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978-1-107-11377-0 - Obscenity and Film Censorship: An Abridgement of the Williams Report

Edited by Bernard Williams

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PART 1

Background

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CHAPTER 1

The Committee's task

1.1 We were appointed on 13 July 1977 by the then Home Secretary “to review the laws concerning obscenity, indecency and violence in publications, displays and entertainments in England and Wales, except in the field of broadcasting, and to review the arrangements for film censorship in England and Wales; and to make recommendations”. The Government had already announced its intention to set up a Committee to examine these matters. On 14 December 1976 the Minister of State at the Home Office explained in the House of Lords (on the Second Reading of the Criminal Law Bill) why the Government had decided not to legislate on the basis of Part III of the Law Commission’s Report on Conspiracy, which concerned public morals and decency. Legislation along such lines, said Lord Harris, “would be bound to raise more fundamental questions about the general law of obscenity” than it had been the Law Commission’s task to examine and it was the Government’s view that a broader look should be taken at the subject before legislation was brought forward.

1.2 We held our first meeting on 2 September 1977 and have met 35 times in all. Immediately after our first meeting we issued a general invitation to members of the public to write to tell us of their views. We sent letters to over a hundred organisations who we thought would have a special interest in the subject, and we placed an advertisement in every national daily newspaper, seeking the views of their readers. Later on, we recognised a gap in the evidence we had received: there had been a very small response to our invitation from the women’s movement, despite the strong views held about pornography by many who are active in the movement. We took further steps, and it was made known in *Spare Rib* and the Women’s Page of *The Guardian* that we wanted to hear from women. As a result of all these measures we received written submissions from something like 150 organisations and groups and from nearly 1400 individuals. We are most grateful to all those who took time and trouble to help us in this way.

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1.3 We should like to acknowledge very warmly at this point the invaluable help that the Committee has received from its secretariat. Mr Jon Davey has been the Committee's Secretary throughout its work, and no-one could possibly have been more patient, tactful, clear-headed and hard-working than he has been. To him, to the Assistant Secretary Mr Roger Creedon, and to the other members of the Home Office staff who have helped us, we express our most sincere thanks.

1.4 One limitation of our terms of reference must be mentioned at this point; it was one that many of our correspondents found hard to accept. Broadcasting was specifically excluded from our remit. The main reason was that the whole field of broadcasting had been the subject of review by the Annan Committee, which reported only in February 1977,¹ and the Government considered it wrong to submit the control of broadcast programmes to yet another review so soon. From the point of view of legal control, broadcasting is easily separated from the matters we were asked to consider, since the controls imposed on programmes do not rely on the law of obscenity, for example, but on obligations placed on the Governors of the BBC and the Independent Broadcasting Authority to ensure that their programmes do not offend against good taste or decency and are not offensive to public feeling. However, some of our witnesses argued that it was wrong for us to be excluded from making proposals affecting radio and television, which they considered should be subject to the same legal controls as apply to the other media. Many of those who wrote to us expressed more concern about what is shown on television than in publications and films. Beyond recording this strength of feeling, we have not concerned ourselves with the field of broadcasting.

Exploring our subject

1.5 One thing that is certainly true about this subject is that people have differing conceptions, not merely of what should be done about obscene publications, but of what the material in question is even like. When we started our enquiries, we ourselves needed to form some clear and shared idea of what, quite literally, we were talking about. We arranged to see a range of magazines of this kind which were then widely on sale, and others, less freely available, which had in many cases been seized when being smuggled into the country. We also looked at

¹ Report of the Committee on the Future of Broadcasting. Cmnd 6753.

publications which had been in trouble with the law in the past, and saw how certain magazines had in recent years been extending the range of what they considered they could show. We saw a number of films which are sold for home viewing or are shown in some of the smaller film clubs. Some of us visited such clubs and shops specialising in pornography and some of the live entertainment offered to adults in London. As a result of these experiences, we gained a reliable impression of what is available, and were able to place this in some kind of perspective in relation to the past.

