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THE CHURCH VERSUS OBSCENE LITERATURE

MAURICE AMEN, C.S.C.*

THERE IS CONSIDERABLE CONCERN over obscenity in lay circles; this fact is evident to anyone who reads current publications. It seems that there is some characteristic element in obscenity which necessitates this concern on the part of the civil government, and, *a fortiori*, on the part of the Church.¹ It is the effect—possible or actual—that obscenity has on mankind in general and on this man in particular that occasions this concern. By enumerating some of the effects of obscenity, perhaps we can achieve some insight into the reasons behind the ecclesiastical legislation against obscene literature.

The Effects of Obscene Literature

One certain effect of obscene literature is the incitement to illicit sexual thought, or activity. Such writing is geared to interest the reader and then, by gradual but persistent degrees, to lead him on to the point where his sexual passions are so violently aroused or stimulated that any attempt to refrain from sexual activity—mental or physical—is almost impossible. The first effect of obscenity is on the individual, and where many individuals are so affected society itself begins to be affected. It is the God-given duty of each man to see that he himself does not become depraved, and, further, that he does not bring about the depravity of others. It is the duty of a society, however, to protect the integrity of its members. Hence the many civil laws and the one general ecclesiastical law against obscenity in literature.

Another effect of obscenity derives from the nature of literature as it is now printed and distributed. Books are read by many, and they are meant to be read by generation after generation. A book becomes a potential source of evil influence as long as it remains in print.² “One

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¹ See A. James Quinn, *Censorship of Obscenity: A Comparison of Canon Law and American Constitutional Law* (Rome, 1963), pp. 119-120 [= Quinn].

² A concern felt at least two centuries ago. See Clement XIII, encyclical *Christianae Reipublicae*, Nov. 25, 1766: *Fontes*, n. 461.

may no more measure the power for evil radiated from a bad book than circumscribe the infinity of space. It may live for ages as potent to debase and defile the last as the first generation into whose hands it comes."³

The very nature of literature also affects us more powerfully and lastingly than some other fields of human art. Louis Proal, in his fine study, *Passion and Criminality*, points out some of these effects that are peculiar to literary art: (1) certain authors reorientate our doctrines, thoughts and behavior; (2) readers of more than average sensibility frequently sympathize with what they read; (3) the heroes of fiction frequently provide "language, sentiments, tastes, habits, names and costumes" for the reader; (4) "men reciprocally act and react on each other in the way of suggestion, by their doings and words. . . . After this, how can any one doubt as to the influence exerted by author over reader, by literature over morals?"⁴

Whereas a good book may raise one's ideals, bad literature may prove disconcerting to any reader's mind, lower his standards of life, and even shake the foundations of his religion in its doctrinal and moral aspects. This is true on the level of the individual and on the greater social scale. Individual as well as group conversions and perversions are possible through the medium of literature. "For writers mould their readers in their own image, they make them participate in their own ideas, passions and sentiments."⁵

Obscenity in literature will inflict moral harm upon the reader, a harm that falls

precisely within the scope of the sixth and the ninth commandments. This effect is undeniable, and so civil governments and the Church alike have been concerned with promulgating legislation against obscene literature. These laws are intended to overcome the undue influence that obscene literature can have over those subject to the laws. The problem of obscene literature is an enduring one, with increasingly prurient ramifications in modern society. The Church, in this matter as in others, has cast the light of wisdom on the sometimes shadowed uncertainty of our society, a "society which places a premium on freedom of expressions and free investigation."⁶ "The greater good—in this case the freedom 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."⁷ Such a statement stimulates a quest to delineate clearly what is strictly prohibited, and what is the intention and scope of the Church's legislation against obscene literature.

The Church has condemned obscene literature insofar as it is injurious to Christian morals. The natural law demands that all men use whatever means are necessary for the preservation of their moral behavior. Christians must abstain from obscene literature whenever reading it will endanger the preservation of morality. The Christian is obliged to do this in virtue of the natural law and the law of the Church, but it will be seen that the ecclesiastical

⁶ Burke, p. 2.

⁷ Norman St. John-Stevas, "Obscenity, Literature and the Law," *The Catholic Lawyer*, III (1957), 303 [=St. John-Stevas]. This article contains most of the prominent points of his full-length study, *Obscenity and the Law* (London, 1956).

³ John Ford, *Criminal Obscenity* (New York, 1926), p. 14 [=Ford].

⁴ Louis Proal, *Passion and Criminality* (London, 1905), pp. 317 ff., and 429 [=Proal].

