5-30-1989

Obscenity: Andres Serrano Controversy (1989): Report 04

who sensitized a nation to aging stereotypes and cut the bonds of compulsory retirement whereby the experience and energies of senior citizens have been reclaimed for the commonweal of American society. He was as vigorous in rooting out prejudice in our society as an octogenarian as he was fighting racial bigotry without regard to his political career in his twenties and thirties. Is it any wonder, then, that he was my hero, as he was a folk hero to millions of older Americans and, indeed, of people throughout the world?

While he is most highly recognized for the great achievements in domestic statecraft of the last half century, he was an inveterate world traveler, whose mark on foreign policy dates back to the Lend Lease Program whereby the United States came to the rescue of democracy in World War II. Incredibly, Mr. President, this man, who knew Hitler and Stalin in person, warned FDR in 1938 that the rise of nazism in Germany would lead to that war.

One of my earliest joys as a Member of Congress was growing to know CLAUDE PEPPER, who was already a historic figure from the New Deal and McCarthy eras before I arrived here 27 years ago. I relished his droll humor and southern comradery and learned we had much in common: We were both born to rural poverty but thanks to hard work and our country's open society, we were able to gain an education, purchased through manual labor and stints as public school teachers. Moreover, we were able to gain entry to, and win credentials from, Harvard Law School. Then, from the practice of law and service in our respective State legislatures, we were able to work our way here to our Nation's Capital. For me, one of the greatest rewards of that long journey was to fulfill my aim of working for aid to the aged alongside this hero of my youth, who after serving in the Senate, returned as a member of the House in my own Class of 88.

Today, Mr. President, we are told that morale on Capitol Hill is at an all-time low, that fractious partisanship is tearing apart the other Chamber, where our former Senate colleague returned to serve with such distinction. If life on this Hill has, indeed, lost much of its savor, it would be well for all of us, regardless of party, to reflect on the record of CLAUDE PEPPER, whose legacy has been to add the spice of mature life to the national work force. Surely, he was no stranger to partisan strife and experienced, as few of us here have, the slings and arrows of political fortune. And yet, having served his country in its most prestigious deliberative body, he chose to return to its supposedly lower one and to serve all the people of this great land all over again. There is only one other American statesman whose dedication to public service rivals CLAUDE PEPPER's example. And John Quincy Adams bore a family name synonymous with service to country.

Mr. President, I mourn with the Nation the passing of my dear friend and mentor, CLAUDE PEPPER. But I rejoice for having had this living legend as a colleague and coworker.

When asked in a recent public interview how he would wish to be remembered, he responded:

As an honest, hardworking man, striving for the benefit of those in need.

CLAUDE PEPPER will surely be remembered as such and even more.

The PRESIDING OFFICER. The Chair recognizes the Senator from the State of Washington.

ON THE OFFICIAL FUNDING OF RELIGIOUS BIGOTRY

Mr. GORTON. Mr. President, seldom in public life does one encounter problems more vexing or consequential than those in which the interests of the state conjoin or run against the practice and principles of art or religion. It is not possible simply to render unto Caesar what is Caesar's and unto Christ what is His, for the sacred and the profane are as thickly intertwined as twisting vines. They have been always and they always will be.

The difficulty arises partly because the language of politics is not deep enough to address profound questions of art and religion, and often when it intrudes upon them it extinguishes their lights. Though politics require definition, art by its very nature eludes it and religion is often beyond it. Should a controversy also incorporate, as does the one I am about to address, questions relating to free speech, the limits of government, and sacrilege, the problem may appear intractable. This one, however, is not intractable, if the will to make distinctions overcomes the will to be outraged.

I shall tell you what happened. First, Americans were taxed, which is no more surprising nor less certain than the rising of the Sun. Revenue came freely from a vast number of households, individuals, and corporate entities. Like water flowing into the Mississippi after spring rains, it swelled into the muddy, omnipotent, self-perpetuating torrent that we call the budget. If the Mississippi grew like the budget, Denver would soon be under water. Instead of running randomly into the Gulf of Mexico, this river of money poured into the District of Columbia, where you and I divided it up and sent it back again. Not only was much energy wasted in the round trip, but by your actions many places that had been wet became unjustly dry, and many places that had been rightfully dry were soaked.

