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Gordon Hawkins and Franklin E. Zimring  
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# I

## **Pornography and the pornography commissions**

## Introduction

The twenty years between the mid-1960s and the mid-1980s could, with justification, be called the Era of the Pornography Commissions. After almost two centuries without a federal investigation of the problems of pornography, there have been two federal inquiries in the United States and one in Great Britain, as well as one in Canada dealing with both pornography and prostitution.

Two explanations for this phenomenon deserve attention. First, all these commissions were a response to social changes in the distribution of pornography that had occurred by the mid-1960s in much of the industrialized West. The commissions were responding to a change in availability and the social reaction to that change. They were an effect rather than a cause of widely available pornography. The first of the U.S. commissions was the product of this reaction almost exclusively. The subsequent commissions were a product of both the change in availability of sexual communications and an emulation of the commission on pornography as a political innovation. A commission of inquiry had become, visibly, one of the few things a national government could do about the subject without major cost.

The British and Canadian efforts were inspired in part by the earlier American example. And the Meese Commission was designed as a response to the Johnson Commission. In this last case, it could be said that opposition was the sincerest form of flattery.

Our method of showing the difference in perspective that these reports brought to their subject is to compare the analysis of each document of the core concerns that any pornography commission has to address. This part of the book is organized around these core concerns. It deals specifically with the manner in which they were addressed by the U.S. Commission on Obscenity and Pornography (the Johnson Commission), the Home Office Departmental Committee on Obscenity and Film Censorship (the Williams Committee), and the Attorney General's Commission on Pornography (the Meese Commission). After an introduction to the three bodies in Chapter 1, we analyze the approach of each of them to the definition of the field of inquiry in

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Chapter 2. Chapter 3 compares the Johnson and Meese Commissions' accounts of the nature and distribution of pornography in the United States. Chapter 4 shows each body analyzing existing evidence on the behavioral effects of pornography. Chapter 5 discusses how each of them deals with the social value of free expression as an issue implicated in making policy about pornography.

Our treatment of these topics is intended both as a guide to the three reports and as an introduction to the issues confronted when considering government policy toward pornography. This general coverage of topics provides a foundation for our consideration of some special concerns in Part II.

# 1

## Experts on what? The origins and composition of pornography commissions

Nationally chartered blue-ribbon commissions, groups of more or less eminent citizens officially charged with the task of considering and then making recommendations for legislative or other action in relation to what is publicly perceived as a national problem, are a much favored political device in Western democracies. It would be ingenuous to think that this is because they have proved notably efficient at problem solving or at producing effective prescriptions for the treatment of national afflictions.

In America there have been, since 1920, nine major national crime commissions under presidential authority or that of the attorney general. When, after his election victory, President Lyndon Johnson responded in 1965 to citizen concern about crime and created the Commission on Law Enforcement and Administration of Criminal Justice, calling on it to “give us the blueprints that we need . . . to banish crime” (Johnson, 1966:983), he was following well-established precedent. But following the commission’s report, the crime problem remained certainly unsolved and not even noticeably diminished, awaiting the next round of high-level attention, which was to come before the end of the decade (U.S. National Advisory Commission, 1968; U.S. National Commission, 1969).

The attractions for a government of the commission device are multiple and diverse. An administration told that it must “do something” about a problem can, when it does not know what to do, establish a national commission and seem to have done something. An administration that does not at the time want to do anything about a problem can use the establishment of a national commission as a means of temporization. An administration that seeks endorsement or a rationale for something it wants to do can establish a (carefully selected) national commission. It is also not impossible that a national commission may be established by an administration genuinely seeking information and advice.

It is not surprising that the state of the laws relating to written, spoken, and visual representation of the pornographic should have been the subject of a

number of national commissions. Not only are those laws “anomalous, devoid of clear principle or objective and often unenforceable,” they are also the subject of continuing debate between those who want stronger and more severe legal controls and those who favor the repeal of all, or nearly all, controls. Governments face constant “pressures – from one direction to clamp down on license, from the other to sustain freedom of expression” (Silkin, 1983:1). When those pressures reach a certain level of intensity, as they had in the three instances we consider here, the appointment of a national commission becomes almost inevitable.