⁵ Pernicone, p. 5.

prohibition of obscene literature is only a slight extension of the natural law.

Obscenity and the Natural Law

It has been mentioned that literature is one of the most powerful external influences on man's life, but if *this book harms this man in this particular way*, he is forbidden by law of nature to read it. The only demand of natural law is that one avoid reading whatever is dangerous to oneself. The degree to which one is sexually bothered by questionable reading will depend upon a number of factors: (1) the control one can exercise over one's imagination; (2) the amount of reading each person has done, as reading extensively and frequently will probably accustom a person to some elements that might bother a more sporadic reader; (3) the degree to which one is otherwise stimulated by sexual matters—there are, comparatively speaking, some people who are sexual icebergs, and they are not bothered in the same way or with the same intensity as others; (4) the present psychological and physiological status of the reader.

The natural law is not binding on all equally, nor is it binding in the same way on one person in several different situations. The natural law binds where there is danger of the perversion of the one who is reading. This danger might arise while one is reading, or it might arise before the reading actually begins. The prudent man is circumspect: he unites whatever knowledge he has of the material he is about to read (siphoned from such elements as others' remarks about the book which were made informally, or, more formally, through criticism and book reviews; familiarity with previous works of the author) with his own self-knowledge. If he then

judges that the book will provide something that will probably lead him to stray from his religion-morality code, the natural law obliges him to refrain from reading the particular work in question. Whenever a person is reading a book of such a nature as to arouse him and tempt him seriously to act or think contrary to chastity, then he must stop reading or else take the steps necessary to remove the temptation or at least to reduce its violence to such a degree that there is no danger of committing any sin. The natural law is concerned only with what a reader finds here and now to be obscene.

The Church, however, takes as the subject of its law prohibiting the reading of obscene literature the "average man" and obliges every Catholic to be subject to its law. The natural law makes no such general obligations—it either obliges this man here and now or it does not. The ecclesiastical notion of obscenity, of necessity, must be based on some conception of what makes a book objectively obscene, that is, that the majority of men will find this book to be subjectively obscene. The natural law does not attempt to determine what is objectively obscene: the natural law is "always that which is demanded by the concrete situation under the light of general or very general principles."⁸ Although the natural law is the innate law corresponding to the being of man, it can still occasion the conceptualized formation of particular norms which can be proposed in an external manner.⁹ In other words, human law, through the application of legal criteria, can state that this book is obscene,

⁸ J. Fuchs, *Le Droit Naturel: Essai Theologique* (Tournai, 1960), p. 121.

⁹ Fuchs, *Theologia Moralis Generalis, I Pars* (Rome, 1960), pp. 68-69.

and that it will be obscene for the generality of men. The legislator may then proscribe this book for everyone who is subject to his laws. The Church, then, can prohibit a Catholic from reading a book (without the proper permission) which otherwise (according to his natural law obligation) he might be allowed to read. He could conceivably read the book in question without infringing the natural law in any way whatever. To repeat, when the Church has prohibited the book, he may not read it because of the ecclesiastical law, and not necessarily because of the natural law. The reverse is equally possible: a book may not be objectively obscene, and therefore it would not fall under the prohibition of the Church; but this same book might be obscene for this given person, and he accordingly would not be able to read it without violating the natural law.

Obscene Literature and Canon Law

The present ecclesiastical prohibition of obscene literature is stated in canon 1399, n. 9, of the Code: *Libri qui res lascivas seu obscenas ex professo tractant, narrant aut docent (ipso iure prohibentur*—the introductory words of the entire canon, are understood to govern all the numbers of the canon). The phrase *ipso iure prohibentur* means that the general classes of works which follow are to be considered as prohibited in virtue of the law (that is, ecclesiastical law) itself. Prohibition is perhaps best defined as “an act of ecclesiastical jurisdiction by which certain books of bad or dangerous reading are forbidden to the faithful.”¹⁰ Prohibition forbids the following: publication, reading, retention, selling, translating, and giving the book to others (canon 1398, n. 1).

¹⁰ Pernicone, p. 73.