Of this wealth collected from nearly every human being in the land, a certain portion went to the National Endowment for the Arts. Fair enough, I suppose. It was in turn divided up, of necessity, I admit, by people who are appointed rather than elected. Fair enough, I guess. Some went to the Awards in the Visual Arts, Program 7, or AVA-7, and was then entrusted to the Southeastern Center for Contemporary Art, or SECCA. Again, fair enough, although, you may note, the acronyms have begun. SECCA then entrusted it to a five-member jury of artists and curators. This jury then chose 10 artists, each of whom received a $15,000 fellowship and the exhibition of his work in the AVA-7 show in Los Angeles and several other cities. One of the ten artists, Andres Serrano, chose to exhibit a picture that he had submitted to the jury and that it had used as part of the basis for awarding him the fellowship. The picture is entitled "Piss Christ," so called that because it depicts Jesus on the cross, submerged in urine. Mr. Serrano is reported to have declared that his next step would be to submerge the suffering Christ in semen. Not fair.

Mr. President, I do not claim to fathom the rationalizations for much contemporary visual art. Given that one of the most generously reviewed exhibitions of recent times was the artist Judy Chicago's mixed media depictions of female genitalia arranged on dinner plates, and that one of the masterpieces of conceptual art was minted as the artist himself was thrown out of a window into a tremendous pile of horse manure, am I supposed to? I believe I speak for the common man and the uncommon intellectual when I confess my indifference, at best, to these heroics.

They originate not only in nihilism but in the more innocent misconception that the great philosopher of aesthetics Benedetto Croce called the intellectualist error. A lesser philosopher put it this way, "If you've got a message, send a telegram." Croce, however was more thorough. "Confusions between the methods of art and those of the philosophic sciences," he stated, "have been frequent. Thus it has often been held to the task of art to expand concepts, to unite the intelligible with the sensible, to represent ideas of universals; putting art in the place of science." But this, what he called "the theory of art as supporting theses," he rejected, for he believed that "Aesthetic consideration * * * pays attention always and only to the adequateness of expression, that is to say, to beauty."

The intellectualist error leads almost without fail to abuse. If artists are to be pedagogues, they will want to wake up their sleepy and foolish students; that is, everyone in the world, and, on occasion, to shock and to offend them. Croce writes of an artist who "may try to conceal his internal emptiness in a flood of words * * * in painting that dazzles the eye, or by heaping together great architectural masses which arrest and astonish us."

This practice is no longer aberrant, it is a way of life, and sometimes one can hardly determine if a contemporary artist is contributing to the development of art or to the history of publicity. George Bernard Shaw wore a shiny green suit to the theater, to attract attention to the fact that he wrote plays. The stategem was so potent that it has worked its way through our century down to this day, and the suit's the thing now; you don't have to bother about the plays.

Mr. Serrano, no doubt, wants publicity, and he is getting it. Indeed, I am giving it to him. His trick is to make his opponents, in their attempt to drown him, pour so much water into the lock that they raise up his boat. And then he tells them what he's doing, mainly for the thrill of it, but also because it is certain to open the sluice for more. To quote Mr. Serrano,

I feel when people attack a work of art to such a great extent, they imbue it with a far greater power than when they ignore it and, in that, I'm flattered that they think it deserves such attention.

This declaration is obviously calculated to do to his critics what banderillas do to a bull—irritate them, weaken them, drive them wild.

I cannot think of a better response to this calculated provocation than to quote the consummate artist, William Shakespeare, whose Hamlet expresses indignation at something very similar.

Why, look you now, how unworthy a thing you make of me! Hamlet says.

You would play upon me, you would seem to know my stops, you would pluck out the heart of my mystery, you would sound me from the lowest note to the top of my compass * * * do you think I am easier to be played on than a pipe? Call me what instrument you will, though you can fret me, you cannot play upon me.

