

Cover Up the Dirty Parts!

Cover Up the Dirty Parts!
Arts Funding, Fighting,
and the First Amendment

By

Dena Shottenkirk

**CAMBRIDGE
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P U B L I S H I N G

Cover Up the Dirty Parts! Arts Funding, Fighting, and the First Amendment,
by Dena Shottenkirk

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For my beloved Molly, who knows the value of both free speech
and social conscience.

Vacuum

Aquinas head down in a vacuum

Aristotle which way in a vacuum

Sacrum, sacrum, inluminatio coitu

—E.P., CANTO XXXVI

By Jeffrey Yang, 2009

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PREFACE

Books are an odd thing. They require a seemingly unwarranted (to others) commitment, an obsessive focus on the minutiae of the topic, and a willingness to look into every related viewpoint in the attempt to rectify each inconsistent thought. And at the end of that full examination there is the writing—not only bringing one’s thought into verbal form with as much clarity as possible but also giving that verbal form a stylistic structure that doesn’t encourage the reader to cringe. I hope I have done that.

If I haven’t, I unfortunately have no one to blame, but I do have many to thank for their help in both the research and preparation, and though the thanks ought to take the concrete form that inserts into a wallet, this will have to do. Prof. Ruthann Robson kindly allowed me to audit her First Amendment class at Queens College, and I am very grateful. Martha Wilson allowed me to benefit from her insights and experience from the beginning of this project several years ago until the end; more friends like that should exist. Jeffrey Sturges once again was enormously helpful in the graphic elements for this book. And I am always grateful to my students who allow me to learn more from them than, I am sure, they learn from me. My undergraduate philosophy students at Brooklyn College (New York City) shared many discussions with me for which I am indebted to them, and my graduate students in the M.F.A. departments at both the Glasgow School of Art (Glasgow, Scotland) and the University of the Arts (Philadelphia, PA) have helped me to articulate my thoughts and their concerns. I am grateful to them all.

I have written this book both from the point of view of a philosopher and the point of view of a practicing artist. I have tried to bring not only the disciplines of each to bear, but the sensitivities. Philosophy must employ rigor in its explication of the facts, but art tries to capture the inner logic—the motive in the gesticulation. I hope I have at least come close to doing both.

Free speech and artistic expression are two of the most essential components of civilization. So, too, is reasoned argument with one’s opponents and respect in the face of their opposition. If we in the United States as well as the rest of the world are to productively move ahead in our cultural debates and develop a modified version of a culture war, we must value all of these. Otherwise, we will lose the opportunity not only

for truth but for peaceful coexistence as well. This book is intended to contribute to that.

Last but not never least, I want to thank each of my children, Merida, Dodge, and Arliss for their tolerance (once again) during this project, as well as their thoughts, too. Teenagers and young adults are perhaps more attuned to the difficulties presented by censorship issues than often are adults and I am grateful for their views. Arliss Coates was invaluable in the manuscript preparation, as well.

—Dena Shottenkirk, Brooklyn College,
Deputy Chair, Department of Philosophy

CHAPTER ONE

THE CULTURE WAR

1.0 Introduction

Everyone knows about this fight. The forces on the right, claiming to preserve decency, fight the forces on the left, who claim to preserve freedom of expression. It's a long fight—it's not only been going on for a few decades without resolve, it has even gained its own name, "the culture war".

The story is repeated every few years or so: some government representative finds some museum or local institution exhibiting something that someone finds utterly offensive, and demands that government funds are pulled. It doesn't happen only in the publicly famous cases such as Mayor Gulliano's fight with the Brooklyn Museum or Senator Helms' fight with the National Endowment for the Arts (NEA); it also happens routinely in the local sphere, and it happens in many countries all over the world. More recently, in France, the national politician and current head of a regional council, Segolene Royal, threatened to withdraw public funding from a popular music festival because a rapper known for his misogynous lyrics was to perform there. The lyrics are surely outrageous, as they rant against an unfaithful girlfriend with such inventive lines as, "I hate you, I want you to die a slow death. I want you to become pregnant and lose the baby,"¹ Sentiments that manage to be both unimaginative and offensive, they truly are the hallmarks of attitudes that could conceivably encourage hatred of and violence towards women. But surely Jimmy Hendrix's "Hey, Joe" was not less misogynous and there were no reported copy-cat murders of unfaithful girlfriends with the pursued murderer escaping to Mexico. A further look back into history though gives us Goethe's *The Sorrows of Young Werther*, which did supposedly lead susceptible young men to leap into the water with the book in their back pockets; but do we hold Goethe responsible? When do we blame? When do we not fund?

The debate rages and surely untold millions of dollars have been spent on both sides to build support and influence politicians. It is not only the

population of the United States that has been split on these related issues—the conflict is repeated around the globe. Who is right?

