

PORNOGRAPHY

EVIDENCE SUBMITTED BY THE
CATHOLIC SOCIAL WELFARE
COMMISSION

TO THE HOME OFFICE COMMITTEE
APPOINTED IN SEPTEMBER 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. "

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(The appendices are additional material prepared by the Commission's Assistant Secretary, N. Coote.)

Introduction

In presenting the following submission to the Home Office Committee, I wish to make three points:

1. The true importance of this enquiry is not contained by its terms of reference. While we discuss obscenity and violence we are discussing the kind of society in which we intend to live. This enquiry into the laws governing obscenity and violence is not an intrusion into private conscience, but an underpinning of decent relationships within our community. In a totalitarian state standards are imposed from above but in a democratic society we, ourselves, must agree on basic standards which will hold our community together and promote human dignity.

This enquiry is part of that total exercise.

2. A section of this submission is devoted to the Christian stance. It is not expected that everyone will accept these beliefs, although it is hoped that most people will share the Christian concern for the dignity of human beings and interpersonal relationships. It was felt important to refer, however briefly, to the Christian tradition because many of our institutions are rooted in that tradition and a substantial section of the population tries to live by it.
3. The specific task of the committee deals with legislation. There may be difficulty in forming laws which can be applied effectively. This is especially the case when personal tastes, personal prejudices and personal convictions can so easily be in conflict. But difficulty in framing a law must not become a reason for abandoning law. Fundamental notions like decency are notoriously difficult to define, but too precious to leave unsupported.

The Commission acknowledges the heavy responsibility which rests with the Home Office Committee. With an equal sense of responsibility the Catholic Social Welfare Commission presents this submission.

+ Augustine Harris
Episcopal President
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Terms of Reference & Definitions

1. The Social Welfare Commission is a Committee of the Roman Catholic Bishops' Conference (England and Wales). It advises the Bishops on matters within its area of concern and, at times, speaks on behalf of the Roman Catholic Church to bodies such as departmental committees.
2. In 1970 the Roman Catholic Bishops of England and Wales made a statement on moral questions and, in particular, declared "we are convinced that the majority of the people of this country are more and more revolted by the pornography of stage, screen and print. We are loath to invoke repressive laws. Definition of pornography is notoriously difficult. But there comes a point at which the general sense of the community is so outraged that the reaction is likely to be vigorous and to swing towards total repression. It should not be impossible to devise restraints on methods of display, the flaunting of what is generally considered as indecent (and, in another sphere, the blasphemous mockery of people's religious beliefs). It may be hard to define indecency but it is still possible to recognise a public nuisance". (1)
3. In considering the terms of reference, the Social Welfare Commission wishes first to propose a broad working description of the subject under discussion - pornography and violence.

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- (a) From the point of view of content, the subject is, in general terms, the representation through the written, visual and auditory media of communication, publicly or privately, for profit or otherwise, of material tending to stimulate sexual desire. This description is taken to include live representations as well as recordings, whether or not there is a pre-established text or plan. To some extent this coincides with the dictionary sense of "erotic", though in popular usage this term imparts a condemnatory sense.

- (b) From the point of view of evaluation, the Commission makes use of the word "pornography" as a comprehensive indication of the misuse of such representation. (2) This includes the subdivisions of obscenity and indecency.
4. In making use of this broad description and of the word pornography, the Social Welfare Commission intends to underline certain points:
- (i) Pornography usefully distinguishes representation from reality and is used in the following paragraphs to avoid begging any questions concerning alleged effects. The issue is not whether, and how, sexual behaviour as such should be controlled. (3) The issue is primarily the control of pornography itself and of those effects and side-effects which have no other cause.
 - (ii) The pornographic nature of material is not affected by whether its exhibition, distribution or presentation is in private or in public: though this is relevant to its control.
 - (iii) People make commercial gain from pornography, but even if they did not, the material would be no less pornographic. This is, again, relevant to control.
 - (iv) The intention of the producer of pornography (e. g. to make a profit, to produce political or social change) does not alter the nature of the pornographic material used. The intention of the user cannot be brought into this general description, since quite innocent representations can be used for sexual stimulation.
 - (v) There is a wide range of abnormal tastes and individual fixations, which makes it difficult to identify the material by its overtly sexual content. In the event the tendency to stimulate sexual desire can be judged from the general context and from whether there is a discernible sub-class, genus or style of material indicating the existence of such a taste.
5. The term "obscenity" imparts both an evaluative sense, and the element of subjective reaction (disgust, offence, outrage, etc.). No doubt for this reason it has been transferred by analogous usage to matters other than sexual (e. g. the "obscenity" of violence or poverty), and has been retained in the 1959 Act. In legal usage it has tended to be thought of as a step beyond indecency. By using the word "obscenity" the Social Welfare Commission wishes not only to observe

the Committee's terms of reference, but to refer to its belief that there is an area of pornography which is a fit subject for legislation, in need of control, and that such legal control is acceptable to public opinion.

6. The term "indecenty" has links with "immodesty" and refers to representations in public, which are offensive and inappropriate, but not merely in sexual matters. In legal usage it has served to indicate an offence of less serious or extreme nature than obscenity. In using the word "indecenty" the Commission points to a field of lesser offence, where "offence" in the legal sense would be similar to "giving/taking offence" in ordinary language. This is an area in which legal control of nuisance, and protection of privacy or freedom from intrusion, would enjoy widespread public support.

VIOLENCE

7. Violence offers problems similar to those arising from pornography.
 - (i) Definitions have been offered such as "overt expression of force intended to hurt or kill", "behaviour designed to inflict physical injury on people or damage to property", and "unlawful exercise of physical force".(4) All these definitions have the evaluative flavour which make it difficult to agree on the descriptive content of the concept, and, hence, on appropriate legislation. "Force" provides a more neutral term both for individual activities and social aspects (such as legal coercion, war, economic and social functions; or even competitive sport), since it can obviously have a legitimate use. Violence can be described as an unacceptable form of force.
 - (ii) As with pornography, the present issue is control of representations of force and violence, rather than control of force or violence.
 - (iii) There is also wide-ranging disagreement over the effects of such representations.
 - (iv) It is not easy to find separate words to distinguish between indiscriminate representations of force on the two levels parallel to those of indecenty and obscenity for pornography. However the Commission considers that there is a case for the need to control indiscriminate representations of violence whether such representations are more part of entertainment or occur in the provision of information.

- (v) This control should be at two levels:
 - (a) that which is offensive and intrusive due to uncontrolled public display of the material;
 - (b) that which is more extreme and perverted in itself. (5)

Limitations of the Terms of Reference

8. The terms of reference exclude broadcasting. Television and radio organisations are covered by special statutes and charters, and a Commission has recently reported on the subject. It might be thought that to bring the broadcasting media under the same legal constraints and procedures as the world of publications, art, theatre and film, would bring about far-reaching changes in the broadcasting organisations out of proportion to the significance of the problem under consideration. The Social Welfare Commission regrets the exclusion of television and radio from the Committee's terms of reference for the following reasons:
- (i) A considerable part of the public's worry about pornography and the representations of violence, and their effects, centres upon television.
 - (ii) Not all television is viewed in the privacy of the home. When viewed in public places its content becomes a matter for concern about public display.
 - (iii) Where television is viewed in privacy, the intrusion of pornographic and violent elements would seem to be even less dependent on the deliberate choice of the consumer. After obtaining the television set or radio the consumer is limited in choice to the programmes offered. Therefore there is even more need of control than there would be, e.g. for pornographic magazines which must be purchased deliberately, in a shop or by mail order.
 - (iv) The advent of cassette television, and the linking, for subscribers, of the TV screen with other telecommunication systems, is likely to make available a far wider choice than at present. This means that broadcasting will become a service more in line with literature, periodicals, films and other forms of entertainment and information available for those who choose to purchase. It would thus need similar controls.

