

Obscenity and Film Censorship

Editor: Bernard Williams
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The subject of sex and violence in the media generates controversy at whatever level and from whatever angle it is approached: Does it harm the reader or viewer? How far ought the law to go in imposing controls? Where is the dividing line between art and pornography? Indeed, what is pornography?

These questions have unleashed torrents of literature ever since the law began to concern itself with written and pictorial material on the grounds of its reference to sexual matters and the way it depicts violence or cruelty.

Among the latest contributions is that of the Williams Committee on Film Censorship, appointed three years ago by the British government to investigate the law on obscenity in England and Wales, and to make recommendations. Its report, fully reproduced in this volume, is a model of the kind of careful reasoning and scholarly detachment one is entitled to expect of -- but regretably often finds conspicuously lacking in -- official enquiries into controversial fields at the behest of public authorities.

As the British law has exercised a strong influence on the South African approach to obscenity, the report is of far more than parochial interest or importance.

The committee's argument is built on the assumption that legal restrictions on individual freedom can only be justified where that freedom is used in such a way as to cause harm either to individuals or society at large. It finds, after reviewing masses of evidence that there is no definitive proof that pornography causes harm, even if "harm" is restricted to more concrete types like the encouragement, through imitation, of sexual offences. Indeed, according to the committee's independently collected statistics, the evidence discloses that sexual and sex-related offences, while on the increase in real terms, are actually *dropping* as a percentage of the overall British crime rate. As far as purported harms of a more intangible kind -- like the erosion of the moral spirit of a nation -- are concerned, the committee finds that "the role of pornography in influencing the state of society is a minor one" (para. 6.80).

This conclusion explains the extreme caution with which the committee approached the drafting of its recommendations. If the argument that pornography causes harm cannot be proved (or disproved), it follows that the law should not be based on a causal test, such as is inherent in the "deprave and corrupt" formulation adopted by the British courts and incorporated into the South African law.

In the committee's view, however, the question of harms are not the only consideration that can over-ride what it conceives to be a presumption in favour of freedom of expression and the individual's right to read or view what he or she pleases. Another is the possible adverse effects of pornography on the young; the other the adult's right to protection from involuntary exposure to obscene displays.

These ends can, in the committee's view, be adequately served by basing controls on a test which frankly acknowledges the absolute subjectivity inherent in any attempt to judge the obscene. Thus material should, in its view, be restricted (as opposed to prohibited) if the prospect of its free circulation is judged likely to be offensive to "reasonable people" (para. 9.32). The more drastic sanction of prohibition should be confined only to pictorial material in which actual physical harm appears to have been caused to those portrayed -- which could clearly apply only in the case of photographs and films. Neither prohibition nor restriction should be applied to written material.

The real value of this study does not lie in its recommendations, however, but in its constant emphasis that a purported desire to safeguard society against the supposed dangers of pornography can often serve as a front for ulterior goals which, if given free reign, can subvert other cherished values. One of these is the distinction drawn in all developed legal systems between private morality and those public areas of behaviour which are legitimately the object of legal control. Another is the principle of freedom of speech and ideas. As the committee warns, many of the arguments against pornography

... involve the danger of citing as a cause something that is in itself only an effect or part of a cultural and historical process. There is also the danger that the cultural process is itself disliked because it is new, unfamiliar and perhaps threatening, and things that are indeed extreme and ugly cultural phenomena, but perhaps not deeply significant ones, are seized on in order to attack social and moral developments which are indeed more significant, but less obviously to be rejected (para. 6.76).

It is arguable, however, that by using its proposed restrictions on an entirely subjective test, the committee has opened the way to abuse of the law for such ulterior purposes. Its answer is that as long as one concedes that there are some grounds for stopping short of allowing the unrestricted circulation of pornography, there is no ideal test by which the problem can be avoided. In the final analysis, the judge must always fall back on his subjective opinion. Thus the problem arises not from what test is applied, but from who applies it.

Although its primary emphasis is legal, this book will be of interest and value to anybody concerned with the intractable philosophical, ethical and social problems that attend the question of whether a piece of literature or pictorial representation is "undesirable". As long as most states shy from the Danish example, the debate will continue to rage. The Williams committee does not -- and did not purport to -- provide the answers. But its contribution has undoubtedly raised the level of the debate.