

ing ahead in the shifting chaos. And yet if he exposes his more respectable children, I am sure of this one thing at least, he would invite us to do the same thing also: namely, abandon some of those stale metaphors of his that we have popularized and politicized, for if there was anything Nietzsche both hated and feared, it was the thought that one day he might become himself, through the activities of well-meaning disciples, a mummified metaphor. But then, perhaps, it was for this reason that he disdained disciples.

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PRIVACY, FREEDOM, AND OBSCENITY: STANLEY V. GEORGIA

In 1957 the Supreme Court declared in *Roth v. United States* that "obscenity is not within the area of constitutionally protected speech and press." (354 U. S. 485) But in 1969 the Court ruled in *Stanley v. Georgia* that no ban on obscenity can "reach into the privacy of one's own home." (394 U. S. 565) "Own" is really redundant, the Court not distinguishing homes rented from homes owned, but its use is one sign of several in a unanimous decision of the Court's zeal in protecting the home against government intrusion. The legal status of privacy is certainly the chief issue in this decision.

The Court states in *Stanley* that it was unable to find any previous case, except one judged inconclusively by an inferior court, that fully considered the question of private showings of admittedly obscene films. The Court is thus, in its own estimate, winning a new freedom in the form of enhanced protection for privacy. The claim will certainly be made good if the private possession of obscene materials becomes more widespread in the future. Technological innovation alone seems favorable since it is making home movies inexpensive, easy to operate, ideally suited to a comfort-loving people of growing income. A home market in expansion could well make *Stanley* a landmark decision in the mass enjoyment of a new freedom.

Stanley claims that the ban of Roth is limited to the "public" distribution of obscene materials and that it must be enforced avoiding the least "infringement of the individual's right to read or observe what he pleases." (568) *Roth* plus *Stanley* thus suggest that the police can raid shops, not homes, which is just the distinction the Court wants to make, but the workability of this distinction may break down in practice. A product or service whose demand at home is protected will sooner or later create a supply ever eager to promote new outlets, licitly in the home or illicitly outside; after all, bootlegging profits can be a greater spur to output than normal ones. The zeal to grant constitutional protection to the private market may thus give an unintended boost to the public market. The Court apparently believes that this deplorable result is not too high a price to pay for avoiding the alleged damage of squelching private possession.

Another possibility is that home showings may be undercut by the growth in many cities of a public market—at "popular" prices—of films that are carefully made to lie outside the narrow definitions of obscenity set down in recent years by the courts. *Stanley* would thus be without practical impact if less-than-obscenity, as judicially defined, takes custom away from the genuine product allowed constitutionally at home.

The private and public markets may also flourish alongside each other. After all, the product is very similar, and tastes developed in one market can be easily satisfied in the other. Both markets should, of course, benefit from the erosion of shame usually attached to obscenity, *Stanley* itself being a contributor to that erosion. Shame is attached to an activity in part because it is against the law; remove the illegality and you remove, or at least reduce, the shame. Shame could even disappear entirely if that activity is not only given constitutional sanction but gains in dignity from association with the "sacred precincts" of the home.

I

What we have said in no way infringes upon the power of the State or Federal Government to make possession of other items, such as narcotics, firearms, or stolen goods, a crime. (568)

The right to private possession is apparently not "absolute" for it depends upon the uses to which that possession is put. Why then say nay to narcotics and yea to obscenity? The Court answers:

Our holding in the present case turns upon the Georgia statute's infringement of fundamental liberties protected by the First and Fourteenth Amendments. No First Amendment

rights are involved in most statutes making mere possession criminal. (568)

In plainer language still:

If the First Amendment means anything, it means that a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch. (565)

“A man sitting alone in his own house.” The force of this expression cannot be exaggerated, judicial overconscientiousness being shown by no less than three redundancies: own, alone and sitting. The judges must mean what they say in finding a right of privacy in the First Amendment. This right was violated, they hold, by Georgia’s statute prohibiting the keeping at home of obscene materials. *Stanley’s* distinctive and original contribution to constitutional law lies precisely in the view that the First Amendment protects private possession of such materials.

