

yers actually mean by propositions that something is valid law, then we must be prepared to embrace the conclusion that they mean a large number of different things at different times, or even several different things at once. If, on the other hand, we are concerned, as Ross himself is, to find a single meaning of such propositions which will prove useful as a universal basis of a doctrinal study of law, his own essay, though highly stimulating in exposing and grappling with difficulties, yields disappointing results. For the realist, as we have suggested, the book will be highly encouraging in its indications of the difficulties which a positivist faces in handling realism. Positivists are likely to be concerned with whether Ross has unnecessarily exposed himself to realist attacks, and in this connection H. L. A. Hart's recent review article<sup>44</sup> is of particular interest. Both schools will be indebted to Ross.

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PORNOGRAPHY AND THE LAW. By Eberhard and Phyllis Kronhausen, With an Introduction by Theodor Reik. New York: Ballantine Books, 1959. Pp. 317. \$0.75.

THE regulation of pornography frequently resembles the firing of buckshot in the general direction of a target, mindless of the havoc caused around. The zeal of some individuals to suppress "smut" tends to engulf "unclean literature," loosely defined, with personal outrage the chief criterion. Yet, one man's dirt is another's sandlot. Personal outrage is a poor criterion for legislation affecting the public at large. The test of the "contemporary mores of the community" would perhaps be more acceptable if that phrase did not have such divergent connotations depending on whether the community is seen from the viewpoint of the late Professor Kinsey or that of a latter-day vigilante. As it is, one suspects that the phrase stands all too frequently for personal bias elevated to a status of communal bias by modest jurists. From behind the bastions of the first amendment, lawyers view obscenity (a first cousin to pornography) as without the walls of protection. Yet the definition of obscenity—smutty, dirty, lascivious, salacious, prurient ("pfui" is its best definition yet)—is mostly an emotional affair. The "pfui" books are not protected by freedom of speech since they do not have "even the slightest redeeming social importance."<sup>1</sup> This determination is made by judges who thus profess to know what is "slight" and what is "socially important." Hence we have an unidentified evil, defined by an unclear value-judgment of whoever constitutes the "community" in the eyes of the judge.

*Pornography and the Law* is interesting because it attempts to deal with the very question of the social usefulness of "smut." The authors submit that far

44. Hart, *Scandinavian Realism*, 1959 *CAMB. L.J.* 233.

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1. *Roth v. United States*, 354 U.S. 476, 484 (1957).

from being detrimental to the morals of the community, pornography may be beneficial in providing us with a safety valve. They seem to believe that pornography's functions are providing a focal point for wish-fulfillment fantasies, acting as a catharsis, and siphoning off otherwise repressed tensions. This is an interesting thesis, although one suspects that it tells only part of the story. Even assuming that the authors are right in stating that sexual repression is responsible for neurosis and crime to a greater degree than the suggestiveness of a dirty book,<sup>2</sup> does it follow that the reading of pornography is necessarily therapeutic? Where is the evidence that those who need the outlet are identical with those who use it? Assuming that in certain cases these books are of value,<sup>3</sup> does it follow that such is the result in most cases? Is it not possible that the increased flow of "psychological aphrodisiacs"<sup>4</sup> might itself add to the "teasing" character of our society? Supply has its own ways of generating demand. We say that "barking dogs don't bite," but is it a salutary practice to promote sexual "bark" in a society where "bite" is still formally proscribed?

Beyond the discussion of the effects of pornography, the major contribution of this book is its twelve-point distinction between "hard core pornography" and "erotic realism." The first category, intended to stimulate sexually, maintains a "steadily mounting excitation through the exclusive depiction of sexual acts,"<sup>5</sup> and substitutes wish-fulfillment cliches for real life experience. In the second category, which includes drollery (Aretino, Balzac, Rabelais, Twain) as well as erotic realism (Henry Miller, or, in a lesser degree, D. H. Lawrence), sexual stimulation is a by-product; the author uses sex as a part of his description of the totality of human experience. One might doubt whether all of the twelve elements of hard core pornography (the above is just a pale summary) are indispensable before a book can be recognized as pornographic. If "steadily mounting excitation" is a necessary element in pornography, what about a book in which sheer repetitiveness may turn the same trick? Wish-fulfillment fantasies may be served in either category. Literary gems may be "smut" when cited out of context. And may not the requirement of an "intent" solely to stimulate sexually be easily circumambulated by clever writing?

One suspects, from the volume under review, that the last question is not purely rhetorical. For while the book offers some interesting, though controversial ideas, intellectual stimulus is not its only attraction. The authors chose to document their assertions by incorporating a collection of the hardest pornography ever offered to the public at large. If it was the authors' purpose to footnote their thesis with examples, the result fairly resembles a ham sandwich with a whole live pig squeezed between two thin slices of academic pumpnickel. For reasons best known to the authors, both of whom are psychologists (with psychoanalytic practice!), the book never really makes up its mind whether

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2. P. 266.

3. See pp. 23, 71, 274.

4. P. 262.

5. P. xi; see pp. 178-95.

it is an analytical study or a synthetic compilation of pornography, with the latter stressed out of proportion to the former. The abundance of notes, learned references, lists of banned words, and classifications (chapters on "defloration," "seduction," "profaning the sacred," etc.) is so enmeshed in the obsessive train of raw "examples" that all this pseudoscientific effort seems a mere afterthought. It is all not unlike "Kind Hearts and Coronets" in which under all the guises one is *meant* to recognize the same Alec Guinness. As a scientific contribution the book offends with its unnecessary luridness; as a super-smoking-room offering it should excite sexophiles in spite of its boring academic overtones, as necessary as commercials in a burlesque.

The incredibly lurid entrails of this volume may, however, turn into a blessing. As long as this paperback<sup>6</sup> is freely available to every seventy-five-cent wielding youngster,<sup>7</sup> it will be simply silly to ban anything else. Thus, even if the authors did not establish a definitive distinction between "smut" and "erotica," the tasteless part of their tome may still prove that the test of "social value" is as easy to evade as it is hard to accept.

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6. The book is also available in a hard-cover edition. New York: Ballantine Books, 1960. Pp. 317. \$5.00.

7. Harrington, Book Review, *A Ghostly Giggle*, *The Reporter*, Dec. 10, 1959, p. 48 ("The divisions into scholarly subsections . . . will not confuse a single adolescent for more than five minutes.").

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