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OBSCENITY, LITERATURE AND THE LAW

NORMAN ST. JOHN-STEVAS*

CENSORSHIP is a perennially interesting subject, and especially so for Catholics, for alone of human organisations the Catholic Church claims to speak with a divine voice, and therefore to possess an access to truth denied to other bodies. This claim is not recognised in the liberal societies of the West, and the Catholic living in such societies is immediately faced with a conflict between the claims of the Church to protect the truth entrusted to her and the duty of the liberal state to allow all bodies not subversive of public order to express their views freely. With this gigantic problem, the modern form of the centuries long conflict between Church and state, this article is only indirectly concerned. It is confined to a consideration of a particular aspect of the problem, namely how far the state should intervene to protect members of society from corruption by the dissemination of obscene literature.

Some maintain that there should be no law for the suppression of obscenity, because far from being an evil, it is a necessity in modern conventional society. Havelock Ellis held this view, arguing that the conditions of contemporary society require relief from oppressive conventions just as the conditions of childhood create the need for fairy stories. Obscene books, therefore, are not aphrodisiac, but act as safety valves protecting society from crime and outrage. Catholics may well not accept this view, but they should bear in mind the caution expressed by St. Augustine in his treatise *De Ordine* when he warns against the socially harmful effect of the total suppression of such institutions as bawdy houses. The elimination of one form of social evil may result in the creation of another.

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Obscenity in literature raises of course the whole issue of freedom of discussion in contemporary society. The point on which there is almost universal agreement is that



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ensorship of books before publication is undesirable. "The liberty of the Press," wrote Blackstone, "is indeed essential to the nature of a free State; but this consists in laying no previous restraints upon publications and

not in freedom for criminal matter when published." Freedom of expression, declared Fr. Courtney Murray recently, is the rule of liberal society not the exception.

The freedom toward which the American people are fundamentally orientated is a freedom under God, a freedom that knows itself to be bound by the imperatives of the moral law. Antecedently it is presumed that a man will make morally and socially responsible use of his freedom of expression; hence there is to be no prior restraint on it. However, if his use of freedom is irresponsible, he is summoned after the fact to responsibility before the judgment of the law. There are indeed other reasons why prior restraint on communications is outlawed; but none are more fundamental than this.

The experience of the Irish Censorship Board gives practical confirmation to these theoretical views. Up to the present time over four thousand books and nearly four hundred periodicals have been banned. In the list of banned books, titles such as *Hot Dames on Cold Slabs* and *Gun Moll for Hire* are found side by side with Proust's *Remembrance of Things Past* and André

Gide's *If It Die*. Four winners of the Nobel Prize for Literature, and nearly every Irish writer of distinction, including the late Dr. St. John Gogarty, Liam O'Flaherty, Kate O'Brien, and Sean O'Faolain appear in the list. Irishmen may not read Charles Morgan's *The Fountain*, Somerset Maugham's *The Painted Veil*, Aldous Huxley's *Point Counter Point*, or George Orwell's *1984*. Even Halliday Sutherland's *Laws of Life* fell under the ban, despite the fact that it carried the imprint of the Censor of the Archdiocese of Westminster. Senator Kingsmill Moore was fully justified when he described the Board's list as "Everyman's guide to the modern classics," during a Senate debate of 1945, adding that the Board "had affronted the general opinion of decent and responsible men: the effect of it has been to impose the view of five persons as a kind of fetter upon the intellect and information of the nation." Undoubtedly the Board has succeeded in keeping out of Ireland a great mass of pornography of a filthy and corrupting kind, but this has only been achieved at the price of depriving Irish readers of many of the best works of contemporary literature.

