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Article 12

Religion and Child Custody; Obscenity Statutes

RECENT DECISIONS

Religion and Child Custody

In *Gluckstern* v. *Gluckstern*[1] both parties to a separation action had lived at the beginning of their marriage according to the tenets of the Jewish faith, but five years prior to the action, the plaintiff had embraced the Christian Science religion. A decree of separation was granted to the plaintiff upon grounds of abandonment and cruel and inhuman treatment. The two older children, both over fourteen years of age, were given the opportunity to select the parent with whom they would reside, and the custody of the youngest child was awarded to the plaintiff upon the condition that she would have the child examined monthly by a physician and would generally provide the child with necessary medical care.

In deciding the main issue of the case, the custody of the youngest child, the Court considered the religious education of the child but was satisfied to decree custody without making any specific recommendation in this area. The Court indicated that the question of the child's religious education was a matter for the custodian to decide and concluded:

> Nor does the fact that awarding custody to the plaintiff may result in the child's being educated according to the tenets of the Christian Science Church affect the right which she would otherwise have to its custody.[2]

[1] 158 N.Y.S. 2d 504 (Sup. Ct. 1956). The original action was reported in 148 N.Y.S. 2d 391, *modified*, 2 A.D. 2d 744, 153 N.Y.S. 2d 184 (1st Dep't 1956).

[2] 158 N.Y.S. 2d 504, 508 (Sup. Ct. 1956).

An examination of the New York cases dealing with guardianship proceedings will make it evident that the courts, in this analogous area, have not been as prone to establish the religious rights of a child in so perfunctory a manner. These courts have often found it necessary to determine the religion of a child and make guardianship appointments according to their findings. It is true that religious considerations are not always controlling, especially where temporal advantages will result for the benefit of the child if other factors are allowed to rule;[3] but the courts have greatly concerned themselves with the child's right to a religious education regardless of the other factors involved. That a child has a natural and legal right that his religious faith be preserved and protected by the court was expressly stated in the *Matter of Santos*.[4]

The early New York courts, following the common law of the Reformation period in England,[5] held that the father had the *sole* right to determine the religion of his children. In 1881, the Court of Appeals held that a father's expressed desire that his child be educated in the Catholic faith was decisive even though a non-Catholic petitioner for guardianship could give greater material advantages to the child

[3] People *ex rel.* Woolston v. Woolston, 135 Misc. 320, 239 N.Y. Supp. 185 (Sup. Ct. 1929); Matter of Mancini, 89 Misc. 83, 151 N.Y. Supp. 387 (Surr. Ct. 1915).

[4] 278 App. Div. 373, 105 N.Y.S. 2d 716 (1st Dep't 1951). See also N.Y.C. DOM. REL. CT. ACT § 88 (4).

[5] See Friedman, *The Parental Right to Control the Religious Education of a Child*, 29 HARV. L. REV. 485 (1915-16).

than the court appointed Catholic guardian.[6] It was stated in a later case that a father is a "priest and king in his own household" and that a court is obliged *by law* to defer to the father's demands in regard to the religious education of his children.[7]

In 1909 a statutory enactment established that a woman, along with her husband, is a joint guardian of her children.[8] Thus the common law was altered so that at present, the parents, rather than the father alone, have the right to determine the religion of their children.[9] However, the courts had already arrived at a similar conclusion for it had been earlier stated that the freedom of religion is a right that does not fully appertain to those who have not yet reached majority or mature judgment, and it is for the parents to lead their children to a religion of their own choosing.[10]

It may generally be stated, therefore, that in guardianship proceedings the religious belief of the child is submitted to judicial determination when the petitioner for guardianship or guardian is of a possible differing religious conviction. It then clearly becomes the duty of the court to make a determination of the child's religion and the primary difficulty involved is the basis upon which the determination should be made.

In this respect, it should be noted that our secular courts are not competent to evaluate nor question the sincerity of the religious convictions of those petitioning for guardianship. It may be questioned whether it is just to subordinate the best interests of a child to the guardian's nominal religious affiliations,[11] but the American concept of freedom of religion would condemn such evaluation by our secular courts. However, one court has gone so far as to indicate that the marriage of a Catholic outside the Church evidenced laxity in conforming to religious regulation, and such fact was considered in denying the petitioner guardianship of a Catholic child.[12]

Concerning the religion of the child, the courts have generally narrowed the basis of their determination to an objective fact, such as formal acceptance into a church or the expressed religious preference of the child himself. In a recent case, a New York court held that mere association with members of a religion or attendance at religious services will not *ipso facto* change a child's religion. An affirmative act of acceptance into the church must be evident to bring about membership.[13]

In another recent case, two children who had been under the custody of a Jewish social agency for four years were placed in the custody of a Catholic institution when evidence was introduced to the court show-

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[6] Matter of Marcellin, 24 Hun 207 (N.Y. 1881).