The terseness of this canon in no way vitiates the legal heritage of which it is the latest heir. This canon is very closely related to the laws of the Council of Trent and of Leo XIII. It restates substantially what these laws stated; hence this canon, which replaces all previous legislation (as is indicated by the editions of the Roman Index of Prohibited Books since 1918),¹¹ must be interpreted in the light of the previous legislation.¹²

The Presumption on Which The Law Rests

In all prohibition of literature in human law, the legislator envisages a danger to the individual, a danger that is so widespread that the lawmaker wishes to oblige all men subject to his law. The prohibition of obscene literature entails a common estimation: obscenity will prove a danger to the ordinary man. Whenever a man reads an obscene book he will be so tempted that he might easily harm himself spiritually and lose grace. There are several reasons underlying the general prohibition of obscene literature, which obliges everyone subject to the lawmaker: (1) there is a great and reasonable possibility of error if the determination of the books to be considered obscene (and, consequently, prohibited reading) were left to the judgment of the individual; (2) in many cases the person will not be able to judge

¹¹ Before the promulgation of the Code, it was customary to print all the existing legislation concerning the censorship and prohibition of books along with the list or Index of prohibited books. In the most recent edition of the Index (1948) the following comprise the prefatory material: (1) a preface written by Cardinal Merry del Val in 1929; (2) the canons which apply to books; and (3) the Holy Office's 1927 instruction on Sensual and Sensual-Mystic Literature.

¹² This was the writer's purpose in a previous article in *THE JURIST*, XXIII (1963), 180-213.

whether this particular book will harm him until after the harm has been inflicted simply by reading the book in question; (3) by making individuals subject to this law, the Church intends to dissuade writers, editors, and publishers of obscene literature.

These reasons are so great that the law against obscene literature binds even learned men and those who see no personal danger in reading a particular obscene book. This law was enacted to ward off the general danger, and the legal principle of canon 21 is to be applied: "Laws which are enacted to guard against a general danger oblige, even though in a particular case the danger is not present." It is to be remembered that the natural law "binds only those for whom the danger exists and as far as it exists."¹³

Ecclesiastical law cannot take into account the background and character of every man. Consequently, the legislator must make his law embrace the situation of the ordinary man. He does this by basing the law upon the presumption of common danger, that is, a probable conjecture about an uncertain thing (canon 1825, § 1). The general assumption on which the law is based is always present: that reading an obscene book is commonly accompanied with moral danger is always true, although in a particular case the danger does not actually exist because of the dispositions of the one reading. But the law itself does not cease to oblige unless the end of the law universally and contrarily ceases; otherwise, the evil (the sexual sin) which the law intends to avert is not efficaciously impeded. Many can persuade themselves that the danger does not exist for themselves, although it might exist for others;

¹³ Pernicone, p. 75, fn. 7.

it is very difficult to imagine, however, an instance when the reading of a professedly obscene book could be countenanced.

*Explanation of The Terms Used in
Canon 1399, n. 9*

Libri. This term is to be taken as including also periodicals, newspapers, and other published writings unless the contrary is ascertained, according to the norms of canon 1384, § 2. The term *book* ordinarily should correspond to our everyday understanding of the term,¹⁴ but the legislator has here given it a broader meaning. The prohibition against obscene literature pertains to all possible forms of publication. The lawmaker, however, states that the broad meaning of the term applies only in this particular part of the Code.

Res lascivas seu obscenas. The wording of the Code makes it appear that the two terms *lascivas* and *obscenas* are synonyms, that is, that notionally they mean the same thing, and grammatically, within the sentence of the Code, they are both used to describe one reality, the lascivious or obscene matter. The word *seu*, then, is to be taken in an explanatory sense: as positing within the statement of the Code two terms each of which describes one and the same reality. For this reason, most commentators simply extend the list of synonyms when they attempt to define obscenity. The Code itself adopts this method and gives one synonym.

The term *obscenity* is not easy to define. Each Christian will have little difficulty in determining what is obscene for himself, but over and above this element, there must be some objective norm which will

¹⁴ See T. Lincoln Bouscaren and Adam C. Ellis, *Canon Law: A Text and Commentary* (3rd rev. ed.; Milwaukee, 1957), p. 752.

conform to an objective (the legislator's) concept of obscenity. Otherwise, it would be impossible to apply the law of the Church to any given work. The subjective norm for determining obscenity will indicate to any given person what he must not read because of natural or positive divine law. The objective norm, however, will tell him what books no one may read in virtue of the ecclesiastical prohibition. It is evident that the two will overlap when they are applied to any book, but that does not detract from the value or the application of the Church's legislation.