There is no discussion of privacy in *Roth*, and the opinion of *Stanley* that *Roth* covers only “public” distribution is based not on text but only on inference. The inference is also clear that *Roth* overlooked the right of privacy in the First Amendment. The alleged blindness is in fact not confined to *Roth* alone; the Court in *Stanley* cites only two previous decisions, one of which is discussed shortly, connecting privacy with the First Amendment and even here the connection is not close. The judges in *Stanley* seem to believe that they have found something in the Constitution that was long overlooked. On the face of it, the claim is a presumptuous one but it cannot be ruled out without examination. What must be ruled in, however, is that the claim be supported with great care by reference to chapter and verse and arguments based thereon. *Stanley* has failed this test. We are even embarrassed to report that we cannot state exactly where in the First Amendment the Court finds the right to privacy, as defined. Our best guess is that the Court discovers it in the clause guaranteeing free speech and press. This clause allegedly supports the “right to receive information and ideas.” (564) We would further guess that the Court’s reasoning is that since this supposed right of the First Amendment can be enjoyed at home and since the home is the locus of privacy, therefore that Amendment gives shelter to obscene literature and movies, which are defined (as noted below) as a form of “information and ideas.”

To a superficial observer, the First Amendment is the last place in the world to find a right to privacy, however defined. The rights it lists—free exercise of religion; free speech; free press; peaceable assembly; and petitioning for the redress of grievances—are all that

to a singularly high degree presuppose groups of people acting together in the public square in pursuit of common, not private, ends. The only possible exception is the free exercise of religion for those practicing it at home.

If there is a right to privacy of any kind in the Constitution, there are several more obvious candidates than the First Amendment. The Third Amendment, for example, bars the quartering of soldiers "in any house" without the owner's consent and only as prescribed by law. The Fourth guarantees the security of your home against unreasonable searches and seizures. And the Fifth insists that private property be taken for public use only with just compensation. It is not self-evident why the Court overlooked these leads in favor of the First Amendment. *Stanley* does refer to "the philosophy of the First Amendment," (566) but this philosophy is unfortunately not spelled out; it presumably goes beyond the bare text of the Amendment itself.

The ruling suggests the broad scope of the Amendment, philosophically considered, in commenting as follows on the "right to receive information and ideas":

Moreover, in the context of this case . . . that right takes on an added dimension. For also fundamental is the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy. (564)

These words suggest that the right to the private possession of obscene materials is lodged not in the text of the First Amendment, but in a dimension added to it from source or sources unspecified. The recent discovery by the Court of this dimension, hidden from the eyes of man for almost 200 years, is therefore a real one. The Court, unfortunately, is silent about the size and shape of this dimension. It is helpful, however, in citing a predecessor decision, *Griswold v. Connecticut*, in support of its own ruling, whose words are very similar to its own:

The foregoing cases suggest that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance. (381 U.S. 484)

What is more, these guarantees create "zones of privacy," according to *Griswold*. (484) This decision goes even further in discovering such zones as penumbras of half of the first ten amendments. The First is among those furnished with penumbras. In this sense, *Griswold* also establishes a right to privacy in this Amendment. It therefore shares with *Stanley* the praise that is due to textual analysis that discovers

what was overlooked for almost 200 years. *Stanley* must nevertheless be credited with a special loyalty to the First Amendment in resting its case on it alone. The ruling differs from *Griswold* also in defending the right of privacy specifically in the form of the home possession of obscene materials. The pioneering character of the decision cannot therefore be denied altogether.

"For also fundamental . . .," *Stanley* states. The term is loosely used in the ruling. It does not seem exactly the term for a right not lodged in the text of the Constitution but only recently discovered in "an added dimension." Moreover, if rights emanating from such a dimension are truly fundamental, what term of even superior value can be applied to rights—trial by jury, *habeas corpus*, for example—explicitly incorporated in the Constitution? The fact is that the term is not found in the document itself, and in view of the gravity attached to it, it should not be used—not loosely at any rate—by the Court. Even more fundamental, of course, is that judges exercise enough self-discipline to find in the Constitution only those rights put into it.

The Court must surprise many people when it defends obscene movies under the right to receive "information and ideas." That is not exactly the category that comes immediately to mind. Either the Court knows a class of films not in common view or else it defines "information and ideas" very differently from the rest of us. The difficulty is of course of *Stanley's* own manufacture, in particular of its decision to base its case exclusively on the First Amendment, which is held to protect the right to receive "information and ideas." *Stanley* would not have had to dignify smut as "information and ideas" had it found a right to privacy anywhere in the Constitution than in the First Amendment.

