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ARGUING FOR ART, DEBATING CENSORSHIP

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Abstract: Using a sociological and philosophical approach, this paper discusses the legitimacy, utility and functionality of art censorship both as a social practice and as an autonomous discourse. My intervention reconstitutes and deconstructs the legal arguments underlying the decision to censor artistic products, by investigating the most common accusations by which the law seeks to justify art censorship: immorality (pornography, obscenity), the encouragement of indecent behaviour or incitement to violence/hatred/racism. Moreover, the paper describes two perspectives that can decisively settle this controversial debate: one in favour of the unconditional, absolute freedom of art, and the other in favour of social control. The former perspective brings together arguments stating that the act of censorship is incompatible with the specificity of art as fiction, while the latter considers that art benefits from normative flexibility that tends to impunity. The analysis of the two perspectives points out that it is difficult (even impossible) to definitively answer the question whether there is a solid reason for (not) censoring art. Art is placed in the interval. The problem of art immunity oscillates between Scylla (with its excessive prohibitions) and Charybdis (with the notion that art works carry messages with a socially toxic potential). The excesses of art cause not only a need for civic control, but also excesses of censorship. The reverse is also true. Among the extreme cases placed at the edge of the spectrum, there is the everyday situation in which art is admonished, more or less harshly, for its “boldness”. Ultimately, while the penchant for censoring art in totalitarian societies is obvious, there is little consensus in the debate on censorship in democratic, liberal societies. Here “anonymous authority”

(Erich Fromm) is frequently expressed through mute, conservative, informed censorship, lending itself to a vast polemical discussion about what the “freedom of art” truly means.

Keywords: literary censorship, Romanian communism, art and justice, discourse, anonymous authority

While the debate about the legitimacy of censorship or about its social and moral usefulness is rather old, decisive conclusions are yet to be reached. Art is a sensitive area of inquiry since there is a belief that only art should be exempted from censorship. It is necessary to distinguish between freedom of expression per se (which is a guaranteed fundamental right) and artistic freedom. Regarding the former, limitations are necessary to protect the dignity of the person and his fundamental rights,¹ as well as to combat attitudes that are perceived as forms of “hate speech” (Frederick 86), but they may also be essential for ensuring fair competition rights. However, these limitations (which have their justification in the field of existence) “cannot be extrapolated along with the same prohibitions and the same penalties to works of art” (Huberman, qtd. in Burnet 44).

The very fictional character of art cancels out this transfer, by way of transfiguration. In an interview given during the “One World Romania” International Human Rights Documentary Film Festival (2012), Alexei Plutser-Sarno (a member of the Russian Voina group, an “anarchist punk-rock artistic movement”) stated that “between art and challenge, between art and crime, there are neither borders, nor any other types of interaction. They are situated in different planes, in worlds that never intersect.”² The idea that censorship cannot be applied to art belongs to a tradition that goes back to Aristotle (Sapiro 108). The work of art has a different ontological classification than the real fact; therefore, a different legal classification is required. Art is fictional, so it is “beyond good and evil.” Artworks must be removed from the jurisdiction of law courts because they are legally unclassifiable. Even among those who concede that art must be subjected to some form of control there are many who assert that literary works, for example, should not be treated with the same severity as political, moral or scientific writings.

¹ For details on freedom of expression as “a conceptual impossibility,” see Fish 115.

² *HotNews.ro*, Sunday, 18 March 2012, 15:06.

1. Art and Justice

Several arguments converge to show that justice is not qualified to judge artistic offences.

1.1 The Conservatism of Justice

The myopia of justice is explained by the conservative principle of law, in comparison with the innovative dimension of art. It is difficult, if not impossible (given the inertia of the system and the slow pace of the legal apparatus) for the dynamics of artistic transformations to be promptly reflected in the legislation. The legal act therefore tends to be lagging behind artistic phenomena. Incriminated works are often judged according to definitions belonging to an earlier stage of art.³ Such definitions are ineffective for assessing contemporary productions, which are always the subject of dispute. Often, in the case of inaugural works, what irritates and may cause rejection is the violation of artistic conventions rather than the transgression of moral norms. The risk to which a judge may be exposed is to make the unfortunate mistake of confusing morally offensive productions with artistic works that are deemed to be outrageous on account of their transgression against the frameworks of perception and the rules of artistic representation (Sapiro 295). The lack of synchronization (between the body of laws and the legal doctrine, on the one hand, and the social and artistic mutations of the present, on the other) threatens to delegitimize punishment, taking into account the fact that, in time, the boundaries of permissiveness have kept being pushed. The facts reveal the conservative character of censorship as opposed to the experimental character of contemporary art. The purpose of censorship is to strengthen cultural taboos (Willis 58, qtd. in Jacobsen 2) and to preserve traditional artistic values by discrediting modernist trends. Ultimately, under the utopian pretext of preserving morality intact, censorship leads, in fact, to the asphyxiation of the cultural space. Judging works of art and condemning the artists may paradoxically entail a situation where moral caveats become aesthetic shackles that block creation.

1.2 The judge's artistic incompetence

A judge lacks the necessary authority to evaluate art. He does not condemn, as it is claimed, professions of immoral faith, but opts between various opposing morals

³ "(...) in the case of art, lawyers are always thirty years behind" (Garçon).

(e.g. surrealist morality vs. bourgeois morality); because of his insufficient artistic training, the judge risks levelling artworks down when assessing them (Brochier 67). Legal conservatism often goes hand in hand with artistic mediocrity.

The “symbolically unlimited” nature of the work of art (to use a phrase belonging to Tudor Vianu) complicates matters. Thus, if we take the case of literature, the accusations that have been levelled against it have sparked a public debate on the interpretation of texts. Traditionally, justice has chosen (when deemed necessary) to condemn literary works for content-related issues. Gradually, the instability of meaning and the fundamental ambiguity of literary texts led, however, to querying not only the content, but also the form of discourse, the literary genre, the style and those components considered to epitomize the artistic personality of writers and their authorial intentions.⁴ At the same time, the judges’ literary incompetence became obvious (compromising the authority of their decisions), and their opinions came to be seen as the opinions of non-experts on aesthetic matters.

Surely, a judge can appeal to the institution of expert witnesses (artists, art critics). However, this procedure poses a twofold inconvenience. The first (perfectible) consists in the manner of making the selection. The second (fundamental) refers to the fact that proper expertise is difficult to obtain. It is usually the case that artistically innovative works end up in court, works that are contested in their own field of origin, since it takes time for their innovative contribution to be comprehended and for such works to forge a pathway in their own (artistic) domain. As a result, expert witnesses can contradict one another, depending on the artistic ideology they uphold.⁵

There are, of course, exceptions which may prove the aesthetic acuity of judges. A possible example is provided by the way in which a complaint against the poster of the film *Amen* by Costa-Gavras (2002) was settled in court. The poster is “a parodic composition, depicting a red cross that is highlighted against a dark background, extending along three sides in the shape of a hooked cross.” “Thanks to a skilful graphic game,” the poster denounced the Vatican’s role in the Second World War, “uniting the Christian cross and the hooked cross into one symbol.” Catholic bishops protested against the “unacceptable assimilation” and intolerable

⁴ An example of exclusion on the grounds of the plot is the work of Allain Robbe-Grillet. For details on this topic, see Andrea Chiurato 177-198.

⁵ For details on the classic dispute tradition vs. innovation/conservatism vs. experimentation, see Malița 2010.

identification of the symbol of Christian faith with Nazi barbarity. The judge, however, did not settle the case in the bishops' favour, considering that the author (Oliviero Toscani) could not be penalized. The president of the court rejected this "close reading" and deciphered in the incriminated image "the will to break down the Nazi cross, a symbol of totalitarianism, and to replant in the ground, as if to rehumanize it, the cross that every community continues to bear." In the reasoning, the judge argued that "the swastika is incomplete, one arm being slanted downwards..." (Saint-Martin 66-69). Even multiplied, however, such examples do not constitute sufficient legal justification. On the contrary, they attest to the fact that it is always likely that the decision to ban a work of art may reflect the judge's subjective preferences and aversions and not the intersubjective views of public opinion. The exceptions actually shed light on the kind of social role that the judge performs as a defender of the *status quo*, which is constantly contested by artists.