The Social Welfare Commission would urge the Committee to request a widening of its terms of reference, or at least to include a supplementary note in its final report. The omission of an area of such vital concern would render that report seriously incomplete.

9. The terms of reference are limited to reviewing the legal framework of control.
 - (i) Some criticisms of the present laws arise on jurisprudential grounds in the strict sense; e.g. the need for consolidating a heterogeneous collection of laws; the desirability of reconsidering procedures and penalties; the need to ensure the uniform application of the law; the need to make sure that the provisions of the law are enforceable.
 - (ii) Further criticisms arise from jurisprudence in the broader sense; there are questions such as: is the law, even if broken, accepted by public opinion as right? Is what it achieves in terms of the legislator's intentions, proportionate to its actual scope, its effectiveness and the size of the legal and police resources it uses?
 - (iii) The same two sets of considerations would have to be applied to any proposals for a revised form of law.

In these areas the Social Welfare Commission intends to offer summary suggestions about the need for action and the types of laws which might command the assent of an informed and sensible public opinion.

10. However, beyond the jurisprudential need for reform of these laws, are the criticisms which arise from opposite points of view about the aims of the law. There are opposing views about the rightness and the need for control and restraint which fall broadly under the headings of moral and political philosophy. Without such considerations a discussion of the legal arrangements cannot be complete.

Law and Morality

11. There are preliminary clarifications to be made about the relationship between law and moral conduct. If it is granted that there is not total discontinuity between them, there is the obvious difficulty of how a democratic society which is changing can reconcile the differing requirements for public policy which might be implicit in differing moral views. There are relevant distinctions to be made between tastes, and moral positions which demand moral reasoning. (6) There are delicate questions about the extent to which society ought to

regulate the free transmission of values in art, entertainment and the communication of information.

12. The Commission suggests that there is general agreement on the following:
- (i) that the law should not coerce purely private behaviour;
 - (ii) that activities which cause tangible harm to others enter the realm of the public good where, allowing for due proportion, the law certainly and rightly has a coercive function.

Where there is disagreement, it appears to be not so much over moral and political theory, as over judgements of sociological facts and evidence. This concerns:

- (i) the direct effects of pornography and representations of violence, particularly relating to delinquent behaviour;
 - (ii) the social effect of pornography and representations of violence; that is, the relationship between the values encapsulated in them, and the public morality encapsulated in the social institutions characterising present society.
13. The Social Welfare Commission does not intend to argue for the need to control pornography from direct tangible effects in the field of delinquent behaviour. The link between cause and effect depends on disputed evidence, and suspect explanatory theories. Moreover pornography and representations of violence may be symptoms of a more general malaise, and may be considered effects, or at most, partial causes in particular contexts, rather than sufficient explanations. (7)
14. However the Social Welfare Commission does believe that pornography and the representation of violence in certain forms and circumstances, is one of the elements which threatens some basic institutions and values of our present society, such as monogamous and stable marriage, and the healthy and happy bringing up of children and their education for life. The Commission is convinced of the incompatibility of an ultra-tolerant, permissive attitude towards pornography and those other values which are still prized. Pornography transmits values, though less measurably and deliberately than advertising, and less systematically and formally than education.
15. (a) It is difficult to assess the importance of pornography and representations of violence in causing social change. Human behaviour, social institutions, values and ideals, individual character and choice, psychological experience, family and social environment; all these are variables in a complex network in which the flow of cause and effect can be reversed or subject

to feed-back, and where it is possible to put forward a variety of explanatory interpretations. The sociological judgement is of a highly complicated nature.

- (b) (i) The Commission is sceptical about oversimplified arguments which attempt to isolate as a single, external, homogeneous element the influence of pornography or representations of violence upon the individuals and institutions which make up society.
 - (ii) It is equally sceptical of the arguments which try to find evidence for the "liberating" and "enriching" effects of pornography upon individuals or society.
 - (iii) Equally unconvincing is that strand of the libertarian argument which tries to show that pornographic treatment of sexual matters is of minor importance with only minor influences on social values and standards, and should therefore be left outside the reach of the law.
- (c) Those who oppose restraint and those who support it, both put forward assessments of social influences which are in theory verifiable from sociological studies, but which in practice amount to professions of faith or assertions of principle deduced from theories about human nature and human dignity.
16. The difficulty of assessing the importance of pornography and representations of violence in causing social change also arises from the function of such an assessment in the argument for control. The public good is of interest to public opinion and all agree that it is an area where legislation has a role to play: therefore both sides have an interest in showing that the course they commend is likely to better society and that the opposite course has changed (or will change) society for the worse. Assumed values come into play twice over: in making the evaluation of what is good and bad in the change; and in deciding the selection of evidence and the weight to be attributed to it. As far as the latter is concerned, there is almost always new evidence to be found in fresh statistics, a new report, a new theory of individual or social psychology or even a popular assessment of a "horror story". The point is that both sides are reluctant to posit in advance what amount and what sort of evidence, collected and evaluated according to pre-determined criteria, could count as invalidating their case about the influence exercised (bad, good - or trivial).
17. That the disagreement can be traced back to ulterior principles or views rather than being capable of resolution by empirical evidence does not exclude the necessity for moral reasoning. On the contrary, it is important to trace back the arguments to first principles so as to

see whether there is any way of resolving them at that level. The uncertainty of the empirical evidence does not justify reducing the argument about control to the level of differing, arbitrary tastes.

The reluctance of both sides to commit themselves wholeheartedly to the value of the empirical evidence is an indication that the argument is broadly on the plane of moral and political theory, rather than that of sociological facts and evidence. Each side appeals to theories about human nature and human dignity. (8) The Social Welfare Commission draws attention to the Christian view of human nature and dignity, which is the basis for the Christian attitude towards pornography and representations of violence and consequently towards legal restraint.

The Christian Stance

18. The Christian stance is founded upon the belief that man is created by a benevolent God. All that has been created is good. This includes man as a whole, physical faculties as well as spiritual potentiality, relating him both to his Creator, and, through social relationships to his fellow creatures; and through them, back to his Creator again. Thus the individual's good is intimately bound up with his relationship to God and to his fellow men.

God's commandments are not capricious impositions designed merely to test human obedience but are in accordance with the good of human nature. The commandments are therefore, on the one hand, enlightening and could be characterised as "to thine own self be true". On the other hand they have the power of moral obligation, and a necessary condition of this moral power is that man should be free to accept or reject them.

The doctrine of sin and redemption asserts that man is capable of perverting his knowledge and his activity either on occasion or habitually and progressively. But he can be rescued from that situation. He continues to be truly free, but at risk of repeated corruption of knowledge and will. This double weakness can make the observance of the commandments seem irksome, and the contents of the commandments seem at odds with some human instincts. This is why the Christian believes that at times restraint and control are a defence rather than an attack on the freedom required for responsible decision.