Censorship is rejected in England and the United States on grounds of principle, and the wisdom of this principle is confirmed by contrary practice elsewhere. Whatever may be the theoretical arguments in favor of censorship — and Plato has shown that they can be weighty — the practical advantages that follow from a wide freedom of publication are far greater than those benefits which might be gained by a system of censorship. To make progress in science and literature the human mind must be free: free to speculate, to express, to make mistakes and to try again. Conversely the practical evils that flow from censorship may well be greater

than the benefits obtained, and in this sphere it is well to use the maximum prudence. As Father Murray has written;

If you impose a constraint on freedom in one domain, in order to increase freedom in another, you may take the risk of damaging freedom in a third domain, with consequences more dangerous to the community. . . . Because social freedoms interlock so tightly, it is not possible to know antecedently what the multiple effects of a regulation will be. At best, the effect you want can only be foreseen with probability, not certainty. And unforeseen effects may follow, with the result that a regulation, in itself sensible, may in the end do more harm than good. For this reason, the social reformer whose only strength is a sense of logic may well be a menace.

Father Murray illustrates his point by the example of *Prohibition*, which while it had much to commend it logically, produced far worse evils than those it was intended to eradicate. The point made by Father Murray was put with the highest authority of the Church in 1953 when Pope Pius XII addressed the National Convention of Italian Catholic Jurists. His Holiness said;

It is plainly true that error and sin abound in the world today. God reprobates them but He allows them to exist. Wherefore the statement that religious and moral errors must always be impeded, when it is possible, because toleration of them is in itself immoral, is not valid absolutely and unconditionally. Moreover, God has not given even to human authority such an absolute and universal command in matters of faith and morality. . . . The duty of repressing moral and religious error cannot, therefore, be an ultimate norm of action. It must be subordinate to higher and more general guiding principles, which in some circumstances allow, and even perhaps seem to indicate as the better policy, toleration of error in order to promote a greater good.

The greater good — in this case the free-

dom of expression in literature — makes it necessary to tolerate some obscenity, just as the greater good of the freedom of the press makes it necessary to tolerate worthless and even harmful newspapers.

Underlying the dispute about obscenity is a real clash of social interests. Authors have a right to communicate their thought and work freely. They must feel free if they are to give of their best, and they cannot feel this if they are in continual fear of prosecution. Virginia Woolf wrote;

The police magistrate's opinion is so incalculable, he lets pass so much that seems noxious and pounces upon so much that seems innocent — that even the writer whose record is hitherto unblemished is uncertain what may or may not be judged obscene and hesitates in fear and suspicion. What he is about to write may seem to him perfectly innocent — it may be essential to his book; yet he has to ask himself what will the police magistrate say; and not only what will the police magistrate say, but what will the printer say and what will the publisher say? For both printer and publisher will be trying uneasily and anxiously to anticipate the verdict of the police magistrate and will naturally bring pressure to bear upon the writer to put them beyond the reach of the law. He will be asked to weaken, to soften, to omit. Such hesitation and suspense are fatal to freedom of mind and freedom of mind is essential to good literature.

Recent events in England have proved Virginia Woolf right. A series of prosecutions broke out in 1954 against reputable publishers and authors and, after a very mixed result of convictions and acquittals, died away, but their effects have continued up to the present time. All over the country printers employed extra readers to hunt through manuscripts, especially novels, and to mark passages which some old lady or police magistrate might consider obscene.

Until such passages had been deleted they refused to print the books. One of America's most distinguished contemporary novelists was unable to find an English printer for her book — widely praised on publication in the United States — because it contained certain passages which, taken out of their context, might fall within the present definition of obscenity. Yet her book was a devastating moral condemnation of the way of life of a certain section of the American intelligentsia. Another American novel has been abandoned by a well known publisher because of the impossibility of obtaining a printer. In its American edition this novel of 450,000 words ran to over 900 closely packed octavo pages, and its price in the English market would have been not less than thirty-five shillings. The publisher's readers were convinced that the book showed great talent and had no doubt of its moral purpose since it criticised severely the life which it depicted. Nevertheless, because for two per cent of its total length the book described sexual incidents in coarse language no printer could be found. The result of the police prosecutions has thus been to establish an unofficial censorship which is continuing.

