect subsidy) may be examined by postal employees. If considered obscene, seditious, or otherwise unmailable, the offending publication may be returned to the sender, or, in some cases, destroyed. The federal government also has the power to deny second-class mailing privileges to the publisher, thus affecting future issues as well as past ones, though the Supreme Court has curtailed this practice. Other administrative techniques include informal warning visits to publishers by postal inspectors. (Such visits numbered 9,554 in 1965.) Criminal prosecution is available for all classes of mail but is used only in clear cases, and relatively rarely.

There has been occasional judicial intervention. In *Hannegan v. Esquire, Inc.* (1946) the Supreme Court set aside an order denying second-class rates to a magazine containing material said to be vulgar and risqué though not obscene. The contention that the low rates are only for publications that contribute affirmatively to the public welfare was rejected. In *Lamont v. Postmaster General* (1966) the court terminated the practice of withholding delivery of foreign propaganda (such as mainland China magazines) unless the addressee responded affirmatively to a postcard from the post office, asking if he wished to receive it. But so long as the system remains in effect, a substantial number of lawful publications (works by Freud, Kinsey, Margaret Mead, and even Aristophanes have at one time or another been excluded) will doubtless continue to encounter difficulty.

The U. S. Customs Bureau, in its inspection of all incoming freight and luggage for tax purposes, also engages in censorship of obscene and seditious material by seizing objectionable items. Since 1930, however, the bureau has been required by statute to establish in court the legality of the seizure if the importer challenges it. The

casual tourist does not ordinarily find it worthwhile to engage in such litigation, but the 1930 law has materially benefited commercial importers. A series of decisions upsetting Customs Bureau determinations, highlighted by the 1933 decision of federal district Judge John M. Woolsey, allowing James Joyce's *Ulysses* to be imported, has led to perceptible liberalization of the bureau's standards as compared with those of the Post Office.

Information About the Government. Although the term "censorship" is ordinarily applied only to obstruction of communication between two willing parties, it is also sometimes extended to the withholding of information by the government. No one contends that every public official should work in a fishbowl; the public interest often requires that internal policy discussions, negotiations with foreign governments, and military plans be kept at least temporarily confidential. It is generally agreed, on the other hand, that the government should not conceal its operations for the sole purpose of protecting itself from criticism by the people, whose agent it is. The public's right to know is basic to intelligent opinion and voting, and the government's power over its own officers and employees, enabling it to exercise monopoly control over the release of such information, has sometimes been abused. Because public trials are guaranteed by the Constitution and most legislative proceedings are well publicized, the problem has arisen mainly in the executive branch.

Secrecy of military information is accomplished mainly through the classification process. Documents are classified as "top secret," "secret," "confidential," or "restricted," and are so marked. The classification determines the scope of permissible circulation within the government as well as release to the press. Military censorship in the United States during World War II was accomplished primarily through this system and by censorship of mail and telegrams entering and leaving the country. The press was left legally free to print what it liked, though it ordinarily refrained from publishing items that the government indicated might be harmful. After the war there was increasing complaint against overclassification resulting from the great number of federal employees—estimated at more than a million—empowered to classify, coupled with the customary conservatism of the censor. Congress in 1958 broadened access to public records, and in 1966 a greatly strengthened "right to know" statute sharply reduced the discretionary power of federal officials to withhold information. The statute provides for judicial review and puts the burden of proof on the government. Similar statutes exist in a number of states.

Public Libraries. Libraries must necessarily purchase books on the basis of content, and censorship is said to exist if there is a conscious effort to prevent or restrict the reading of lawful material because of moral, partisan, or doctrinal disapproval. The American Library Association (ALA) has vigorously maintained that librarians have the right and duty to provide full access to all viewpoints on all problems and issues, including such controversial matters as communism and fascism, and to resist outside pressures toward "a coercive concept of Americanism" (*ALA Bill of Rights*, 1948). The ALA has also condemned the practice of labeling materials to indicate that the librarian considers them subversive or other-

wise dangerous, its position being that the presence of a book in a library does not imply endorsement of its contents and that the responsibility of evaluation rests on the reader (ALA *Statement on Labeling*, 1951). Its bimonthly *Newsletter on Intellectual Freedom* publicizes departures from those standards and provides significant moral support to local librarians confronted by community criticism. When conformist pressures became acute in the early 1950's under the stimulus of congressional disloyalty investigations conducted by Senator Joseph R. McCarthy and others, President Eisenhower strongly endorsed the ALA position in a widely publicized letter on intellectual freedom.