Now, you know my opinion of the tradition Mr. Serrano exploits, and you know I believe that absent didacticism, gimmickry, shock, and mockery, works such as his have a tendency to disappear. But this is not a bullfight and he is not a matador. I know that the heart of his strategy depends on the overreaction of those who would by instinct and passion suppress his sacrilege as readily as they would defend their own children, for, indeed, he has assaulted that which they hold most holy, sacred, and dear.

But, no. I refuse to enter that trap, and will not allow him or his partisans to cloud his abuse by diverting the issue to that of freedom of expression. He has the right to display his picture. There is no question that he has that right. It is almost absolute. I would sell my grandmother, shoot my dog, what have you, before I would fail to defend that right. On February 22 of this year, in my remarks concerning the Rushdie affair, I made clear that I hold to his position and that I do so in service of what I believe is a vital and fundamental principle. And in the case of Mr. Serrano as is in the case of Mr. Rushdie, neither the transparency of his intentions nor the quality of his work can prejudice it.

Let us even assume, for the sake of argument, hypothetically, as a fiction, a conjecture, a speculation, a purely academic exercise, that his picture is a great work of art. Great works of art can be sacrilegious: not only in theory, but in fact. For example, Michelangelo's statute of Moses is fitted with a pair of horns. Generations, and generations of Jews have been stung by that, but the statute, without a doubt, is great art. So let us assume, for the sake of agrument, that Mr. Serrano's picture which is deeply offensive to Christians, is of the same caliber as Michelangelo's Moses, which is deeply offensive to Jews. What is the role of the state in these matters? Does it dare subsidize sacrilege? Does it dare not subsidize Michelangelo?

The answer touches upon the question of the limits of government, which is right and proper both for the Chamber and for our time, and the answer is clear. The state must confine itself to its own interests, and art must be free. Neither subsidy nor censure are appropriate, for the state, with its unrivalled power, must not take sides in purely symbolic disputes. This judgment has honorable origins, a long history, a basis in reason, and several illustrative parallels.

It would be relatively easy to preclude SECCA from receiving Government funds on other, more practical grounds. In this matter the layers of unaccountability are much like those of shell corporations established on islands that vanish at high tide. Passing from the constituent to the Treasury, to the NEA, to SECCA, through the panel of judges, to laureate, the money flows freely, with neither obstruction nor delay, from citizen to Serrano. But what of traffic in the other direction? Does any kind of accountability run the othe way? No. At every step, as in the famous Thomas Nast cartoon of the Tweed ring, someone is pointing a finger at someone else and saying, "We can't possibly interfere with the artistic choices made by our grantees." To cite part of a letter I received from the NEA, "This limitation reflects concern that Federal funding for the arts would result in government intervention in the substance of artistic projects."

I ask you, is a $15,000 fellowship, a traveling exhibition, and the imprimatur of and association with the National Endowment for the Arts something that is neutral? Is it of no effect? If it is, what is its purpose? And if it is, as anyone can see, the promotion and advancement of one artist as opposed to another, of his work and of his philosophy, of his style and approach, how can providing support be less as "intervention in the substance of artistic projects" than would be withdrawing support?

The Government and its compensated agents choose. They must choose; they have no other means of accomplishing the distribution. And to make the choice, they must have criteria and they must exercise their judgment. How can it be that if the people who provide funds for this program—the taxpayers—are spurred to exercise their judgment and proffer their criteria, it is to be criticized as intervention, whereas if the judges and the panels do the same, it is not? We are told that if the citizenry has predilections, leanings, principles, convictions, an aesthetic, they must be held in abeyance for fear of intervention. But if the judges have predilections, leanings, principles, convictions, an aesthetic, they may be exercised, for that is freedom of expression.

The scheme I have outlined, or, rather, uncovered, is one manifestation of the principle that the bureaucracy wields more power than those who have empowered it. It depends upon an inequality in the flow of funding and accountability, an inequality sustained by bureaucratic faith in contradictions and inconsistencies that are so obvious as to be surreal.