Freedom to discuss every sphere of life is especially important today, since literature, and in particular the novel, is closely concerned with psychological problems and the realistic portrayal of sex. It can hardly be suggested that the Victorian solution of omitting sex from literature or confining the representation to those of an impeccably regular kind, which a reverend mother could contemplate with equanimity, should be re-adopted today. Such an attitude would maim contemporary literature by artificially restricting its range and shutting off from its vision what Francois Mauriac has called

“that place of desolation, the human heart.” Above all it should be remembered, as Cardinal Newman pointed out in his essay on *The Idea of a University*, that literature is not concerned with life as it *OUGHT* to be, but with life as it *IS*.

If authors have a special position in society they also have duties, since they are not writing in a vacuum but writing to be read. Literature may or may not have a social purpose, but it certainly has social implications and writers cannot be totally emancipated from the customs of the community in which they live. Writers must possess something of the cardinal virtue of prudence. As St. Thomas says;

If a person is prudent he must first be adjusted to the ends of life. He cannot come to right conclusions unless his principles are sound. Therefore prudence presupposes that his intelligence has a habit of insight and that his affections are rightly mustered by the moral virtues.

The writer must accept the responsibility of affecting the judgment of his readers, but this is a moral responsibility. The real need is not for legal restraints but for interior sanctions voluntarily imposed. Ultimately the working of a free society is dependent on this intangible, a sense of self discipline, the only alternative to which is regimentation. A free, and, therefore, a great literature has grown up in the English-speaking world because of the high sense of responsibility felt by authors for their work. Freedom and responsibility go together, one extending the other, so that freedom is only possible in a confident and mature society. It is no accident that the three great contributions of the English-speaking world to civilisation have been law, literature and liberal-democratic government, all dependent on self restraint and an unwritten law of liberty.

Those authors who pretend that there is no problem, and that the whole obscenity question has been created by a group of unenlightened Grundys and Comstocks only bring discredit on their own cause. Nor is the inevitable carefully selected quotation from Milton — “To the pure, all things are pure” — out of its historical and literary context — of any practical utility in the social conditions of the present time. Sir Ifor Evans said at a recent P.E.N. Congress that;

The whole problem of propaganda, the dissemination of opinion, the distribution of printed matter has changed entirely since Milton's day. Milton's conception of the circulation of ideas was that which might have prevailed in Greece, a small audience all of whom are capable of forming their own judgments, with discussion to correct false emphasis. He has in mind the formulation of an adequate judgment by the Socratic method. Even the England of his own day did not fit into that picture altogether, and the world of our day does not fit into it at all. One man or group of men can by subtle psychological methods, and by use of the newspaper and radio, effect a secret tyranny over the minds of millions.

To use the language of Milton to defend the immunity of commercial interests whose only object is to make money by the sale of degrading pornography is only to mislead.

On the other hand, those who pose the question as a clash between a group of irresponsible intellectuals, leaders of a minority coterie, striving to impose their extravagances on the virtuous and sober-living majority, are equally wide of the mark. Authors certainly have an interest in a free literature, but it is one shared by the rest of society. Consciously or unconsciously, a nation's literature mirrors its life and values, being at once the repository of its culture and the guarantee of its continuance. If au-

thors have an interest in writing freely, the public in general has an equal interest in being able to choose what to read. Society, however, also has an interest in preventing the assumption of the cloak of literature by those who wish to make money through the stimulation of the baser appetites and passions. Racketeers are especially tempted today by the emergence in every modern state of a new public who can read, but who are only semi-literate. On the whole, perverts excepted, educated people do not read pornography, since their taste for reading is fully formed, and they find it dull and uninteresting, but the barely literate masses have had no such opportunity and here the purveyors of filthy sub-literature find a profitable market.

So far it has been assumed that pornography does have a corrupting effect on its readers, but this assumption must be further examined. Such an assertion rests not on scientific evidence but on what is called *common sense*. A further assumption is made that even if there are legitimate doubts about the effect of reading upon adults there can be no doubt that reading does have a positive effect on youth and especially children.