The doctrine of the resurrection asserts that man is destined for a goal which transcends the material and the secular, and that without attaining that goal he will not be satisfied. The secular and the material are not denied, but do not find their full value unless they point beyond themselves. The physical faculties are not just physical and do not find their meaning merely in physical activity.

19. In this context is to be found Christian teaching about sexuality and man's own creative, competitive, executive and controlling capacities; (9) and the corresponding attitude towards pornography and violence. These last two matters are therefore a relatively small part of a total view, and not an obsessive fixation or an expression of arbitrary or old fashioned taste.

On the basis of this doctrine, the Christian avoids facile optimism and prudish pessimism about the sex drive and the assertive instinct. They are basically good; they are as socially directed as human nature itself; they share in its whole physico/psycho/spiritual orientation. The sex drive and the assertive instinct are also powerful, but able to be directed and used by intelligent and deliberate choice.

How to use these two drives involves moral choice. The choice is not reducible to a matter of taste; not to a matter of following an inclination which is automatically and inevitably in accordance with the good of the individual and of the social setting to which the two drives relate him so powerfully. This ambivalence is partly a condition of the exercise of choice itself, and partly a consequence and symptom of that recurring tendency to blinkered selfishness which is the fallen state. It is because of this that the commandments may be experienced by a person as burdensome, particularly if their connection with the total good of man has been obscured by a previous adoption of exclusively material or secular goals. Nevertheless these commandments offer the promise, not just of reward for obedience, but of a self-fulfilment that does not exclude others.

20. What Christians find in pornography and representation of violence are the defects of trivialisation, casualisation, compartmentalisation, dehumanisation, desocialisation. This is a degrading view of the use of sex and the assertive drive. Sex as mere entertainment, amusement, passing gratification, playing with or at sex, is as degrading and as dangerous as the use of force or assertion for entertainment. Representation of either seems usually to fall into the category of "for entertainment only", - under two aspects:
- (i) Representation which concentrates solely on the physical details of sex and of forceful assertion takes them out of

their total context. This is to encapsulate a value judgement of sex or assertion as entertainment and to trivialise human activities which should never be trivial.

- (ii) The fact that the sexually stimulating and the aggressive is represented, and is therefore divorced from real and social life, invites the viewer, reader, etc. to regard them as things which can be taken up or left at will, without consequences - mere entertainment or enjoyment without involvement. (10)
21. On the other hand, the use of sexual material or the representation of violence could, in art, entertainment or communication of information, serve to cast a revelatory light upon some aspects of human life, good or bad, inspiring deeper understanding, compunction, tolerance or appropriate action. This form of representation would turn the consumer back towards real life. This is why certain passages of the Bible and Shakespeare avoid falling under a general condemnation of representations of sex and violence.
22. It may be objected that all this is making very heavy weather of what really can be used on occasions as mere enjoyment and entertainment. If sex characteristically relates two human beings to each other, can they not by mutual agreement, suspend, as it were, the solemn, committing, "significant" aspect? In this way the usage of human beings as means or things is avoided - it is more like going out for a meal with a casual acquaintance. This argument then suggests that the suspension of commitment is even more obvious in the case of pornography which is not direct sexual activity involving another person, but only representation.

The objection can also apply to violence: it is agreed that gratuitous aggression, or violence as an explosion of temper or an attempt to have one's own way is wrong; but does not the world of business, international relations, competitions show that we can suspend the ultimate orientation of aggression and use it in a mutually agreed convention? A fortiori, representations of violence - witness the conventional way in which violence is treated in traditional "Westerns" or "crime thrillers".

The reply from the Christian viewpoint is that human nature, its facilities and drives are created, and created as essentially related to others. As created it is not entirely at our own disposition. We are not entirely our own, to dispose of as we wish. We, with our relatedness to others, hold ourselves in trust, as it were. We are stewards of ourselves. Not only are we not entitled to treat other human beings as things; nor may we agree

to be treated as things, by switching off interpersonal relationships and substituting, even temporarily, "thing" relationships. On the representational level there may not be another real person to be treated as a thing, but even in phantasy we are not entitled to switch off our sociality. The risk of flight to the representational is that our switch-off attitude may feed-back into the real world of real relationships.

23. It is because the Christian view of both the sexual drive and whatever may be covered by the name of assertive instinct, is basically positive, that their degradation and abuse is seen as so important. They both have common features, namely:
- (a) they both originate in human nature itself;
 - (b) they both affect the whole person;
 - (c) they both have socialising dimensions.

Consequently the effects of pornography and representations of violence are profound, dangerous and extensive.

24. Pornography and representation of violence is liable to transmit a trivial, casual, compartmental, dehumanised, unsocial picture of sex and assertion, both unworthy of and disproportionate to the place, function and meaning which sex and assertion have in human nature. The Christian view certainly takes seriously the importance of the sexual and aggressive drives in human behaviour and does not regard a human individual or his faculties as able to be separated off into distinct compartments.

This Christian view would seem to be more realistic than those libertarian views which minimise the social influence of pornography by confining it to a small, closed compartment of the private and phantasy life of a certain number of individuals. The same could be said for representation of violence. In the end the issue returns to what is believed to constitute the reality and dignity of human nature. From this flows the judgement about pornography: generally it is both morally objectionable and harmful to the life of human beings in society. This leads to the question of suitable controls.

The Need for Legal Protection

25. Those who regard pornography and indiscriminate portrayal of violence as morally objectionable, and can present a reasoned account of why they do so, can claim to have the right to some legal protection from what amounts to the intrusion of these elements into their life. This is not the same as claiming legal

protection for an eccentric taste. The phenomena in question affect areas of human social conduct which are far from trivial.

The constant public representation of sex and violence amounts to a provocative affront to many people's moral values. The Christian viewpoint to some extent coincides with, and underwrites, general feelings about modesty and decency, and reactions to the lurid displays of sex and violence which are so blatant in some advertisements, on magazine covers, in public places, in films and theatre productions.

The Christian stance, indeed, helps to maintain some constant standard for the idea of decency. Conventional standards are subject to shift and erosion as people become used to, and inured to, indecent display and to having their attention wooed by increasingly "daring" displays which give fresh offence in a process of descending spiral.

The idea of protection of reasonable privacy and protection from intrusion in the course of ordinary daily activity is an extension of general protection from harm done by the activities of others. This type of defence could be the basis for a law concerning indecent display in public places.

26. A second need for protection concerns children. The Christian attitude is that children should have passed on to them definite values, and that to leave them in a moral vacuum, or to present a confusing array of value systems without guidance or selection, is a dangerous nonsense. This form of "freedom" is illusory. Only gradually do children come to sufficient maturity, understanding and moral capacity to be able to accept or reject moral and religious beliefs with the knowledge, seriousness and consistency proportionate to a responsible decision.

To permit the young to be exposed to pornography and indiscriminate representations of violence, is to play on the sexual drive and the assertive instinct at a time when their immediate desires can override all other considerations. As has been argued, the values encapsulated in pornography are contrary to Christian values, and Christian families have the right to demand that access to pornography and certain representations of violence shall be barred to minors in much the same way as the consumption of alcohol.