It has therefore been concluded that it would be ridiculous for the aesthetic value of an artwork to be discussed in court.⁶ Artists themselves have been concerned to delegitimize such an approach. As for the justice system, it has compromised itself by reaching questionable decisions and by condemning several great artists throughout history.

1.3 The burden of proof concerning the harmfulness of art

It is, in fact, really difficult to produce the legal evidence that will prove (alleged) artistic offences, which are converted, by association, into non-artistic offences, as a rule. André Glucksmann believes that, as far as art is concerned, justice has failed to develop a "code of social threats" (Glucksmann 80). If it can be said to even exist, the harmful content of art is difficult to prove, so the driving force of censorship is not a certainty, but an anxiety, whose cultural perception is the "fear of representations" (Goady, qtd. in Glucksmann 76). The procedure, therefore, is exactly the opposite: first it resorts to exclusion (in order to protect) and only then is the "dangerous" nature of the censored content invoked, a content that is not so much the cause of the interdiction as its consequence. The very exclusion operated by censorship grants a work of art this "dangerous" character (sometimes abusively). The most common accusations against art are, therefore, those of immorality (pornography, obscenity),

⁶ "Literary debate in a correctional framework is absurd" (Pauvert 53).

of “attacks against good morals” or of inciting violence, hatred, and racism. All three categories present controversial aspects.

(i) Art and pornography

The encounter between art and pornography is epistemically explosive (as it takes place between two “open” concepts, each likely to generate controversy) and is considered to be, according to legal norms, morally culpable. The question is whether it is rigorously possible to avoid this encounter. By systematizing the huge bibliography on this subject, Hans Maes inventories the main opinions expressed on this topic. The most prominent, first voiced by Peter Webb (1975) and frequently resumed afterwards, states that the dividing line between art and pornography is clear to the point of incompatibility.⁷ There are also some classic ways to mark that difference.⁸ However, the problem is that there are some generic differences which are difficult to prove in practice, where the situation is ambivalent. In any case, Maes contends, these dichotomies operated between some prototypical examples “will not serve to justify the claim that art and pornography are mutually exclusive.” A second sample, opposed to the first one, consists of theories which, taking note of the frequent violations of territory from both sides, argue either that pornography should be dissociated from obscenity, suggesting that only obscenity is incompatible with art (Huer; Mey; Graham),⁹ or that pornography has an aesthetic dimension.¹⁰ In any

⁷ Among the authors who consider art to be incompatible with pornography are: Christopher Bartel (Bartel 153-165); Fred Berger (Berger 183-209); George P. Elliott (Elliott 72-95); Jerrold Levinson (Levinson 408); Alyce Mahon, 2005; Christy Mag Uidhir (Uidhir 193-203); Marina Wallace, Martin Kemp and Joanne Bernstein 2007 (qtd. in Maes, Drawing 385-397).

⁸ The main ways to mark the difference, according to Maes, are as follows: (i) pornography objectifies, while art invites us into the subjectivity of the person; the former dehumanizes sexuality, while the latter sublimates into love (Scruton 11-13; Bovens 205-217); “pornography is not interested in individuals, but in body organs” (Marcus, 281); (ii) art is correlated with beauty, while pornography is non-aesthetic/smutty (Ellis; Scruton); (iii) art is made to be contemplated (requires an “aesthetic distance”), while, on the contrary, pornography makes contemplation impossible (Schopenhauer); (iv) art is necessarily complex and multifaceted, while pornography is one-dimensional (Webb 6; Mahon 14; Wallace, Kemp, Bernstein, 15); (v) art requires originality, whereas pornography is limited to a “copulation of clichés” (Nabokov 313; Steiner 203); (vi) art is addressed to the imagination, while pornography targets fantasy, being rather hostile to the imaginative activity; pornography is aimed at satisfying desire and is immune to the constraints of plausibility, of real life; on the contrary, art helps us to understand the world in which we live (Scruton 13; Steiner 210; Graham 152-164).

⁹ Obscenity, along with pornography, is part of the spectrum of morally unacceptable, vicious and vulgar behavior and discourse. Obscenity may be distinguished, however, by exaggeration and by a specific combination between, on the one hand, the satisfaction provided by the violation of fundamental moral prohibitions and, on the other hand, repulsion and fascination. Matthew Kieran defines it as that aspect of pornography that “demands cognitive-affective responses pertaining to vicious violence or extreme misogyny” (Kieran 54). The aggravating meaning of pornography can therefore be retained, in the absence, however, of a clear conceptual differentiation. In the literature,

case, the differences are often minimal (quasi-imperceptible), generating errors. In the fine arts or in theatre and film, regrettable confusion has often been made between artistic nudity and pornography, for example. The works of writers like Flaubert, Byron or Baudelaire were condemned, in their own time, because of a blindness defined as ridiculous by posterity. Finally, to eliminate conceptual obscurity, it is recommended that one should consistently use the term “erotic” to denote the presence of sexual/sensual elements that are artistically transfigured in works of art.

Avoiding to let myself enmeshed in ever more refined conceptual distinctions, I will resume the conclusion reached by Maes, according to whom the best argument that the notion of “pornographic art” is not oxymoronic, but designates a legitimate artistic category is the very existence of pornographic artworks. His examples include Pauline Réage’s novel *Histoire d’O*, Nagisa Ôshima’s film *In the Realm of the Senses*, Kitagawa Utamaro’s woodblock print *Woman with man with black cloth and food service*, or Mapplethorpe’s photograph *Jim and Tom, Sausalito*.¹¹ If we continue to trace the line of demarcation between art and pornography with the firmness demanded by some theorists, many of the works of unquestionable artistic merit, Maes concludes, are on the “wrong” side (Maes, Drawing 4). Despite this argument, however, the suspicion remains that a work can be genuine both as art and as pornography,¹² thus rendering the whole process as a circular one.

The sheer scale of theoretical debates on this issue reveals the difficulties of deciding in court on the pornographic/obscene character of a work and of providing

the terms are most often interchangeable. “There is no obscene art” (Schiele, qtd. in Schlessler 136). “There is no erotic work that is obscene, as long as it makes artistic sense” (Atwood, qtd. in Angenot 17).

¹⁰ Susan Sontag claims that pornographic literature has an imaginative dimension (Sontag 35-73); Matthew Kieran talks about imaginative scenarios and about attention to personal experience, to personality; Richard Shusterman challenges the idea that the erotic experience (implying sexual arousal) is incompatible with the aesthetic experience, going as far as to say that it can generate an autonomous aesthetic experience (Schusterman, “Aesthetic experience” 79-97). See also Morse Peckham, Peter Michelson and Maes himself.

¹¹ Maes distinguishes this category from that comprising works of art which only imitate or make reference to pornography, such as: (When I say that there already are works of pornographic art, I do not just mean works of art that mimic or make reference to pornography, without themselves actually *being* pornography) Thomas Ruff’s nude photographs, Jeff Koons’s statuettes, Marlene Dumas’s paintings, Fiona Banner’s text pieces, etc. For more examples, see Maes, ‘Art or Porn: Clear Division or False Dilemma?’.