1.6 We also needed to study how the law operated and what its effect was, in practice, on the various kinds of material. We took evidence from those who enforce the law, and from other people with a professional or practical interest in the law and its effects. We held discussions with a number of those who made written submissions to us, as well as with other people to whom we thought it would be helpful to talk on the subject.

1.7 Since we were also concerned with the arrangements for film censorship, we needed to find out how the present arrangements operated and how film censorship works. Mr James Ferman, the Secretary of the British Board of Film Censors, readily agreed to explain the Board's policy and practice to us and he spent four afternoons with us giving an illustrated guide to the ways in which the Board censors films. In the course of those four afternoons we saw extracts from 90 different films, sometimes in "before" and "after" versions, which illustrated the attitude taken by the Board towards the protection of children who go to the cinema, towards the depiction of violence, the depiction of sex and towards sexual violence and sadism. We are much indebted to Mr Ferman for the trouble he took to familiarise us with the operation of film censorship: for his four talks, for meeting us on several occasions, and for receiving us at the Board's offices and letting us see the Board at work. There were several films we thought we should make a special point of seeing in their entirety. Some had been the objects of concern and controversy after they had been approved by the Board: films such as *Straw Dogs*, *A Clockwork Orange* and *The Language of Love* (which had been the subject of unsuccessful proceedings for indecency). Others were films to which the censorship had withheld a certificate, and had been criticised by some for doing so: these included *The Story of O*, Pasolini's *Salò*, Oshima's *Empire of the Senses* (*Ai No Corrida*) and Malle's *Pretty Baby*. In addition to these, Mr Ferman showed us *Manson*, which had been refused a certificate in 1972 for reasons slightly out of the normal run—it had been thought that it could incite to violence, though it was not itself violent. Last, in view of some

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concern expressed to us about some sex education material, we took steps to see Dr Martin Cole's *Growing Up*, which had attracted some controversy. In all, apart from our private cinemagoing, we saw as a Committee 110 films, trailers or extracts from films.

1.8 Our next aim was to find out what people perceived to be the defects—and the strengths—of the present law and practice, and how they thought the law and practice could best be amended. As well as studying the wealth of written material submitted to us and reading many of the books published on this subject, we invited a number of people to talk about the subject with us. Some have an official role to play in the administration of the criminal law or the film censorship system; others have jobs which inevitably involve them in the operation of those laws; others possess a wide variety of knowledge, experience and concern for the welfare of society and the well-being of individuals. Those who helped us in this way are listed at Appendix 8 and we are extremely grateful to them. These discussions helped us to an understanding of how the law works and of the difficulties it causes to those it affects; to a greater knowledge of the way the trade is carried on and of the nature of the market; to a deeper perception of the nature of the issues involved and of the factors on which we should base our conclusions; and also to a fuller awareness of the strength of the feelings which the subject arouses.

Research

1.9 Needless to say, we discussed the effects of pornographic and violent material with a number of psychiatrists and psychologists, of various outlooks. At an early stage in our work we considered, very carefully, whether this was a matter on which it would be useful to commission fresh research. We were able to take into account two reviews of the existing literature, one on the effects of pornography which had been undertaken by Mr Maurice Yaffé in 1972 for Lord Longford's Committee,² and which Mr Yaffé brought up to date for our benefit, the other on the effects of screen violence by Mr Stephen Brody of the Home Office Research Unit.³ Both of these drew attention to the considerable amount of research which had already been undertaken, and also to the difficulties

² Appendix V to *Pornography: the Longford Report*, Coronet Books, 1972.

³ *Screen Violence and Film Censorship*. Home Office Research Study No 40, Her Majesty's Stationery Office, 1977.

of studying human behaviour and of drawing conclusions about its motivations. Yaffé, for example, stated that “there is no consensus of opinion by the general public, or by professional workers in the area of human conduct, about the probable effects of sexual material” and Brody said that “social research has not been able unambiguously to offer any firm assurance that the mass media in general, and films and television in particular, either exercise a socially harmful effect, or that they do not”.