[7] *In re* Lamb's Estate, 139 N.Y. Supp. 685 (Surr. Ct. 1912). See also Matter of McConnon, 60 Misc. 22, 112 N.Y. Supp. 590 (Surr. Ct. 1908); Matter of Crickard, 52 Misc. 63, 102 N.Y. Supp. 440 (Surr. Ct. 1906); Matter of Jacquet, 40 Misc. 575, 82 N.Y. Supp. 986 (Surr. Ct. 1903).

[8] N.Y. DOM. REL. LAW § 81.

[9] Note, *Religion as a Factor in Adoption, Guardianship and Custody*, 54 COLUM. L. REV. 376 (1954).

[10] Matter of Jacquet, 40 Misc. 575, 82 N.Y. Supp. 986 (Surr. Ct. 1903).

[11] Huard, *The Law of Adoption: Ancient and Modern*, 9 VAND. L. REV. 743 (1956).

[12] Matter of Crickard, 52 Misc. 63, 102 N.Y. Supp. 440 (Surr. Ct. 1906). See also *In re* Lamb's Estate, 139 N.Y. Supp. 685 (Surr. Ct. 1912).

[13] Matter of Glavas, 203 Misc. 590, 121 N.Y.S. 2d 12 (Dom. Rel. Ct. 1953).

ing that the children had been baptized in the Roman Catholic Church.[14] In an earlier case, a child was determined to be Protestant as he had been baptized and enrolled in the "cradle roll" of the Methodist Episcopal Church.[15]

The formal acceptance doctrine appears to have been given less weight by the courts in those cases wherein it has been adjudged that the children themselves are capable of making a decision as to their religious preference. Of course there can be no arbitrary rule by which a court may determine that the child has attained the maturity of judgment by which it can evaluate the comparative merits or meaning of differing religious faiths, so that the facts of each case must be decisive. The Court of Appeals recently held that a twelve year old was capable of such decision, but the dissenting opinion flatly stated a child of that age has not reached such a degree of maturity that his preference should be binding upon the court.[16] The court in *In the Matter of Mancini* acquiesced to the expressed desire of a fourteen year old and appointed as guardian the person of her choice. However, the guardian being of a different religious faith from that of the child, the court ordered the guardian to educate the child in the religion of the child's baptism.[17]

The child's actual religious practices or attendance at religious services has also been a factor which the courts have considered. Although not determinative, evidence that a child was an altar boy in a Roman Catholic Church was persuasive in the court's determination that the child was a Catholic.[18] It would appear therefore that the courts have recognized that a forced change of religion may result in the unsettlement of the child's tranquility if the religious education of the child has progressed so that definite religious concepts have been impressed upon its mind through teaching and daily practice.[19]

It is manifest, then, that in guardianship proceedings the New York courts have not been hesitant in determining the religious status of the child. In awarding custody in separation and divorce proceedings the problems which the court faces may differ from those presented in a petition for guardianship. The court may be presented with issues of increasing complexity which must be considered if the best interests of the child are to prevail. It is nevertheless submitted that the spiritual life of the child is a factor which cannot be summarily dismissed, whether the proceedings be for guardianship or custody.

In the instant case, the Court may be justly criticized for its failure to examine the religious status of the child in awarding custody. It may be seriously contended

[14] Matter of Santos, 278 App. Div. 373, 105 N.Y.S. 2d 716 (1st Dep't 1951). For criticism of this decision see 65 HARV. L. REV. 694 (1951-52); PFEFFER, CHURCH, STATE AND FREEDOM 588 (1953).

[15] *In re* Newman's Guardianship, 142 Misc. 617, 255 N.Y. Supp. 777 (Surr. Ct. 1932).

[16] Martin v. Martin, 308 N.Y. 136, 123 N.E. 2d 812 (1954). See also 1 CATHOLIC LAWYER 66 (Jan. 1955).

[17] 89 Misc. 83, 151 N.Y. Supp. 387 (Surr. Ct. 1915). *Cf.* People *ex rel.* Woolston v. Woolston, 135 Misc. 320, 239 N.Y. Supp. 185 (Sup. Ct. 1929).

