

Clarence Thomas, Plato and 'Grand Theft Auto'

WSJ wsj.com/articles/SB10001424052702304447804576413851248888990

June 30, 2011

The Supreme Court voted 7-2 this week to strike down a California law prohibiting the sale or rental of violent video games to minors. It was a victory for free speech, a subject that makes for strange bedfellows and odd antagonists, with the court's conservatives and liberals splitting in atypical fashion. Their disagreements implicate fundamental principles, and they echo the ancient debate between Plato and Aristotle over how societies regulate art.

In Monday's *Brown v. Entertainment Merchants Association* ruling, conservative Justice Antonin Scalia wrote the majority opinion, backed by liberal Justices Ruth Bader Ginsburg, Sonia Sotomayor and Elena Kagan, plus swing vote Anthony Kennedy. In a meeting of conservative minds, Chief Justice John Roberts joined Justice Samuel Alito's opinion concurring with the court's judgment but offering narrower grounds. And Justices Stephen Breyer, from a progressive perspective, and Clarence Thomas, grounded in conservative convictions, wrote separate but complementary dissents from the majority judgment.

These unusual alliances are reminiscent of freedom-of-speech controversies from the 1980s, when radical feminist law Prof. Catharine MacKinnon joined forces with the conservative Christian Rev. Jerry Falwell in an unsuccessful campaign to restrict the sale of pornography. Then as now, the advocates of restriction lost to the defenders of a robust First Amendment. And then as now, the losing case for regulation echoed ancient and enduring considerations.

Aristotle is commonly thought to have been more friendly to art than was Plato. In "The Republic," Plato's Socrates famously expels the great poets from the just city he imagines because they corrupt the young by portraying the gods as weak and immoral. In contrast, Aristotle in "The Poetics" emphasizes the benefits of tragedy: By dramatizing the fall of a tragic hero, he argues, tragedy stimulates fear and pity, which work together to purge citizens' propensity to pride.



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These views are in tension, but they both reflect an appreciation of the enormous power of art to arouse the passions, shape opinions, and mold human character. Indeed, Socrates expels the great poets, but he does so for the purpose of replacing them with poets who are properly educated and disciplined. Subject to philosophical rulers, his preferred poets are crucial to promoting the good of the city by crafting beautiful tales based on a proper understanding of the gods and of justice—an understanding that will encourage moral and intellectual virtue in the citizenry.

John Locke, the 17-century British philosopher whose views on political liberty helped shape the U.S. Constitution, attached much less importance to art. And unlike Plato and Aristotle, he maintained that cultivating citizens' minds and character went beyond government's legitimate function.

But Lockean liberty, no less than Plato's republic and Aristotle's well-blended polity, depends on moral education. As Justice Thomas points out in his dissent, Locke wrote in his highly influential "Some Thoughts Concerning Education" that the family was the unit essentially responsible for children's education. For Locke and for the American founders, the proper exercise of parental authority meant inculcating in young citizens the virtues that allow for the responsible exercise of liberty.

The Supreme Court justices' disagreement in *Brown* comes down to a clash between two great goods essential to freedom: the First Amendment's prohibition on government restricting speech because of its content, and our constitutional tradition's assignment to the family of the task of educating children for liberty.

The majority believes the First Amendment requires that California's restrictions be struck down even if violent video games corrupt the young or harm their moral development. Given the vulnerability of imaginative works—and violent video games, for all their glorification of gore, are imaginative works—to the zealous thought police of the right and left, it's good to have both conservatives and liberals affirming that the First Amendment's vigor is measured by the objectionable speech that it protects.

The dissenting justices argue that in contrast to literature, TV and movies—all of which can expose children to shocking and gruesome violence—video games provide a kind of imaginative participation in maiming and killing that presents a novel and dangerous threat to the ability of parents to control the education of their children. Government, these justices contend, can regulate this threat without infringing First Amendment rights. This view didn't win the day, but it's good to have both conservatives and liberals recognizing the centrality of the family to our constitutional tradition.

Debates over regulating expression and educating the young are as old as our civilization. This Supreme Court decision, far from ending the matter, nicely sets the stage for many more salutary quarrels to come.

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