¹² “Although obscenity may possess one or more ‘distorted’ aesthetic properties (as, for example, proportion), these properties are only tangential to its primary purpose, which most commonly involves unbridled sexual stimulation. In opposition to art, for which the aesthetic properties of the work are central, obscenity does not arouse an intellectual or reasonable response (...) and degrades those involved” (Spicher 728).

a credible reasoning for the penalties applied. Achieving a hypothetical consensus does not close the file. There are radical interrogations of the socially dangerous and morally degrading nature of pornography¹³ and of the legitimacy of the government to ban its citizens from publishing and/or watching it.¹⁴ The dispute is waged between the right to freedom of expression and, respectively, the right to dignity and identity (self-image). The former is a fundamental right and includes (in the context) the freedom of autonomous beings to pursue their own conception of development and to expand/diversify, through experimentation, their means of sexual gratification.¹⁵ However, to the extent that pornography is considered harmful in emotional and relational terms, offensive and corrupting from a moral point of view, inducing libertinism, proposing role models that might deteriorate the self-image of people as social beings and partaking of “hate speech,” the right to free expression must be, in its case, (severely) restricted.

Even though, in life, pornography can be condemned (at least on account that it tends to corrode the organizational structures of society, attacking the core of the family and, by default, that of social cohesion), in art its harmful effect is, for many, unlikely. Symbolic transfiguration cancels it out.

In the case of literature, the situation is further complicated. Writings with explicit pornographic content (such as Sade’s novels) have a distinct philosophical character, which should protect them against censorship. They “not so much excite readers, as they fascinate intellectuals; hence, their weak erotic character” (Baudrillard 45). In addition, the accumulating effect of (perverse) sex sequences leads to a voidance of desire. The internal analysis of a literary work is not, however,

¹³ It has not been explained in what way the representation of sex could exert a depraving, corrupting or degrading effect, if sexuality itself (as a real activity) does not deprave, corrupt or degrade. I will mention only the seminal study of Danny Frederick, “Pornography and Freedom” which summarizes the main reasons of the general (and hypocritical) opposition to pornography, presenting a few arguments why he considers that its suppression is not only unnecessary, but also inherently wrong and stating that not only is it harmful to ban pornography, but that it may actually be beneficial. For details on the social use of pornography, see also Jeffrey G. Sherman, *Love Speech*.

¹⁴ Despite an impressive bibliography in which the empirical fact that pornography is harmful seems to be proven, there are also contrary positions. Thus, the conclusion of the “Nixon Report” about the dangers of pornography for the American people has been rather disappointing: administered in large doses, pornography would be “more than a propensity towards violence or towards sexuality and would lead to... boredom” (“Le Monde,” 4 September 1970, qtd. in Pauvert 58). See Sapiro 71 and West 422, Note 50. At the same time, two official reports of the research undertaken by the UK Home Office conclude that the evidence does not support the existence of a causal link between the consumption of pornography and antisocial behaviors (violent, aggressive). Liberal thinking has defended the freedom of adults to produce and consume pornography. For details, see Jean Baudrillard 21-2.

¹⁵ Pornography is, in this sense, an integral part of personality (Frederick 84-5).

necessarily conclusive. Often insufficient, it must be corroborated with contextualization.¹⁶ In fact, contextualism is inherent to late modern aesthetics, according to which artistic status is not intrinsic, but relational and extrinsic to the work (see ready-made artefacts).

Regardless of the credibility of such arguments, the solution is not, one might think, that of banning these works. Such a measure can only limit access to those books, which will continue to circulate in clandestine forms, producing, sometimes, not only a more powerful impact (through the secondary effect of reverse advertisement), but also proposing a distorted reading of those texts, in the sense of strengthening their “pornographic” character. The hypothetical argument is that reading selectively (in the case of adolescents, for example) certain “debauched” fragments increases, by decontextualization, the degree of perversity of those scenes, if they are read exclusively through that lens. No matter how raw and, apparently, not transfigured artistically, such blameable fragments present in literary works have an altogether different significance by the very fact that they are not confined to themselves, but belong to a parabolic whole, which transcends them. Only within the context as a whole do they acquire aesthetic value and do they reveal their problematizing, ironic, visionary, etc. dimensions. The part is resignified because it belongs to a whole that is so radically different from it. Thus, by being embedded in a broader and infinitely more complex narrative structure, these fragments are absolved of their degrading status, no matter how crude the language might be. They benefit from a “system effect”. In other words, a great writer can afford the coarseness of a pornographer without becoming one himself.

(ii) The offence and the encroachment on morality

Indecency is an obscure offence¹⁷ (the law does not define it precisely), undermined by a theoretical insufficiency.¹⁸ It remains, however, the most common

¹⁶ One possible example in which intertextual gaming can relieve a work from the charge of pornography is Alain Robbe-Grillet’s *Sentimental Education*. Accused that it is simply a pornographic novel, from beginning to end, saturated with perverted and heinous images, the novel is saved by the ironic title, with intertextual cultural references, by the symbolic stature of the writer (the halo of prestige with which he is associated), and, possibly, by the cleanliness of the stylistically refined phrases. It has been interpreted as an experiment, as a quotation with invisible quotation marks, or as a situationist attempt at validating pornographic sub-literature.

¹⁷ The absence of a precisely delineated content of the offense of indecency, also known as an “attack on public morals” or “outrage to good morals”, is undoubtedly revealed by the fact that in legal practice, this offense has most often been identified with obscenity or pornography. There is, however, no consensus that pornography and indecency should be associated (Maes, Drawing 390). Another area of criminalization is sacrilegious art, which allegedly improperly uses religious symbols, hijacking

wrongdoing in the name of which artists and journalists have been prosecuted, despite the fact that the fictional status of art should absolve one from such liability. True art cannot corrupt: it has a rectifying rather than a corrupting role. Naturally, disputes also persist on this topic.¹⁹

(iii) Incitement to violence

The relationship between art and violence is so old that it seems inextricable. The film industry has enhanced it exponentially. The aestheticization of violence becomes an actionable matter when there is a suspicion that the work of art incites to hatred and could lead to acts of violence. In this case, however, it cannot be demonstrated (as the law claims) that there is a direct causation between reading a book or watching a violent film and committing criminal acts.²⁰ The work of art is an inextricable mixture of reality and illusion, which we cannot translate *tale quale* into

their meaning. As Isabelle Saint-Martin points out, there has been a controversy over the right of artists to use Christian iconography in their creations (Saint-Martin 73-74). On the one hand, it is argued that the legacy of religious symbols belongs to believers; on the other hand, invoking the process of secularization in Europe over the last centuries, it is claimed that, on the contrary, this heritage belongs to culture in a broad sense nowadays, constituting, therefore, a shared visual inheritance that anyone can use, beyond strict religious references.

¹⁸ Conceptual ambiguity is encumbered by its very history. In France, for example, *indecenty* replaces the older *disturbance of social order*. The substitution exceeds the importance of a simple re-semanticization. It is a possible solution to the historical challenge (of the French Revolution) and to the changes suffered by the framework of argumentation determined by the separation of secular power from religious power. In order to avoid anarchy, the suspension of the right of religion to censor social manifestations and behaviors imposed the invention of another moral, on the basis of which the representatives of the nation could formulate prohibitions accepted as legitimate by most citizens. What was envisaged was, most likely, a phenomenon of contamination. It was hoped that civic and national values could be strengthened with the taboo force that only religious values had benefited from until then. The transfer, however, remained incomplete. The offence incriminated by the old Criminal Code was a legitimate regulation, but, from the perspective of the new political philosophy of the revolution, it was a conservative one – in the sense that it was explicitly invested with the aim of preserving the *status quo*. On the contrary, the new regulation had the advantage that it could be qualified as democratic and progressive, as it was intended, according to the legislators, to protect the interests of the citizen in a broad/generic sense. However, its imprecise wording made it vulnerable to criticism. The concept of “public morals” was soon to become so much contested that Benjamin Constant even demanded its suppression (qtd. in Sapiro 96).