The answer is not so easy to arrive at. As in all good investigations, it is vital to look at both sides of the fence though looking from both sides of the fence is an activity too few want to do. One is reminded of President Truman's frustrated comment that he wanted only one-handed advisors, because each time his advisors were giving an opinion about a situation it was then followed by giving the contrary point of view coupled with an "on the other hand" disclaimer. Reader be forewarned: this is not a one-handed book. The truth is often not found completely on either side of the debate. Sometimes truth is subtle and the process of arriving there is more like stumbling over uneven terrain than having a pleasant stroll.

In order to honestly examine the culture wars and try to get some genuine understanding, it is necessary to look at several issues and several examples. Therefore, in an examination of the relationships between funding, censorship, and democracy, I look closely at particular examples where the United States government at least wanted to refuse funding (it sometimes in fact succeeded) and to then look at the issues that arise from that act. The main example I have chosen is Andres Serrano, whose *Piss Christ* helped many people's blood pressure rise, and who, along with Robert Mapplethorpe, caused the late 1980s and early 1990s outcry over the NEA. These are the instances that started the so-called culture war almost two decades ago and it is in this form that the conflict still exists today. This book is an attempt to rationally and completely examine the issues at hand and to finally set to rest the contentions that underlie the debates, not just in their current specific form in the United States, but in general. These are the philosophical issues, which include not only the obvious political concerns around demands for liberty, free speech, and the compromises inherent in social organizations, but the epistemological issues at the heart of art. What is it that we learn from art and why is the presence of culture so often beloved, and a deprivation of it bereaved?

In light of this goal it is helpful to look at a few historical and international examples of censorship and persecution, so that we might get a complete picture of just what government censorship entails. Therefore, I have included a subchapter on Georg Grosz, who was one of the many artists censored by the Nazis, as well as one on Shahrnush Parsipur, the contemporary Iranian writer who has been imprisoned several times in Iran, both under the Shah and under the fundamentalist cleric's regime that has existed since the 1979 revolution. She is also interviewed for the book.

It is necessary to briefly examine in this introduction the arts funding problem as it was initially confronted in the early 1990s. The facts surrounding the Andres Serrano case are fairly simple if melodramatic. He was offered, in 1988, by an organization that received funding from the NEA, to exhibit with a traveling group show and was given a grant of \$15,000. Of this money, one third came from the government's arts funding agency, the National Endowment for the Arts, with the other two thirds coming equally from The Rockefeller Foundation and the Equitable Life Insurance Company. The content of the exhibition came to the attention of Donald Wildmon, who is head of The American Family Association, and then to senators Jesse Helms and Alfonse D'Amato, who both performed scenes worthy of Sarah Bernhardt on the floor of the Senate.

It is clear that certain members of the government did not want to sponsor speech that they deemed unworthy. The issues involved are less simple. Andres Serrano is but one example of more pressing issues: Does the government's refusal to fund certain kinds of art constitute censorship? and What is the role of tolerance in a democracy and how far are we able to go in our tolerance for dissenting positions? These are the immediate questions on which this book is built and they are two very separate questions. The first is essentially legal while the second is, at least initially, social.

Let me give you an analogy that will help in explaining one side of the argument—the one that says the government has no obligation to fund controversial art. If I am a celebrity and I want to hire a ghost writer to author my “auto” biography, am I censoring if I refuse to pay for speech that is outside the parameters of what I want written? If, for example, the writer has long essays on how phobic I am, do I have to pay for it?

Most people would say “no”. I pay the writer to write something so I get to dictate the terms. This is analogous to the line that is essentially taken by Supreme Court Justice Scalia (as well as other conservatives) in censorship/funding cases as they have come before the Supreme Court: the government is the “buyer” of the speech, and if the government doesn't want to buy a particular kind of speech the government doesn't have to pay for it. This is a sophisticated (and judicial) version of “I don't want my taxes going to pay for that crap.” (That relative of mine will remain anonymous.)

The other side of the argument sees the government not in the “buyer” or even the “regulator” model, but in the patron model. The government, on this view, is fulfilling the function of the old-time wealthy patron who, in the ultimate gesture of philanthropic generosity, gave money to worthy

artists so that the rest of the citizenry might have a rewarding and meaningful culture (and, of course, also so that the patron's status—and hence power—was enhanced, but we'll be discreet and ignore that for the moment).

In that role of patron, the government's decisions, according to this line of thinking, must be "viewpoint neutral" in order to accord with the First Amendment. What that means is that the funders don't choose some speech/art over other kinds on the basis of *what* is said; they can only discriminate on the basis of *how well* it is said. It is artistic excellence that counts and not the message conveyed by the art. The government's role is only to stimulate creative activity by rewarding those artists deemed worthy of reward and that cannot be done on the basis of content. This makes excellence separable—in theory and in fact—from content.²

These are the two sides of the fence. But there are many nuances to both sides and the arguments are far from clear. Emotions have run high in most exchanges of this particular "culture war" issue, and a clear-sighted account is long overdue.