There is a very wide-spread anxiety about the corruption of children by pornography and violence. However naive or unarticulated this anxiety may be, and however uncontrollable the ways there will always be for children who really try to get at "forbidden" matter, this is not sufficient reason to do nothing. The requisite protection could be given partly by the provisions of a statutory offence of

indecent display in public places, and partly by the requirement for a certain reserved category of showing in theatres and cinemas.

27. The need for children to be protected from pornography raises the question of so-called "child pornography". The Christian view condemns unreservedly the exploitation of the innocent and helpless, and finds pornography portraying the sexual use of children the most morally objectionable form of pornography.

It is important to be quite clear what is involved and what is not. There is undoubtedly a trade in child prostitution (or the equivalent) and where there is mixed adult/child activity, it is not at all certain which is the main activity, the prostitution or the pornography. Absolute prohibition of this class of pornography will not necessarily stop child prostitution. Unfortunately this will remain a major anxiety.

As far as the control of child pornography itself is concerned, representations of the more serious type (real or simulated sexual activity between children or with adults) would undoubtedly fall within the scope of an improved Obscenity Act. The activities represented could also be prosecuted under such headings as unlawful sexual intercourse or indecent assault. Where there is a question of the connivance of parents or guardians in the production of representations that are indecent rather than obscene, and which are produced for commercial ends then, upon enquiry and detection, social workers and courts have sufficient power to act already.

There is no doubt about the right to protection or the need for it. The question is whether new legislation is required, or can improved detection of offences and more extensive use of present laws and procedures suffice?

Preservation of Social Values

28. Up to this point there is a reasonable possibility of general agreement to the measures proposed, since the Christian viewpoint, coincides to a considerable extent with general public opinion. The Christian can add the distinctive point that he at least, is convinced, even in advance of empirical proof, that pornography and indiscriminate representation of violence have a deleterious social effect. This social effect consists in the undermining of public moral standards. These standards are still encapsulated in our society's institutions. They are the basis on which persons in our society relate to one another through love and the family. They are the

basis on which the present social, legal and political arrangements rise above mere compulsion by physical force. By a complex process this social effect of undermining public standards redounds to the harm of individuals. Even if pornography and the indiscriminate representation of violence are not the only causes of the change, they are ones worth tackling because they affect people powerfully.

Although this conviction is put forward in advance of generally accepted empirical proof, it can be hoped that with the passing of time indications will mature into empirical evidence to confirm the conviction, or at least not to contradict it. From the basis of Christian belief the Christian says that pornography and representation of violence are social evils which can come within the purview of legal control. It is this conviction which distinguishes the Christian view from that of the person who denies the legitimacy of legal control on the grounds that the threatened harm to society is at best speculative and not immediate or demonstrable. (11)

29. At this stage it is necessary to look at the actual situation today. There is now a law controlling obscenity, and there have been for a long time various other measures of control. Thus the basic argument is not about whether a totally new control should be introduced, but whether this present form of control should be retained, possibly improved, or abandoned. Today, pornography and representations of violence have begun to reach an audience of a size quite unparalleled ever before due to modern means of communication. In addition to this quantitative increase, a qualitative spread has been revealed by the increasing commercial exploitation of the further and more peculiar ranges of deviation phantasy. In this situation there is a presumption in favour of not relaxing control, just when the possible effects might be expected to begin to multiply.
30. In the present state of public opinion which is divided and possibly confused about the issue of control, there are two additional reasons why the law should be retained:
 - (i) Some people take the law as a guide, in a rough and ready way, for what is right and wrong, and by a change in the law could be led to accept as right some changes in social standards which neither the public nor the legislators had intended to bring about.
 - (ii) With relaxation of the law changes would gradually take place in social morality and standards without objection from the majority. These changes would be due not to deliberate and planned choice but to the gradual corrupting effect of pornography.

31. It is important to discern public opinion accurately. It is equally important to determine whether public opinion is based on prejudice, muddle or genuine conviction about changing or not changing social standards. Until this discernment becomes possible (and it is difficult to lay down exact procedures for doing so), again it seems preferable to preserve, more or less, the status quo, by retaining the main outlines of an obscenity law. To some extent the jury system is a safeguard against the law's getting too far out of step with what is wanted and accepted, provided that the law is clear enough for the jury to understand what it is about.

This assumption in favour of the status quo is based:

- (i) on the proposition that it is, in principle, not improper for the law to seek to control the social effects of pornography and representations of violence;
- (ii) on the perception of the value of the present social institutions and standards which enshrine wholesome, loving, orderly and reasonable relationships between persons;
- (iii) on the belief that the grosser forms of pornography and representations of violence threaten present social institutions and standards by the "values" they embody and by their effects which cannot be confined to the stimulation of a small number of individuals; or to a limited aspect of their lives;
- (iv) on the conviction that most people, when faced with the choice, would prefer preservation of the values embodied in present social institutions and standards to unlimited toleration of pornography and representation of violence.

The desire to retain legal protection does not come from the wish to coerce people into living an approved sort of life with approved goals. It comes from the desire to avoid long term harm to individuals resulting from the erosion of standards and social institutions. It is on these grounds, that the Social Welfare Commission urges the retention of an Act on Obscenity, together with necessary provisions to cover representation of violence in extreme forms, and the requisite amendments and clarifications for jurisprudential reasons.

Legal Provisions

32. Obscene Representations

The Social Welfare Commission proposes that:-

- 1) there should be a statutory offence of obscenity under an Obscene Representations Act:
 - (a) this Act should be based on the framework of the present Obscene Publications Act (1959) and Theatres Act (1968) and should cover the whole field of representation in the visual auditory and written media;
 - (b) in particular it should apply to:
 - (i) private commercial clubs with live or other exhibitions;
 - (ii) cinemas licensed for public showings and private cinema clubs;
 - (c) it should apply to all broadcast and televised material whether BBC or IBA;
 - (d) it should apply to material transmitted through the postal services, to material imported from abroad, and in the matter of obscenity only should incorporate the relevant provisions of the Post Office Act (1953) and the Customs Consolidation Act (1876).
- 2) The definition of obscenity should be redrafted to eliminate:-
 - (i) the clash between common sense understandings and the highly technical and artificial legal definition of the 1959 Act which has been frequently criticised;
 - (ii) the concept of corruption, which is difficult to agree on and difficult to prove;
 - (iii) the concept of "tending to corrupt" which has not been able to provide a sensible logical and legal usage;
 - (iv) the difficulty of proving an objective effect, whether from occasional or repeated use of obscene material, whether on individuals or on the community at large; whether of a physical, psychological, moral or spiritual nature.
- 3) The Act should cover representation of violence as well as pornography. Thus the definition explicitly referring to these

areas without excluding further areas could read as follows:

"the material shall be deemed to be obscene if its effect, taken as a whole, is to outrage contemporary standards of humanity accepted by the public at large, particularly if the material is of a nature tending to stimulate sexual desire, or represents or describes violence".