¹⁹ “The qualification of a writing as a ‘novel’ does not suffice for it to avoid defamation” (de Leusse 117-129). Conversely, Donald Thomas states that freedom of speech was inseparable from the right to insult and offend (Thomas 6).

²⁰ The irrelevance of the accusation that literature incites, at the level of ideas, to reprehensible deeds appears to be obvious, according to Jean-Jacques Pauvert. He believes the best counter-argument is the fact that “it was not pornographers who set fire to cinemas in which vaguely blasphemous films were running. (The reference is to Scorsese’s film *The Last Temptation of Christ* (1988), whose premiere screening caused acts of arson committed by religious fanatics in the Saint-Michel neighborhood in Paris. It is precisely the anti-pornographers who sentence writers to death (Rushdie) and execute them when they can (Algeria). Who says anything about the ravages caused by reading the Koran? The Koran, manifestly, can incite violence” (Pauvert 155). See also Graham 152-164.

reality. The transition to action negates the artistic status of the work: art, Kenneth Clark claims, loses its true character when it incites to action (Clark, qtd. in Maes). It remains a subject of controversy whether art really augments violence (fuelling or expanding it) or whether it amounts (in Aristotelian terms) to a form of purgation, to an imaginary escape valve, which allows the release of the aggressive potential through a phantasmatic experience.

Like indecency, incitement to violence is an imprecise offence. This imprecision paves the way for abuse (Sapiro 97). Each of these is, Gisèle Sapiro notes, a vague and flexible formula used in the court of justice when one cannot be prosecuted for more precisely defined crimes (Sapiro 102). There are no arguments to uphold the accusation of an “attack on good morals” or “public morals,” only “the cry of an outraged conscience”: this article of the law is nothing more than a “weapon of society, used to defend itself from what it deems can hurt it” (Sapiro 101-102). Keeping them in the Criminal Code requires stricter rephrasing. To this point, however, the way to reach consensus on legal action against art remains insufficiently clarified. Nor is it clear where we draw the limit between the freedom of the judiciary and the non-democratic restriction of the freedom of expression of the person undergoing trial. Where exactly does the disagreement between them start?

1.4 The misdemeanour of opinion

Such crimes (pornography, incitement to violence, indecency) contain a blatant contradiction, which can discredit the very fight against them. At the same time, the distinction between a wrongdoing and a misdemeanour of opinion is among the tests that can tell the difference between liberal societies and totalitarian regimes. The *post factum* legitimation of prohibitions is built around the argument that they punish culpable acts, which represent an abuse of the right to free speech. Conversely, the severity of preventive censorship (the only one that, some people maintain, deserves this name!) derives from the fact that it penalizes a misdemeanour of opinion, considered culpable because it does not comply with the official viewpoint.²¹ The legal issue of the misdemeanour of opinion continues to fuel the dilemma.²²

²¹ In the old Western democracies, freedom of expression was guaranteed even to radical enemies, provided that they did not go from word to deed, from verbal expression to action. By opposition, totalitarian systems are ideocratic regimes which practice preventive censorship in order to preserve the monopoly of meaning. Censorship works as a weapon of threat and intimidation, being used to eliminate counter-discourse (alternative discourse) and to impose “unique thinking”, as the

Literature is a limit-case, in which the two perspectives cannot overlap. In this area, the very definition of the notion of “act” is problematic. In order to review the polemics, it suffices if we refer to the theory of commitment (in a moral and ontological sense) proposed by Sartre, a theory used to justify the indictment and conviction of French writers who collaborated with the Nazi regime, under Nazi occupation). Sartre argues that “to publish” is an act. The democratic argument (actually, a fallacy) is that what is censored is the **act** of publication (a deed that is objectively attributable to the publisher and the author, the only deed relevant to criminal law) and not the **discourse** itself, no matter how important the ideas would be as a basis for action.²³ Let us note, first, that *publishing* is tantamount to *inciting*, in order to admit, in step two, that ideas are actually being censored.²⁴ Literature relativizes the distinction between mere words and deeds, because, in a sense, the written word (writing) is the writer’s defining activity par excellence. Even without being disseminated, the very substance of creation is tainted. Thus, in the particular case of literature, to prohibit means simultaneously (Korolitski) a professional punishment. What can freedom of expression refer to in the case of a writer who has no right to publish? Guaranteeing this freedom seems to involve the prerequisite that the writer should be allowed to publish his texts, in other words, to disseminate, through publishing, his ideas, visions and conceptions, expressed in writing. If the work is not published and disseminated, the writer is not left with any relevant

expression of the dominant ideology. The criminalization of opinions on principle is the main reason why Hannah Arendt characterizes totalitarian regimes through the “ban on thinking” (Arendt, qtd. in Rasson 8).

²² The representatives of liberal epistemology recommend non-interventionism, except in brutal and obvious cases, when the danger is clear and imminent. As for the rest, opinions must be able to be expressed outside any form of regulation. In their case, the screening process is specific to the market of ideas, which is a protected forum of public discourse. The liberal view is countered based on two premises: (i) there is no free market of ideas, devoid of ideological underpinnings and protected from any partisanship; by contrast, (ii) there are discourses that have an aggressive and destructive potential, opinions that, we think, are “full of death” (Holmes), a situation in which any distinction between speech and act is erased. These must be punished. To tolerate them is to flirt, for the sake of abstraction, with our own destruction (Fish). For other arguments, see also Ulysse Korolitski, “Les justifications de la censure,” in *Raisons politiques*, 2005/1, no. 17. His solution represents an attempt to cope with the intrinsic tensions of the definition of these offences and to reconcile them in practice, openly acknowledging that it is not possible to fix elegantly and credibly the problems of legal theory raised by the articles of the law that criminalize them. However, even when there is consensus about the fact that some representations and some ideologies (totalitarian, or those that promote racism, bestial sexuality, incitement to hatred and violence, etc.) must be prohibited due to the very nature of the ideas propagated, the fact of deciding, in practice, when an incitement to violence occurs remains a renegotiable problem.

²³ “Every idea is an incitement,” J. O. Wendel Holmes.

²⁴ As Gisèle Sapiro shows, publication is dangerous only to the extent that it ensures the dissemination of an idea (Sapiro 32, 37).

artistic space of self-expression. It turns out that prohibition has (in the case of the writer) a much more precarious legislative basis, by comparison. Whether what is punishable is the publication of an idea, or the idea itself, taken separately, each of them is insufficient to explain the prohibition. In fact, banning a book means withdrawing tolerance before (culpable) acts are committed; in other words, it means punishing a misdemeanour of opinion.

1.5 The perverse effects of censorship

Censorship has never been able to ban something permanently. However, unlike the work of art, which has no direct consequences on behaviours, censorship is harmful and produces paradoxical perverse effects. Among them, the following can be listed:

(i) The presence of talent intensifies the act of censorship

The dangers of literature, for example, are commensurate with the author's talent. Works that later entered the universal cultural heritage may have fallen victim to censorship on this account, while numerous other immoral writings remain unsanctioned legally, even though they are found to be morally reprehensible. Justice is not interested in them, because such writings do not enjoy sufficient notoriety.

Let us admit that this hinges on a limit of censorship, which is aware that it cannot eradicate or even control the (undesirable) phenomenon of pornography, so it tries to limit its public influence. That would explain the interest of censorship in artistic works authored by renowned writers. When such writings contain fragments that are "obscene" or "pornographic," the influence they may exert on the public, given their prestige, is exponentially higher compared to the creations of specialized pornographers, which remain confined, as a rule, to their own niche of consumers. Such reasoning, invoked with good faith, reveals a logical stalemate: justice condemns (when it decides to do so) the works of great writers precisely because there is a presumption that they exceed the domain of literariness and touch on that of obscenity and pornography. The option to censor mainly these works and not the effervescent and reprehensible pornographic literature *per se* amounts, however, to an implicit recognition, in reverse, that their authors are genuine artists and not mere pornographers and that their works are, in fact, artistic, in spite of the accusation of pornography. Through the very act of accusing (only) genuine writers, judges seem to recognize the talent of those whom they condemn.