At the risk of championing the obvious, I must point out that the issue itself is of paramount importance. Freedom of speech is not only embodied in the First Amendment of the United States Constitution, but in—I would argue—our very instinctual make-up. Demands for liberty are ancient. They are not just part of the American Revolution or the French Revolution or even of Moses' parting of the Red Sea to free his people from slavery. Demands for freedom seem to be almost as old as the human race. Coupled with our need for social groups—and all the restrictions that come with that—we have the contrary need for individual freedom and individual expression. We want to be not only free from physical restraints by others in such institutions as slavery but we also want to be free to speak our minds. It is this latter—freedom of speech—that this book is about, for art is a kind of freedom of speech, even though it is also much more.

Perhaps the importance of our freedom of speech is better understood if we remember that when our thoughts remain in our minds and we are not allowed to express them in action or in speech, then those thoughts remain embryonic and incomplete. To express a thought is to work out the complete thought—to bring the thought to fruition. Not only do ideas not reach full maturation if they are left unexpressed, but they also do not, paradoxically, become fully a part of the speaker's mind. An unexpressed thought is a thought not clearly known by the thinker.

Everyone knows what it is like to say something aloud to someone else that you had only previously thought: suddenly the thought is real and

powerful and the knowledge of that thought becomes a part of the identity of the person speaking, not only new knowledge on the part of the person hearing the speech. In those moments, after we have spoken something that we had never had the courage to speak before, we redefine ourselves to be in accordance with that thought: “I am the person who thinks so-and-so.” In other words, when we express ourselves we not only let others know our thoughts, but we come to know those thoughts as well. Self-expression is self-knowledge. And the essence of being free is the sense that we are free to discover ourselves. We can express ourselves and thereby know ourselves.

So why should you care about free expression? Because you can’t help it. It is not merely some dry part of the U.S. Constitution. It is how we are made. Our need to survive belies our love of feeling alive, and our love of liberty is the penultimate commitment to feeling alive. It’s as simple as that.

Now, do we think that the government should have paid for Andres Serrano’s grant? Well, that is more complicated question. It is always wise to start with the facts. An interview with Serrano is a good beginning.

1.1 Interview with Andres Serrano

AS: They called me back in ’87 or the beginning of ’88, when I was living in the East Village. I got a phone call from these people “Awards in the Visual Arts”.

DS: Where were you living in the East Village?

AS: Tenth Street between Second and Third [avenues].

DS: Hmm, I was on Ninth Street between Second and Third.

AS: Yeah, I was there when all those galleries—like Jay Gorney—came on the block.

DS: I guess we didn’t live in the same place, too, in that neighborhood—that would be too weird. [Serrano and Shottenkirk had lived, at different times, in the same apartment on Gold Street in Brooklyn.]

AS: Yeah, that would be funny. [laughter]

AS: So, initially I get a call from those people from Awards in the Visual Arts telling me that I’d won for that year from Manhattan, and I was incredulous. I said, “Is this the same award that Ross Bleckner got last year?” And they said, “Yeah”. Because, you know, I was an unknown. It really blew me away to have won that award. And that award, you remember, was ten artists from different parts of the country. The

competition was [set up so that] you had to be nominated by one professional who would nominate five different people. And Marcia Tucker from the New Museum had nominated me. So I got that award, and that award, in addition to the money—a \$15,000 grant—also had a traveling exhibition. And so they asked you to submit work for the exhibition and the catalog. And “Piss Christ” was one of the ten slides I sent in and I thought nothing of submitting it as one of the images for the show. And so, the show started at the L.A. County Museum, then to Carnegie Mellon, and the last stop for it was at the Virginia Museum.

DS: There were three stops?

AS: Actually, I think maybe there were four. Anyway, it ended [at Virginia] in January of 1989. Now, I heard accounts and I’ve read accounts that what happened was that maybe a few days or a couple of weeks after the show ended someone wrote a letter to the editor of the Richmond newspaper, a small little item complaining about a piece he saw at the museum called *Piss Christ*. A few months later, Donald Wildmon from the American Family Association, which is a right-wing fundamentalist group, saw that letter and mounted a huge campaign against *Piss Christ*. [He] sent out 178,000 letters mostly to churches and to their constituents. He was the head of the American Family Association and they were the same people who had targeted Martin Scorsese’s film *The Last Temptation of Christ*. In fact, in a letter that I have seen, a letter that Wildmon had written to a senator, he is talking about first, we have the *Last Temptation of Christ*—this desecration—then he complains about Madonna’s video *Like a Prayer* and the fact that she had the Pepsi contract. And because of their actions, Pepsi quickly got rid of Madonna; because they came down on Pepsi.