Undoubtedly, the general moral standards and social customs prevailing in a community are frequently formed or changed by the influence of books. “I am convinced,” wrote Bernard Shaw in his preface to *Mrs. Warren's Profession*, “that fine art is the subtlest, the most seductive, the most effective instrument of moral propaganda in the world, excepting only the example of personal conduct.” The law, however, in the plural state, can only be very sparingly introduced to protect moral standards. First it often happens that what passes for morality is only convention, and secondly, in

countries such as England and the United States, there is no common agreement on ultimate moral attitudes. A book advocating divorce will appear *obscene* or *corrupting* to one group, while another will regard it as an argument for a necessary freedom. Similar considerations apply to books about such subjects as birth control or homosexuality on which there is no agreed opinion. Unless there is universal agreement on any subject, such as, for example, compulsory education, the plural state cannot impose coercive sanctions. In a plural society no minority has the right to impose its standards on other minorities who differ from it. It has the full right to advise its own members on what they should read and it also has the right to work by means of voluntary associations to spread its ideas and gain recruits, but it has no right to coerce other minorities. The situation is different in a unitary state such as Southern Ireland, where there is an almost universal agreement on certain moral principles, and which enables a censorship to be imposed which would be intolerable in England or the United States.

The justification for the laws against pornographic books is the belief that such books have a directly undesirable effect on sexual behaviour. Unhappily, there is little scientific evidence to support this view, since very little research has been carried out on the causal relation between reading and behaviour. Social sciences can never hope to be as exact as the natural sciences since their study is man not matter; and with regard to sexual behaviour, man is subject to so many different stimuli that it is difficult to isolate one and gauge its effect. Furthermore, it may be argued that it is sexual desire, especially if frustrated, that creates the taste for pornography and not pornog-

raphy which stimulates sexual desire.

In 1938, the New York City Bureau of Social Hygiene carried out some researches, and showed that books play a very small part in the dissemination of sex information among women. One thousand two hundred women out of ten thousand college and school graduates were questioned about the sources of their sex knowledge. Of the twelve hundred, only seventy-two mentioned books and none of these were of the pornographic type (one was Motley's *Rise of the Dutch Republic*). Asked what they found most sexually stimulating, ninety-five of the four hundred and nine who replied answered *Books*; two hundred and eight said *Men!*

Behaviour is a function of both personality and environment, the dominant influence being personality. However, as the Jesuits have long known and modern psychologists stress, the basic personality is formed at a very early age, normally before the reading habit is formed. Environment, of course, influences behaviour, but direct experiences have a much greater influence on human behaviour than vicarious experiences through books. Once again there is no direct evidence in point, but the research into drug addiction which has been carried out in the United States shows that reading matter and even mass mediums of communication have much less influence on attitudes than is generally supposed. Mass communications confirm and reinforce existing attitudes, but they rarely cause a fundamental change of outlook.

Youth and children are probably more open to influence because their total personalities have not yet been formed, and they have little residue of past experience on which to draw. There is no evidence that the reading of horror comics, for instance,

leads directly to the committing of delinquent acts, but they may well have the more general effect of deadening a child's sensitivity and accustoming him to accept brutality and violence as a normal part of human conduct. In 1946, George Orwell noted the change which had come about in boys' papers after the war, and pointed out that bully worship and the cult of violence entered into the comics in a way they never did in the old *Gem* or *Magnet*. Doctor Wertham, in his book, *Seduction of the Innocent*, stressed the brutalising effect that horror comics have on children, and supported the view by experiments carried out by himself and other psychologists. Doctor Wertham wrote;

The most subtle and pervading effect of crime comics on children can be summarised in a single phrase: moral disarmament. To put it more concretely it consists chiefly in a blunting of the finer feelings of conscience, of mercy and sympathy for other people's sufferings and of respect for women as women and not merely as sex objects to be bandied around, or as luxury prizes to be fought over. Crime comics are such highly flavoured fare that they affect children's taste for the finer influences of education, for art, for literature, and for the decent and constructive relationships between human beings and especially between the sexes.

He refuted the argument that such reading provides a necessary *catharsis* for children's emotions because emotion is stimulated without being given any adequate outlet. The child identifies itself with characters in the comic and is left with only a limited scope for release in actions. These actions, he wrote, can only be "masturbatory or delinquent."

