

FREEDOM OF LITERARY EXPRESSION AND CENSORSHIP IN ZIMBABWE

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Abstract

This article examines the Zimbabwean law of censorship relating to the circulation of literature in the context of the freedom of expression as a legal right guaranteed by the African Charter and the Constitution of Zimbabwe. In particular, the article evaluates the governing statutory regime in terms of its conformity or otherwise with the freedom of expression. The author also attempts, in the light of previous practice, to identify specific conceptual problems that are confronted in the censorship of literature. The conclusion suggests that the undue influence of subjectivity in the assessment of literature probably justifies the removal of censorship in this sphere.

INTRODUCTION

THE ROLE OF the censor in any society is inevitably an ambivalent one. Not unlike some socio-cultural barometer, he or she must tussle with the simultaneous demands of maintaining public mores and allowing the free movement of ideas and information. And to do so objectively and impartially, often with little more than personal observation and intuition for guidance, is surely one of the most arduous and invidious positions of social responsibility.

How and why censorship should be exercised in a given society are questions that are as large as they are controversial. From a purely legal perspective, they cannot be meaningfully addressed except indirectly by way of analysing the efficacy or legality of a given policy. Be that as it may, the scope of this article is considerably more limited. Its object is to examine the Zimbabwean law of censorship governing the circulation of 'literature' (however that may properly be defined) in the context of the freedom of expression as a juridical norm enshrined in the African Charter and in the Constitution of Zimbabwe.

AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

Freedom, so it is postulated, is universal and therefore indivisible. Thus, the General Assembly of the United Nations proclaimed the Universal Declaration of Human Rights as 'a common standard of achievement for all peoples and all nations' and enjoined the 'universal and effective

recognition and observance' of the rights and freedoms enunciated in the Declaration.¹

This affirmation, however, does not and cannot preclude the formulation of regionally specific standards which, though peculiar to the region in which they obtain, complement rather than contradict the application of internationally conceived standards. Indeed, a regional system of human rights may carry with it a greater potential for the meaningful enjoyment of those rights by virtue of the cohesion implied by geographical proximity as well as social and cultural affinity. It is in this vein that continental groupings under the United Nations umbrella have opted for regional instruments as a means of enhancing the due recognition and observance of human rights.²

The African Charter was adopted by the Organisation of African Unity in 1981³ and entered into force in September 1986.⁴ In so far as concerns the expression of substantive rights and freedoms, the Charter was conceived in the image of the Universal Declaration. Nevertheless, it contains certain distinctive features that are either novel or quite peculiar to the African context, and which might have some bearing on the freedom of expression.

The Preamble to the Charter reflects the recency of foreign domination and the need not only to achieve material independence but also to disburden the African consciousness of its colonial baggage. The totality of the drive towards liberation is more fully articulated in Article 20 where the right of peoples to self-determination is defined to encompass the struggle against political and economic as well as cultural domination.

The inescapable corollary of economic liberation is the right to development, which is conceived in Articles 21 and 22 as entitling peoples freely to dispose of their wealth and natural resources in order to enhance collective development. Firmly entrenched in the Preamble as well as the body of the Charter is the conviction that civil and political rights are indissociable from economic, social and cultural rights. Indeed, the satisfaction of the latter is perceived to be a precondition for the enjoyment of the former.

Another crucial element, albeit not unique to the Charter, is that the exercise of rights and freedoms is necessarily conditioned by the due performance of duties and obligations. The individual, in other words,

¹ Preamble to the Declaration (UN Doc. A/811, 1948).

² Of major significance are the European Convention on Human Rights (1950), European Social Charter (1961), American Convention on Human Rights (1969), Additional Protocol to the American Convention (1988), and the African Charter on Human and Peoples' Rights (1981).

³ At the 18th Assembly of Heads of State and Government, June 1981, Nairobi.

⁴ In accordance with the provisions of Article 63.3.

cannot demand his rights without doing his duties. These duties towards society are envisaged in Articles 27, 28 and 29 as being both positive and negative. The positive aspect requires the individual to respect and tolerate his or her fellow beings and actively to pursue the interests of the family and the larger community. In the negative sense, the individual is obliged to refrain from any activity which might adversely impact on the rights of others or of the community.

The interdependence of rights and duties is reflected at a different level in the necessary linkage between individual and collective rights. The individual's status and rights stem from his existence within, and interaction with, society. Accordingly, his or her position cannot be maintained at the expense of society and, conversely, the collective interest should not be invoked to undermine individual freedoms. The inevitable difficulty, of course, arises where individual and collective interests diverge to such an extent that it becomes impossible to harmonise them.