DS: Really? I don’t remember that.

AS: Yea. And then he says in the letter, “But I never thought I’d live to see this—*Piss Christ*, so-called work of art—this crucifix in urine.” So—

DS: Sorry, could I interrupt for a minute. Are people like this—Wildmon, etc.—are they recommending that movies like this—like *The Last Temptation*—not be distributed?

AS: Yes. They don’t want it distributed, they don’t want you to see it. They want to do away with it all together. And they try to frighten people. Like in the case of Pepsi; they did a good job. They want to frighten corporate sponsorship of anything they don’t like.

DS: Let me remember something—there was a woman, a really right-wing woman, who sponsored Florida orange juice. Do you remember? She had a contract to promote juice—what was her name?

AS: Oh, yeah—Anita Bryant.

DS: Now, didn't she also lose that sponsorship for some reason or other?

AS: Yea.

DS: What was that all about?

AS: Anita Bryant made a derogatory statement about gays. I think that's what it was.

DS: And then she lost her sponsorship.

AS: Exactly. And that's exactly what these corporations want. They want someone squeaky clean. The minute there's some dirt on you they don't want you anymore. So, really, it was the result of Donald Wildmon's campaign where he urged people to write to their Congress people and their senators to protest the use of their taxpayers' money in this fashion.

DS: He's not aptly named is he? Wild-man.

AS: Well, it's spelled W-I-L-D-M-O-N. I don't know if it's said like "wildman" or not. But anyhow all this is happening in April of 1989. And in May I start realizing, because I'm getting calls and people are telling me about it—from SECCA (Southeast Contemporary Center for Art), the people who initially did this show and gave me the money. They start saying that Ted Carter, who was the director at this time, called me up and said, "There are senators and Congress people who are starting to call me and coming down heavy on us, meaning the NEA is coming down heavy on us, because they want a rationale or an explanation for the picture. And he said, can we say that it's a protest against the commercialization of religious values? And I said, "You know, Ted, it's not language that I would use but you're welcome to put words in my mouth. I don't care. Others have done it before."

DS: Right. [laughter]

AS: So by May of 1989 I see all these references in the Congressional Record—Jesse Helms is denouncing me. Alfonse D'Amato is getting up on the floor and ripping up the catalog.

DS: That guy's got rabies, right?

AS: Yeah, right. And then there's twenty-five senators at that time who drew up a recommendation to the NEA saying what they could and should not fund. Now, what really snowballed and made this a bigger thing was—because at the beginning I felt that I was in there alone and no one really cared in the art world. It was not a big deal and I was not a big deal. What happened was that about three weeks later—three and a half weeks later—the Corcoran, who was about to mount a big Mapplethorpe retrospective, I believe it was about June 12th or June 10th that was supposed to [happen], two or three days before the show [was to] open they cancelled the show.

And they cancelled it in order to avoid the heat that I was getting in Congress. They saw it coming their way, too. So their way of dealing with it was to cancel the show. Then in doing that it became this Serrano/Mapplethorpe controversy, and then it became a big deal. The artworld got all worked up over it, and that's really when it snowballed. And that's the reason why it snowballed because at this point the politicians felt that they were right.

DS: They were winning.

AS: Exactly. And I think it was an easy and unexpected win for them. I think the NEA also initially fumbled the ball, because they didn't stand up—forget about me, just stand up for yourselves! They should say, "We have a mandate. This is a mandate and it is in our guidelines and our rules and we didn't give this money directly, but we gave it to art experts and they decide what to do with the money." That's where they messed up. There were three sponsors for the show: the NEA, The Rockefeller Foundation, and Equitable Life Insurance. Equitable and the NEA backed away, but The Rockefeller Foundation stood up and said, "We stand by our work. It's your right to protest it and it's the artist's right to do it."

DS: Right.

AS: I felt like they came out smelling like a rose. Rightly so, they maintained their position. And the NEA, by doing what I felt like was a very timid caving in to the bullies. They caved in early. And that is why they got into all the trouble they did. They reaped what they sowed, you know? And in fact, shortly after that, it became a big deal with other grants being questioned. There was a grant to "Artists Space" and a grant to Karen Finley was also questioned. And I remember John Frohnmayer, who was the head of the NEA—

DS: He wrote a book about this.

AS: Really? He came down to Artist Space for a meeting there, and there were a lot of artists there and people from the community—

DS: I didn't go but I remember the event.

AS: I remember someone saying to him privately, in this little room, "what are your feelings about *Piss Christ*? And he said some nice things about it, and the person said, "Have you ever said that publicly?" And he said, "No". Meaning: no one was willing to defend it, stand up for it. And that's why I felt that John Frohnmayer, in the end, tried his best maybe; he was a good guy but he really didn't have the stomach for it either.