It is possible to list many synonyms for the obscene, but the more precise application of the term is always employed to denote anything that is offensive to chastity or modesty.¹⁵ In general, there seem to be as many definitions of the obscene as people can find terms apt to describe what they understand by obscenity. When the word is used in human law, the meaning is to be decided by the civil or ecclesiastical legislators and judges. If it were left to the majority of men to decide this matter, it would seem that any objective notion of the term might be lost. For then it would be quite possible for something to be non-obscene according to the estimation of the majority, yet to be obscene by nature. Furthermore, it seems that a specific book could be obscene for ten people, and innocuous for five hundred. Who is to say whether the book is objectively obscene? Each one can decide that the book is or is not obscene for himself, but should it not also be possible to say whether the

book is objectively obscene? The subjective definition of obscenity is entirely dependent on the individual.¹⁶

As regards objective obscenity, one literary critic lists three elements which should make a judgment possible: (1) the total intent of the work; (2) *l'homme moyen sensuel*; and (3) "the slightest redeeming social importance."¹⁷ The presence of this third element would to some extent undermine the obscenity of a work; where it is not present, the objective obscenity of the work can be asserted. It is, at best, questionable whether the Church's conception of obscenity includes this third criterion.

An American civil judge has given the following descriptive definition of the obscene: "It seems almost incredible, yet some publications, in free circulation, not merely portray unnatural vice but actually incite to it by extolling in seductive phrase the ecstatic pleasure of such indulgence."¹⁸ This description contains the two elements that should be present in any basic definition of obscenity: the *matter* of obscenity, and the *manner* in which that matter is presented.

In one of the attempts to define obscenity in international law, it was stated that obscenity depended on three things: (1) the spirit of the national language; (2) the degree of moral development reached in any given country; and (3) the different

¹⁵ L'Abbe Bergier, *Dictionnaire de Theologie* (Paris, 1829), tom. 6^{ieme}, entry "Obscenite," pp. 55-56: "parole ou action capable de blesser la pudeur; . . . capables de salir l'imagination et d'exciter des passions impures" [=Bergier].

¹⁶ There is some truth, then, in D. H. Lawrence's statement: "What is pornography to one man is the laughter of genius to another."—"Pornography and Obscenity," *Selected Literary Criticism* (London, 1955), p. 32.

¹⁷ John Ciardi, "The Book Burners and Sweet Sixteen," *Saturday Review*, June 27, 1959, p. 22.

¹⁸ Ford, p. 17.

kinds of offenses in this realm.¹⁹ Other authors have distinguished two basic types of obscenity: (1) pure obscenity or literary indecent exposure; and (2) thematic obscenity or the crime of subverting sexual morals. The first type of obscenity "consists of the outrage of the sense of sexual shame through the exhibition of an excessive sensualism. This we have called obscenity *per se*: the induction of sexual excitement." The second type of obscenity "reflects upon current sexual morality in an offensive way through the choice of theme and the treatment of character."²⁰

Two recent authors have described what they term "hard core pornography" in this way: there is a presentation of a "steadily mounting excitation through the exclusive depiction of sexual acts arranged in a series according to the strength of the social taboo—or psychological repression—which would deter the reader from performing these same acts himself. Obscene literature proposes to stimulate an erotic response in the reader."²¹ The authors counterdistinguish hard core pornography

from erotic realism, the "truthful description of the basic realities of life, as the individual experiences it, is of the essence, . . . and it is axiomatic that the reader should respond erotically to such writing."²² These authors add a further note for the detection of obscenity: "Whether to the average person . . . the dominant theme of the material taken as a whole appeals to prurient interest, . . . material having a tendency to excite lustful thoughts."²³

Many moralists and canon lawyers both before and after the promulgation of the Code were far less willing to comment on the obscene than the above-mentioned writers. They have been content to mention the prohibition of obscene literature without attempting any definition of the obscene. This is, to some extent, in harmony with the rules for interpretation given by the Code itself: words commonly have a meaning assigned to them by their use in civilization (cf. canon 19). It should be pointed out, however, that the term *obscene*, if taken in its root meaning, would mean little more than adversity, or (in its adjectival form) inauspicious or ill-omened. It is solely through the process of transference that it is used to describe what is sexually abominable or disgusting.²⁴ Perhaps much of the present difficulty regarding the sense of this term may be attributable to the fact that the word is of doubtful etymology and is, in some sense, dependent on the use for its meaning.

Obscenity is sometimes the companion of another term, *pornography*. More fre-

¹⁹ Polish Government Reply to the League of Nations Questionnaire (q. 2) in *Obscene Publications: Replies of Governments to the Questionnaire Concerning the Draft Convention of 1910*, p. 7. From a reading of this document it is evident that most countries wanted to determine the meaning of obscenity for themselves. The Greek modification wanted the League of Nations to determine the general notions, leaving further refinement and precision to the individual countries. The document was adopted in 1923 at the Geneva Convention.

²⁰ Morris L. Ernst and William Seagle, *To the Pure . . . A Study of Obscenity and the Censor* (New York, 1928), p. 195 [=Ernst-Seagle].