His argument that the reading of horror comics leads to juvenile delinquency is less

convincing. He gives numerous examples of juvenile delinquents who had many comic books in their possession, but so have many children who never commit a delinquent act. The argument is the old one of *post hoc propter hoc* and is open to the same objections. Sheldon and Eleanor Gluck in their study, *Unravelling Juvenile Delinquency*, gave little prominence to reading among the ninety factors they listed as causes of juvenile delinquency. They showed, in fact, that delinquent children read much less than law abiding.

Horror comics have now been banned in England and in many Commonwealth and European countries. Such a step can be justified as a precautionary measure, if only to protect abnormal children, since there is no literary or social interest in the horror comic to be weighed against its possible harmful effect. Further, children are clearly in need of protection, whereas adults can be expected to choose for themselves. The irony of the horror comic situation is that they are read — and this is more true of the United States than Britain — as much by adults as by children. Forty-one per cent of male adults and twenty-eight per cent of females in the United States read such comics regularly.

The causal relation between reading and behaviour is so uncertain, the number of sexual stimuli so diverse, and the subjective factors are so numerous, that the law in the sphere of obscenity should proceed with caution. One point seems evident, that literary standards should not be regulated by law. Literature is creative, imaginative and aesthetic, with no extrinsic purpose, its one criterion being fidelity to its own nature. Law is not creative but regulative, seeking not a special ideal harmony but a generalised justice and the application of

universally valid principles. Thus it is impossible to attempt to confine literature within the Procrustean bed of the law.

On the other hand the law is rightly used to suppress the social evil of pornography and to punish those who seek to benefit by its distribution. The point has been clearly put by Virginia Woolf;

There can be no doubt that books fall in respect of indecency into two classes. There are books written, published and sold with the object of causing pleasure or corruption by means of their indecency. There is no difficulty in finding where they are to be bought nor in buying them when found. There are others whose indecency is not the object of the book but incidental to some other purpose — scientific, social, aesthetic, on the writer's part. The police magistrate's power should be definitely limited to the suppression of books which are sold as pornography to people who seek out and enjoy pornography. The others should be left alone. Any man or woman of average intelligence or culture knows the difference between the two kinds of book and has no difficulty in distinguishing one from the other.

Virginia Woolf rather over-simplifies the problem, but she does suggest a rational principle on which the law should be based. When the prosecutions that took place in England in 1954 were over, the Society of Authors set up a committee under the chairmanship of Sir Alan Herbert to consider reform of the obscene libel law. The committee, to which the author of this article acted as legal adviser, took this principle as the basis of their deliberations, and drafted a bill to implement it. The bill received a unanimous first reading on its introduction into the House of Commons in 1955, and again on its re-introduction in 1956. In May 1957, the bill passed its second reading and at the present moment is

being considered by a special committee of the House. In all probability the bill will pass into law by 1958, although it may be seriously modified at the committee stage. United States law is not of course directly affected by English developments, but since both countries are ruled by the common law, what happens in one can hardly fail to influence the other, and developments in one country are of sufficient interest to the other, to make them worth describing in a little detail.

Under present English law there are two distinct means of proceeding against obscene publications. At common law it is an offence to publish an obscene libel, and for this offence any author, publisher, printer or distributor, may be prosecuted and sent to prison for an unspecified period of time. The test of obscenity was laid down in 1868 by Chief Justice Cockburn in *Hicklin's* case.

The test of obscenity is this, 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.

The meaning of this formula is by no means clear, although it has always been followed by the courts. One point seems established, that the courts will consider not the *intention* of the publisher but the *tendency* of the matter published to *corrupt and deprave*. What do these last words mean? Clearly a book which shocks or disgusts by the offensiveness of its language does not come within the scope of the test. *Deprave* and *corrupt* are both strong words and cannot be equated in meaning with writing that is merely offensive or shocking. The words can have any or all of three meanings. First, they can mean that the tendency of the

book is to arouse impure thoughts in the mind of the reader or viewer. Secondly, they can mean that such a person would be encouraged to commit impure actions. Thirdly, they can mean that the reading of the book or looking at the picture would endanger the prevailing standard of public morals. The courts have used the words in all three senses.