Where is the consensus for "Piss Christ"? Is there anyone in this body who will stand to declare that Americans should subsidize religious bigotry? Is there anyone who will declare that this is not religious bigotry? What will the NEA pay for next? A mockery of the Holocaust? A parody of slave ships? A comedy on the decimation of the American Indian? A satire of the massacre in the Katyn Forest?

To those who might say that for the Government to remain disengaged from things like "Piss Christ" is to limit freedom of expression, I say that to assert this is merely to transform high principles into stepping stones that lead to the public trough. The ill-considered reasoning behind such an argument is that if the Government does not nurture people like Mr. Serrano it is therefore oppressing them. This view, I submit, is a self-serving belief in a political principle that does not exist; namely, that the state owes all things to all people and has neither the discretion nor the moral right to abstain from any facet of activity or to reject any petitioning for funds.

To the contrary, government requires, above all, and almost always, discretion. The least of the examples I can think of is that Mr. Serrano was competing with 500 other artists. The Government chose 10 and rejected 490. So much for the myth that it cannot bring its discretion to bear.

My view is founded on the conviction that good government is a matter as much of restraint as of action. By the kind of encouragement the NEA offered to the creator of "Piss Christ," the state usurps its citizens' independence and self-sufficiency and therefore the power and effectiveness of the

Government itself, which derives in turn from these very qualities.

And in offering this species of encouragement, the Government takes sides—in esthetics, in philosophy, in politics, and, in this case, in a theological dispute, for no matter how poor and distasteful Mr. Serrano's argument, it, is nonetheless, at least symbolically, a religious argument, and the Government of the United States should not take sides in religious arguments. Here, by subsidizing one of the parties, it has done so, and that is wrong.

We have in the Constitution a direct prohibition of established religion. By immediate inference, this means that we cannot diminish one religion, lest another, the one unburdened, rise out of proportion.

If art and religion are to be free of state influence, then they must indeed be free of state influence. If they are to be free of censure, they cannot depend on subsidy. As for the religious bigotry here in question, sacrilege exists; it will always exist; and it is not the business of the Government of the United States to root it out. But neither is it the business of the United States to support it. Though Mr. Serrano and SECCA may enjoy near perfect liberty from constraint, they cannot expect the privilege of requiring the support of those from whom they desire non-interference, for that is tyranny. I propose that the Government of the United States withdraw from the question entirely, that it separate itself, its influence, its resources, its finances, from SECCA and Mr. Serrano, allowing them the near perfect liberty to reflect upon what they have done, liberty unimpeded by further U.S. Government support.

Mr. President, I propose that the NEA deprive SECCA of Federal funding for a period of say 5 years, and until such times as it is obvious that SECCA is administered responsibly. Moverover, if the NEA finds itself unable to take such a momentous step, this Congress should expressly prohibit NEA from providing such support.

REPORT ON NATIONAL EMERGENCY WITH RESPECT TO IRAN—MESSAGE FROM THE PRESIDENT RECEIVED DURING RECESS—PM 46

Under the authority of the order of the Senate of January 3, 1989, the Secretary of the Senate, on May 23, 1989, during the recess of the Senate, received the following message from the President of the United States; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

I hereby report to the Congress on developments since the last report of November 15, 1988, concerning the national emergency with respect to Iran that was declared in Executive Order No. 12170 of November 14, 1979, and matters relating to Executive Order No. 12613 of October 29, 1987. This report is submitted pursuant to section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c), and section 505(c) of the International Security and Development Cooperation Act of 1985, 22 U.S.C. 2349aa-9. This report covers events through March 28, 1989, including those that occurred since the last report under Executive Order No. 12170 dated November 15, 1988. That report covered events through October 1, 1988.

1. Since the last report, there have been no amendments to the Iranian Assets Control Regulations, 31 C.F.R. Part 535 (the "IACRs"), or the Iranian Transactions Regulations, 31 C.F.R. Part 560 (the "ITRs"), administered by the Office of Foreign Assets Control ("FAC"). The major focus of licensing activity under the ITRs remains the importation of certain nonfungible Iranian-origin goods, principally carpets, which were located outside Iran before the embargo was imposed, and where no payment or benefit accrued to Iran after the effective date of the embargo. Since October 1, 1988, FAC has made 583 licensing determinations under the ITRs.