- 4) For the legal test of obscenity no other tests, definitions or understandings of the offence should be retained and conflicting provisions, statutes, by-laws and regulations should be amended.
- 5) It should be re-affirmed in the new statute that where the essence of the offence is obscenity, the proceedings are to be under the Statute and not under common law; and that the common law offence of conspiracy to corrupt public morals and to outrage public decency should specifically be abolished, as was originally proposed in the Law Commission's report in 1976. The citizen has the right to know the extent of the law and its penalties. A revised Obscenity Law should be made adequate to cover its designated area exclusively.
- 6) The defence of being for the public good should be confined to being on the grounds of science, learning, literature and other art.
- 7) The option of jury trial should remain available even where seizure of material is concerned.
- 8) Prosecutions should only be able to be initiated with the consent of the Director of Public Prosecutions.
- 9) Publishers, distributors and retailers should be liable to prosecution under the Act.

33. Indecent Display

The Social Welfare Commission does not regard it as necessary or useful for a legal definition of indecent or offensively violent to be made. It proposes that:-

- 1) There should be a new statutory offence of indecent display in public, under an Indecent Display Act:
 - (a) this Act should follow the broad lines recommended by the Home Office Working Party on Vagrancy and Street Offences so far as these relate to display;
 - (b) the offence should consist in exposing to view or hearing, or making accessible to examination, in public places,

for sale or otherwise, material which is indecent or offensively violent in its representation.

- 2) There should be a specific exemption for premises guarded by a prominent warning of the nature of the material, with access to persons under 18 prohibited.
- 3) The Act should not extend to:
 - (a) broadcast material;
BBC and IBA should continue to be guided by the duties laid down by charter and statute, and according to the interpretations of their respective responsible bodies; consideration should be given to setting up under the statute and charters respectively of an advisory or an appeal board with representation of the viewing/listening public; warning should be given to listeners/viewers of possibly offensive material before it is transmitted;
 - (b) private clubs, whether film, theatre or other entertainment clubs;
proceedings for indecent display should no longer be possible under the Disorderly Houses Act 1751; closer control of membership and prohibition of membership to those under 18 should be more strictly enforced.
- 4) It should be sufficient defence against proceedings for indecent display.
 - (a) for films shown in public cinemas, that:
 - (i) a license of appropriate category has been obtained;
 - (ii) that the film was shown in premises reserved as under 2) above.
 - (b) for theatrical and live performances, in public theatres, that the performance took place in premises reserved as under 2) above.
- 5) Forfeiture and destruction of the allegedly indecent and offensively violent material should be possible under summary proceedings, but election of jury trial should remain for the defendant to choose.
Proceedings should not be possible without the consent of the Director of Public Prosecutions.
- 6) Film licenses should be granted by a statutory central body, with representation of professional, trade, and viewing interests. Among the categories should be "reserved", implying restriction to public premises guarded by notices (as under 2) above); such premises could either be part of a

cinema permanently reserved, or the whole cinema for the entire programme.

Local Authorities should be represented on the national licensing body, but should cease to exercise a censorship function themselves.

While the Social Welfare Commission welcomes the trades' self-restraining machinery set up in the shape of the "Publications Control Board" and the "Association for Cinema Club Standards", it does not regard these as arrangements which are sufficiently comprehensive, durable or effective, to fulfil adequately the functions of an Indecent Display Act.

The difficulty of making these provisions effective in cases where there are repeated offences on the same premises is recognised: the provision of severe penalties for repeated offences on the same premises, irrespective of individual or corporate ownership, tenancy etc. might be considered.

34. Mail Order

The Social Welfare Commission foresees the possibility of a large scale switch from retailing indecent material through news-agents to selling by mail-order; it foresees a consequent need for protection from unsolicited material. It therefore proposes:

- 1) that the relevant provisions of the Unsolicited Goods and Services Act (1971) and the Post Office Act shall be combined into a new clause which could be added to the Indecent Display Act;
- 2) a person shall be guilty of an offence who sends or causes to be sent to any address material which is indecent or offensively violent, or material advertising the same, and knows or ought reasonably to know that such material is unsolicited.

35. Child Pornography

The Social Welfare Commission believes that an improved Obscenity Act would safely cover pornography involving acts between children, and adult/child acts, whether real or simulated.

In the case of poses which are indecent, artificial and seemingly geared to deviant taste quite deliberately, a jury should be able to judge from the content whether such exploitation constitutes an outrage to contemporary standards of humanity, i. e. is obscene.

In the case of photographs or films which are more in the category of immodest, the Commission would favour greater vigilance on a disciplinary and supervisory level, and action by courts and social workers if such activity is suspected or detected.

APPENDIX A

Morality and the Law

- (i) It is commonly said that it is not the law's function to enforce morality, that no-one can be constrained to be morally good.

This is true, but it is also the case that the law can be used to remove obstacles to goodness, temptations, occasions of sin etc. and can encourage and facilitate those acts of virtue which mature into the habit of virtue. People do not, and do not expect to, function continually at the level of a Kantian categorical imperative.

However the fact that law and morality are compatible in this way, does not solve the problem if there is no consensus about the content of the moral goodness which is to be favoured by the law. Nor does it show how far the law can go in protecting and prohibiting before it does impair the freedom essential to some sort of exercise of moral choice.

- (ii) Varieties of moral beliefs are sometimes thought to be akin to varieties in taste, which are legitimate and harmless provided they do not infringe upon other people's opinions, tastes and freedoms. In a pluralist society there are bound to be conflicting moral beliefs, which may extend to a conflict of views about those matters of public concern which might be subjects for legislation. In cases of conflict it would seem to follow that neutral "non-moral" legislation is the only fair way of resolving the dispute.

However, it is not always seen that the "neutralist" position is itself a value judgement and not neutral at all. If it is held out of theory and by preference, it is a direct value judgement based on a particular theory of social reality; if it is held on grounds of practicality in cases of conflict, it is a value judgement about relative goods and their hierarchy.

- (iii) This approaches the essence of the dispute on law and morality, more recently exemplified in the controversy between Professor Hart and Lord Devlin, but going back to Mill, Milton, and even Plato.

The issue is not primarily whether morality is a private affair and, because of its private nature, properly outside the scope of the law, but whether there is, as well, in any particular society, a social or public morality which is essential to its existence as this or that sort of a society, and which is therefore to some extent enforceable by law; and whether such a social morality is quite different in kind from (perhaps as being exclusively utilitarian), and not in any way derivable from, or criticisable from, a particular moral standpoint (often thought of -wrongly - as purely personal and non-rational). (12) If sexual morality is an important element in the public morality which characterises and to some extent constitutes a particular sort of society, then the law may within the limits of (i) above safeguard morality in so far as it is entitled to protect society itself and its institutions.

- (iv) It will be recalled that in giving the necessary conditions of pornography, sexual behaviour was excluded, and it was said that control of pornography does not include control of sexual behaviour. This was partly due to the nature of pornography (representation) and partly because the argument about alleged effects (deviant, and usually sexually, deviant behaviour) required that the presumed cause should not be muddled in with the presumed effect - otherwise the question would have been begged.

Sufficient and convincing evidence for a casual link between pornography and "tangible harm" is not easily found; pornography may be not so much connected with sexual behaviour and attitudes as a cause, but rather as a symptom or a part with implicit values parasitic on the values of society in general. Thus although the Hart type of justification for legislation ("tangible harm") is not available, at the same time a stronger case might be constructed on the threat to the social morality of our present society. In this case the point of disagreement or dispute will be not directly over pornography itself (as if it were between those who tolerate or even approve of pornography and those who do neither of these) but over the type of society which is wanted, and over how fundamental to determining this type is the sexual morality, attitudes and behaviour of which pornography constitutes one facet.