There is another bizarre result of *Stanley's* loyalty to the First Amendment. It comes out in its open challenge to one aspect of *Roth*. According to that decision, the purpose of that Amendment was solely to foster national self-reform, and its exact words are:

The protection given speech and press was fashioned to assume unfettered interchange of ideas for the bringing about of political and social changes desired by the people. (484)

This view, if allowed to stand, need not bring into question the basis of *Stanley*. For if obscene movies can be called "information and ideas," they can also be called, with hardly more exaggeration, ideas for bringing about national reforms. But it appears that the Court did not want to go that far. Its only alternative then was to extend the word "ideas," as used by *Roth* in the above quotation, to include entertainment also, in which category obscene materials would seem to belong. Such is precisely the view of *Stanley*, expressed as follows:

Nor is it relevant that obscene materials in general, or the particular films before the Court, are arguably devoid of any ideological content. The line between the transmission of ideas and mere entertainment is much too elusive for this Court to draw, if indeed such a line can be drawn at all. (566)

Ideas and entertainment being thus classified together, the scope of protection afforded by the First Amendment becomes very broad indeed, certainly enough to cover obscene movies. *Stanley* thus widens the ground of *Roth*, to the point, it seems, of overruling its view that obscenity cannot legitimately be protected by the First Amendment. For this Amendment, according to *Stanley*, shelters entertainment and not just ideas leading to national improvement, from which it follows that, even apart from the question of privacy, obscenity cannot be outlawed. Future court rulings may not only restrict the scope of *Roth*, as *Stanley* does ostensibly, but chuck it out altogether.

II

Broad as the First Amendment is, in the opinion of the Court in *Stanley*, it does not protect the private possession of documents used in treason. "In such cases," the Court states, "compelling reasons may exist for overriding the right of the individual to possess those materials." (568) There are apparently no such reasons, in the Court's judgment, in regard to obscenity. The Court believes, in fact, that the harm done by obscenity is light, if it exists at all. It could not easily put smut with "information and ideas" if it regarded it as a social menace.

The degree of harm is, of course, an empirical question and is treated as such, at least in part, in the ruling. But the Court takes it up in such a restrictive way that its conclusion that there is little harm, if any, leaves the question short of adequate exploration. The Court raises the problem in contesting the claim of Georgia that "exposure to obscene materials may lead to deviant sexual behavior or crimes of sexual violence." (566) It answers that "There appears to be little empirical basis for that assertion," (566) citing two studies, a book and a law-review article. The examination goes no further.

The ruling contains one observation that, if taken seriously, would attribute social utility, not harm, to obscene films and books. The Court supports Mr. Stanley, defendant in the suit brought by Georgia, in these words:

He is asserting the right to read or observe what he pleases—the right to satisfy his intellectual and emotional needs in the privacy of his own home. (565)

The home is his "own" and so presumably are his needs and that would seem to settle the question, without benefit in this case of empirical studies. That a man's needs may be meretricious and their satisfaction deplorable is apparently a thought not allowed to weigh on the scales of justice. That our needs are many and at war with each other and that the role of man, as distinct from other animals, is to arrange them in a natural hierarchy does not affect judicial judgment either. Needs as such are apparently sovereign and so everything that promotes their satisfaction renders a service. The service of obscenity is even a double one, ministering to intellectual as well as emotional needs, according to the Court.

The hostility of *Roth* to obscenity is unmistakable. "But implicit in the history of the First Amendment," it declares, "is the rejection of obscenity as utterly without redeeming social importance." (484) There is a force in that "utterly" that was overlooked by the judges in *Stanley*. In fact, they give a restrictive interpretation to the basis of that decision, finding it hostile to obscenity on only two grounds of limited scope:

For example, there is always the danger that obscene material might fall into the hands of children . . . or that it might intrude upon the sensibilities or privacy of the general public. (567)

But *Roth* was concerned with more than sparing your feelings if it judged obscenity to be "utterly" without social benefit and if it denied it constitutional protection. One careful student, surveying the problem before the decision made in *Stanley*, finds that the Supreme Court, since *Roth*, has been drifting "toward the extreme libertarian position without acknowledging that it was doing so (and, perhaps, without deliberate intention of doing so)."¹ *Stanley* carries this drift further.