When in October 1967 the United States Congress authorized the establishment of a Commission on Pornography and Obscenity there had been three sets of congressional hearings on the subject during the previous fifteen years (Kendrick, 1987:213). Crusaders against pornography and self-styled civil libertarians had long been engaged in a conflict later described as a “Civil War over Smut” (Witcover, 1970:550). Public concern in the late 1960s was related to the increase in the availability of sexually explicit magazines and films in the United States. The Williams Committee was set up in response to a decade of acrimonious public debate from which there had “emerged a near unanimity of dissatisfaction with the law and its administration” (Simpson, 1983:22). This committee was formed after fifteen or more years of greater availability of increasingly explicit material in Great Britain. The Meese Commission came at a time when great technological developments had affected the transmission of sounds, words, and images. President Nixon had warned in 1970 after the publication of the Johnson Commission report that “if an attitude of permissiveness were to be adopted regarding pornography, this would contribute to an atmosphere condoning anarchy in every other field and would increase the threat to our social order as well as our moral principles” (Kendrick, 1987:219). By 1985 such developments as cable television and videotape recording had, as the Meese Commission report put it, rendered much that the Johnson Commission said about the distribution and availability of pornography “starkly obsolete” (U.S. Department of Justice, 1986:226). And many citizens believed that, in relation to the public portrayal of sexuality, the anarchy President Nixon envisaged had arrived.

The three bodies whose work we review – the U.S. Commission on Obscenity and Pornography (the Johnson Commission), the Home Office Departmental Committee on Obscenity and Film Censorship (the Williams Committee), and the Attorney General’s Commission on Pornography (the Meese Commission) – were thus all established in response to what was seen as public concern about an urgent national issue. Yet in no case were their principal recommendations adopted, and their respective receptions suggest that in no case was public disquiet allayed.

The Johnson Commission, which had recommended the repeal of all legisla-

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tion prohibiting the sale, exhibition, or distribution of sexual materials to consenting adults, was told by an unconsenting President that “so long as I am in the White House there will be no relaxation of the national effort to control and eliminate smut from our national life” (Kendrick, 1987:219). As for the Williams Committee, one of its members, Professor A. W. B. Simpson, wrote, four years after the publication of its report, that the British government had “successfully shelved the Williams Report, and there has never been a Commons debate on its provisions” (Simpson, 1983:57). The overwhelming majority of the ninety-two recommendations of the Meese Commission have been ignored.

The attorney general who appointed the Williams Committee, looking back some years later at “the history – or unhappily lack of history – of what followed” the publication of the committee’s report, noted that it was commonly “the fate of august reporting bodies that their reports [are relegated to] pigeonholes” (Silkin, 1983:4). In retrieving three of them from their pigeonholes, or rather the places where they were gathering dust on library shelves, we were concerned not with the fate of their recommendations, some of which were exemplary pigeonhole material, but with the issues they confronted and the processes by which their recommendations came to be made. In this chapter we begin by looking at the genesis of the three bodies, their membership, what they were asked to do, and how their reports were received.

### **The Johnson Commission**

The United States President’s Commission on Obscenity and Pornography was appointed in January 1968 to investigate the traffic in pornographic and obscene materials, which Congress had found to be “a matter of national concern” (Public Law 90–100). The purpose of the commission was defined as “after a thorough study which shall include a study of the causal relationship of such materials to antisocial behavior, to recommend advisable, appropriate, effective, and constitutional means to deal effectively with such traffic in obscenity and pornography” (U.S. Commission, 1970:1).

The commission was assigned four specific tasks:

1. With the aid of leading constitutional law authorities, to analyze the laws pertaining to the control of obscenity and pornography; and to evaluate and recommend definitions of obscenity and pornography;
2. To ascertain the methods employed in the distribution of obscene and pornographic materials and to explore the nature and volume of traffic in such materials;
3. To study the effect of obscenity and pornography upon the public and particularly minors, and its relationship to crime and other antisocial behaviors; and
4. To recommend such legislative, administrative, or other advisable and appropriate

ate action as the Commission deems necessary to regulate effectively the flow of such traffic, without in any way interfering with constitutional rights. (ibid.)

The commission was composed of two women and sixteen men, including the chairman, Professor William B. Lockhart, who was dean of the University of Minnesota Law School. In addition to the chairman, membership included five other lawyers: Thomas D. Gill, chief judge of Connecticut Juvenile Court; Thomas C. Lynch, attorney general of California; Edward E. Elson, president, Atlanta News Agency; Charles H. Keating, Jr., senior partner in a Cincinnati law firm; and Barbara Scott, deputy attorney of the Motion Picture Association of America, Inc.