- (v) Legislative control of pornography is sometimes ruled out, not on the negative ground that it is a matter of private behaviour and taste, but on the grounds that the type of society in which we live endeavours to maximise freedom of choice and autonomous conduct within the limits of protection of the individual from harm. If pornography does not do tangible harm, control beyond the aspect of avoiding public nuisance and offence, is an attack on the sort of society we want to preserve. Conflict of moral opinions is a necessary

condition of having choice between different options. Defence of pornography is represented as defence of freedom.

Two preliminary observations: (a) is the freedom to buy, import, look at every sort of pornography, a significantly important part of free choice; would its sacrifice be a substantial loss to free choice? Maybe yes - but not certainly - not, for instance, in the same way as censorship of the press for political ends. The question is one of balance.

(b) Secondly, all societies recognise that freedom is and must be within certain limits, i. e. is subject to compatibility with other goods. Maximising freedom of choice cannot be unconditional.

More basically, effective freedom of choice may impose limits on the variety and number of choices; the availability of some choices make others illusory or non-existent. Just as public display of pornography makes it more or less impossible not to view pornography, so it could be argued, the attitudes common to pornography and general sexual behaviour makes it very hard to choose as a real option the sort of sex-education for children, or the sort of commitment to a permanent and monogamous marriage bond, which are compatible with Christian (or perhaps another) morality. Again it is not a question of taste for censorship versus taste for freedom, but a weighing up of to what degree and how much will censorship preserve the quality of freedom of choice, and of weighing the degree to which uncontrolled pornography is significant inimical to, or favourable to, the sort of society we have and/or want.

To sum up on the question of morality and law: attitudes to pornography will certainly differ according to moral attitudes; but this is no reason for claiming that therefore pornography where it does not cause tangible harm is outside the area in which the law should intervene.

The points of disagreement are not which private opinion or taste shall be allowed to prevail, or whether belief in freedom shall prevail over belief in control, but to what extent sexual morality and pornography do affect the institutions characteristic of our society, whether people appreciate the question in this light, and whether they do want to change society significantly. It is not just pro or anti porn, or in case of dispute, how to be neutral.

The same sort of remarks could be made on the subject of representation of violence.

APPENDIX B

The Effects of Pornography

The debate about the effects of pornography is extremely confusing, partly because the phenomenon of pornography covers so many different areas, partly because there is not clarity on what is meant by effect, partly because there is lack of evidence, and partly because there is disagreement on how to interpret what evidence there is. One school of thought has even written off "external" evidence in favour of the "experience of its (pornography's) corrupting power in our own lives".

(Longford Report p. 215)

1. WHAT IS MEANT BY EFFECTS ?

The following might be a useful classification of effects (13) and the arguments which surround them:-

- (i) Not only is sexual stimulation itself a constituent part of pornography (and in a sense, an effect) but pornography and represented violence cause reactions whether of attraction or repulsion. This is clear from some people's purchase of pornography and curiosity about violence, and from the amount of distress, indignation and upset which is manifested by (presumably) others at the sight and even thought of pornography. Thus at a minimal level, reactions are effects. (On the same level the law would be concerned with protection from nuisance and preservation of freedom and choice).
- (ii) Extrapolating from these observable pro and anti reactions, are arguments intended to demonstrate various effects on the appetite and psychological make-up of individuals, with behavioural consequences: a process which seems to amount to psychological conditioning producing aversion, addiction or desensitisation.
 - (a) Pornography is said to be addictive, and by analogy with drugs, the addict requires more, and more extreme, pornography to be satisfied, failing which he/she is left frustrated (there is no reason why this should be the case with pornography in particular, more than other sexual activity).

(b) It is not clear whether this is distinct from the "desensitisation" argument about the effects of exposure to pornography on individuals, or on society as a whole, although the alleged effect (indifference) is different from frustration. The increasingly "hard" nature of pornography available is not necessarily evidence of the increasing psychological needs of an individual, or the coarsening of society : it could be the result of commercial competition and of the desire to test how far it is legal to go.

(c) A further addictive effect is said to be:-

Pornography creates an addiction to an idealised substitute for sex, rendering the addict incapable of coping with live sex as it really is; (the reverse side of this argument is that deviants can be restrained from dangerous or undesirable conduct by the provision of pornography as a substitute - the so-called "catharsis" argument).

(d) It is not always realised that this argument is incompatible with and the exact opposite of, the suggestion that, particularly with "perverse" pornography, the addict is stimulated to seek a real life acting-out of his phantasy. (The reverse side would be: "normal" pornography ought to be able to play a conditioning role in restoring to normal conduct the perverted or "normal" phantasist).

(e) Deviant (e. g. sadistic) pornography is said to have an effect in diverting the normal sexual appetite into abnormal channels, again by a process akin to conditioning. Ex hypothesi, this can only occur by a gradual and escalating exposure (or else the subject will be put off rather than attracted).

(f) On the aversive side, it is argued that sudden or (in the case of the young) premature exposure to pornography can destroy, temporarily or permanently, the ability to enjoy a balanced and normal sex life in the future. (The reverse side of this argument is that pornography could be used as part of a clinical aversion-therapy to cure deviants). This alleged "aversive" effect is slightly at odds with the "desensitising" thesis which asserts that imperceptibly even young people have become coarsened and curiously immune to things which would have shocked and disturbed an earlier generation. The underlying paradox of the argument is that the more pornography exerts its desensitising influence, the less it is capable of the shock-aversive effect. Likewise the addictive/diverting effect will be lessened by the desensitising effect; or else it will have to be so powerful in order to become noticeable that it risks being aversive rather than attractive.

(g) A similar set of alleged effects can be produced for exposure to the depiction of violence. (14)

The trouble with postulating the "conditioning" set of effects is not that pornography could not produce them, but that the analogy is too loose. It is one thing to claim as effects, behaviour changes in individuals or groups of individuals, in clinical conditions with control groups, with precise objectives established in advance. It is quite different to take changes in behaviour in society in general and not easily definable changes in attitudes in society in general, which may be self-reinforcing and/or due to other variable influences and are not readily amenable to control, - and to call them effects.

In so far as the "effects" are confined to changes in individual behaviour due to deliberate intervention, then it is possible to see how pornography might be an instrumental cause, with good or bad, wise or foolish, effective or ineffective application. But in society its "effects" seem to be so diverse and complex, that it has insufficient explanatory and predictive power to be labelled a single, homogeneous cause.

(As far as the law is concerned, it would amount to making a case for safeguards to regulate the use of a potentially dangerous therapy, to protect a patient's free consent, or to warn people of possibly dangerous effects! At this level it is rather difficult to take very seriously the dispassionate concern for unpleasant effects, manifested by some of those who argue against pornography. If they are concerned about these effects, they will be equally concerned about regulation of use; if they are not concerned with regulating use, it points to the probability that they are against pornography as such and not really interested in the effects except as a debating point).

(iii) It could be claimed that the desensitisation thesis consists in observing and diagnosing a quite different sort of effect from behaviour changes inducible in the individual by psychological conditioning.

It is argued that representations of violence and sexual indulgence endanger the veneer of social (and individual) self control, and undermine the learned habits of socialisation.