The judges in *Stanley* could argue that the damage done by obscenity, if it is admitted at all, is minimized because it is confined to individuals at home. Hence their stress on private possession; their ruling, in fact, refers ten times to "mere" private possession as against two references to such possession unsupported by "mere." Insistence on "mere" suggests the view of *Stanley* that society at large escapes whatever damage inheres in obscenity.

The Court must believe that it can draw a line between the private and the public. The Court grows faint only before the challenge of drawing a line between "ideas" and "entertainment." It takes on the

¹Harry M. Clor, *Obscenity and Public Morality* (Chicago and London: The University of Chicago Press, 1969), p. 80. The charge of judicial self-ignorance is of course a serious one.

lion and quakes before the hare. At any rate, it draws the first line in claiming that *Roth* outlawed only "public" distribution, but how the distinction fares in practical enforcement, as noted before, is yet to be seen.

But there is more to be said about this distinction. Something bad occurring in one home may not be of public interest; occurring in many or all homes, it is a public as well as a private matter. It may perhaps be well to avoid the view that because something is a private matter, it is also a public matter. The domains overlap and, where they do, the public interest can make itself felt also.

Moreover, we are the same people moving constantly between the private and the public, absorbing into one personality harmful influences, whatever the source. We are, in particular, made at home, and if we are made badly we are bad citizens, soldiers, employees, etc. Furthermore, if the home makes character, character makes the man and man makes the polity. The link between the home and the political order is not so tenuous as to escape judicial attention. The "mere" private possession of obscene materials is therefore no guarantee that public life escapes damage.

It would appear that *Stanley* lays down a false scent in bringing in the danger of thought control. Only by doing so can it claim that we must accept the allegedly inferior evils introduced by obscene books and films. Those opposed to this view must, of course, accept the responsibility of demonstrating that the evils of their suppression are more easily borne than the harm of obscenity. The suppression can in truth be made effective and have nothing in common with brainwashing.¹

The judges seem unaware that the path to thought control is not through the suppression of obscenity but more reliably through its protection and spread. A people drugged by obscenity is ripe for the taking by mind-manipulators. For these would find in the great appeal attached to obscene images an attractive ribbon for their political message. Normally sanctuaries of freedom, the homes whose discrimination and decency have been undermined by long habituation to filth would be open to flooding from the all-surrounding sea of propaganda. The Court that is anxious about captive minds should take up arms against, not for, obscenity.

III

The Court calls to its support a Brandeis dissent of 1928 that describes the makers of the Constitution in these terms:

They conferred, as against the Government, the right to be

¹Ibid., chapter 5.

let alone—the most comprehensive of rights and the right most valued by civilized man. (564) (*Olmstead v. United States*, 277 U. S. 478).

The judges in *Stanley* might be forced to admit that the harm done at home spreads abroad. They meet the argument in fact by claiming that the harm done in suppressing the evil is greater than the evil itself. This claim is an important argument of *Stanley*, which points out:

Our whole constitutional heritage rebels at the thought of giving government the power to control men's minds. (565)

In the same spirit *Stanley* states that the government "cannot constitutionally premise legislation on the desirability of controlling a person's private thoughts." (566) An attempt to do so, in its opinion, would be "a drastic invasion of personal liberties." (565)

To "control men's minds," even their "private thoughts," evokes with full force the horrors of brainwashing, which entails more than the State's imposition of ideas upon the mind; it is imposition with such force as to remove even the capacity to think of ideas that are rivals to those imposed. With the mind in bondage, the last redoubt of freedom is reduced. The horror cannot in truth be exaggerated, but what country does *Stanley* have in mind? Georgia sought much less in trying to keep away from people's minds—a policy of exclusion, not imposition—a specific set of influences that are narrowly defined by the courts and defined at least in *Roth* as unworthy of legal protection. No total nor even partial seizure of the mind was sought, it being as free as ever to roam amidst the great confusion of ideas and entertainment too that exists in the United States.