1.10 Such conclusions as we have been able to draw from the vast amounts of research that exist we shall set out later in this Report (Chapter 6). It will be seen that such research tends, over and over again, to be inconclusive. This is certainly not an accident, but rather reflects basic features of this subject, or perhaps of any social research into subjects of this kind. It would be stupid to claim that no future research could shed more light on these questions than past research has done. But we do strongly suspect, in fact, that what these questions need are not so much new facts, as new ideas; and further, that enquiries which will be helpful are more likely to be those directed to the study of human personality as a whole, rather than to specific questions about violent or sexual materials and their supposed effects. However that may be as a general issue, one thing that became clear was that this Committee, in the brief period of its work, was neither going to invent nor galvanise others into inventing, the fruitful research ideas which have eluded so many able, industrious and well-funded researchers over so long a time. What we did do, besides studying the literature and trying to think about it, was to discuss the problems with a range of people who have professional experience in the study of human behaviour.

Public opinion

1.11 A different question was that of research into public opinion. Obviously the body of people who took the trouble to write to us does not constitute a cross section of the public. Many of those who did not write may be indifferent to the whole subject—and this is one of those questions on which indifference is itself an attitude. There are in any case problems about the ways in which public attitudes are relevant to our task. Few people suppose, for instance, that the mere fact that a lot of people dislike something is, just in itself, a good enough reason for suppressing it (it is interesting that some people who have very populist sentiments in other connections do not have them on subjects such as obscene publications or capital punishment: and conversely). But does it make a difference

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if the dislike is not merely dislike but outrage? How much difference would it make if it were not the material, but displaying it in public, which was to be suppressed? These issues of principle we shall come to in Chapters 5 and 7. However, without prejudging them, and without supposing that findings about public opinion could properly determine our recommendations, we could agree that it would be interesting and important to know more about public opinion on the matter, if possible, especially since large claims are sometimes made about what that opinion is.

1.12 The obvious way to assess public opinion is through an opinion poll, and we therefore looked at the possibility of commissioning a survey of public attitudes. It was helpful to us in considering this to study the results of a poll undertaken by Opinion Research Centre in 1973, summarised in the *Sunday Times* of 30 December 1973, and also the report of an exploratory study of public attitudes towards film censorship conducted by Social and Community Planning Research in 1974 for the Greater London Council. We also looked at the results of an attitudes survey conducted in the United States of America for the Commission on Obscenity and Pornography; and, at a later stage, we had submitted to us the findings of a Gallup poll conducted in January 1979 on attitudes towards pornography. We found it very difficult to gain a clear idea from these polls of what people thought: contradictions and inconsistencies were evident in all of them. For example, in the 1973 ORC poll 79 per cent of respondents agreed that all films shown in public cinemas should be passed by a national censorship board, but 46 per cent agreed that there should be no censorship at all for films shown to adults. Again, still on the subject of film censorship, the 1979 Gallup poll found 70 per cent against the abolition of the censorship on sexual grounds of films, and 65 per cent against sex being filmed, but 48 per cent in favour of allowing ordinary people to decide for themselves what is fit for them to see. The 1974 pilot study by SCPR found that some people who said they were opposed to film censorship in principle were quite prepared to suggest that particular scenes should be cut or banned; while others who pronounced themselves believers in censorship found it difficult to think of an exercise of censorship powers with which they agreed. It seemed clear that even if questions were framed with considerable care, the answers could not be accepted at their face value.