Individuals and societies have levels of outrage, shock barriers, which are changed by constant breaching. A constant "diet" of pornography will have an effect akin to pollution of the environment. Since it is mental or spiritual "pollution" which is caused by pornography, it is not, from the nature of the case, easily observable or measurable. Public executions, bear baiting and

other spectacles were banned not because they had been shown to have had harmful behavioural effects, but because they were thought to be generally degrading. By analogy pornography could be said to have corrupting effects and should be banned, even if it is not possible to say exactly what the effects are, or how they are linked with their alleged cause.

The difficulty is that there are no rules or criteria about how to measure the effects or how to know whether there are effects. Consequently this form of argument appears to be more like a judgement on the character of society and society's changes, a disguised moral or social assertion, rather than a search for causes in the sense of a social science. "Desensitisation" of the young could be called in equally evaluative language, the generation gap. Promiscuity could be called free love.

The argument is made more portentous by the examination of alleged historical parallels, the fall of Greece and Rome seen as preceded by pornographic depravity. On a shorter time-scale the rise of violence against the person in US and UK has been linked with television saturation of combined sex and violence, in contrast with West Germany's or Eastern Europe's less entertainment-orientated and state-controlled television (Longford p. 51). It is quite difficult to know how seriously to take such observations, no matter how distinguished the authorities invoked. This is the large-scale end of the spectrum, where desensitisation, incitement and model images are indiscriminately invoked as the mechanisms by which pornography and representation of violence are said to be significant causes of the degeneration of societies. More conscientious analysts are prepared to admit that society is already disposed to changes in sexual attitudes and in the practice of violence, and that forms of entertainment reinforce rather than create these wishes; and that the inevitably selective representation of reality in the communication of news reflects (a) what attracts interest; (b) what the modern media (including books and photography) make it possible to communicate on a vast scale; (c) what is a significant aspect of reality already.

2. WHAT IS THE EVIDENCE?

- (i) The most striking set of effects attributed to pornography (and/or the representation of violence) are not those affecting individual psychological make-up through conditioning, nor those vaguely affecting society's attitudes, but those that are in the public domain, and measurable or observable, and are agreed to be deleterious: namely, offensive, violent and criminal behaviour. It is this type of effect which is often used as the chief

justification for requiring legislation to increase control over pornography and the representation of violence.

Here there is quite extraordinary conflict of opinion about what constitutes evidence, the quality of the evidence and the inferences to be drawn. Totally contradictory reports on the effects of television on violent behaviour have recently been published (in the UK in 1977). The evidence of the famous Report of the US Commission on Obscenity and Pornography (1970) is so much disputed that it is of doubtful apologetic value for either side.

There are three types of evidence commonly produced:-

- (a) Anecdotal evidence drawn from court reports showing that commission of crime and possession of pornography go hand in hand. Arguments from this type of evidence, including horrifying stories from schools, personal tragedies etc. can commit fallacies which make them of little value in establishing a causal nexus. However dreadful the event, was the possession of pornography the sole or even a contributory cause? Are there cases of others in possession of the same sort of pornography, in the same relevant conditions, who did not commit similar crimes? Did the pornography in question merely help to direct the criminal behaviour in this rather than that direction?
 - (b) Self-reported evidence - either in census surveys or in individual cases - the subject is asked to give his own account of the evidence ("to what do you attribute your downfall?"). It is not just that the subject may give dishonest, evasive or partial answers, but that he is honestly mistaken in his attribution of causality and the further back he is asked to cast his memory the greater the possibility of omission, confusion and selection. The errors are likely to be worse with anecdotal evidence, but even the development of questionnaire technique does not help much to eliminate unconscious error in surveys.
 - (c) Evidence from clinical surveys, with exact measuring techniques, control groups and controlled conditions. Although less liable to subjective distortion, the limitations of this method are the difficulties of extrapolating the results of experiments in artificial conditions or with select groups, to society in general; and the lack of longitudinal studies.
- (ii) In view of the conflict of interpretation and evaluation of evidence, it is sometimes argued that, on the principle of safety first, it should be assumed that pornography has dangerous effects, and until the contrary is proved, pornography should be controlled. At this point we are not concerned with what effects

would justify control, but with the argument that "it is, in the nature of things exceedingly difficult to prove the causal relationship between pornography and sex crimes, and that the burden of proof rests on those who assert that obscenity has no adverse results". (Longford p. 196). An analogy is drawn with the obligation on a pharmaceutical company to prove that a new drug is not dangerous, before placing it on the market.

Faced with this requirement the libertarian might reasonably reply that for purely logical reasons two different standards are being applied to the evidence. The assertion that there is not sufficient evidence to link pornography as cause, with sex or other crime, as effect, (or representation of violence with perpetration of violent deeds) can be knocked down by any one example of sufficient evidence. Since this might arise in the future it could arise in the future, and therefore the lack of a link is never capable of proof, no matter how much favourable evidence is produced. On the other hand, those who assert that there is a causal nexus can go on searching for the one vital piece of evidence, can regard any amount of contrary evidence as inconclusive, and can contemplate the demolition of any quantity of their own supporting evidence with nothing more than some irritation - there is always a tomorrow. It is as though the drug testing requirement had no limitations as to time or as to possible effects.

In the circumstances it is hard to know what rules of procedure could be laid down which would be acceptable to both sides, and sufficient to satisfy such a dispute about evidence.

- (iii) Tacit acceptance of the "safety first" principle is sometimes inferred from the readiness of almost everybody to accept that children must be protected. Thus even the pornographers and the libertarians seem not to be totally convinced by the lack of evidence for a causal connection. However, it must be pointed out that to advocate barring minors from access to pornography is quite compatible with belief that there is insufficient evidence to prove a causal connection between pornography and even merely unusual conduct. The desire to protect minors could arise from the opinion that minors are not capable of a fully responsible decision, and not from the suspicion that there might be a need to protect them from a hypothetical evil.

3. HOW COULD THE CAUSAL LINK WORK?

Various explanations are offered of how pornography or depictions of violence could induce anti-social and criminal behaviour. We have already dismissed the psychological

conditioning and stimulating/addiction mechanisms as being unable to account for such heterogeneous effects.

A second type of explanation is based on learning-processes, and studies have been made in particular on the effects of televised and film violence and pornography. Within this category of explanation the learning of undesirable behaviour by imitation of particular actions has tended to be discarded on the grounds that there are too many significantly modifying influences on the outcome to allow straight imitation to be retained as a useful explanation. At best, the notorious examples alleged (e.g. the imitation of Clockwork Orange violence) show that for a very limited number, the type of anti-social behaviour is specified or given a particular form of expression, rather than caused.

More convincing is the account based on the learning process of how children (and adults) form images of themselves and reality. In extreme cases, it is said, television can so saturate a person, and this saturation occurs in such ordinary life circumstances (the home) that the viewer is particularly exposed to the danger of confusing phantasy and reality, information and entertainment.

There is evidence that very young children may confuse reality and phantasy, or fail to appreciate real life effects of violent acts, but an attempt to use this as a legal defence for an adult has recently been rejected by American courts.