²¹ Edward and Phyllis Kronhausen, *Pornography and the Law* (New York, 1959), pp. xi and 18 [=Kronhausen]. The statement in the introductory part of the book is from the Foreword by Theodore Reik.

²² *Ibid.*

²³ *Id.* at pp. 147-148, quoting the United States Supreme Court.

²⁴ *The Oxford English Dictionary* (Oxford, 1933), VII, 27.

quently than not both terms will be used to describe some work of written art. Etymologically, obscenity may be translated "ill-looking" or "filthy," but perhaps a richer meaning is found when the term is seen in a historical context. *Obscena* were those things which might not be presented on the stage in Grecian and Roman times.²⁵ Whether or not the *obsceana* were always sexual things which were not to be presented is not clear, but the term connoted at least some general notion of impropriety for presentation to the sight of others. Pornography literally means writing about harlots or harlotry. Although one could possibly describe pornography as obscenity in writing, there should be some basis for discriminating between the two terms. Obscenity will arise in any literature through either the *matter* that is described or the *manner* in which something is presented. Pornography, on the other hand, deals exclusively with *obscene or licentious life or themes*, and is therefore the term to be used to describe the presentation of unchaste persons or subjects in literature. Thus one could conceivably call a novel which abounds in off-color and ribald terminology obscene, but one should not call such a novel pornographic solely on this basis.

Probably the best definition and explanation of obscenity is the following:

Obscenity is a quality of words, acts or objects by which impure thoughts are conveyed, or impure desires or actions suggested. We may consider it either internally (*i.e.*, in the intention of

²⁵ Jacobus Bailey, *Totius Latinitatis Lexicon consilio et cura Jacobi Facciolati opera et studio Aegidii Forcellini* (London, 1828), II, 11-12 (entry "obscenus").

the person who uses the words, acts or objects) or externally (*i.e.*, in the nature of the things themselves which are used).

(a) Thus, *internal* obscenity [is] the will to use what will corrupt the minds and morals of others . . .

(b) *External* obscenity is the tendency of words, acts or objects themselves to call up impure images in the mind, or to excite impure desires or actions in those to whom they are presented.²⁶

Another author states that obscenity of words, actions, or objects "being seen (in reality or in the imagination) excite the venereal appetite, or arouse the lower passions."²⁷ Some insights can be gained by seeing what the non-obscene is: (1) it does not gravely excite *ad libidinem*, even though it might treat of licit or illicit love; (2) does not disturb the senses; (3) does not expose to notable danger.²⁸ "A book is not obscene if it merely offends by vulgarity or against external propriety."²⁹ Gerald Kelly demands two elements before there be obscenity in books: "a) their theme, or content, is of an impure or sexually-exciting nature; and b) their manner of presentation is such as to throw an attractive emphasis on that impure or sexually-exciting element." He then gives an example to show what he means: "when a book or play . . . portrays

²⁶ John A. McHugh and Charles J. Callan, *Moral Theology*, rev. and enlarged by Edward Farrell (New York, 1958), I, 587-588 [=McHugh-Callan].

²⁷ Pernicone, p. 168.

²⁸ J. B. Bouvier, *Dissertatio in Sextum Decalogi Praeceptum* (18th ed.; Paris, n.d.), p. 103 [=Bouvier].

²⁹ Pernicone, *loc. cit.*

[adultery] in an attractive manner, such a play or book is obscene."³⁰ Those things are obscene which, when seen, of themselves excite the venereal appetite; obscenity is "the deliberate presentation of sexually-exciting matter in a manner calculated to be attractive and to stimulate the sexual passions."³¹

With a little reflection, one can see rather easily that this definition, although it seems to comprehend both the subjective and the objective concepts of the term, must still be embellished with various notes if one is to determine what is obscene for this person, and what is obscene according to the mind of the Church. Moralists enumerate the following things as gravely obscene in themselves (the *res lascivas seu obscenas* of the canon): the conjugal act, licit and illicit acts between spouses, means of impeding conception or of procuring pollution, natural and unnatural methods of intercourse, free love, ways of procuring venereal pleasure, exceedingly immodest acts, and protracted discussion of any of these things.³² Moralists also mention a few examples of things they consider to be lightly obscene: Vermeersch considers the language of harvesters and mule-

teers to be such, and Gury mentions these two professional swearers and states that the speech of vintagers is little better.³³ Ordinarily whenever there is a jocose or brief treatment of any obscene thing, provided that no scandal is given, the matter will only be lightly obscene.