DS: I'm not a hundred percent sure about this, but I think I remember that in his book he comes out and says that he should have been strong about this.³

AS: Well, I agree. I definitely agree.

DS: That's a pretty good recounting of the events. Can I ask you a couple of theoretical, political questions?

AS: Sure.

DS: In that people pay taxes, how much of a say do you think they ought to have in deciding how those taxes are spent by the government? The most obvious example is the military, right? There are lots of ways that the government spends taxes on military matters that many people don't agree with and yet they just have to swallow it. Is that the analogy that you're operating with?

AS: Well, what's the reality? The reality is that we have no say, right? I mean, I'd like to have some say, you know. I think it would be fair if taxpayers, particularly those who pay a lot and I feel like I pay a lot—would have some say. But if we have no say about anything else why should we have some say about what is relatively a very, very minute amount of money? We're talking about the NEA, which at the time was getting \$170,000.000.00 for the whole year.

DS: You're exactly right!

AS: Yea, I remember it. But my grant—exactly one-third of it came from the NEA, so that means \$5,000.00 of the taxpayers' money is what I got.

DS: Did you have to give back that \$15,000.00?

AS: No. So if we're looking at it that way, we're looking at a percentage of a penny. A small percentage of a penny that funded this so-called controversial exhibition.

DS: And the money was not to make the work, but was given after the work was made.

AS: Yes, it was more like an achievement award, I guess you'd say.

DS: And an award so that you can make more. So in the budget of \$170,000,000.00 this \$5,000.00 is a very small amount of money. And it's ironic that here it is that the media, the people, the Congress were all upset about this that was just pennies of the taxpayers' money.

Why do you think people get so worked up about it?

AS: That's a good question. Because I don't quite understand it. Why are you worried if two cents of your dollar goes to the NEA? What about the other hundred thousand that you have to pay in taxes? If you don't have control of where the two cents goes why should you care where the rest of it goes?

DS: But they do care—inordinately. And the question is why.

AS: It's just puzzling to me. It's just an insignificant amount of money.

DS: But it can't be the money. This is the philosophical point. What else do people care this much about? Stem cell research, maybe. How much money goes to that? Again, almost none. But people are getting totally worked up about their money going to that. So what's going on?

AS: And abortion. Some people are upset about that. Because sometimes it's based on public hysteria rather than on reality. Like I said, why should you worry about the two cents when you don't worry about the fifty thousand dollars of your taxpayer's money that you know is going to military. You don't have control over that. Why don't you worry that they're sending fifty thousand of your dollars to the military but you distress and freak out about the two cents going to the NEA?

DS: It's like the Halliburton problem. Halliburton is not able to establish how they spent 1.8 billion dollars of the money they got for the work in Iraq. That's 43% of the total amount of the money that they received from the government; they have no accounting of that money. And very likely the Pentagon is going to just write it off. Which means we pay for it. I don't read anything about people getting upset about it; they're not upset about 1.8 billion dollars that disappeared.

AS: It's just too abstract a thing for them. Maybe things like abortion, or AIDS research, or AIDS itself, maybe these are just words that touch a fiber that is disproportionate to the reality.

DS: It is a moral issue to people. Somehow people see culture as a symbolization of the country's moral stand. I get that feeling.

AS: I think you're right. And people often feel that art has no place in our funding; no place in our national interests. Unfortunately, we don't—as a people, as a nation—place that high a priority on art or on culture.

DS: Absolutely.

AS: At the time, I believe, even marching bands were getting more—the military marching bands were getting more funding than the NEA budget.

DS: That's very likely. It's worth looking up. I think that what people don't understand about this is that they are willing to fund the major institutions—the Met, the Brooklyn Museum, etc.—thinking they can do it without any controversy at all. But though they don't want to fund the smaller institutions, like Artist Space, because they feel that these might be controversial, what they don't understand is that these small institutions are like the feeder institutions that supply the bigger institutions with their content. The big ones won't continue to house great works if those works aren't made by the little institutions on the lower level.

AS: I think people focus on the little picture because the big picture is too hard to comprehend. Some of these so-called big institutions like the

Met or the Guggenheim are not squeaky clean either. They have all kinds of shady business dealings. One of the most controversial pieces that was showing at that time was the Hans Haacke piece where he pointed out the flaws behind slumlords who were on the board—

DS: I remember vaguely the piece. It looked like—

AS: I didn't see the show. It was I know about the facade [of the museum].

DS: There is also the point about illegal acquisitions.

AS: Right, but something people think that as long as there is no controversial art in the museum, then it's a good place. It's fine.

DS: Right.

AS: That's a problem—that people focus on the simple things because they can't really grasp the big picture.

DS: I think it is also the problem about the fear of controversy. People are afraid of argument. That's where the urge to censor comes from. I don't know if you have ever read J.S. Mill's *On Liberty*?

AS: No.