Turning to the freedom of expression in particular, Article 9 of the Charter provides as follows:

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

Thus stated, the freedom of expression embodies two distinct rights: the right to receive and the right to impart information, opinions and ideas. In essence, the two-fold nature of this freedom as enunciated in the African Charter accords substantially with its formulation in other international and regional instruments.⁵ Again, as is the case with other instruments, the exercise of the freedom is subject to restrictions imposed by the law for the protection of others and the public interest. In the Charter, this limitation is stated very baldly as applying to circumscribe the freedom 'within the law'. Clearly, it could not have been intended by the drafters that any restriction whatsoever, no matter how sweeping, should operate, so long as it is imposed by law, to curtail the freedom of expression. If the freedom is not to be whittled down to the point of extinction, the power of the law to limit the freedom must itself be limited.

The qualifications, I would submit, are to be found in Articles 27, 28 and 29 of the Charter. Thus, in exercising his or her freedom of expression, the individual must have 'due regard to the rights of others, collective security, morality and common interest' and must further 'respect . . . his fellow beings . . . and . . . maintain relations aimed at promoting, safeguarding

⁵ Article 19 of the Universal Declaration of Human Rights (1948); Article 19 of the International Covenant on Civil and Political Rights (1966); Article 10 of the European Convention on Human Rights (1950); Article 13 of the American Convention on Human Rights (1969); cf. also Article 7 of the African Charter on the Rights and Welfare of the Child (1990).

and reinforcing mutual respect and tolerance'. In more general terms, the individual is also enjoined 'to preserve the harmonious development of the family and to work for the cohesion and respect of the family' as well as 'to preserve and strengthen positive African cultural values' and 'to contribute to the promotion of the moral well-being of society'.

These provisions, taken together, serve to identify the collective interests, values and criteria that might properly be invoked by the state to justify any abridgement of the freedom of expression. This approach is in keeping with the duties imposed on the state, by Articles 17 and 18, to promote and protect 'morals and traditional values recognised by the community' and to assist 'the family which is the custodian of morals and traditional values'. It also reinforces the essential characteristics underlying the Charter relative to mutual respect, the role of the family and the individual's obligations towards the immediate community and society at large. In short, it is the individual's duties towards others which serve to define the extent to which his or her freedom of expression may justifiably be interfered with.

FREEDOM OF EXPRESSION IN THE CONSTITUTION

The Declaration of Rights in the Constitution of Zimbabwe, like many other national constitutions, is predicated on the need to strike a balance between the rights and interests of the individual on the one hand and social obligations and the public interest on the other. This dichotomy of rights and interests is expounded at the very outset of the Declaration, in section 11, in terms which make it abundantly clear that the rights and freedoms of the individual are subject to respect for the rights and freedoms of others and for the public interest.

The freedom of expression itself is enunciated in section 20 (1) as follows:

Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

As with the conventional provisions referred to earlier, this formulation captures the duality inherent in the freedom of expression, viz. the right to receive and impart ideas and information without interference. Additionally, by way of emphasis, special recognition is given to the privacy of correspondence.

The limitations to the freedom of expression are elaborated in sub-sections (2) and (6) and, to some extent, in sub-section (1) itself. Firstly, every person is entitled to voluntarily assume the imposition of restraints

on his or her freedom — usually by way of contractually agreed obligations. Secondly, it is accepted that persons below the age of majority are subject to whatever regime of discipline is fixed and applied by their parents or guardians. Thirdly, as stipulated in sub-section (6), the freedom of expression does not *per se* confer a right to exercise that freedom in any public thoroughfare. In other words, the so-called 'right to demonstrate' cannot be exercised so as to hinder the free passage of persons or vehicles.

Sub-section (2) enumerates the range of matters in relation to which the freedom of expression may be derogated from by way of legal prescription. First and foremost is the possibility of limitations devised in the public interest, in particular, 'the interests of defence, public safety, public order, the economic interests of the state, public morality or public health'. The second category of limitations involves the need to protect 'the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings'. The rights and freedoms to be protected in this context would, obviously enough, embrace the constitutional rights of others, including, for instance, their freedom of conscience and of religion. The remaining areas of possible prescription relate to the disclosure of confidential information, the maintenance of judicial and parliamentary independence, the regulation of telecommunications and the activities of public officers.

In all of the matters covered by sub-section (2), the possibility of the law being prescribed or perverted to nullify the freedom of expression is tempered by the requirement that the law cannot exceed the bounds of reasonableness. The test of what is or is not reasonable in this instance (as with other provisions of the Declaration of Rights) is that the law in question or the action taken under its authority should be 'reasonably justifiable in a democratic society'.