Censorship by selective acquisition doubtless exists to some extent, but on the whole it has not crippled library service. A number of libraries, however, have followed the compromise practice of keeping controversial books on a "closed shelf" behind the librarian's desk and making them available only on request. In some places they are lent only to certain classes of readers, such as adults or married persons.

Public School Textbooks. Another quantitatively important censorship possibility exists with respect to textbooks. About half of the annual sales of hard-cover books are made to public agencies or are subject to their approval. Half the states have central textbook commissions, and the others rely on local boards. As in the case of libraries, approval is necessarily based on content, and there are frequent pressures to deviate from the sole standard of educational utility, largely because of the fear that juvenile readers may need special protection against undue candor about sex or political ideas considered wrong and dangerous. Much controversy has also centered on race relations, books thought to place undue emphasis on civil rights, and, elsewhere, books that have been criticized as implying Negro inferiority.

Private Censorship. Though censorship is ordinarily associated with official action, a significant part is played by private organizations that endeavor to suppress particular books and other materials, usually on moral grounds. Insofar as they address themselves directly to the potential reader or moviegoer and condemn the material as unworthy of patronage, they do not engage in censorship. Typically, however, they exert their efforts against distribution channels in order to eliminate the power of individual choice; and this is censorship. Often they seek to induce action on the part of public officials who have censorship powers, such as movie censors, postal and customs authorities, and, particularly librarians and textbook agency personnel. They lobby for stronger obscenity legislation and encourage prosecutions under existing law (which have a strong deterrent effect even when there is an acquittal, because it usually costs a bookdealer more to defend a criminal charge than to discontinue the sale of one or a few challenged books or magazines).

Such organizations have also worked independently of government, through boycott of offending merchants. For example, lists of disapproved books and magazines have been distributed to members of the organization and the public, with a request to make no purchases at all from bookstores, drugstores, or other retailers that sell any item on the list. Such action has often been highly effective.

The historic prototype was the *Index of Prohibited Books*, published by the Roman Catholic Church from 1559 until its discontinuance in 1966, which in its latest revision listed more than 4,000 works forbidden to Catholics as heretical or otherwise sinful. For a time the *Index* was used for preventive censorship in some countries, through laws penalizing publication and sale of any listed work, but even after withdrawal of legal sanctions such works were often avoided by dealers.

In the United States, Anthony Comstock's Society for the Suppression of Vice became prominent in the latter part of the 19th century, as did the New England Watch and Ward Society. The best known modern organizations are the National Organization for Decent Literature, established in 1938 by the Catholic bishops of the United States, and the nondenominational Citizens for Decent Literature, organized in 1956, which has concentrated on appeals for official censorship to prevent sale of sex literature to juveniles.

The courts have sometimes curbed private censorship. In 1926, for example, the New England Watch and Ward Society's attempts to force withdrawal of magazines by threats to prosecute dealers were enjoined as an illegal boycott, in *American Mercury, Inc. v. Chase*. But in a number of communities, private organizations have succeeded in keeping out of retail stores, libraries, and the schools such serious novels as *The Catcher in the Rye*, *Brave New World*, and *The Grapes of Wrath*, and issues of such reputable magazines as *McCall's* and *Reader's Digest*.

Self-Censorship. One form of accommodation to official and private censorship has been the establishment of voluntary standards by industrial associations, with central offices to interpret the rules and monitor violations. The best known of these is the agency created by the American film producers, originally known as the Hays Office and redesignated the Motion Picture Production Code Administration, which reviews films before release and accords its "seal of approval" only to those that satisfy its fairly strict rules on sex, violence, and moral teaching. For some years after 1927, when 17 producers agreed to follow the Hays Office rules, local movie houses generally refused to exhibit films that failed to comply with them. In the 1950's and 1960's, however, the effectiveness of such censorship was weakened by the influx of foreign films, the defection of one major film producer (United Artists), and the producers' loss of control of distribution through application of the antitrust laws. Similar self-censorship efforts have been made by television broadcasters and comic book publishers.

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