Numerous Customs Service detentions and seizures of Iranian-origin goods (including carpets, caviar, dates, pistachios, and gold) have taken place, and a number of FAC and Customs investigations into potential violations of the ITRs are pending. Several of the seizures have led to forfeiture actions and imposition of civil monetary penalties. An indictment has been issued in the case of *United States* v. *Benham Tahriri*, which is now pending in the United States District Court for the District of Vermont.

2. The Iran-United States Claims Tribunal (the "Tribunal"), established at The Hague pursuant to the Claims Settlement Agreement of January 19, 1981 (the "Algiers Accords"), continues to make progress in arbitrating the claims before it. Since the last report, the Tribunal has rendered 22 awards, for a total of 418 awards. Of that total, 308 have been awards in favor of American claimants: 193 of these were awards on agreed terms, authorizing and approving payment of settlements negotiated by the parties, and 115 were decisions adjudicated on the merits. The Tribunal has dismissed a total of 25 other claims on the merits and 56 for jurisdictional reasons. Of the 29 remaining awards, two represent withdrawals and 27 were in favor of Iranian claimants. As of March 28, 1989, awards to successful American claimants from the Security Account held by the NV Settlement Bank stood at $1,136,444,726.00.

As of March 28, 1989, the Security Account has fallen below the required balance of $500 million 25 times. Each time, Iran has replenished the account, as required by the Algiers Accords, by transferring funds from the separate account held by the NV Settlement Bank in which interest on the Security Account is deposited. Iran has also replenished the account once when it was not required by the Accords, for a total of 26 replenishments. The most recent replenishment as of March 28, 1989, occurred on March 22, 1989, in the amount of $100,000, bringing the total in the Security Account to $500,011,034.15. The aggregate amount that has been transferred from the interest account to the Security Account is $624,698,999.39. The amount in the interest account as of March 28, 1989, was $128,220,636.82.

Iranian and U.S. arbitrators agreed on two neutral arbitrators to replace Professor Karl-Heinz Bockstiegal and Professor Michael Andre Virally, who had submitted letters of resignation. On December 16, 1988, Professor Bengt Broms of Finland replaced Professor Bockstiegal as Chairman of Chamber One, and on January 1, 1989, Professor Gaetano Arangio-Ruiz of Italy replaced Professor Virally as Chairman of Chamber Three. Professor Bockstiegal had also served as President of the Tribunal. After Iran and the United States were unable to agree on a new President of the Tribunal, former Netherlands Supreme Court Chief Judge Charles M.J.A. Moons, the appointing authority for the Tribunal, appointed Professor Robert Briner to the position on February 2, 1989. Professor Briner, who has been a member of the Tribunal since 1985, will continue to serve as Chairman of Chamber Two.

3. The Tribunal continues to make progress in the arbitration of claims of U.S. nationals for $250,000 or more. Over 68 percent of the nonbank claims have now been disposed of through adjudication, settlement, or voluntary withdrawal, leaving 169 such claims on the docket. The largest of the large claims, the progress of which has been slowed by their complexity, are finally being decided, sometimes with sizable damage awards to the U.S. claimant. Since the last report, nine large claims have been decided. One U.S. company received an award on agreed terms of $10,800,000.

4. The Tribunal continues to process claims of U.S. nationals against Iran of less than $250,000 each. As of March 28, 1989, a total of 362 small claims have been resolved, 82 of them since the last report, as a result of decisions on the merits, awards on agreed terms, or Tribunal orders. One contested claim has been decided since the last report, raising the total number of contested claims decided to 24, 15 of which favored the American claimant. These decisions will help in establishing guidelines for the adjudication or settlement of similar claims. To date, American claimants have also received 56 awards on agreed terms reflecting settlements of claims under $250,000.

The Tribunal's current small claims docket includes approximately 185