(ii) Censorship – an advertising machine

The counter-productive nature of censorship is illustrated by the fact that it often promotes the work it bans, by giving its fame (an “aura”) and increasing its audience.²⁵ It is not rare for censored works to benefit from a more efficient dissemination than through the official circuitry. The taste for transgression arouses interest in a product that would undoubtedly be less noticeable in the absence of censorship’s sterilizing intervention. A paradox rears its head: censorship accidentally grants (commercial) value to the prohibited work, in the sense that it manages to achieve exactly the opposite of what it intends: instead of delegitimizing, denouncing and limiting access to a banned artwork, censorship, on the contrary, enshrines and creates popularity, a halo, an additional attractiveness.²⁶ It has a promotional role, like that of a marketing campaign. To the extent that censorship has turned into a kind of involuntary advertising machine, one might say that it contains its own principle of self-destruction: by targeting an artwork, it augments its popularity. This amounts to a defeat for the official system, but for art it is a gain, a victory.

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The confrontation between art and justice implies a constant, close and tense negotiation between the right to free expression, on the one hand, and the right to dignity (and identity), on the other. Both can be overstepped and there are situations in which they inconvenience/challenge each other. Therefore, the question whether art must be withdrawn from the social contract field is frequently reiterated. There is a persisting indecision regarding the question whether the freedom of art must be

²⁵ The paradoxical effect: censorship draws attention to itself and focuses attention on what it claims to obscure from the reader’s gaze (Zinszner, 15). See also Robert Darnton, *Edition et sédition. L’Univers de la littérature clandestine au XVIII e siècle*, Gallimard, 1991); Jacques Domenach, “Introduction”, Jacques Domenach (ed.), *Censure, autocensure et art d’écrire. De l’Antiquité à nos jours*, Editions Complexe, 2005, 11-12.

²⁶ Writers often perceive censorship as a sign of consecration. “Perhaps the proudest moment of my literary career”, writes children’s and YA author Norma Klein (1986), “was during the summer of 1982 when I read in *Publisher’s Weekly* that I was one of the most banned writers in America” (p. 18). She found herself among a distinguished company (with Solzhenitsyn, Kurt Vonnegut, D. H. Lawrence, Daniel Defoe, Ernest Hemingway and William Faulkner. “My first thought was: I’ll never be in such good company again. My second was to envision a talk show /.../ The observation that none of the objections had anything to do with the literary quality of the book” (p. 19). She admitted she had been censored because of her honest and realistic writing for young people, which adults found disturbing. /.../ Censorship not only increases the commercial value of a book, but fosters its canonization. The presence of famous names on the list suggests consecration. The title of a censored book is resumed in the lists for many years.

absolute or, on the contrary, if there should be limits to social permissiveness in relation to it. The current debate seems to indicate that relativism cannot be overcome. There are credible arguments on both sides. While we have an intuition that absolute immunity cannot be granted to art and literature, it is hard to argue convincingly in favour of judicial intervention to regulate this sensitive area of society. That is also because no good examples can be invoked, while errors and abuses abound.

The terms of this dilemma also constitute possible criteria according to which the complex and nuanced attitudes that have gained shape can be classified (simplifying, of course, the picture) into two opposed sets: one in favour of the unconditional, non-censurable, absolute freedom of art, and the other in favour of social control. The former brings together voices that say that the act of censorship is of a severity that is incompatible with the specificities of fiction, while the latter groups together opinions that art benefits from a laxity that verges on impunity. As Joel Gilles notes, each of the options is undermined by internal contradictions. If the answer to the need for control is *no*, it is equivalent to the notion of the insignificance of art and/or risks infantilizing the artist; art is done a disservice, being divested of the challenges that stimulate it (Gilles 21-22). In addition, making an exception for art means establishing an unacceptable conceptual hierarchy among the creations of the human spirit.²⁷ If, on the contrary, the answer is *yes*, by this we credit art with meanings that have implications beyond its limits. If you are censored, it means that your work has a social impact and that it is taken seriously. However, we concede that it must be subject to common rules, without claiming that it has the right to escape social prohibition. What complicates the picture even more is the fact that the plans overlap and the same arguments are used with a different purpose in the two camps.

2. The theory of necessary control

The will and even the need to supervise artists and their art are based on both aesthetic and moral arguments. The argument is that if society waived its right of control over art, all it would achieve, by this exception, would be to promote the intolerance it wishes to avoid, for it would deprive itself, in fact, of “the legal

²⁷ Pierre Gioux believes that the moment one attempts a legal definition of the very notion of “work of art,” there emerges a conceptual hierarchy of intellectual creations, seen as works of the spirit, and that is not acceptable (Lefrère, Pierssens 216).

possibility of penalizing the expression of sexist, racist, anti-Semitic innuendoes...” (Collin, qtd. in Upinsky 49). The political dimension of art is difficult to ignore; that is why it is necessary that art should obey the general principles, codes and rules that govern the public space. The fictional character of art does not imply the absence of every form of control. In fact, the argument that art has nothing to do with reality because it tackles our subjective relationship with it is contradictory. To defend the impunity of the art, disconnecting it from its bond with reality, is counter-productive (in essence, it is a vulgarized and absurd use of the critical concept of “referential illusion”), since it entails obliterating the conception from which it simultaneously derives its value. An additional problem for the exemption of art from censorship would be the difficulty of defining the artistic object today.

(i) The protection of minors

If I were to select an incontrovertible justification for the social control of art, it would undoubtedly refer to the protection of vulnerable groups. “Not everything can be shown to anyone; not all people are of age” (Burnet 37) is the basic principle, which might be defined by the protection of the vulnerable, in the name of their own “good”. Certain age categories (such as children or adolescents) must be protected not because there is something harmful in the content of art, but because it may be inadequate for insufficiently mature people to appreciate it properly. In fact, the criminal codes of most European countries provide for the prohibition of broadcasting materials likely to expose minors to cultural shocks, with predictable consequences that are nonetheless difficult to quantify.²⁸ The premise for this punishable restriction is that the censor is the voice of public interest. Appropriating the role of a parent, he exercises his profession only in relationship with the vulnerable members of society, to protect them from the undesirable consequences that they could become potential victims of. As a precaution, prevention action is required in their case. This is not a prohibition in the full sense of the term, but a contextual one, in order to preserve the innocence of children. The right to prohibit is based on the “fragility of the victim and not the harmfulness of the artist” (Burnet 40).

²⁸ The question arises whether words can, indeed, numb the visual impact, which is often devastating. A culturally unassimilated visual shock, insufficiently processed by children, for example, may persist despite the efforts of the supposedly responsible adults who guide them towards coping with it.

Excess can, however, compromise reasonable regulations of this kind. There is a tendency to gradually expand the circle of those who are considered “minors” and who need to be protected. Thus, the General Council of Var canceled Gloria Friedman’s exhibition, scheduled for December 2000, expressing the fear that what would be shown “would be incongruous with public expectations” (Burnet 40-45). In her commentary, Eliane Burnet shows that, behind the apparent respect for democratic rights, there hides a double contempt: one towards the public, considered unable to bear/tolerate anything that deviates from their expectations, but also a contempt for the artist, who becomes a kind of service provider, meeting (solely) the expectations of the public. The arrogance of politicians, who believe that “by a sort of state-granted grace, when they reach positions of power, they become able to appreciate what is good, in matters of art, for their fellow citizens” (Burnet 39), turns, in the best case scenario, into an excellent tool for the promotion of conformist, cliché art. The paternalism of censorship spills into partisan protectionism.