A comparison of section 20 with the African Charter and other conventional provisions indicates a broadly concordant approach to the enjoyment and restraint of the freedom of expression. Generally speaking, limitations to that freedom are to be justified by reference to the rights of others or the public interest. A similar approach is also evident in the constitutional provisions of other African countries.⁶ The distinctive feature of the Zimbabwean Constitution is the attempt to chart the parameters of the freedom and the permissible restrictions thereon through the perspex of democratic reasonableness. What this means in state practice and how

⁶ Cf. Article 7 of the 1964 Dahomey Constitution and Article 25 of the 1963 Nigerian Constitution. The former, representative of the francophone approach, adopts a terse but eloquent preambular formula, listing, among other fundamental liberties, the freedom of 'manifestation'. The latter is more typical of the anglophone approach in its attempt to articulate the freedom and its limitations in greater detail.

it might be interpreted judicially are issues that are far from being unproblematic.⁷

In recent years, the Supreme Court of Zimbabwe has attempted to define the democratic justifiability or otherwise of restrictions on fundamental rights.⁸ The Court has proceeded on the premise that interference with a constitutional right is not reasonably justifiable if it arbitrarily or excessively invades the right according to the standards of a society that has proper respect for the rights of the individual. The criteria to be applied in determining the legitimacy of interference are that:

- (a) the legislative objective must be sufficiently important to justify limiting a fundamental right or freedom;
- (b) the measures designed to meet the legislative objective must be rationally connected to it and must not be arbitrary, unfair or based on unreasonable considerations; and
- (c) the means used to impair the right or freedom must not exceed what is necessary to accomplish the legislative objective.

CENSORSHIP LAWS IN ZIMBABWE

The control of publications made its first entry into the statute books of Southern Rhodesia in January 1912 through the Obscene Publications Ordinance, 1911.⁹ As is evident from the title of this enactment, the scope of statutory control was confined to indecent or obscene publications. The manner of control that was adopted was the traditionally robust device of criminalising and penalising specified conduct. The particular activities that the Ordinance proscribed covered the importation, production, sale, distribution, possession and posting of indecent or obscene publications or printed matter. That the legislator deemed the subject matter to be especially abominable and the mischief involved to be one of heinous proportions is quite evident having regard to the relative severity of the penalties imposed.¹⁰

⁷ The traditionally favoured test of the English courts in seeking to define the essence of reasonableness was to have regard to what might be perceived and conceived by 'the man on the Clapham omnibus'. The relentless impact of social and cultural change has brought this test into considerable disrepute and inevitable disuse. In any event, it remains to be seen whether any analogous test could be successfully deployed on the Zimbabwean social landscape.

⁸ *Woods and Others v Minister of Justice and Others* 1994 (2) ZLR 195 (S); *Nyambirai v National Social Security Authority and Another* 1996 (1) S.A. 636 (ZS); *Retrofit (Pvt) Ltd v Posts and Telecommunications Corporation and Another* 1996 (1) S.A. 847 (ZS).

⁹ Ordinance No. 14 of 1911.

¹⁰ These ranged from a fine of £10 or a prison term of one month for possession to a fine of £250 and/or incarceration up to three years for importation or production. In comparison, the brewing, sale, possession and supply of traditional beer, under an Ordinance promulgated in 1911, were regarded with relative leniency — attracting a penalty of £50 or six months imprisonment.

The regulation of the visual media was also introduced later the same year, in terms of the Cinematograph Ordinance, 1912.¹¹ The primary concern of this enactment appears to have been the physical safety of the premises used for celluloid exhibitions rather than the moral purity of the viewing public. Indeed, exhibitions given in private premises were expressly excluded from the purview of statutory control. Subsequent legislation, promulgated as the Entertainments Control and Censorship Act, 1932,¹² expanded the scope of control to cover theatrical performances and other public entertainments. This Act also established the Board of Censors whose functions at that time were confined to the scrutiny of films and film advertisements.

In 1967, the diverse strands of legislation were combined in the Censorship and Entertainments Control Act, 1967.¹³ This Act was then updated and consolidated under the same title as Chapter 78 in 1974 and as Chapter 10: 04 in 1996,¹⁴ but has remained substantially intact since its inception in 1967. It is this piece of legislation and, in particular, its treatment of publications that I now turn to consider.

