

PHOTOGRAPHY AND MORALITY

Hips That Pass In The Night

When the Contemporary Arts Centre of Cincinnati, Ohio and its director, were charged with the rather quaint sounding offences of pandering to obscenity and the illegal use of a minor, the reverberations were heard throughout the American art world.

It is thought to be the first time that a public art museum in the United States has faced criminal charges as a result of the contents of an exhibition. (New South Wales can proudly boast of an earlier example, as a result of the "Romance" show at the Lake Macquarie Regional Gallery which resulted in the seizure of several works by Davila and the conviction of the Town Clerk).

The Cincinnati jury trial was one of the aftershocks of the retrospective exhibition of a recently deceased photographer named Robert Maplethorpe. Widely acknowledged as one of the great photographers of the decade, Maplethorpe gained not his recognition but his infamy from photographs of males with a predilection for leather, whips and poses that would expose the subject to some very uncomfortable sunburn that would not necessarily be avoided by the wearing of a hat.

In early October, the defendants were found not guilty. What is important for Australians is not the fact that charges were laid or that the defendants were acquitted. After all, the charges are not precisely known to Australian criminal law, nor do we have a Bill of Rights and nor do we use the concept of "appealing to purient interests". We do however share the notion of "obscenity". (This is in itself interesting for the Australian law would seem to be based on the premise that the viewer is one whose essential goodness may be "depraved or corrupted", whereas the American "purient interest" approach admits that there may be viewers in the community who like what they see, but shouldn't).

For Australia, the importance of the Maplethorpe incident is that it gives us cause to reflect upon the state of our own obscenity legislation. Any such review (see "Visual Artist and the Law" (2nd ed)) reveals that most State legislation concerning the protection of the public's sensibility is antiquated, socially misconceived and very poorly expressed. It seems still to be based on the Victorian rule of thumb that, for women and homosexuals, sex was an evil, that those who enjoyed sex were depraved and those that might enjoy it were easy subjects of corruption.

That of Western Australia and Queensland must win prizes for the most amusing legislation in the area although most other States would get certificates if there were a competition.

Although there are probably few votes in the introduction of newly considered and articulated morals legislation, this is no excuse for not tackling the problem. When the vice squad seized the Juan Davila work "Stupid As A Painter" from the Sydney Biennale in 1982, the then Premier promised reform so that such a matter would not again occur in that State. Yet he did nothing and nor did his successors.

Suggested reforms

There is no doubt that the community demands that there be some laws against "offensive", "indecent" or "obscene" material and it is impracticable to suggest that all such laws should be repealed or that works of art in general should be excluded from their ambit or even that there should be an absolute defence for works of art that are exhibited in art galleries. To even argue the social desirability of such suggestions is a waste of time. They are politically impossible.

Nevertheless there are changes that can be made:

- (i) One simple (and politically acceptable) reform would be to enact a statutory presumption whereby a work of art exhibited in a bone fide art gallery would be presumed to be not "indecent", "offensive" or "obscene" for the purposes of the Act.

The suggestion that this would allow every porn vendor to open an "art gallery" and sell disgusting material without appropriate public control would surely be met by the ability of any court to determine whether the gallery was bone fide.

- (ii) Another sensible innovation is that introduced by the South Australian Police Offences Act 1953 - 1983. Section 33 (vi) forbids the commencement of any action without the prior consent of the Minister.

This is good so far as it takes the final decision out of the hands of the vice squad and into an elected representative of the people. (On the other hand, as many of the complaints, which have triggered the most, publicised "art-porn" raids have been laid for political purposes, the value of that provision will depend largely upon the incumbent).

- (iii) A suitably drafted defence of "artistic merit" would also ensure that the material (as well as the venue and other circumstances of exhibition) was put into its proper perspective.

Conclusion

With perhaps the exception of South Australia, all States have archaic and sometimes absurdly funny legislation relating to obscenity. The law may be a less joyful profession if our legislators repeal provisions such as the Queensland definition of an indecent picture or printed matter:

"any picture relating directly or indirectly, to pregnancy of women or to sexual intercourse in a lewd, purient or obscene manner, or which may be reasonably construed as in a lewd, purient or obscene manner, or sexual abuse or to any complaint or infirmity arising therefrom, or to impotency, or to nervous debility or female irregularities, or which may reasonably be construed as relating to any illegal medical treatment or illegal operation." (s.2 Vagrants, Gaming and Other Offences Act).

Perhaps legislators suffer from "nervous debility" when facing up to the need for legislative reform when legal, moral and political issues meet.