The right to be let alone is presumably "comprehensive" enough to include a right to privacy, at least to the private enjoyment of obscene literature and films. Needless to say, neither the general nor specific right is found in an ingenuous reading of the Constitution. But this is not all. The right to be let alone can be used to undermine as well as to advance civilization: it depends on who is using it and for what purposes. An "absolute" right to privacy, if used basely, could promote barbarism.

Moreover, though the civilized man, more than most people, likes to be let alone, solitude is not what is most precious to him. He wants above all the company of like-minded men, joined to him in lively discourse. The most self-sufficient of civilized men, Socrates, haunted the marketplace, and not only to escape Xanthippe. The recluse and solitary dreamer are fugitives from civilization. Is it possible that the Court does not know what civilization is?

The language of the Constitution is not of living alone but of living

together. "We the People"; "a more perfect Union"; "the common defense"; "the general Welfare"; and "to ourselves and our Posterity." The same language runs through the Declaration of Independence, to which the Bill of Rights is so closely linked. Its first words are of "one people," and we were declared even that early to be a "country"; the note is not of individuals living alone.

The central issue here may be the proper scope of law. *Stanley* reveals its view in being harsh toward treason and soft on obscenity. The law is held to be the shield of national self-preservation but has no business tampering with private morality. Its sole concern is to assure minimal conditions of social order and not to aid the attainment of high moral goals.

The view that the moral elevation of citizens is not the business of law does not necessarily deprecate the importance of non-legal efforts toward that end. These efforts may even be accorded a higher importance than law. Accordingly, it is possible for the Court to believe that obscenity is a serious violation of the moral order but is not a legitimate field of legislation. This view in fact is implied in *Stanley* when it refers, in support of its decision, to a citation whose climax words are: "Obscenity, at bottom, is not crime. Obscenity is sin." (565) The Court says nothing to take away from the heinousness of sin, but rather makes the distinction between sin and crime in order to show that sin is beyond the reach of the law. It fortunately does not carry out this view to all fields of conduct.

A narrow view of law often goes hand in hand with expressions of the greatest sympathy for those institutions, the family, church and school, that seek man's moral improvement. It is not clear, however, given the difficulty of the task, especially at present, why one potential agent, the law, should not also be enlisted in this cause. The passions and prejudices of men are too strong for the Government to look on as a neutral observer in the struggle between virtue and vice. According to one scorekeeper, the struggle at present is inclining heavily toward vice, obscenity itself weighing strongly in its favor.¹

The most curious view of *Stanley* is its view of itself as the voice of tradition that is raised against strange innovations. Its loyalty to the First Amendment, as it sees it, is but one instance of its self-image as the champion of an honored past. Frequently in the ruling are favorable references to "heritage," "traditional," and similar terms. But unfortunately the Court, in returning to tradition, has not stumbled upon the immediate predecessor of the Bill of Rights, the Virginia Declaration of Rights, adopted in June 1776. Its article 15 reads as follows:

¹Paul Eidelberg, "Intellectual and Moral Anarchy in American Society," *The Review of Politics*, 32, No. 1 (January 1970). On obscenity he writes: "all this, word after word, scene after scene, is slowly but ineluctably eroding the moral foundation of society." (p. 34).

That no free government, or the blessings of liberty, can be preserved to any people but by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles.

Virtue held so high is not likely to overlook the help of law in keeping vice at bay.

Constitutions of some of the state governments existing in the early Republic had similar provisions; section 45 of Pennsylvania is not unusual:

Laws for the encouragement of virtue, and prevention of vice and immorality, shall be made and constantly kept in force.¹

Virtue is "absolutely necessary" in a free government, according to the 1780 Constitution of Massachusetts (Part I, Article XVIII). It was in fact well understood in the early Republic that a government based on the consent of the governed makes special demands upon the character of the citizen, and hence the insistence at the time on a strict moral code. This view is not entirely dead, showing up, for example, in the immigration law, which demands "good moral character" before granting citizenship. If this view is correct, then unconditional citizenship for all native-born, though necessary in practice, carries a risk to the political order, especially the democratic one. The Supreme Court is blind to the democratic strand in tradition when it is blind to this risk.

The new view is that self-interest, not civic virtue, is the principle of democracy. Self-interest for the average man means, in effect, dedication to the satisfaction of his needs. Self-indulgence thus replaces the old rule of self-restraint. The never-ending quest for the goodies of modern life becomes the universal norm. But is any tyranny more burdensome than submission to insatiable appetite? Can a free government emerge from individual souls in bondage?