At a less extreme level it is said that the viewer takes ready-made interpretations of reality, hero-images, values etc. in the unreal context of representation and transfers those indiscriminately into activity in the real world. Once again the basic criticism is not that this could not happen, but that it does not provide an effective explanation. On one hand it is too general (the construction of self and reality is inevitably based on values). On the other hand it is too simplistic: the particular and harmful values thought to be conveyed are transmitted and transmuted (or reinforced) in a social context, and the use made of the transmitting media is more significant in determining effects, than the content itself.

4. THE NECESSITY FOR THERE TO BE EFFECTS

In spite of the criticism that the values inherent in pornography and some representations of violence are transmitted in the same way as any representations transmit values, but that this does not entail particular and anti-social actions, a further argument is made, on a priori grounds.

Much money is spent on education to inculcate sound taste and values, and on advertising to induce people to buy certain products. This shows how effective people believe education and advertising to be. Pornography is of a similar nature and therefore must have effects. Negatively the forbidding of "racialist" representations shows what effects perverse depiction is thought to have and what legal curbs are consequently justified. More directly the political use of pornography by anti-establishment movements shows what influence some practitioners of the art believe it to be capable of exercising.

Two types of effect are being lumped together here:

- (i) stimulation to particular actions (to buy - by advertising; to activities likely to lead to breaches of the peace - by racialist literature)
- (ii) transmission of values (education; political use of pornography)

(i) With regard to particular actions:-

Advertising solicits (not always successfully) an audience to buy a product; representations of violence and pornography do not solicit anyone to do anything except to look, listen and enjoy this very representation (in so far as sex comes into advertising it is itself being used to sell something else). It is true that advertising tries to create, or at least to arouse people to consciousness of, a need normally of a material nature, and holds out a value-laden picture of the desirable life. But to a great extent these values are already "there" and are being built up or changed by a complex tissue of influence apart from advertising. The links between values implicit in advertising, values perceived and accepted by viewers and particular actions are complex, and not to be equated with pornographic "persuaders", in any case. The need for legal restraint of racialist representations depends upon a judgement about the relationship between some representations and the provocation or insult to groups in given social circumstances : that judgement may mistakenly overestimate the hurt done or may be quite right in trying to protect peoples' feelings in the interests of social integration; but it is not easy to distinguish a particular group who are being attacked by pornography, who feel themselves so attacked, and whose reactions are likely to create public disorder and social unrest.

(ii) With regard to transmission of values:

Values can indeed be taught, encouraged, transmitted etc. , (values in, values out), but even in education this is recognised as a very long term and difficult to measure influence in terms of overtly inculcating a particular set of explicit values. The political use of pornography involves setting pornography in a very explicit context of aims; the same is true of representations of violence. Except where it takes on the tone of propaganda and is used for particular purposes, it may be doubted whether pornography and representations of violence can be shown to have a deliberately intended, explicit value-system.

(iii) With regard to transmission of implicit values:

This is obviously harder still to measure; it may also be that the implicit values are to some extent parasitic upon the values of the society in which pornography flourishes. Possibly for this reason it is as important to direct attention to "disposable relationships" as it is to pornography as the evil afflicting sexual relations today.

It is at this point that the argument arises : are there specific values implicit in pornography or representations of violence, and are they incompatible with values implicit in other social institutions. The argument is not readily settled by appeals to evidence.

Footnotes

- (1) p. 21 Moral Questions. Statement by the Bishops' Conference of England and Wales. Catholic Truth Society. London 1970.
- (2) Although the words "erotic" and "pornography" do not occur in the terms of reference, they can be useful in distinguishing between
 - (a) a neutral description laying down a necessary condition for a thing's being pornographic
 - and
 - (b) an evaluation which does not lay down the extent of the misuse, but indicates that there is a misuse.
- (3) Because the extent and nature of such effects is widely disputed, it is preferable to put forward as a description one which does not include them.

As far as side-effects are concerned (such as, for instance, the exploitation of children or adult performers in real or simulated acts), legislative control is needed. However such control would not cater for all types of pornography, and the sexual exploitation of children extends beyond the production of pornography.

Where dubious services or forms of sexual behaviour seem to be advocated, facilitated, described or illustrated in pornographic media, the context will show whether they have the real character of pornography in themselves (to arouse sexual desire, though under the guise of crusading, advising, instructing, etc.) or whether they fall under the headings of serious attempts to change attitudes by persuasion, of sex education, or of straight advertising of various services.

- (4) Longford report, following J. D. Halloran; US National Commission on the Causes and Prevention of Violence; a common dictionary definition.
- (5) The juxta-position of violence, on the one hand, and pornography/obscenity/indecency on the other, should in no way be taken to imply that one is an essential element of the other. Only in sado-masochism are sex and violence strictly connected.
- (6) See Appendix A on Morality and the Law.
- (7) See Appendix B on Effects of Pornography.
- (8) The libertarian case may start by an assertion of fact: pornography (etc.) does not have significant social or individual effects. It then moves to the assertion that even if it does have some bad effects, either it is, on balance, more conducive to general "good" not to constrain the liberty of some people in the interests of the protection

of some people (a utilitarian presentation) or that the protection of individual moral autonomy is a supreme and fundamental value (a presentation which is non-utilitarian, but could be re-presented in a utilitarian light). In theory it would appear that unfavourable evidence would not affect the case.

The case for restraint and control is more attached to evidence, in that it would be greatly weakened if pornography (etc.) could be shown to have little or no social effect. However, the Christian view appeals to an understanding of human nature and dignity (which could be shared by many others) which suggests that social change for the worse does follow.

- (9) Whatever may be thought of sociobiological explanations of human behaviour in terms of sex drive and the aggressive instinct, the Christian view does not make the mistake of underestimating the power or ramification of either. Both are manifold, potent, symbolic and expressive ways in which human beings relate to one another socially, giving rise to psychological, economic, legal and conventional claims and obligations, dictating the arrangements of how people live, and acquire and share things, requiring and creating rituals, institutions and organisations. The "sociality" of sex seems fairly obvious. Violence might be regarded as a dubious, often evil form of aggression, of which psychological self-establishment, initiative, risk-taking and leadership in competitive enterprise could be viewed as positive manifestations. Unfortunately, even 'aggressive instinct' has a perjorative sound. Perhaps a more neutral expression could be proposed, such as "assertive instinct".
- (10) This aspect is summed up strikingly in the title of a recently distributed film: "Come Play with Me".
- (11) It is a legitimate exercise to try to imagine what would be the social effects if pornography and representations of violence were universally available, sought after by all, and unrestrained in degree by any legal check. On the reverse side it could be asked to what extent the social effects of pornography and representations of violence are at present lessened by the influence of those who still reject such values.
- (12) "Those who believe, with Professor Hart, that sexual morality is largely determined by 'variable tastes and conventions' will not regard it as of any great importance what the sexual habits of a given society are, so long as they do not cause 'tangible harm'. Those, however, who believe, as Lord Devlin does, that there is, in these matters, an objective right and wrong and that the sexual morality of a society has a good deal to do with some of its central institutions will take this danger more seriously". B. Mitchell: Law, Morality,

and Religion in Secular Society. Oxford 1967, P. 99-100
(See also p. 91)

- (13) Although those in favour of control sometimes argue as though their opponents were denying any effects attributable to pornography at all, this is a misrepresentation.
- (14) Cf. Stephen Brody pp. 49-75; (Screen Violence & Film Censorship : Home Office Research Study 1977)





Catholic Information Services
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