DS: It's a great book. The best book ever about censorship and free speech. He argues that you're always benefited by listening to an opponent's argument. You are always advantaged—even if you don't walk away thinking that they were right, and you walk away still thinking that you are right and they are wrong, your own opinions are clearer to you than they were before the disagreement. So there is no point in censoring anyone, because it is only detrimental to you.

AS: I think it holds true for a lot of these politicians. They don't really necessarily—I mean they want to win votes and they also want to make themselves feel good and look good and sometimes, with Jesse Helms and others, I question whether or not Jesse Helms really gave a damn about *Piss Christ*. I question how religious he is. But I think he understood that it played well to his constituents and—

DS: I'm religious and when I looked at the piece I instantly saw that it was a religious piece. It never dawned on me to think that it was a "sacrilegious" piece. Anybody who knows anything about iconography or theology is not going to fall for believing that it's "sacrilegious". It's only the title that would allow the simple-minded person to jump to the wrong conclusion. But, you know, the urge to censor is a really bad thing.

AS: And it also backfires.

DS: Certainly in your case it did.

AS: It brings more attention to something that you want to go away.

DS: Absolutely. Did you send him a thank you note? You really should have. My God, you must owe—if not your whole career than at least a substantial part of your career—to Jesse Helms.

AS: Well, you know, I like to work with the people I'm not supposed to work with. And I'm working on a new book and the thrust of the book is really America; the book is called *America and Other Work*, and the other work is also there. But "America" takes up most of the book and "America" consists of over a hundred portraits that I've done over the last two and a half years. And there are people from all walks of life. Everyman—and woman.

[laughter]

One of the people I tried to photograph was Jesse Helms. I wrote him a very personal letter saying—

DS: Of course he couldn't.

AS: It was also written from the heart. Meaning that I acknowledged my debt to him.

DS: Maybe you can set up a little trust fund for him.

AS: Unfortunately, I don't know if that letter even got to Jesse Helms. You know, these people—

DS: There's lots of people in between.

AS: Yeah.

1.2 The Issues Raised

The situation with Andres Serrano raises several issues, which form the skeletal structure of this book. Most obviously, the question is raised whether or not a denial of funding can be construed as censorship. If that is the case, the further question arises how this situation compares to the context of censorship in the history of the United States and in other countries as well. But that is only the skeleton and there are many related questions. If, for example, a refusal to fund is merely seen as an attempt at censorship or a desire for censorship instead of actually an instance of succeeding at censorship, what then do we call that? Many things are not named in the world and yet we still respond to them, interact with them, and fear or desire them. The fact of not naming things only makes it harder to think of them; it does not necessarily diminish their impact.

Similarly the case for vague terms: we try to define and discuss "obscenity" but are thwarted by the nature of the word. And yet our inability to firmly grasp the definition does not diminish the effect it has on our lives. This too is an important issue within this context.

And the notion of art is not much easier. However much any given individual, whether senator or curator, believes he or she can define the activity, there has been a consistent failure rate in this regard for several thousand years. That, too, is important to discuss in the debates as we need to know what we're forbidding before we can say why. The philosophical difficulties with vague terms almost pale next to the difficulties of providing a definition of what makes something worthy of being called "art". Whether or not art is mere pleasure akin to a warm bath or whether it has actual epistemological bearing is essential to consider, for we cannot know what to accept into the category until we know what the criteria for acceptance is. What role does art play in how we gain knowledge about the world?

And then of course there is political philosophy, and concerns about liberty, free speech, and the arguments justifying the restrictions a government can enforce. In lieu of those considerations, what does a democracy gain from the arts? Who gets to decide what is the art of the day and what therefore is the proprietary relationship between a nation and its art?

There is finally the question of whether a national funding agency should fund art that is offensive to some and if so, two further questions arise: Given that governmental edicts are to be content and viewpoint neutral, how do funding decision get made? and Does religious sentiment have a relationship in the formulation of laws? An examination of the religious right is essential in this examination and within that of course is nested (again) the issue of free speech.

The methodology of the book is to present the historical facts, followed by an analysis of the philosophical problems that arise as a result of that situation. In that structure, each chapter is set up such that it first tracks a historical situation that in turn leads to a set of central philosophical problems. The process builds a picture of the complex relationship between art, free speech, demands for liberty, restrictions resulting from democracy and the demands of the group. In this I argue that art functions as a kind of knowledge thereby enabling both our development as individuals and our social interactions with one another.

Underwriting all of this are the notions of epistemological fallibility and the ethics of conflict. Wars fought on uncertain ground with malicious tactics yield consequences both unstable and destructive. The rules of the game are important to discover.

CHAPTER TWO

A BRIEF HISTORY OF U.S. CENSORSHIP

2.0 The First Amendment and Its Early Foes

The Amendment

The First Amendment States:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging 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.