What the Court in *Stanley* calls "our free society" (564) may be no society at all. The term may be self-contradictory where freedom is understood as license. Where does the common ground arise where each one is bent on unlimited self-indulgence? Citizenship scarcely appears, and coherence freely gained is impossible amidst individual wills in open conflict for resources always outrun by appetites. Disorder will succeed disorder as problems arise and fester without solution. Problems hang on because citizens, self-absorbed and self-willed, will not give to their solution either the attention of resources needed.

¹Cf., Paul Eidelberg, *The Philosophy of the American Constitution* (New York: The Free Press, 1968), Appendix 2.

People could eventually give up their freedom to free themselves from the overriding vexations of chaos. From no government to total government could be a short step.

Justice in race relations is the one problem that above all requires fresh dedication to the common good, even at the expense of private goods. It thus requires the moral elevation implicit in sacrifice freely made. It requires, in short, moral qualities that the Court would have the law not bother about. Committed more than most to justice in racial affairs, the Court undermines what is needed to bring it about.

IV

Stanley is soft to the governed and harsh to the government. It is soft to the point of flattery for nothing is more flattering than giving each one his head. It is also soft in not keeping people to standards; the absence of standards for the people is the great void in the decision. It sets no standards because it believes in no standards: distinctions between virtue and vice, base and elevated, and decency and indecency are, all of them, foreign to *Stanley*. Their absence is in fact the basis of a radical, comprehensive, and coherent defense of the all-licensed freedom that the ruling represents.

The ordinary defense of freedom is that to protect the expression of good speech, you must, for example, grant freedom for bad expression since suppression of the second puts the first in jeopardy. The distinction between the good and bad is accepted, at least by implication, though not with enough conviction to outlaw the bad; there is an underlying distrust in the ability of public officials to keep their hands off the good. This distrust is so strong that it animates more recent attempts, exemplified by *Stanley*, to do away altogether with moral distinctions. The very identification of a course of action as evil is regarded as a peril to freedom since it exposes that action to suppression. Hence the only sure way to guarantee freedom is moral neutrality. Treason alone, imperiling the preservation of the state, is to be disallowed; for the rest, fair is foul and foul is fair.

This line of reasoning appears to be the "philosophy" of *Stanley*. It is, however, so patently false that some will doubt that it is the real view of the Court, and so it is necessary to cite supporting text. We turn again to the Brandeis dissent, already cited, which *Stanley* invokes in approval of its ruling, and which states as follows of the authors of the Constitution:

They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. (564)

Any thoughts? Any sensations? Was the truth of the first and the

morality of the second of no account to them? Indeed, was it not of central account? The Founders loved not diversity so much as to assure protection for any extreme of human behavior. Nor did they love the protection of emotions and sensations at all. This protection implies a right to experience as such, a contemporary idea that was known to 18th century planters and backwoodsmen alike.

The words of Brandeis, if taken literally, suggest that life is a series of titillations—the greater the number and the greater their intensity, the greater the happiness. On this view the greater emotion experienced in strangling your mother has higher value than the slight emotion experienced in directing a loving word toward her. The result is highly perverse of course, but strictly speaking inheres in the relativism and moral neutrality of the Brandeis view.

This neutrality is in fact not found in the American tradition. “We hold these truths to be self-evident. . . .” Truths therefore do apparently exist. There are, for example, true ways of living and false ways of living, the first to be followed and the second to be shunned. A moral void does not emerge from the traditional line of thought.

“ . . . The Laws of Nature and of Nature’s God . . . ” (Also from the Declaration of Independence), even if taken in the most minimal sense, reach far. They mean that laws not of his making are binding upon man. For he is part of a natural and divine order requiring submission and reverence. Only as a rebel against this order will he feel free to do as he pleases. The Court could of course reply that it is the Constitution that we are expounding, not the Declaration of Independence—if it were only so with respect to the Constitution. But if the Court is in its own eyes the voice of tradition, especially as embodied in the Bill of Rights, it cannot pass over their close link to the Declaration. The Declaration also stands as a reproach to the Court in its *Stanley* ruling.

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