Obscenity, then, admits of degrees. It can signify gross indecency at one extreme, and what is only unconventional at the opposite extreme. Not every book treating of love is obscene, as there are books which are erotic, that is, they treat of love but without any impiety or delectation. This class of literature usually lacks the lascivious detail which characterizes grossly obscene works. Such novels do not fall directly under the prohibition of the Code; they must first of all fulfill the requisite conditions as they are stated in the canon.³⁴

The degree of obscenity in literature also depends upon the person reading. When a reader has previous knowledge of some obscene matter that he encounters in a novel, for instance, there will be a lessening of the intensity of the obscenity inherent in the book for him.³⁵ An adolescent seeking knowledge through the media of obscene literature, however, would clearly be different from one who already possessed such knowledge.

Books or other writings contain obscenity when they inculcate or recommend impure acts, or advise how these may be committed; when they treat sins of impurity or narrate immoral facts or stories in such a manner as to make vice seem alluring or

³⁰ Gerald Kelly, *Modern Youth and Chastity* (St. Louis, 1949), pp. 76-77 [=Kelly].

³¹ J. Aertnys and C. A. Damen, *Theologia Moralis secundum Doctrinam S. Alphonsi de Ligorio Doct. Ecclesiae* (Turin, 1944), p. 759 [=Aertnys-Damen]. The direct quotation is from John J. Lynch, "Forbidden Reading," *Review for Religious*, XV (1956), 37-38 [=Lynch].

³² Joannes Petrus Gury, *Compendium Theologiae Moralis* (5th ed.; Ratisbonae, 1874), p. 199 [=Gury]. Benedictus Henricus Merkelbach, *Summa Theologiae Moralis ad Mentem D. Thomae et ad Normam Iuris Novi* (5th ed. aucta et emendata; Paris, 1947), I, 601, and II, 959 [=Merkelbach]. Arthur Vermeersch, *De Castitate et de Vitiis Contrariis* (ed. altera; Rome, 1921), p. 376 [=Vermeersch].

³³ *Ibid.* Gury, *loc. cit.*

³⁴ A. Konings, *Theologia Moralis Novissimi Ecclesiae Doctoris S. Alphonsi* (3rd ed.; New York, 1877), I, 221 [=Konings].

³⁵ E. F. Regatillo and M. Zalba, *Theologiae Moralis Summa* (Matriti, 1953), II, 400 [=Regatillo-Zalba].

pardonable to the intended reader; when an erotic composition by language, allusions, details, sympathetic treatment, etc. gives prominence to animal passion.³⁶

There are, then, two characteristics of obscenity: it is concerned specifically with sexual things, and it involves both a presentation of and a solicitation to bad morals in this sexual realm.³⁷ The things narrated may be either real or imaginary, that is, they may be presented in the book either as the accurate recounting of factual matter in revolting detail, or the product of some artist's creative imagination couched in words that accurately and intimately present the mind of the author in all its sexual detail. This last element of detail impinges on the manner of obscenity. In narrating a sexual sequence, the author attempts to present the matter so

³⁶ McHugh-Callan, I, 588-589.

³⁷ A recent study of present-day obscene works lists the following matters as the main characteristics of such literature: seduction of a willing collaborator; defloration scenes with strong sadistic elements: usually the defloration is accomplished with the aid of others; presence of incest (when it appears in modern non-obscene literature it is usually veiled or allegorized); super-permissive parent figures who condone and even participate in the sexual activities of the child, seduce and initiate the child into various sexual malpractices; profanation of the sacred (usually persons); dirty words; over-emphasis on male sexual anatomy (element of phallus worship, exaggerated description of genitals, quantity of semen produced, potency); satyriasis-like condition of males and nymphomaniac females; Negroes and Asiatics as sex symbols; Lesbian and homosexual activities (homosexuality is not a frequent element as it is not so stimulating as is Lesbianism for the heterosexual male; there have been books written for male homosexuals, however, which abound in homosexual practices, usually flavored with sado-masochistic elements); exhibitionistic-voyeuristic elements; culmination in the mass orgy; abundance of flagellation. Kronhausen, pp. 195-244.

lively that the ordinary reader will be so drawn to and ensnared by the description that his sexual instinct will be gradually, if not initially and immediately, aroused.