There are several different clauses in this amendment, each guaranteeing specific freedoms. First, there is the establishment clause (e.g., the government cannot establish any officially recognized religion); the free exercise clause (e.g., the government cannot restrain or limit any religious practice as long as it is not criminal); the free speech clause (e.g., covers political speech, commercial speech, money as speech, and is the part of the amendment that addresses issues relating to obscenity, pornography, and hate speech); the free press clause (e.g., forbids discrimination against and restraining of the press); the free association clause (e.g., prohibits discrimination by the government against certain groups disfavored by the government, and forbids discrimination by private groups against others based upon race, sexuality, or gender)⁴. But, it is the free speech clause which obviously is our present concern, so the others we shall leave aside for other discussions.

Our Constitution, written in 1787, eleven years after the Declaration of Independence and four years before the first ten amendments were ratified, is the oldest written constitution in the world. We can wonder why it took eleven years to write it, but when I put that question to a historian friend of mine, she countered with, “how long did it take you to write your dissertation?” I immediately withdrew the question and have never posed it since.

Derived largely from the views of John Locke and based on natural law doctrine, each of these documents affirms a belief in not only “inalienable rights” but in the priority of an individual’s conscience. But the First Amendment wasn’t enthusiastically supported by all of our founding fathers. It was opposed by Alexander Hamilton on the grounds that it was “impracticable” due to its inherent vagueness (which he thought would encourage wholesale “evasion”), and it was only moderately supported by Jefferson and Madison.⁵

It is important to remember how the First Amendment gives to us the five rights stated at the first of this chapter: it gives to the courts the independent judicial review of legislative acts when the constitutionality of those acts has been challenged by a litigant. While the rights are guaranteed, they are not automatic. In other words, sometimes you just gotta sue ‘em. Our constitutional rights have been fought for and we must continue to fight for them. First Amendment cases have come before our Supreme Court hundreds of times, and the free speech doctrine that has evolved is both complex and sometimes less than unambiguous.

While the amendment states that the government shall make no law abridging the freedom of speech, clearly that’s not exactly—or literally—what the framers meant. The problem with the phrase and its precise meaning in this legal context is not exactly analogous to the word “love” between romantic partners—so often employed and so easily disavowed with “that’s not exactly what I meant; I mean I thought I meant it...” but the analogy is worth a quick look. The framers of the First Amendment didn’t write it down and then take it back, exactly. But the framers absolutely did not mean that all speech is free speech. So like the word “love” the phrase “the government shall make no law abridging the freedom of speech” needs a little unpacking, as they say.

An obvious counterexample to the assumption that all speech is allowed is the disingenuous “Fire!” in a crowded theatre for the purpose of creating a chaotic stampede for the sadistic pleasure of the screamer. Another obvious counterexample is libel or slander, or the speech necessary for plotting a murder, or inciting a riot, or giving government secrets to the enemy in times of war. But once the amendment is subjected to scrutiny, we realize that not all speech could possibly fall under its umbrella—of course the framers didn’t mean all speech—but it is sadly true that exactly what kind of speech is excluded is left for us to figure out. The simple clue is the following. It’s not the “no law” part that is under suspicion; it is the “speech” part that we debate. In other words, not all talk is speech.

The sorts of verbal exchanges (or their symbolic equivalents in visual language) that are not included in the term “speech” have changed over the years. Recent examples of changes in these excluded categories is commercial speech, which has been included in a limited way within the amendment’s umbrella, and libel law, which, when applied to celebrities, is less inclusive than it was formerly. But the most litigated kind of speech that is excluded from First Amendment protection has been speech that is accused of being obscene, which has always been viewed as outside the domain of protected speech. This bears repeating: obscene speech has never been included under First Amendment protection.

While the category of obscenity is not currently today included within the confines of protected speech anymore than it was included in 1791 when the amendment was added, what has changed is what falls under the term “obscene”. For example, while making a drawing of my neighbor depicting her as a sheep that is being mounted by her ugly and brutal husband and hanging it outside their door would never have been protected speech in the past, it might very well today be protected speech if it’s published as a cartoon and the neighbors were public figures who have therefore given up some of the privacy rights of ordinary citizens and can’t therefore sue so easily under libel or slander laws. In other words, the difficult issue is what, exactly, constitutes obscenity.

But before the difficulties of definition are examined, it is worthwhile to remember why obscenity would not be covered in the first place. The reason obscenity is not covered by the First Amendment is for the same reason that private household speech is not covered in the First Amendment: the amendment is meant to protect those kinds of speech that are part of the exchange of viewpoints in the public arena necessary for political life in a democracy. It is also meant to protect all speech used for the practicing of religion so that religion is free from the meddling and oppression of government, for as Madison was to say in 1784, “religion, or the duty we owe the Creator” is not within the understanding or power of the government. It is, in other words, an amendment directed at public life and private conscience, and in the view of the founders and of all successive Supreme Courts, obscenity is not within those parameters.