1.13 This is not to say that previous surveys have been lacking in any lessons. For example, the 1973 ORC survey found people apparently much more prepared to take a libertarian line with publications than with films, 74 per cent (as against 46 per cent for films) saying that they were in favour

of the freedom of adults to buy whatever literature they wished, and the same distinction emerged in the United States survey. As regards public displays, the 1973 survey showed a majority (54 per cent to 34 per cent) in favour of a new law against indecent displays, despite the fact that the relevant question was loaded with references to the police being given wide powers of search and arrest, and despite the fact that 71 per cent of respondents claimed, in a separate response, never to have been seriously upset by an indecent public display. The survey also permitted the conclusion that men are less likely to take a restrictive attitude than women, the young less likely than the old and, to a less significant extent, middle class people less likely than working class people. In showing where the line ought to be drawn in restricting displays the survey was a good deal less definite. Questions about what people found to be indecent produced only confusing results and certainly were of no help to us in deciding what the law should attempt to restrict.

1.14 It seemed to us in studying these earlier surveys that there were severe practical difficulties in mounting any survey the results of which would be useful to us. There are a number of reasons for this. One is that it is clear that many respondents would be answering questions about a subject of which they had little or no knowledge, both from the point of view of law and practice, and (as we have already said) with respect to the nature of the material under discussion. Quite apart from this, the quality of the response is doubtful because of the potentially embarrassing nature of the subject; the sex, appearance and demeanour of the interviewer and the nature of the surroundings will all affect the answers given. The findings also tend to be distorted, as the United States survey found, by the fact that those who prefer not to discuss such a subject exclude themselves; and even by the fact that interviewers tend to retire from the enquiry rather rapidly, because of the distasteful nature of the subject, and have to be replaced.

1.15 The major problem, however, seemed to us to lie in obtaining some kind of shared understanding between interviewer and respondent about what it is that the questions relate to. This is not merely a matter of avoiding such general terms as “pornography” and “obscenity”, of which individuals often have different conceptions. Even if one tries to define the subject matter more closely by verbal descriptions—as in “material depicting sex organs”—one cannot eliminate different interpretations of the words, so that one person may have a mental picture of putting fig leaves on statues, another a serious sex education manual and another a highly explicit pornographic magazine. As SCPR commented in their pilot

study, “survey research cannot adequately convey the context and the manner of presentation of scenes which is essential to obtaining meaningful responses”. The only way to overcome this kind of misunderstanding is to present the respondent with specific examples and ask such questions as “Is *this* acceptable to be displayed in public places?” or “Should material of *this* kind be permitted for those adults who wish to buy it?” Leaving aside any questions of law, however, there are clearly ethical arguments against thrusting examples of pornography or other extremely distasteful material before unsuspecting members of the public, and the results of such a bizarre transaction would have little evidential value; while if such a study were undertaken with volunteers only, that pre-existing bias would cast doubt on its findings.

1.16 The 1973 ORC survey seemed to recognise the problems we have mentioned, and the need to focus the response on particular examples. It tried to meet both by showing its respondents three photographs, but of a comparatively innocuous kind with which the law on indecent displays was unlikely to be concerned. One was of Rodin’s *The Kiss*, another a costume sketch for *Scheherazade*, of a reclining nude, by Leon Bakst, and the third a front cover of *Men Only*. In the event 7 per cent thought *The Kiss* indecent, 30 per cent thought the Bakst sketch indecent and 28 per cent thought the *Men Only* cover indecent. These comparatively high figures for material unlikely to be indecent at law suggest that more outrageous material might well have aroused overwhelming hostility. It seemed to us that it was simply not possible, in the words of the *Sunday Times* report on the poll, to “find out what the nation considers indecent” by showing pictures of a relatively inoffensive character, let alone to conclude from the response that, as the headline put it, “it isn’t easy to shock the British”. This poll tended to confirm us in our view that it would be a mistake to expect very much assistance from the commissioning of a survey of public attitudes. In view of the various difficulties we have mentioned, we decided against commissioning a fresh survey. We paid attention to the evidence of ordinary people’s views submitted to us, and took into account some broad indications which emerged from the surveys already undertaken.

Foreign experience

1.17 It seemed to us that there was something to be learnt from the way other countries deal with these matters. We were interested in their experience of trying to suppress pornographic and violent material or,