Few books contain only obscene matter: there might be a preponderance of this, but there will also be passages (of transition, of advancing the "story") which will not, in all probability, be obscene. It should be clear that the matter alone does not deserve the condemnation of obscenity; otherwise, the canon would be applicable to medical, legal, and scientific works.³⁸ There is also a definite relation between the obscene matter and the "local convention of propriety."³⁹ In this regard, Vermeersch developed an interesting analogy between obscenity in literature and nudity in art. There is simple nudity, which does not try to capture one's attention unduly. This corresponds to what has been termed *realism* in literature: simply a presentation of certain data, including, as does life itself, sexual data that are virtuous in one instance and sinful in another. What is important is that in presenting such data the author may not directly attempt to arouse the reader sexually. Secondly, there is affected nudity in art, which attempts to arouse or excite one's libidinous instincts. This is nudity (analogously, obscenity) sought for itself. In literature, this may occur in a variety of ways: the action described may itself be something that is obscene in the circumstances; or the author may, by some insidious literary means, attract undue attention, in a perverted way, to something that might be sexually licit; or he may describe something sexual with such minute detail that his narrative is, by the presence of that

³⁸ Burke, pp. 23-24.

³⁹ *Ibid.*

detail, rendered immoral.⁴⁰

Local conventions cannot be the only determinant of what is obscene, yet they must be taken into account when judging the obscenity of a given book or passage. Sociological works can reflect the local conventions without tending to corrupt morals. But any work which seeks to encourage any depraved practice would be obscene. This tendency can take many forms: showing vice in all its seductive brutality; showing characters afflicted with psychical and moral deformities as examples to be followed; having characters act according to the most perverse instincts; using the magic of style to corrupt morals. Some of the authors of obscene works are not content to paint sin in its hideous yet attractive colors—they seek to justify it. They are not satisfied with fascinating the reader's senses and corrupting his heart—they even attempt to pervert his ideas by justifying the covetousness of nature, insinuating that marriage is an evil, divorce a right, and adultery a necessity. They proclaim that voluptuous love is a chaste ardor and that its manifestations are a pardonable impulse, a slight fault, or a pathological failing. These same authors preach that the laws of chastity are no more obligatory than their distorted notion of the permanency of marriage; that conjugal fidelity is an absurdity and an impossibility. They ridicule the chaste woman and laud the profligate man. They place equal excellence on the conception of legitimate children and of the offspring of debauchery. In a word, they call good that which is evil and evil that which is good; they exalt vice and dishonor good behavior; they reverse the most elementary

⁴⁰ Vermeersch, p. 176 and 376. See Kronhausen, p. 178, and St. John-Stevas, p. 308.

notions of evangelical morality and the morality of the natural law. They corrupt morals and warp ideas.⁴¹

Ex professo. The canon further qualifies its condemnation of obscene literature by stating that such obscenity be induced in a given work *ex professo*. This phrase is used to denote "a systematic treatment of a subject at least in a notable part of a work with the intention of convincing the reader."⁴² In its use, this phrase is very close to another which is used in the Code, *data opera*: "To treat something *ex professo* means to do so in the whole book or a notable part of it; to treat something *data opera* refers not so much to the quality of space or to the system followed as to the intention and thesis running throughout a treatise."⁴³ Whenever there might be question of a book's obscenity, the method of procedure and the style of handling the arguments against modesty or chastity or the subject-matter itself must be taken into consideration.⁴⁴

The use of this phrase in this particular canon must necessarily vary in some respects from the way it is used in other passages. Thus canon 1399, n. 4, speaks of a book treating *ex professo* of religion, and means thereby that the author "must state clearly his tenets; he must bring forward arguments and reasons to establish them, and must endeavor to answer and explain away opposing doctrines."⁴⁵ Few writers of obscene works will explicitly argue for

⁴¹ L'Abbe Louis Bethleem, *Romans a Lire et Romans a Proscrire* (11th ed.; Paris, 1932), p. 79 [= Bethleem].

⁴² Pernicone, p. 137, fn. 66.

⁴³ *Ibid.* See Timothy Hurley, *A Commentary on the Present Index Legislation* (Dublin, 1907), pp. 151 ff. [= Hurley], and Cappello, II, 484.

⁴⁴ See Augustinus Arndt, *De Libris Prohibitis Commentarii* (Ratisbonae, 1895), p. 139.

⁴⁵ Hurley, p. 62.

obscenity as such, or for any particular malpractice, by using syllogisms. Nevertheless, one must remain as close as possible to the meaning the phrase has in describing works of religion and morals.