[18] Matter of McConnon, 60 Misc. 22, 112 N.Y. Supp. 590 (Surr. Ct. 1908).

[19] Matter of Glavas, 203 Misc. 590, 121 N.Y.S. 2d 12 (Dom. Rel. Ct. 1953); *cf.* Sisson v. Sisson 156 Misc. 236, 281 N.Y. Supp. 559 (Sup. Ct.), *modified*, 246 App. Div. 151, 285 N.Y. Supp. 41 (3d Dep't), *rev'd* 271 N.Y. 285, 2 N.E. 2d 660 (1936).

that if the child is Jewish then the plaintiff could not rightfully change the religion of the child without the consent of the father.[20] It is submitted that if it had been determined that the child was of the Jewish faith, although the best interests of the child might dictate that the mother be the proper custodian, custody should have been awarded only upon the condition that the child be educated according to the teachings of the Jewish faith. There is authority for the issuance of such a conditional decree in both custodial[21] and guardianship[22] proceedings.

Obscenity Statutes

The Supreme Court of the United States in the significant decision of *Butler* v. *Michigan*[1] recently declared unconstitutional a Michigan "obscenity" law[2] that prohibited the sale of any book "manifestly tending to the corruption of the morals of youth." In reversing the conviction of a bookseller who sold to a police officer a book which the trial court found to have a potentially deleterious influence upon youth, the Court *held* that the statute unduly restricted freedom of speech as protected by the Fourteenth Amendment. An incidence of such legislation, the Court said, would be to "reduce the adult population . . . to reading only what is fit for children."[3]

At common law, publication of obscene literature was an indictable offense as a breach of the peace.[4] One of the first "obscenity" statutes was Lord Campbell's Act of 1857.[5] In the United States, every state but New Mexico has some sort of law banning the sale of obscene books.[6] Generally speaking, the purpose of such legislation is twofold – to protect the young and to uphold the moral standards of a community.[7]

It is interesting to note that in the *Butler* case the Supreme Court for the first time ruled squarely in favor of affording constitutional protection to purveyors of literature attacked as obscene.[8] That the freedom of speech and freedom of press guarantees

[20] Matter of Glavas, *supra* note 19, Ross v. Ross, 149 N.Y.S. 2d 585 (Sup. Ct. 1956).

[21] Shearer v. Shearer, 73 N.Y.S. 2d 337 (Sup. Ct. 1947).

[22] Matter of Mancini, 89 Misc. 83, 151 N.Y. Supp. 387 (Surr. Ct. 1915); *In re* Lamb's Estate, 139 N.Y. Supp. 685 (Surr. Ct. 1912).

[1] 352 U.S. 380 (1957).

[2] MICH. STAT. ANN. § 28.575 (1938). The statute reads in part: "Any person who shall . . . sell . . . any book . . . containing obscene, immoral, lewd or lascivious language . . . tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth . . . shall be guilty of a misdemeanor."

[3] *Supra* note 1, at 383.

[4] See *e.g.*, Commonwealth v. Holmes, 17 Mass. *336 (1821); Rex v. Wilkes, 4 Burr. 2527, 98 Eng. Rep. 327 (1770).

[5] 20 & 21 Vict. c. 83 (1857). This statute provided for searches and seizures under which the police might confiscate obscene literature. It is interesting to note that in defense of the law, Lord Campbell said: "The measure was intended to apply exclusively to the works written for the single purpose of *corrupting the morals of youth . . .*" (emphasis added). Grant & Angoff, *Massachusetts and Censorship*, 10 B.U.L. REV. 36, 55 (1930).

[6] Lockhart & McClure, *Literature, the Law of Obscenity, and the Constitution*, 38 MINN. L. REV. 295, 324 (1954). However, New Mexico expressly confers upon municipalities the power to prohibit the sale of obscene literature. N.M. STAT. ANN. § 14-21-12 (1953).

[7] *Cf.* Lockhart & McClure, *supra* note 6, at 374.

