

**Art, the American flag and our culture of freedom**, by Anthony D'Amato Mar 8, 1989, pg. 17

"What is art?" This question has never been answered satisfactorily by philosophers. Nihilists might say art is anything an art museum exhibits. Under that definition, an American flag laid on a floor is "art" if the floor is part of the School of the Art Institute of Chicago.

Should we ask the question of Veterans of Foreign Wars members who are angrily picketing the Art Institute? Or the various politicians who are displaying their personal courage and bravery by seizing the flag and attempting to take it away or sticking it on a pole? Suppose they answer, "It isn't art-it's sacrilege!" Part of the trouble is that the same verdict was pronounced by the Ayatollah Khomeini upon "The Satanic Verses"; for good measure, he ordered that its author be murdered.

Most people would agree that a good work of art attacks us emotionally. The emotional reaction it engenders in us changes us, makes us see the world in a new light. Yet throughout history many people have reacted angrily upon first seeing a genuinely creative work of art. The Dutch gentry reacted bitterly to Rembrandt's unflattering portraits. Yet today the incredible market value of a Rembrandt shows how taste can change. The world would be a lot more artistically impoverished if various vigilante groups in The Netherlands had succeeded in destroying Rembrandt's canvases.

In a curious way, the people who are shocked the most by the American flag affair are the ones whose emotions and sensibilities have been affected in precisely the way student artist Scott Tyler may have intended. The veterans and politicians are themselves getting the biggest "art impact" from the flag exhibit. Is that why they are so attracted to the Art Institute? Of course they wouldn't say so; they would say that their purpose is to dismantle and destroy something which isn't art at all. But isn't that what every censor claims? A board of censors, one of my students once said, is a group of people who like to read pornographic material. Another student added that the board gets a second thrill by denying the material to everyone else.

I have not said anything about the "law" so far. As a teacher of 1st Amendment law, I have been asked about the "legality" of the American flag exhibit at the Art Institute. The answer is not to be found in the words of the 1st Amendment, but in our history and culture which form the context for our Constitution.

Freedom of expression under the 1st Amendment is one of the things that make America great. The freedom to talk, to write, to be uninhibited in creating works of art, are not just narrow freedoms affecting a few people. Rather, freedom of expression carries over to other realms of personal freedom-to privacy, to the right to live one's own life free from the heavy hand of government. Visit nations that deny freedom of expression, and you will find a cramped and constraining attitude in matters other than speech. If we allow

self-proclaimed censors in our country to destroy free expression, someday those censors will find that they have created a governmental monster that restricts their own freedoms.

In the 1970s, the American Nazi Party marched in Skokie. That was as hard for the people of Skokie to accept as the American flag exhibit is for the veterans groups today. But we learned from the Skokie affair that the only time free speech needs the protection of the law is when it is blatantly offensive. Inoffensive speech does not need legal protection. The history of freedom is written in those incidents that were, in their day, enormously controversial. The Art Institute exhibit is today one of those incidents that play a formative role in our culture of freedom.

During the Vietnam War, a student named Spence pasted a large "peace symbol" over the stars of an American flag and displayed the flag publicly. Spence was convicted under a Washington State law that specifically forbade the attachment of figures or symbols to a United States flag. But the U.S. Supreme Court, in a 1974 decision, reversed the conviction on the ground that Spence was communicating a political opinion and criticism of Vietnam policy.

Robert Bork, who was rejected as a nominee to the Supreme Court, might distinguish Spence's case from the Art Institute situation as follows: Spence was engaged in political speech, and if the 1st Amendment protects any speech at all, it protects political speech. But the student at the Art Institute is not engaged in political speech; he is simply creating a work of art. Art, Bork would say, is not protected by the 1st Amendment.

Although some lawyers might agree with Bork, I find his position narrow and cramped. All art is in a sense political. On the other hand, many people think politics is artful (perhaps in the sense of "artifice"). If I am right in saying that the veterans and politicians who are protesting the Art Institute exhibit do not look upon it as artistic, then the ultimate irony is that their anguished reaction is a political one. But if it is political, then their very protests should serve to guarantee the legal protection of Scott Tyler's work—even for judges who agree with Bork's narrow view of the 1st Amendment that it protects only political speech.

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