In any obscene book, obscenity (in some particular form) will be the principal subject matter; this may be a secondary subject throughout the whole book or the principal subject in notable parts of the book (such as a chapter);⁴⁶ obscenity may be reinforced by literary argument for its presence within the book (for example, having an obscene passage as the denouement of a novel for some reason); obscenity may attempt, by its presence, to lessen the respect one has for virtue and morality. What is paramount is that for a book to be *ex professo* obscene, the book need not wholly treat of obscene things, or be handled in an exclusively obscene manner.⁴⁷

We have at our disposal three elements for determining whether a book treats professedly of obscenity: (1) the subject matter of the book; (2) the scope and intention of the writer; (3) the avowal of this intention indirectly by various literary devices. The question arises whether the intention must be expressed explicitly within the work, that is, whether the author must express that he intended to write an obscene work in order to corrupt the morals of any reader. This does not seem to be necessary. The intention of the author is to be judged from the finished literary product itself: the author must be judged on what he actually produced rather than on what he might have wanted to produce. The book stands apart from the avowal of the artist as an infallible and

implacable witness to his intention.⁴⁸ The principle "by their works you will know them" is certainly applicable here. When any author intends to write an obscene book, there will be sufficient indication in the works itself, and no one need approach the author to find out whether he really had such an intention. When the author disavows the obscenity of his work, there will be enough evidence within the text to disprove his supposed piety. Only by looking at the book itself and examining it can anyone tell whether it is obscene.

Tractant, narrant, aut docent. In this phrase the *aut* is to be taken as disjunctive, that is, any one of the other three words (touching upon, narrating, teaching) is sufficient for the application of the canon. This is evident from the nature of the canon and the nature of what the individual words signify. It is to be noted that there is an increasing intensity in the action which these words describe. Someone may touch upon some obscene subject without, however, teaching it.

A book touches upon, treats of, or discusses (*tractant*) any obscene subject when it deals with it "in such a way as to arouse lust, suggest depraved thoughts and induce the incautious readers to perform immoral actions."⁴⁹ This verb generally "implies a frivolous or alluring style,"⁵⁰ which arouses to libidinous activity, sometimes even under the pretext of being scientific or sociological.⁵¹

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⁴⁸ George N. Shuster, *The Catholic Church and Current Literature* (New York, 1930), p. 25.

⁴⁹ Pernicone, p. 169.

⁵⁰ Charles Augustine, *A Commentary on the New Code of Canon Law* (St. Louis, 1923), VI, 475 [= Augustine].

⁵¹ Franciscus Xavier Wernz and Petrus Vidal, *Ius Canonicum* (Rome, 1935), III, 171 [=Wernz-Vidal].

⁴⁶ Burke, p. 37.

⁴⁷ Pernicone, p. 36.

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(Continued)

To narrate (*narrant*) obscene things seems to imply some historical sense, rather than one that is theological or scientific, just as it connotes a treatise of some length rather than a mere report in some paper or magazine.⁵² Thus any real or fic-

⁵² Augustine, VI, 471.

tional description of obscene things, when this would be rather minute or perversely detailed, placing the obscene fact amid its circumstances in so realistic a manner that the reader could scarcely avoid thinking about and picturing mentally the things so narrated, would be considered as forbidden literature.⁵³

⁵³ *Ibid.*, 474; Pernicone, *loc. cit.*; Wernz-Vidal, *loc. cit.*

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The final word in the canon, *docent*, is the strongest. "Those books are said to teach obscene things which impart and explain how lustful actions are performed, by what means others may be corrupted and led to satisfy one's wicked desires."⁵⁴ This word clearly indicates and delineates the case of a reader who "deduces false conclusions from the description or narrative."⁵⁵ Any book would be condemned in virtue of this word if it were to introduce into the narrative some immoral deed or practice and then proceed to explain or

justify it.⁵⁶

⁵⁴ Pernicone, *loc. cit.*

⁵⁵ Augustine, *loc. cit.*; see Cappello, *loc. cit.*

⁵⁶ Burke, p. 37. There are other moralists and canon lawyers whose definitions of these three terms agree with what has been presented: Aertnys-Damen, I, 758; Udalricus Beste, *Introductio in Codicem* (Collegeville, 1946), p. 707 [=Beste]; J. Brys, *Juris Canonici Compendium* (10th ed.; Bruges, 1947-59), II, 218 [=Brys]; Ianuario Bucceroni, *Institutiones Theologiae Moralis* (6th ed.; Rome, 1914-15), IV, 315 [=Bucceroni]; Cappello, II, 485; Merkelbach, I, 601; Benedicto Ojetti, *Synopsis Rerum Moralium et Iuris Pontificii* (ed. altera; Prati, 1905), II, 255, who comments on the meaning of these words before the formulation and promulgation of the Code, and thereby shows the continuity in the meaning these words have had in Church law; Wernz-Vidal, *loc. cit.*