[8] *Id.* at 352. However, it cannot be disputed that freedom of expression is limited. Chaplinsky v. New Hampshire, 315 U.S. 568 (1942).

in the First Amendment were applicable to such literature had been claimed before the Court only once previously, and in that case[9] a conviction for publishing an obscene book was affirmed by an equally divided court without opinion. However, there had been dicta by the Court upholding such protection.[10] One effect of this aspect of the decision may be that there will be more sales of questionable literature and consequently more prosecutions on "obscenity" cases.[11] Such a result should aid in clarifying uncertainties in this field.[12]

The particular importance of the case under discussion, though, is that the opinion pronounced upon one of the standards for determining whether certain literature is to be declared obscene,[13] *viz.*, the influence of the book on a portion of the reading audience. Prior cases had set up such guides as the effect upon: a) youth,[14] b) the normal adult,[15] c) the young and abnormal[16] and d) the probable reader.[17] Many states had enacted statutes specifically designed to protect the young; the typical one, like Michigan's, spoke of books that would manifestly tend to corrupt the morals of youth.[18]

A logical starting point for a review of this aspect of the case would be the famous *Hicklin* case.[19] In that far-reaching deci-

[9] Doubleday & Co. v. New York, 335 U.S. 848 (1948), *affirming per curiam by an equally divided court sub. nom.* People v. Doubleday & Co., 297 N.Y. 687, 77 N.E. 2d 6, *affirming mem.*, 272 App. Div. 799, 71 N.Y.S. 2d 736 (1st Dep't 1947) (*per curiam*).

[10] See Winters v. New York, 333 U.S. 507, 510 (1948).

[11] *Cf.* Lockhart & McClure, *Literature, the Law of Obscenity, and the Constitution,* 38 MINN. L. REV. 295, 390 n. 540 (1954).

[12] "The best that can be said of this entire subject is that the courts have made a hopeless muddle of it." Grant & Angoff, *Massachusetts and Censorship,* 10 B.U.L. REV. 147, 158 (1930).

[13] For an excellent article on the position of the Church as to obscenity and its meaning, see Gardiner, *Moral Principles Towards a Definition of the Obscene,* 20 LAW & CONTEMP. PROB. 560 (1955). In the courts, obscenity has most often been defined as that which tends to excite lust or lower sexual morality. See, *e.g.*, People v. Berg, 241 App. Div. 543, 544-45, 272 N.Y. Supp. 586, 588 (2d Dep't 1934) (*per curiam*); People v. London, 63 N.Y.S. 2d 227, 230 (N.Y. City Magis. Ct. 1946).

[14] See People v. Wendling, 258 N.Y. 451, 180 N.E. 169 (1932).

[15] See People v. Pesky, 230 App. Div. 200, 243 N.Y. Supp. 193 (1st Dep't 1930).

[16] See United States v. Bennett, 24 Fed. Cas. 1093, No. 14,571 (S.D.N.Y. 1879). New Hampshire's statute appears to have been drawn with an eye on the young and abnormal, for it defines an obscene book as one "whose main theme or a notable part of which tends to impair, or to corrupt, or to deprave the moral behavior of *anyone viewing or reading it*" (emphasis added). N.H. REV. STAT. ANN. § 71:16 (1955).

[17] See Commonwealth v. Isenstadt, 318 Mass. 543, 62 N.E. 2d 840 (1945). Under this view, if a book is advertised and distributed in such a way as to reach those upon whom it is not likely to have undesirable effects, it is not obscene; on the other hand, if the book is so circulated as to reach those upon whom it is likely to have undesirable effects, it is obscene.

[18] At least 11 states have "obscenity" statutes similar to Michigan's. FLA. STAT. ANN. § 847.01 (Supp. 1955); IOWA CODE ANN. § 725.4 (1950); ME. REV. STAT. c. 134, § 24 (1954); MASS. ANN. LAWS c. 272, § 28 (1956); R.I. GEN. LAWS c. 610, § 13 (1938); S.C. CODE § 16-414 (1952); TEX. PEN. CODE art. 526 (1952); UTAH CODE ANN. § 76-39-1 (1953); VA. CODE § 18-113 (1950); VT. REV. STAT. § 8490 (1947); W. VA. CODE ANN. § 6066 (1955).

A noteworthy sidelight is that New York's statute relating to immoral entertainment (PEN. CODE § 1140) contains the phrase "tend to the corruption of the morals of youth" whereas the statute relating to obscene books (PEN. CODE § 1141) does not.