The notion of a symbolic minority (the idea that the lack of appropriate instruction renders one fragile and that, by contrast, education makes us immune to the possible negative influences of art) can also motivate other behaviours, driven by the fantasy of an “enlightened” elite. Luxury editions of books²⁹ or the prohibitive prices of certain products/artistic productions represent such a solution which paradoxically capitalizes, nowadays, on the Aristotelian theory of the two publics: elitist/professional/erudite and popular/amateurish/ignorant. The risk of manipulation present in this approach is illustrated by Pierre Bourdieu in the oxymoronic paradox of “enlightened obscurantism”.

(ii) Censorship as a contrastive element necessary to art

To affirm that art and censorship form a dialectical couple amounts to postulating that art is edified under coercion (through confrontation). In the absence of censorship, the necessary fertile tension no longer accumulates. The ultimate consequence would be that we need to maintain censorship, because in its absence there would also be no place for anti-censorship discourse. If we examine the consequences of its suppression, censorship appears to be, paradoxically, necessary in art, says Eliane Burnet (Burnet 45). In other words, boundaries are needed for

²⁹ For details about the Sade affair, published in luxury editions, which were inaccessible to the general public, see Brochier 73-74.

transgression to exist. “Censors,” says Thomas Schlessner, “attest to the power of art and the fears that it can induce: they make creators face their own responsibility, compelling them to resistance and transgression” (Schlessner 9). Transgression itself is the pole a dialectical couple, formed with the idea of constraint/regulation/norm, etc. Transgression loses its *raison d'être* if all regulatory forms are abolished and they can no longer stir the temptation to transgress.

The argument uses Toynbee's challenge theory: fighting the enemy fortifies you, makes you ingenious. More precisely, censorship stimulates invention, forcing the artist to find subtler means of expression. “In art history,” says George Steiner, “one can see a correlation between the value of works of art and the violence exerted by the powers to be: the greater the coercion, the more alive the art. Hence the terrible conclusion that the greatest works of art were born out of the greatest tyrannies” (Burnet 48). Thus, a cycle sets in: subversion and transgression are the engine of art, which tests the fragility of order, which requires censorship.

(iii) Censorship as a form of value selection

Often the censorship/anti-censorship dialectics is part of a complex system of exchanges at different levels of the cultural field, through which a selection/evaluation process is carried out. Integrated into this mechanism, censorship clarifies what is legitimate and what is not in a culture (Kidd x).

(iv) Censorship: a cultural ferment

Although too rarely stressed, there is a cultural gain which consists in the enrichment and globalization of thinking caused by the migrations of authors who were ostracized in their home countries: “Forced exile constitutes a source of exchanges, strengthening the impact of thought that was intended to be suppressed and expanding its area of influence” (Goedert 13).

The experience of totalitarian regimes shows an amplification of the role of art. Having an ideologically constrained trajectory, words are charged with new symbolic and aesthetic meanings that reverberate socially.

(v) Censorship: an artistic catalyst

Censorship becomes participatory, assisting to complement and sometimes to enhance the suppleness of the work. The quality of art increases through the act of

censorship.³⁰ It has been argued (especially in the case of literature) that the changes demanded by censors can be beneficial to the aesthetic value of a book, contributing indirectly to the enrichment of its imaginary universe. By a principle of amputation, writers sharpen their expressive acuity, refining their style.³¹ The obstacles to censorship are thus thwarted by poetic means. “Censorship,” Petre Răileanu comments, “works as a fuel of imagination and grants meaning to subversion” (Răileanu 7). Although possible,³² the valorisation of these side effects of censorship ignores the overwhelming multitude of authors’ testimonies about the opposite outcome. The work does not come out clarified/purified from the fire of censorship but, on the contrary, it emerges stunted and deformed, ideologically diminished and, implicitly, aesthetically mutilated.

It seems reasonable to lay emphasis on the term “side” when we talk about the “beneficial side effects” of censorship. It is not in the interest of censorship to stimulate creativity. On the contrary, its goals are mainly, if not entirely, destructive. Therefore, to argue that censorship as a *status quo* can produce these beneficial aesthetic results is an exaggeration or a non-sense.

³⁰ The presumption that censorship does not always violate art, but that there can also be imagined beneficial forms of censorship for the aesthetic optimization of the oeuvre, led Richard Shusterman to develop the concept of “aesthetic censorship” (Shusterman, *Aesthetic Censorship*). The phrase designates the interventions made from the vantage point of a creative consciousness and prohibitions formulated in good faith, in order to protect and optimize the work, contributing to the stabilization and augmentation of its artistic value. Such constraints (which could be issued, possibly, by publishers, librarians or art critics) are in agreement with the acts of suppression operated by the artist during and as an inherent part of the creative process. Another possible example is that of the decisions of award committees. Richard Shusterman is not proposing a redefinition of censorship, but a questioning of why censorship is or should be rejected. His answer is paradoxical. A censorship carried out for aesthetic reasons is not just compatible with art and creation, but, through its possible effects (including the diminished inflation/ invasion of bad art, which blunts sensitivity and spawns indifference), it is downright beneficial. Thus, it is not the argument that, as the promoters of the absolute autonomy of art believe, art is incompatible with censorship that justifies its rejection, but reasons of an exclusively moral nature (the infringement of the fundamental right to free speech). In any case, there persists a suspicion that the selections operated by the author during the process of creation and the internal constraints of the work of art imposed by the *ars poetica* can be called and considered a form of “censorship”, even though no poetic art can detach itself completely from ideology. As for the system of artistic awards, although it relies (like censorship) on an exclusion process, it is in fact an alternative to censorship. Even if they are complementary activities, they are nonetheless opposed: to award a book a prize means to grant it value, to distinguish and privilege its value, while censorship, on the other hand, involves highlighting its singularity in a negative sense, through devaluation.

³¹ “Censorship proves to be not only an obstacle, but also a stylistic catalyst, as it contributes to the crystallization of a complex of subtlety...” (Baudrillard 49).

³² In any case, there cannot be established criteria for recognizing the beneficial excisions operated by magistrates or censors. Therefore, the situations in which the intervention of magistrates in literary texts is beneficent or not are unpredictable.

Each of the above allegations has been met with opinions to the contrary.

The reasoning according to which art is reformed, out of necessity, when subjected to coercion is false. In fact, this is a sophism that introduces, through the back door, a prejudice against transgressive art, whose acts are regarded as gratuitous. The premise is tendentious against protesting writers, who are portrayed as arrested in a permanent act of reiterated rebellion. However, the artists' revolt against totalitarian censorship, for example, is not an end in itself, but a reaction against restrictions that are felt to be dangerous for art and for the guaranteed freedoms of the individual. Liberators would not be needed if there were no oppressive bans. The relationship between censorship and transgression could be described, rather, as an arms race, as a ceaseless competition that generates refinements in both parties, both in the oppressor and in the oppressed.

In the same way, a perverse effect is that marginal artistic voices must become ever more ingenious, being forced to refine their discourse (including from an aesthetic point of view), so as to be heard and acknowledged. It is counter-intuitive to argue that artistic refinement would not have been possible otherwise. Subversive authors (a possible typology, because not all artists are militant) would prefer there not to exist censorship, and their main purpose is precisely to eliminate it in order to be able to freely express their own ideas.

I am inclined to think that there is no "good" censorship in literature, just the side effects of sterilizing interventions.³³ Paradoxically, those who defend censorship, emphasizing its positive effects, condemn it radically. Whatever possible beneficial consequences may emerge are involuntary, strengthening in fact the negative essence of censorship. Through its arbitrary interventions, art is disfigured and constrained to become, in turn, compatible with a deformity that is fundamentally foreign to itself.