Three sociologists served on the commission: Joseph T. Klapper, director, Office of Social Research, Columbia Broadcasting System; Otto N. Larsen, professor, Department of Sociology, University of Washington; and Marvin E. Wolfgang, professor and chairman, Department of Sociology, University of Pennsylvania. There were also two psychiatrist members: Edward D. Greenwood, M.D., director, Division of School Mental Health of the Menninger Foundation; and Morris A. Lipton, Ph.D., M.D., professor and chairman, Department of Psychiatry, University of North Carolina.

Organized religion was represented by: the Reverend Morton A. Hill, S.J., president and administrative director of Morality in Media; Dr. Irvin Lehrman, rabbi of Temple Emanu-El, Miami Beach, Florida; and the Reverend Winfrey C. Link, a Methodist minister who was administrator of the United Methodist Retirement Home, Hermitage, Tennessee.

The remaining four members were: Frederick J. Wagman, director of the University of Michigan Library and professor of library science; G. Williams Jones, assistant professor of broadcast-film art, Southern Methodist University; Freeman Lewis, formerly vice-president of publishing, Simon & Schuster, Inc., and director, American Book Publishers Council; and Cathryn A. Spelts, assistant professor, South Dakota School of Mines and Technology and a member of the National Council of Teachers of English.

Professor Lockhart was a distinguished authority on constitutional law and a leading academic authority on obscenity laws. He had coauthored three widely cited articles on the subject of obscenity and the law (Lockhart and McClure, 1954, 1955, 1960). In one article he and his coauthor had made a strong plea for social scientists to undertake extensive research into the effects of exposure to obscene or pornographic materials (Lockhart and McClure, 1954:385). "Our obscenity laws," he has said, "are a classic example of how laws ought not to be made – in the dark" (Lockhart, 1971:210).

Few of the commission's other members had previously shown any particular interest in the subject of obscenity or pornography, or if they had, it is not mentioned in the biographies of commission members appended to the com-

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mission's report. Only in three cases is there any reference to engagement in activity related to the commission's tasks. The Reverend Morton A. Hill's corporation, Morality in Media, is described as an "interfaith organization working to counter the effects of obscene material on the young, and working toward media based principles of truth, taste, inspiration, and love" (U.S. Commission, 1970:635). The Reverend Winfrey C. Link had since 1960 been chairman of the Tennessee Commission on Youth Guidance Subcommittee on Pornography and Obscene Literature. Barbara Scott as a member of the American Bar Association was serving on the association's Committee on Obscenity. In addition, Charles H. Keating, Jr., who was appointed to the commission by President Nixon in 1969, after one of the original members was appointed ambassador to India, and whose biography was not included in the report, was the founder of Citizens for Decent Literature.

The commission held its first meeting in July 1968 and then organized itself into four working panels: (1) Legal; (2) Traffic and Distribution; (3) Effects; and (4) Positive Approaches. An executive director and general counsel were appointed effective the last week in August 1968. The nucleus of the staff, which ultimately numbered twenty, was assembled in September 1968. The commission held public hearings in Los Angeles on May 4 and 5, 1970, and in Washington, D.C., on May 12 and 13, 1970. The final 646-page report of the commission was transmitted to the President and Congress on September 30, 1970. The commission had expended \$1,750,000.

The Johnson Commission owed its existence to the initiative of Senator John McClellan (D., Ark.), who in 1967 had steered the resolution about obscenity and pornography's being a matter of "national concern" through the Senate Judiciary Committee and the House to become Public Law 90-100. The same Senator McClellan on October 17, 1970, seventeen days after the commission's report was made public, introduced in the Senate a condemnatory resolution that was passed by a vote of 60 to 5 rejecting the report.

In the years between, the commission's history had not been without incident. In the late fall of 1969, two members of the commission – Commissioners Hill and Link – who were later to describe the majority report as "a Magna Carta for the pornographer" (U.S. Commission, 1970:385), organized "runaway" public hearings in eight cities contrary to the announced policy of the commission. The general tenor of these hearings, which were extensively reported in the press, was "strongly in favor of tightening legal controls" (Packer, 1971:72).

Then, before the publication of the commission's report, a volume was published purporting to be the commission's report and entitled *The Obscenity Report*. No indication of authorship was given and it is not entirely clear what the purpose of the publication was. One observer, Professor H. L. Packer, commented that it "sounded very much like a Birchite document.