[19] Queen v. Hicklin, L.R. 3 Q.B. 360 (1868). In that case, the court declared obscene "The Con-

sion, Lord Chief Justice Cockburn held that the test of obscenity was

> whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.[20]

The English jurist added that the pamphlet in issue "would suggest to the minds of the young of either sex, or even to persons of more advanced years, thoughts of a most impure and libidinous character."[21] This view became firmly imbedded in subsequent cases not only in England but also in the United States.[22]

Within a half-century, war was declared on the *Hicklin* rule. The most audible attack came in 1913 when Judge Learned Hand, though surrendering to the traditionally-honored doctrine of stare decisis, personally rejected that test and issued this biting protest:

> . . . [I]t seems hardly likely that we are even to-day so lukewarm in our interest in letters or serious discussion as to be content to reduce our treatment of sex to the standard of a child's library in the supposed interest of a salacious few, or that shame will for long prevent us from adequate portrayal of some of the most serious and beautiful sides of human nature.[23]

Minor skirmishes had been waged by some New York tribunals a few years earlier but the din of battle was barely heard, for the courts had quietly ignored the *Hicklin* standard.[24] It was Judge Hand's opinion that brought the fray into the open.

The major volley came in the famous *Ulysses* decision[25] in which Judge Augustus Hand (with his cousin Learned Hand concurring, and another judge dissenting) repudiated the "partly obscene" test[26] estab-

fessional Unmasked," a pamphlet published by the Protestant Electoral Union to further its program of advancing Protestantism and opposing Catholicism.

[20] *Id.* at 371.

[21] *Ibid.*

[22] See, *e.g.*, People v. Muller, 96 N.Y. 408 (1884); United States v. Bennett, 24 Fed. Cas. 1093, No. 14,571 (S.D.N.Y. 1879).

[23] United States v. Kennerley, 209 Fed. 119, 121 (S.D.N.Y. 1913).

[24] In one case, New York's highest court held that a violent newspaper attack on the confessional was not indecent. People v. Eastman, 188 N.Y. 478, 81 N.E. 459 (1907) *(per curiam)*.

[25] United States v. One Book Entitled Ulysses, 72 F. 2d 705 (2d Cir. 1934), *affirming* 5 F. Supp. 182 (S.D.N.Y. 1933).

[26] Under this test, a book could be banned without regard to the overall merit of the work if individual passages were deemed to be obscene. The Ulysses case established the "dominant effect" test, an approach by which the questioned book is judged as a whole before it is determined whether its circulation would be morally detrimental to the reader. The transitions of the Massachusetts "obscenity" statute are relevant in this regard. Before 1930, it applied to a book *"containing* obscene, indecent, or impure language, or manifestly tending to corrupt the morals of youth" (emphasis added). MASS. GEN. LAWS 1921, c.272, § 28. In 1930, it was amended to apply to a book *"which is* obscene, indecent or impure, or manifestly tends to corrupt the morals of youth" (emphasis added). MASS. ANN. LAWS c.272, § 28 (1956). The change was undoubtedly made to correct such cases as Commonwealth v. Friede, 271 Mass. 318, 171 N.E. 472 (1930), in which Theodore Dreiser's "An American Tragedy" was held to be obscene on the basis of selected passages alone. Massachusetts courts have followed the Ulysses case apart from its implications that a book is not obscene if artistry and sincerity of purpose are more predominant than obscenity. See Commonwealth v. Isenstadt, 318 Mass. 543, 62 N.E. 2d 840 (1945). It is perhaps significant along this line that in the Butler case, appellant's counsel argued that there is a question of whether the word "containing" made the Michigan statute unconstitutional in view of prior rulings that books must be judged as a whole. The Court, however, did not consider this point in the opinion. 25 U.S.L. WEEK 3117 (U.S. Oct. 23, 1956).

lished by the *Hicklin* case, and also adopted as the standard for determining a book's influence the lower court's *l'homme moyen sensuel* —

> . . . a person with average sex instincts . . . who plays, in this branch of legal inquiry, the same role of hypothetical reagent as does the "reasonable man" in the law of torts. . . .[27]

While most courts followed the *Ulysses* verdict,[28] the war had not yet been won — the *Hicklin* rule still appeared occasionally in various camouflages.[29] Even the United States Supreme Court recognized "the importance of the exercise of a state's police power to minimize all incentives to crime, particularly in the field of sanguinary or salacious publications with their stimulations of juvenile delinquency."[30] It is not unlikely that the supreme court of the land in the *Doubleday* case[31] discussed this question, for in the trial court a dissenting judge contended that his two colleagues should have used the average adult as the yardstick, not the young and emotionally immature.[32]