³³ Slavoj Žižek 124 (Romanian edition) cites a possible example. Faced with the dilemma of whether to suppress, for ideological reasons, the references to Christ in a movie (Wyler's *Ben-Hur*) whose subject was the birth of Christianity, the censor removed the entire third part, in which the character of Christ played a central role. The film thus ended with the famous scene of the horse race, in which Ben Hur defeated Massala, his Roman enemy. While the actual end of the film insisted (in tendentious manner) on the triumph of Christianity, the new ending, after censorship, suggested (unlike in the original romantic, sentimental version) an existentialist confrontation with anguish, revealing an augmentation of both its aesthetic and its political premises. The censor added nothing: "he created the effect of 'depth,' of profound existential vision, simply by mutilating the work, by eliminating its essential parts".

(vi) Censorship as incitement to freedom

The defence of censorship reaches the apogee in the form of a paradox: not only does it ensure the protection of culture (and, implicitly, of human dignity), but censorship also becomes an incitement to freedom. Defining the “frontier between what is allowed and what is forbidden, it outlines a space of freedom, which is less destabilizing as the no man’s land of ‘everything is allowed’”.³⁴ Censorship would therefore safeguard the beneficent rules for the community, the rules that are necessary for the proper functioning of society. If there are no more rules (prohibitions) to defy, then it is not freedom that acquires expression, but barbarity, anarchy, nothingness. The distinction between public and private is exploded and, with it, the differences that structure the cultural and social space disappear. As for art, it is allegedly subject to a levelling, flattening effect. The loss of the halo, the disappearance of the “auratic” dimension of the work of art reduces it to the status of mere commodity, vulgarized by mechanical reproduction. For Jean-Paul Curnier, the absence of censorship is tantamount to the disappearance of the right to criticism: “The total refusal of censorship risks becoming the prohibition to express revulsion, disgust, rejection, when the ignominy of the image is not a sign of aesthetic value,” and the “inability to express a critical judgment” (Curnier 65, qtd. in Burnet 47).

For art, a series of practical inconveniences arise from the common-sensical assertion of socially indispensable norms. When it comes to their enforcement, it is difficult, if not impossible, to distinguish between the standards understood as simple behavioural cues that are acceptable (even laudable and inspiring) and, respectively, rules that are perceived as unfair, discretionary and oppressive, with an inhibiting effect on art. Not only censors, but also some artists walk the thin line between the two contradictory meanings.

As for axiological collapse and immunity to criticism, given the absence of any grounds for prohibition entailed by the (presumptive) abolition of censorship, I am afraid that the reasoning is similar to the one exposed by Žižek, who mentions, among the symptoms of consumerist society, the shift from happiness as the privilege to the “duty” to be happy. The latter acquires, like the freedom to which censorship incites the artist, a convulsive quality. Telling it all, confessing to everything is a kind of self-administered secret delight for writers. In this

³⁴ About the liberating paradox of censorship, see details in Goedert 12.

hypothetical case, it becomes an imperative drive, as tyrannical as that of prohibition, which was supposed to be removed.

3. The theory of the absolute freedom of art

Art is a fundamental good. It enriches the quality of life, diversifies thinking and expression. Cumulatively, the criticism of censorship leads to an encomiastic discourse, which affirms the right of art to a statute of extraterritoriality (where current rules and norms are suspended) and sacralises the artist. The museum is a possible prototypal example. The museum, says Eliane Burnet, “should be considered as a kind of foreign embassy with all the prerogatives of immunity and inviolability” (Burnet 41). Art, like the museum, is the enclave where one should not intervene to sterilize artworks, in the name of legal and/or moral considerations, and the artist is the beneficiary of a state of exceptionality. It is easy to see the romantic reflex in this option.³⁵ What is curious, however, is that art lays claim to a privileged status in a moment and in a (postmodern) context which tends, by virtue of trans-aesthetic definitions, to reach democratization and to transgress the borders between art and life. On the one hand, the concept of “spontaneous creativity” imposed by pop culture has democratized art, cancelling the “aesthetic distance” between art and non-art. On the other hand, in a contradictory manner, the new democratic art tends to simultaneously preserve the privileges of talent.

For the critics of censorship, things are therefore clear: freedom is constitutive of art, which, in turn, is vital for democracy. They demand thus the legal entrenchment of the artist’s privileged status and the recognition of the absolute freedom of creation as a fundamental freedom.³⁶ The argument is simple: tolerating freedom of expression is the only possible way forward, and art is able to resolve its own internal contradictions. For example, in cases where (see Dostoevsky) an

³⁵ Up until Romanticism the artist was, rather, a good craftsman, an artisan. Romantic thinking propelled him to the status of a genius, to whom, as Fr. Schlegel states, everything is allowed, especially the anti-classical ecstasy of breaking rules. The artist is above any conventional rules, which only limit his imagination. Imagination must, in fact, remain completely free, evolving above trivial reality. The genius needs absolute freedom.

³⁶ The proclamation of this principle does not exclude restrictions. One possible example is that of the artist Damien Hirst and of the composer Karlheinz Stockhausen. Each of them independently stated that the destruction of the Twin Towers was an excellent *performance* and a major work of art. However, as Thomas Schlessler remarks, “considered the attacks as an aesthetic phenomenon was, in the eyes of the traumatized public opinion, a thought that did not even have the right to be formulated” (Schlessler 208). Incidentally, since the artist did formulate it, violating taboos, this was a counter-example: more precisely, an example of “failed censorship”. In the wake of the ensuing scandal, the two artists withdrew their claim and apologized to the American people.

authentic work of art carries with itself (also) a retrograde political message, such content is absorbed, suppressed and dialectically surpassed by the great artistic/aesthetic value of the whole. By contrast, the ultimate consequence of censorship is *self-censorship*.³⁷ This marks the defeat of the freedom of thought and imagination.

The claim that art and artists should have an exceptional status conjures up arguments from two different registers.

(i) The transgressions of art

The association between art and transgression has been strengthened by the emergence of the culture of originality, which promotes the “interesting” new (defined not just as something unprecedented, but also as something that is “captivating,” “enlightening” even). The classical tradition of praising prestigious canons and established conventions has been replaced, starting with romanticism, by a poetics of transgression, which violates norms, in both aesthetic and moral terms. Frequently, art violates some prohibitions. Aesthetically, the work of art dynamites the old cultural preserves, generating new ones, which will be challenged, in their turn, at a fast pace.³⁸ Contemporary art has a strong experimental character (corresponding to the increasingly liberal character of society) and promotes an aesthetic of shock. Simultaneously, art is transgressive also in relation to the whole network of social norms and conventions, which it constantly provokes, pushing it into crisis, in the hope of forcing its resurrection. What if, asks Thomas Schlessler, given the generalized moral and social anaesthesia, “in order to awaken consciousness, art is condemned to step outside the law?” (Schlessler 199). Numerous

³⁷ From a perspective that is relevant to this article, *self-censorship* represents a victory of censorship, consisting in surrender and a regrettable way of conformism. The artist internalizes and anticipates the precepts of censorship in his own work, reproducing, in the words of Pierre Bourdieu, the “structures that structure”. Thus, before being exercised, censorship is already effective simply as a virtual threat. Roland Barthes asserts that “the real censorship of discourse, even in democratic regimes, is the one that determines the speaker to take into account what is expected of him, to comply with the normative expectations, which will take, in the text, the form of received ideas, of cliché ideas; the subjection of discourse to the dominant order (he may not be aware of the service of domination that words perform.) This submission to a normative horizon of expectation (...) it is not a kind of diffuse servitude, nor is it the expression of an abstract fear of power, or of a spontaneous propensity to conformism” (Barthes 10). Self-censorship mutilates the personality of the artist, who gradually turns into his own censor. “We can be complicitous in maintaining censorship institutions, even if we tell ourselves that we resist them” (Foucault in Muller 18).