Many people thought this document a parody. Among lawyers it was thought to be a hoax perpetrated by law students. Although its provenance is unknown to me, one ought to compare this spurious document with the dissenting views expressed in the genuine report by Commissioners Hill and Link. . . . There is a marked similarity" (ibid.:72–73).

Subsequently the text of the commission's report was prematurely "leaked" by an unidentified commission member to the House Subcommittee on Postal Operations. The subcommittee then conducted hearings mainly given over to the refutation of the unpublished findings of the commission by Professor Victor Cline of the University of Utah, who had been cited by Commissioners Hill and Link, in their joint dissenting statement, as their principal expert on the behavioral sciences (U.S. Commission, 1970:390–412).

The Associated Press obtained a version of the final report that was extensively publicized. Next, Charles H. Keating, who was President Nixon's only appointee on the commission, filed suit to enjoin publication of the commission's report on the ground that the commission had denied him sufficient time to prepare a dissent. He obtained a preliminary injunction but subsequently reached agreement over an extension of time with the chairman of the commission.

It can have been no great surprise to any of the commissioners when President Nixon repudiated the report. Any chance that it might have been was obviated when Ronald Ziegler, presidential press secretary, told reporters without being asked and before the report had been submitted to the President, that the President had views at variance with the report.

### **The Williams Committee**

The Home Office Departmental Committee on Obscenity and Film Censorship, usually called the Williams Committee after its chairman, Professor Bernard Williams (at that time provost of King's College, Cambridge), was formally established on July 13, 1977. Its terms of reference were "to review the laws governing 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" (Home Office, 1979:1).

The Williams Committee has been described by Samuel Silkin, Q.C., who was the attorney general at the time of the committee's establishment and had requested the Home Secretary to set it up, as "virtually a Royal Commission in character, if not in title." He has since said that what he wanted was "a wide-ranging inquiry by an objective and widely representative group" of the laws in the field of obscenity, indecency, and censorship (Silkin, 1983:3).

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The committee consisted of ten men, including the chairman and three women, and included among its members three lawyers: Judge John Leonard, Professor A. W. B. Simpson, and a solicitor, Ben Hooberman. The other members were David Robinson, film critic of *The Times*; Richard Matthews, former chief constable of Warwickshire; Vivian White, secretary of the United Caribbean Association and a youth and community worker in Cardiff; John Weightman, professor of French at the University of London; the Right Reverend John Tinsley, bishop of Bristol; Dr. Anthony Storr, a consultant psychotherapist; Sheila Rothwell of the Equal Opportunities Committee; Polly Toynbee, a journalist; and Jessie Taylor, a headmistress from Manchester.

Professor Simpson says, "How quite we were selected remains a mystery," although "it was rumored that the Archbishop had been given the nomination of a cleric – hence the selection of the Bishop of Bristol, John Tinsley" (Simpson, 1983:24). Professor Williams had earlier served on some similar bodies – the Public Schools Commission (1965–70) and the Royal Commission on Gambling (1976–78). Professor Simpson had been a member of an Advisory Group on Rape.

Professor Weightman subsequently wrote that being selected to serve on a committee of inquiry, such as the Williams Committee, "is rather like being summoned for jury duty. An official letter arrives out of the blue, and in due course you find yourself closeted with a varied group of fellow citizens whom you have probably never met before. . . . Juries of course are picked at random, whereas, someone must choose committees in the name of the minister concerned. . . . But who this is you are not told. The question – why me? – is left unanswered . . . I could only suppose that I had been roped in as the statutory literary academic, who had also happened to be writing film and theatre criticism" (Weightman, 1979:10).

Two members had previously publicly shown some interest in the committee's subject matter. The chairman, Bernard Williams, and the psychiatrist Anthony Storr had both publicly defended the publication of Hubert Selby's *Last Exit to Brooklyn*, published in 1966 by Calder and Boyars, who were prosecuted at the Old Bailey in 1967. As film critic of *The Times*, David Robinson presumably possessed a professional interest in the working of film censorship; otherwise no members of the committee had exhibited any particular interest in the subject. The appointment of Bernard Williams was the subject of some protest at the time, both from the Festival of Light, on the ground that he was not a believing Christian, and from a group of peers and MPs.

The committee met for the first time on Friday, September 2, 1977, and held thirty-five meetings in all. The last was on Wednesday, October 31, 1979, for the formal signing of its 270-page report, which was unanimous.