A further question which must be answered is to whom the words *corrupt* and *deprave* apply? The answer may be normal adults, abnormal adults, normal children, or abnormal children. The English law has always stressed the importance of protecting the young. Thus the old form of indictment invariably contained an averment about the *morals of youth*, and, in the *Hicklin* case, Chief Justice Cockburn specifically mentioned the need to protect youth. Such a consideration seems to have been uppermost in the minds of most English judges and counsellors who have taken part in obscenity trials, but in the case of *The Philanderer* (entitled *The Tightrope* in the United States), Mr. Justice Stable, rejecting the youth criterion, said;

A mass of literature, great literature from many angles is wholly unsuitable for reading by adolescents, but that does not mean that the publisher is guilty of a criminal offence for making those works available to the general public.

The Herbert Committee Bill abolishes the old common law offence of publishing an obscene libel. In place of the misdemeanor the bill substitutes a new offence of "wilfully and knowingly distributing, selling or offering for sale, or writing, drawing, printing or manufacturing any matter which to his knowledge is obscene within the meaning of this Act." Thus the prosecution must prove that the accused person actually

foresaw the consequences of his action. In framing this provision the committee had in mind the fundamental maxim of the criminal law, *i.e.*, *actus non facit reum nisi mens sit rea* — the intent and the act must both concur to constitute the crime.

A second major reform proposed by the bill is a new test of obscenity. Strictly interpreted, the *Hicklin* case means that a book can be held obscene if it contains only one obscene passage. However, in each of the recent prosecutions the jury was ordered to read the book as a whole, and the bill places the matter beyond all doubt by stating;

Any matter shall be deemed to be obscene for the purposes of this or any other enactment if its dominant effect is such as to be reasonably likely to deprave and corrupt persons to or among whom it was intended to be distributed, circulated, or offered for sale.

The bill thus departs from the *Hicklin* judgment in two important respects. "Dominant effect" replaces "tendency," and the type of person who is "intended" to receive the book must now be taken into consideration. A book intended for adults would thus be judged by different standards from one intended for children. In this the bill follows closely the test laid down by the American judge, Judge Hand, when he lifted the ban on *Ulysses* in 1934.

We believe that the proper test of whether a given book is obscene is its dominant effect. In applying this test, relevancy of the objectionable parts to the theme, the established reputation of the work in the estimation of approved critics, if the book is modern, and the verdict of the past if it is ancient are persuasive pieces of evidence, for works of art are not likely to sustain a high position with no better warrant for their existence than their obscene content.

While the bill in this respect liberalises the law, it also makes it more severe by including within its definition of obscenity, "any matter, whether or not related to a sexual context which unduly exploits horror, cruelty, or violence whether pictorially or otherwise."

Juries and magistrates are also empowered when judging a book's dominant effect to receive "expert evidence as to the literary or artistic merit, or the medical, legal, political, religious or scientific character or importance of the said matter." The committee's view that such matters are relevant is supported by the authority of Mr. Justice Stephen. In his *Digest of the Criminal Law* he wrote;

A person is justified in exhibiting disgusting objects or publishing obscene books, papers, writings, prints, pictures, drawings or other representations, if their exhibition is for the public good, as being necessary or advantageous to religion or morality, to the administration of justice, the pursuit of science, literature or art or other objects of general interest: but the justification ceases if the publication is made in such a manner, to such an extent or under such circumstances as to exceed what the public good requires in regard to the particular matter published.

The point was judicially approved by the Recorder of London in the *De Montalk* case (1932), and is incorporated in the New Zealand legislation covering obscene publications which came into force in 1954.

With regard to *experts*, they are at present admitted to give evidence of scientific or medical value, but evidence of literary merit has always been excluded. Mr. Desmond MacCarthy was prevented from testifying in the *Well of Loneliness* case, and a similar exclusion operated in the more recent *Philanderer* and *Image and the*

Search cases. In United States federal courts, however, such evidence is freely admitted. The committee felt that the distinction between scientific and literary evidence was both arbitrary and illogical and it is abolished by the bill.