³⁸ The saraband of changes produces paradoxical forms: originality has come to be defined through the production of series of works; in other words, the new form of originality consists in challenging the very notion of originality.

contemporary artists uphold, in any case, the irreverent nature of creation.³⁹ Conversely, genuine censorship imposes norms that are not only ideological, but also formal, consubstantial to art, which means that the moral ban on the work is simultaneously an artistic one. As for the artist, he has a history of violating prohibitions. He was declared a professional of transgression (Anthony Julius). It is considered, however, that, unlike a criminal, who is guilty of transgressing social and moral order, the artist's transgression is creative, culturally productive.

Therefore, the need for the freedom of artistic expression is drawn from the very (alleged) transgressive nature of art. For over a century, transgression has been at the very core of art. It is art's generating engine. Hence, the question arises whether there can be punishable transgressions in its case, without annihilating its specificity (its emblematic characteristic, its distinctive status)?

(ii) The futility of censorship

Equally paradoxical is the second argument. The inefficiency of censorship, in the case of art, requires that it should be relinquished, not only because it is undemocratic and inopportune, but also because it is futile. Art is immune to censorship, because fiction eludes it through allegory, metaphor, metonymy, allusion and so on.

As a respondent to the survey on "Censorship and Books" published by *Magazine Litteraire* in 1920, Borges seems to have amused himself with a deliberately contentious response. He asserted that censorship was not the unanimously feared enemy of literature, but, on the contrary, an incapacitated/powerless adversary that used inefficient and somewhat rudimentary

³⁹ See Anne Simonin, "Le texte, le sexe et la censure," 26/2/2006, qtd in Claire Bruyere, Henriette Touillier-Feyrabend, "La censure et ses masques," in *Ethnologie française*, vol. 36, no. 1, 2006, 6. Countless examples can be invoked, from the *actions* of Hermann Nitsch and the Viennese group (Viennese Actionism) to the self-mutilating performances of Marina Abramovich and Gina Pane, which escalated to extreme violence, as if art could no longer provide another route to singularity except that of excess. In correlation with transgressive identities, transgressive art has tended, in the last half century, to refer to corporeal limit-experiences (consisting in the fierce confrontation with the most atrocious and abject somatic components and poses), considered capable of provoking radical/liminal experiences of consciousness. Such limit-experiences (as a rule, with religious connotations) also exist, of course, in primitive societies, but there they are institutionally regulated and practiced at certain moments in the calendar. By contrast, the artist exceeds the frameworks of this controlled deviationism. In opposition with the situation in which the transgressive rites of primitive societies were based on a convention and on a socio-symbolic network of solidarity, the artist is anarchic by the sheer arbitrariness of his will.

weapons.⁴⁰ Art tolerates censorship and has the resources to integrate and transform its sterilizing interventions, through metaphor and the poetics of incompleteness. Metaphor, Borges says, has always ensured artistic success through an extraordinary poetic intuition. Poetry is, by definition, transfiguration. It produces a quasi-alchemical transmutation of reality. A text that does not reach the level of metaphor (including as a structural trope) is not literature. The value of art lies (even for a poet of transparency like Whitman) in metaphorical language, which renders the text intangible to censorship. In fact, censorship responds and can react to the crude language,⁴¹ to unrefined expression, which is clearly provoking. However, one does not need to be either unpolished or unconventional to say what one means, using the language of art. According to this reasoning, it appears that censorship targets those literary texts (or fragments thereof) that forsake their artistic status through non-transfiguration.

Censorship is, in Borges's view, irrelevant also from the perspective of a poetics of incompleteness. It is condemned by thinkers like Schopenhauer, for whom the literary text is sacrosanct and untouchable. In reality, it must be regarded, however, as an endlessly reworkable draft. All writers, Borges says (resorting to a Platonic-Jungian conceptual scaffolding), copy, reshuffle, rearrange the Great Universal Text, succeeding only in part to give shape to those non-sensible Ideas. Each literary work is an always already erroneous version of the archetypal Text.⁴² At this scale of vision, the impotence of censorship becomes obvious.

The truth is that Borges resorts to a poetic license. His declaration of acceptance of censorship takes the form of a metaphor eulogizing literature. The artist and his poetry are elevated to an area that is inaccessible to censorship. Despite all attempts at corseting it, art triumphs. Censorship can be defeated simply by ignoring it.

⁴⁰ Borges ignores the existential, contestatory function of art in totalitarian regimes.

⁴¹ Borges believes that the six censored poems in *The Flowers of Evil* are not among the most aesthetically valuable ones.

⁴² The lineage is partial. What gets lost is Plato's devaluing stance on art and artists; all that is retained is the metaphor of the archetypal Text. Borges's assertion seems the escapist reverie of an elite humanist intellectual, a classically erudite scholar, with a universalist aspiration. In other words, we are faced with a charming speculation, which does not provide a fertile track for a contextualized ideological-political approach to censorship.

4. The difficulty of slipping through the horns of the dilemma

The bibliography of the problem indicates that the theme of censorship in art is a reason for permanent controversy. Although both positions taken in the dispute are comprehensible and compelling from the perspective of the ideology assumed by each, all these interpretations are undermined by various problems. The repeated failure to produce an impeccable volley of arguments can also be motivated by the collective emotional climate. The pathos that surrounds debates often makes them obscure and inoperative. There is no neutral space in which the battling ideas can be analysed, no (supraordinate) authentic court to arbitrate the conflict, only biased parties that dispute their supremacy.

There is no disagreement on which the rational camps might reach an agreement. Censorship is generally considered bad because it suppresses ideas and works. To claim that all actions against it are good would, however, be a reductionist fallacy. The recommendation to take account of paradigmatic examples in order to arrive at an adequate definition of censorship is incompatible with the disagreement generated by controversial cases. To use the same word for one and the other risks making the (traditional) concept of censorship inoperative. The desire to avoid lexical tricks (which push the problem one step behind, without solving it) raises questions about which moves are permissible and which ones are not in the effort to define censorship.

There is no trenchant response that might disarm all camps simultaneously. The final verdict must be suspended, because previous answers to the components of the issue under discussion could not be clarified/elucidated, resulting in endless (and sometimes implicit) attempts to define censorship.

In this dilemmatic context, it is difficult (even impossible) to answer the question if there is any solid reason why art should (not) be censored. For art is placed in the interval. Its position is problematic in any society. Ideally, it should be recognized that art has a status of its own and there should be a provisional (albeit unstable) balance. We would like to believe that there are beneficial forms of censorship, backed by the complementarity between Good, Law and Truth. However, if we stay true to reality and do not fall for utopia, we must recognize that censorship is repugnant since it is perceived as a means that contributes to the consolidation of power. The fact is that societies in which political power wants to turn art into its own instrument, there are always ways to regulate its privileges and limits, thus

establishing censorship. Still, censorship cannot achieve infallibility. Art always finds remedies, means to express, in different ways, whatever censorship is trying to ban. Therefore, a dynamic dialectic has set in between various types of censorship and various forms of transgression/subversion. The themes of this confrontation are historically redefined, each era displaying its own spectrum of confrontation scenarios.

The issue of the immunity of art oscillates between the Scylla of excessive prohibitions and the Charybdis of some “Trojan horses” (vectors through which, it is believed, works of art carry messages with a socially toxic potential). Not only do the excesses of art cause a need for civic control, but they also fuel the excesses of censorship. The reverse holds true as well. In between the more extreme cases placed at the edge of the spectrum (the happiness or the unhappiness of art due to censorship or non-censorship) are the everyday situations, in which art is punished, gently or harshly, for its audacities. Permanently at work (including in liberal societies) is the *silent censorship* of an “anonymous authority” (Erich Fromm), which most often evinces a conservatism that is instinctively opposed to art’s liberties, especially to those verging on libertinism.

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