Arthur Comstock

And it is here where censorship in art and literature takes hold, for where to draw the law between art and obscenity is sometimes less than obvious, though many have believed they know exactly where to draw the line. And one of the most famous of all those who *knew* exactly where to

draw the line was the American censor Anthony Comstock. It's a fun story and worth the re-telling.

As a young man in his early twenties fresh from the Civil War, Comstock moved to New York and secured employment in a dried goods store. It was there that he was horrified to notice the types of printed materials that were being passed around by his fellow employees, and with the focused ambition of a true zealot, Comstock traced back some of the material to a particular supplier, whom he then had promptly arrested.

As it is in many endeavors, success bred more ambition, and Comstock, in 1873 at the age of twenty-eight, enlisted the support of several prominent New Yorkers such as J.P. Morgan and Samuel Colgate, and formed the New York YMCA's Committee for the Suppression of Vice (later named the New York Society for the Suppression of Vice). Also in that year, Comstock successfully lobbied Congress and pushed through a statute to prohibit mailing "obscene" material. The definition of "obscene" in this law was very important to Comstock, for that definition included any information on birth control or abortion. And for the eternal bachelor Comstock, anything associated with sex clearly exemplified obscenity.

President Grant named him special agent to the Postal Service in order to implement the new law, and such was Comstock's enthusiasm that he accepted the position unpaid. He was later to claim that he seized 143,000 pounds of books during the first six months alone, and of course, numerous prosecutions followed.

The Comstock Act, with minor changes, still remains part of the U.S. Code today, though the Supreme Court has substantially narrowed the idea of obscenity. Many literary works have been banned over the years from Comstock's time until the mid twentieth century, including Daniel Defoe's *Moll Landers*, Jean-Jacques Rousseau's *Confessions*, Voltaire's *Candide*, Honore de Balzac's *Droll Stories*, Walt Whitman's *Leaves of Grass*, Gustave Flaubert's *November*, Havelock Ellis' *Studies in the Psychology of Sex*, Marie Stopes' *Contraception and Married Love*, James Joyce's *Ulysses*, D.H. Lawrence's *Lady Chatterley's Lover* and *Women in Love*, Sinclair Lewis' *Elmer Gantry*, Henry Miller's *Tropic of Cancer*, Lillian Smith's *Strange Fruit*, Ernest Hemingway's *For Whom the Bell Tolls*, Erich Maria Remarque's *All Quiet on the Western Front*, and Erskine Caldwell's *Tobacco Road* and *God's Little Acre*.⁶

George Bernard Shaw in 1905 coined the word "Comstockery" in retaliation for Comstock having Shaw's *Man and Superman* removed to the reserve shelf at the New York Public Library. In a letter published in The New York Times in 1905, Shaw wrote,

Everybody knows also that if I had the misfortune to be a citizen of the United States I should probably have my property confiscated by some postal official and be myself imprisoned as a writer of 'obscene' literature....I do not say that my books and plays cannot do harm to weak or dishonest people. They can, and probably do. But if the American character cannot stand that fire even at the earliest age at which it is readable or intelligible, there is no future for America.⁷

It's a word we ought to revive. Cries of "Stop that Comstockery!" could be shouted everywhere all over the world. The Danish government especially could recently have made good use of the word.

Changes in the Twentieth Century

The history of seizing material seen to be unfit for the public has lessened over the years, but the decline was not automatic. Increased tolerance for shocking and offensive (to some) art and commerce was not merely the by-product of the modern twentieth century. Comstock's efficaciousness waned as many people grew weary of his campaigns, witnessed by the general approval of the work "Comstockery" and by instances such as the public's lack of support for opposition to such "offenses" as the 1913 exhibition of the French artist Paul Chabas' *September Morn*, a sentimental painting of a female nude standing on the banks of a misty lake appropriately covering up with her hand the dirty parts; the poster of the painting, (the original painting is owned by the Metropolitan Museum), sold widely as a consequence of the opposition against it. Of course.

Legal changes often follow on the coat-tails of social consensus but even in that process catalysts are always required and in the case with the Comstock laws many people were involved in ways where the outcome was sometimes less than predictable. The fight over the Tariff Act is a case in point.

The Customs Bureau had been granted the authority to seize "obscene" material by the Tariff Act of 1842. But the 1929 renewal of that act, assumed to be a rubberstamped renewal, in fact faced stiff opposition from the ACLU and from others, but not because they had grown weary of art censorship. They opposed the renewal of the Tariff Act when the House of Representatives wanted to extend it to include a broadly defined notion of treason. The opponents succeeded in not only removing the section on treason but the resulting reworking of the act, constructed in a bill passed by the Senate, did maintain the prohibition on obscene art but left it to the courts to determine whether particular books violated the statutes. By