Apart from the common law offence of obscene libel there are also statutory powers for destroying obscene books under Lord Campbell's Act of 1857. This act created no new punishable offence and no penalties are laid down save the destruction of the obscene matter. Under the act any person can lay an information on oath before a stipendiary magistrate or any two justices, that he believes that the obscene matter is being kept in premises within the jurisdiction for the purposes of sale or distribution, and that an actual sale has occurred. The magistrates, if they are satisfied that "publication would amount to a misdemeanour proper to be prosecuted as such," may issue a warrant giving authority for the premises to be entered by a police officer and the obscene matter to be seized. The magistrates, when the seized articles have been brought before them, must issue a summons calling upon the occupier to appear within seven days to show cause why the matter seized should not be destroyed. They may order matter so seized to be destroyed immediately after the expiration of the seven days allowed for appeal.

When Lord Campbell introduced this act into the House of Lords in 1857 anxiety was expressed lest the act should be used to attack literary works. He emphatically denied that this was his intention: "The measure is intended to apply exclusively to works written for the single purpose of corrupting the morals of youth and of a nature calculated to shock the common feelings of

decency in a well regulated mind." Lord Lyndhurst's comment in view of the subsequent use made of the act to suppress such novels as D. H. Lawrence's *The Rainbow*, and Radclyffe Hall's *Well of Loneliness* was prescient; "Why, it is not what the Chief Justice means, but what is the construction of an Act of Parliament." The bill preserves the main provisions of the Campbell Act. Two reasons lay behind the committee's decision to retain these powers. First, they felt that the police needed such a weapon to check pornography, and secondly, they thought it undesirable to leave the police no alternative but to proceed with a criminal prosecution in every case. The act is, however, amended in important respects. The new test of obscenity applies to proceedings under the act, and the injustice whereby a book can be condemned without author or publisher being able to speak in its defence is ended. In all proceedings under the bill, authors, publishers, and printers are given the right to give and call evidence.

Another important change covers the customs laws. Under the present law customs officers can seize and destroy books without an order of the court. Under the bill they may still seize books but must apply to the courts for a destruction order or return the seized property to its owners.

Wise administration of the law is as important as the substantive law itself and here again the bill makes important changes. At the present time the police are bound to consult the Director of Public Prosecutions before they bring criminal proceedings, but they are not bound to follow his advice. Furthermore, there is not even the obligation of consultation when the 1857 procedure is used. Private persons are free to bring prosecutions and in the past this power has been abused. In the *Bradlaugh* case of 1877,

when Charles Bradlaugh and Annie Besant were prosecuted for publishing a manual on birth control, Chief Justice Cockburn pointed out the danger of leaving this power in the hands of the public. On one point, he said, they were all agreed; "A more ill advised and injudicious prosecution was never instituted." By the end of the trial the manual which had originally sold only a few hundred copies had reached a circulation of one hundred and twenty thousand. The publishers were acquitted. By making all proceedings under the bill subject to the consent of the attorney general, the bill ensures that such injudicious prosecutions will not occur in the future. A further change in the law is the fixing for the first time of maximum penalties for all offences under the bill.

In conclusion it must be stressed that the bill gives legal effect to the committee's view that the essential requirement is to distinguish pornography from serious works that may by contemporary standards be considered shocking or obscene. Pornography should be suppressed by law, but literature is best regulated by prevailing standards of taste. These standards are constantly changing and the law only brings itself into disrepute by attempting to enforce them by means of legal sanctions. At different times Mrs. Gaskell, Charlotte Brontë, George Eliot, Thomas Hardy, George Moore and James Joyce amongst novelists, and poets such as Byron, Shelley, Swinburne and even Tennyson have been denounced by contemporaries as obscene, an accusation which later generations have failed to sustain. The Victorians, although foolish in many ways in their attitude to sex in literature were wiser in this respect than ourselves, for, with the single exception of Zola, prosecutions were never instituted to suppress books of literary merit.