In 1954, the *Hicklin* rule suffered a devastating setback in its native land, for in that year England herself abandoned her prodigy with *Regina* v. *Martin Secker & Warburg, Ltd.*[33] In that case, the court solemnly declared:

> Are we to take our literary standards as beings the level of something that is suitable for a fourteen-year-old girl? Or do we go even further back than that, and are we to be reduced to the sort of books that one reads as a child in the nursery? The answer to that is: Of course not. A mass of literature, great literature, from many angles is wholly unsuitable for reading by the adolescent, but that does not mean that the publisher is guilty of a criminal offense for making those words available to the general public.[34]

The court established the standard of "the average, decent, well-meaning man or woman."[35]

With the *Butler* decision, the war against the *Hicklin* rule appears to be over. Without mincing any words, Justice Frankfurter said that the effect of the Michigan statute by "quarantining the general reading public against books not too rugged for grown men and women in order to shield juvenile innocence"[36] is to "burn the house to roast the pig."[37] The Court, however, took notice

[27] 5 F. Supp. 182, 184 (S.D.N.Y. 1933).

[28] See, *e.g.*, People v. Gotham Book Mart, 158 Misc. 240, 285 N.Y. Supp. 563 (N.Y. City Magis. Ct. 1936); Parmelee v. United States, 113 F. 2d 729 (D.C. Cir. 1940); Bantam Books, Inc. v. Malko, 25 N.J. Super. 292, 96 A. 2d 47 (1953).

[29] See, *e.g.*, Burstein v. United States, 178 F. 2d 665 (9th Cir. 1949); King v. Commonwealth, 313 Ky. 741, 233 S.W. 2d 522 (1950); Commonwealth v. New, 142 Pa. Super. 358, 16 A. 2d 437 (1940).

[30] Winters v. New York, 333 U.S. 507, 510 (1948).

[31] Doubleday & Co. v. New York, 335 U.S. 848 (1948), *affirming per curiam by an equally divided court sub. nom.* People v. Doubleday & Co., 297 N.Y. 687, 77 N.E. 2d 6, *affirming mem.*, 272 App. Div. 799, 71 N.Y.S. 2d 736 (1st Dep't 1947) (*per curiam*). Justice Frankfurter, who wrote the Butler opinion, did not participate in this case.

[32] N.Y. Times, Nov. 28, 1946, p. 1, col. 7.

[33] [1954] 1 Weekly L.R. 1138.

[34] *Id.* at 1139-40.

[35] *Supra* note 33, at 1141. The "partly obscene" test, however, has been expressly reaffirmed in England in Regina v. Reiter, [1954] 2 Weekly L.R. 638.

[36] 352 U.S. 380, 383 (1957).

[37] *Ibid.* Using this same analogy, a New Jersey newspaper asked editorially: "Why is it arson to burn down a house 'to roast a pig' and not some form of arson to burn up the souls of weak grown-ups with the bonfires of obscenity and destroy youth bound to get hold of such filth?" Elizabeth

that the book, which might possibly have had a deleterious influence on the young, was in fact sold to a police officer, and pointed out that Michigan had an appropriate remedy had the publication actually been sold to a minor.[38]

Though the decision is limited, of course, to the particular facts of the case, the Court clearly indicated its approval of testing the obscenity of a book by its influence upon the normal adult. Whether such a standard must be employed in all instances, however, is open to question. It would seem that a state would not be "burning the house to roast the pig" if it could show that its "obscenity" statute was reasonably restricted to the evil to be averted and, consequently, was not violative of due process as protected by the First Amendment.

Daily Journal, Feb. 27, 1957, p. 8, col. 1-2. On the other hand, some publications may reprint what was written more than a decade ago: "We have managed to keep at bay the literary censors and the keyhole peepers who insist that books shall not be printed that their little Lucy should not read." Saturday Review of Literature, Mar. 23, 1946, p. 22.

[38] A Michigan statute makes it a criminal offense to "sell, give away or in any way furnish to any minor child any book . . . tending to the corruption of the morals of youth. . . ." MICH. PEN. CODE § 142. Another law prohibits exhibiting upon any public street, or any other place within the view of children passing on a public street, a book "containing obscene language . . . tending to the corruption of the morals of youth . . ." MICH. PEN. CODE § 143. Some other states make it a crime to introduce into any family, school, or place of education a book containing obscene language. See, *e.g.*, TENN. CODE ANN. § 11190 (Williams 1934); WIS. STAT. § 351.38 (1951).