

DLAS

THE DEFENCE OF LITERATURE AND THE ARTS SOCIETY
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REPORT ON OBSCENITY AND FILM CENSORSHIP – SUMMARY

The Committee on Obscenity and Film Censorship, which reported in October 1979, was set up in July 1977 “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”. Broadcasting was excluded chiefly because the Annan Committee had reported only in February 1977.

The composition of the Committee is given at the end of this summary. Its Report, which is unanimous, surveys the existing law and the present situation; considers the question of harms supposedly caused by obscene publications and films; and discusses such questions as the nature of the offensiveness of pornography, obscenity law and freedom of expression, and the relations of obscenity and pornography to art. These theoretical sections are not easily summarised, but the Committee sees them as the basis of their recommendations.

The Present Situation:

The Report describes the present law as “a mess”. This is principally for the following reasons:

- (1) Besides the Obscene Publications Act, there are various other provisions with a variety of over-lapping or conflicting effects.
- (2) The Obscene Publications Acts rest on a definition of obscenity – the “deprave and corrupt” test – which receives very various interpretations, and which is rarely taken to mean what it says; when it is so taken, offensive material is often acquitted.
- (3) The “public good test” provided in Section 4 of the Obscene Publications Act has taken in the past been abused; in any case, as a way to safeguard artistically worthwhile publications, it is misconceived.
- (4) The Act is powerless against the open sale and display of much material which is reasonably found offensive.
- (5) The law is extremely uncertain, with consequent injustice.
- (6) The law about cinemas permits bogus clubs which show uncertificated films in usually unregulated circumstances.

Harms:

The Committee surveyed the whole range of claims that had been made to the effect that obscene publications cause harm. Many of these claims are extremely vague, and in many cases do not distinguish between obscene publications causing cultural or social harms, and their being the effect or expression of some much wider and deeper condition of society. Where the claims are definite enough to be tested, the Committee came to the conclusion, after careful and unprejudiced assessment of the evidence, that, except in a very narrow area, there is no persuasive evidence of such harms. On the question of the alleged causation of sex crimes by pornography, as measured by criminal statistics, the Committee felt that it should pay particular attention to the work of Dr John Court, who has made stronger claims than any other established social scientist to the effect that there is such a connection. Its conclusion, after a careful analysis which the Report sets out at length, is that Dr. Court's claims are baseless and his methodology unsound.

Recommendations:

Publications: Prohibition

Total prohibition should apply to one class of publications, namely those that can reasonably be thought to cause harms to those involved in their production. This is identified as "material whose production appears to the Court to have involved the exploitation for sexual purposes of any person, where either

- (a) that person appears from the evidence as a whole to have been at the relevant time under the age of 16 years; or,
- (b) the material gives reason to believe that actual physical harm was inflicted on that person".

The private circulation of such material, as well as its commercial sale, would be illegal. The offence would be triable either in a Crown Court before a Jury, or in a Magistrates' court. Prosecution would require the consent of the DPP.

Publications: restriction

A further range of material should, in the Committee's view, be restricted. This means that it could be sold only by mail order or in separate premises (or premises with a separate entrance from the street) which have no window or similar display, state the nature of the premises, give a warning notice, and exclude persons under the age of 18. Restriction is designed to deal with the public nuisance aspect of pornography, its offensiveness to those who do not wish to see it. Material to be restricted is defined as

Material which, not consisting of the written word, is such that its unrestricted availability is offensive to reasonable people by reason of the manner in which it portrays, deals with or relates to, violence, cruelty, or horror, or sexual, faecal or urinary functions, or genital organs.

Restriction offences would be triable only in a Magistrates' Court. The right of prosecution would lie with the Police.

The Exclusion of Written Matter:

Written matter cannot involve the kind of harms identified for prohibition offences; and it does not display the kind of instant offensiveness offered by pictorial matter. It raises the hardest problems about the question of opinion and related freedoms, and about artistic merit. If it were to be subject to restriction, a "public good" test would be required, but such a test, the Committee argues, is unworkable.

This proposal would not in fact make much difference to the situation that actually exists: the Committee was informed that under the present law there was little certainty of convicting any written material, and the authorities were reluctant to proceed against it.

Live Performance:

"Live shows", in the sense of actual sexual activity in the presence of an audience, would be forbidden.

Films:

It is proposed that the present Local Authority basis of film certification should disappear; the Committee's evidence was very largely that its operation was purely notional in most cases, and anomalous or inconsistent in many others. There should be a new statutory body, the "Film Examining Board"; this would replace the present British Board of Film Censors, which draws its authority solely from the Local Authority system. The Board, which would be set up to include a wide range of expertise, would provide general policy, and would also hear appeals against decisions of the examiners, who would be a small body as at present.

All films shown for private gain would be subject to certification; bogus clubs would disappear.

It is recommended that there should be five grades of certificate:

U: as now

11A: children under 11 to be accompanied by an adult

16: no one under 16 to be admitted

18: no one under 18 to be admitted

18R: no one under 18 to be admitted, and film 'restricted'.

This last certificate would be given to a film which could be shown only in a cinema designated by the Local Authority; besides the age restriction on admission, there would be no external publicity, stills, etc. and a warning would be given that the content of the film might prove offensive. This certificate could apply to, but would not be confined to, some pornographic films.

The Film Examining Board, besides categorising films, would have the power to refuse a certificate to a film and thus, under the Committee's proposals, prevent its public exhibition altogether (the refusal of a BBFC certificate at present does not have this legal effect). The Committee proposes guidelines to the Film Examining Board so that a film would be refused a certificate only if it were illegal (for reasons outside this area, or because its contents were prohibited in the same terms as the Committee's recommendations for publication); or if there were special reason to think that it was unfit for exhibition in virtue of the manner in which it depicted violence or sexual activity or crime.

COMMITTEE ON OBSCENITY AND FILM CENSORSHIP

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