LITERARY CENSORSHIP: PROCEDURAL ASPECTS

Part IV of the present Act regulates, *inter alia*, the importation, production, distribution and sale of publications (as well as pictures, statues and records). The term 'publication' is broadly defined to include all printed matter as well as any written or typed matter which is reproduced for circulation. The basic restriction, contained in section 13, applies to publications which are *ex facie* undesirable or which have been declared by the Board of Censors to be undesirable.

Administratively, the Board constitutes the primary repository of control. It is empowered to examine any publication and to declare whether or not, in its opinion, it is 'undesirable'. It may also, after due notice, declare subsequent editions of a periodical publication to be undesirable. Moreover, if motivated to do so in the public interest, the Board may go further to declare an undesirable publication to be 'prohibited'. The sting behind prohibition in this sense is that the mere possession of a prohibited publication is tantamount to an offence.

Procedurally, the Board is not obliged to call for objections before making its decisions — except in the case of future editions of a periodical — nor is it expressly enjoined to abide by the rules of natural justice.

¹¹ Ordinance No. 5 of 1912.

¹² Act No. 6 of 1932.

¹³ Act No. 37 of 1967.

¹⁴ 1974 and 1996 Revised Edition of Statutes.

However, the modern judicial tendency is to insist on adherence to these rules, particularly the right to a fair hearing, even where the statute in question is silent on the point. The extent to which the courts would be prepared to assert their inherent power of review over the proceedings of the Board is a moot point. In any event, the merits of the Board's decisions are explicitly made subject to appeal to the Censorship Appeal Board. The latter may confirm, vary or set aside any decision appealed against and, apart from the possibility of questions of law being referred to the Supreme Court, the decision of the Appeal Board is final.

The autonomy of the Board's decisions from Executive intervention was significantly modified in 1989.¹⁵ In effect, the relevant Minister is now empowered to override any decision of the Board which declares a publication to be undesirable or prohibited. In so acting, the Minister must be satisfied that the decision of the Board is not in the public interest. The peculiarity of this position is, to say the least, not without considerable irony.

LITERARY CENSORSHIP: SUBSTANTIVE CRITERIA

The substantive grounds for banning published matter are spelt out in sections 13 and 33 of the Act. In essence, there are three broad categories of control, namely, that the offending publication:

- (a) is indecent or obscene or is offensive or harmful to public morals;
- (b) is likely to be contrary to the interests of defence, public safety, public order, the economic interests of the state or public health; or
- (c) discloses, with reference to any judicial proceedings, matter which falls within the ambit of category (a) or, with reference to matrimonial proceedings, particulars which are unnecessarily prejudicial to the parties involved.

As regards category (a), the Act endeavours to amplify its intent in section 33. Material is deemed to be 'indecent or obscene' if it tends to deprave or corrupt the minds of those likely to be exposed to it or if it is in any way subversive of morality. A publication may also be obscene if it unduly exploits horror, cruelty or violence. Matter which is 'offensive to public morals' is so characterised if it is likely to outrage or disgust persons who are likely to read it. As for matter being 'harmful to public morals', this will be the case where it deals in an improper or offensive manner with criminal or immoral behaviour.

The permissible exceptions to the rule, viz. situations where ordinarily undesirable matter may be published, are also enumerated in section 13.

¹⁵ By section 4 of the Censorship and Entertainments Control Amendment Act, 1989 (No. 26 of 1989).

Apart from law reports and documents concerned with legal proceedings, the principal exception relates to publications of a technical, scientific or professional nature *bona fide* intended for use in any particular profession or branch of arts, literature or science. The other major exception is that in respect of publications of a *bona fide* religious character.

The inclusion of the exception in favour of religious materials needs some explanation. Prior to the amendment of the Act in 1989,¹⁶ the criteria for undesirability included any matter which was 'likely to give offence to the religious convictions or feelings of any section of the public'.¹⁷ For obvious reasons, the presence of this ground for restriction rendered it necessary to inscribe a correlative exception in favour of religious publications.¹⁸ The continued retention of the exception, despite the removal of the restriction, is explicable on the basis that there may be other objectionable features (lewd or indecent references, for example) contained in religious literature; and that, notwithstanding such elements, the publication should not be proscribed so long as it serves a genuine religious purpose.

CONFORMITY WITH FREEDOM OF EXPRESSION

There is little doubt that the restrictive provisions of the Act as described above impinge upon the freedom of expression. What needs to be canvassed, however, is whether these restrictions violate the juristic conception of that freedom. More specifically, do they fall within the bounds of the permissible limitations to the freedom of expression as embodied in the African Charter and in the Constitution of Zimbabwe?

The Charter, as already indicated, subjects the exercise of rights and freedoms to 'the rights of others, collective security, morality and common interest'. Similarly, the Constitution contemplates the possibility of statutory derogations to protect the public interest in its various aspects and the rights and freedoms of others.

Before addressing the restrictions currently in force, it may be of interest to consider the status of the restriction that was removed from the Act in 1989, namely, that against material giving offence to religious convictions. It might be argued that the freedom of conscience and religion¹⁹ embodies a right to the serene enjoyment of one's conscience or religion.

¹⁶ By sections 2 and 3 of Act No. 26 of 1989.

¹⁷ The constitutionality of this restriction is discussed below.

¹⁸ It should be noted that the saving of religious material does not necessarily extend to a publication simply because it deals with a religious theme or topic. To benefit from the exception, the publication must, in addition, serve some religious purpose. In South Africa, it was so held in *Publication Control Board v Gallo (Africa) Ltd* 1975 (3) S.A. 665 (AD). In interpreting an identical provision in the equivalent South African legislation.

¹⁹ As guaranteed by Article 8 of the African Charter and section 19 of the Constitution.

If this is accepted, any outrage or insult to the religious feelings of a believer would constitute an infringement of that person's rights.²⁰ Accordingly, any limitation imposed by the law against blasphemous or sacrilegious literature would constitute a justifiable restraint on the freedom of expression to the extent that it seeks to protect the rights of others. As against all of this is the position that statements which insult or outrage a person's religious feelings do not necessarily hinder his freedom to manifest, propagate or practise his religion. Indeed, the more robust view is that every new creed has evolved by way of impugning existing faiths and that the freedom of religion itself necessarily incorporates the right to attack existing religions.²¹ In between these diametrically opposed positions is the view that statements or insults perpetrated with the deliberate and malicious intention of affronting the religious convictions of others are apt for legal suppression by virtue of their calculated tendency to provoke public discord.²²

Reverting to the Act in its present form, it will be seen that the three categories of control are designed to safeguard the public interest in general, public morality in particular, and the rights and freedoms of other persons. Considered in the abstract, the measures and means used to attain these objectives appear to satisfy the judicial tests propounded to determine what is reasonably justifiable in a democratic society.²³ Thus regarded, it may be accepted that these restrictions are broadly compatible with the dictates of the Charter and the Constitution and that they are therefore unobjectionable in principle.²⁴ It does not follow, however, that the practice necessarily conforms with theory or with the notion of democratic reasonableness. It may therefore prove illuminating to examine

²⁰ Cf. the decision of the Court of Appeal in the English case of *R v Lemon and Gay News Ltd.* 1979 A.C. 617, confirming a conviction for blasphemous libel arising from the publication of a poem metaphorically attributing homosexual acts to Jesus Christ. The decision has been criticised for 'extending the bounds of criminality to serious literature, which is endangered whenever it couples sex with religion, irrespective of the pureness of its purpose' — Robertson, *Obscenity* (1979, 242).

²¹ Cf. the comments in the *Encyclopedia of the American Constitution*, Vol. 3, at p. 1542, relative to the First Amendment to the United States Constitution.

²² The international furore occasioned by Rushdie's *The Satanic Verses* highlights the absence of any real consensus in this extremely sensitive area of the law.

²³ See page 56, where the criteria fixed by the Zimbabwe Supreme Court are discussed.

²⁴ There are, inevitably, certain features of the Act that are not so readily defensible. The most obvious candidate for attack is section 26 which criminalises the mere possession of material which is 'indecent or obscene' as defined or which has been 'prohibited' by the Board of Censors. In a very recent judgement of the South African Constitutional Court, *Case and Others v Minister of Safety and Security and Others* 1996 (3) S.A. 617, similar legislation was struck down as invading the right to personal privacy as well as violating the freedom of expression. It was further held that this particular intrusion into personal privacy failed the tests of reasonableness and justifiability which might otherwise have operated to save the impugned provision from nullification.

the diverse publications that have been proscribed by the authorities in practice.

CENSORSHIP IN PRACTICE (1967-1985)²⁵

It comes as no surprise that the most saleable literature everywhere in terms of readership appeal is that which deals with sex or with politics. The index of censorship is no exception to the preoccupation with these two highly topical subjects — the former, naturally enough, taking pride of first place.

The ocean of sex, to abuse a pun, is an exceedingly large and fertile space and the human imagination is virtually boundless in its capacity to exploit its manifold bounty. And so it follows that the nets cast out to catch obscenity, indecency and immorality happen to be correspondingly wide in their bid to fulfil the censor's moral mission.

To begin with there was caught the exotically erotic designed to amuse and titillate at varying levels of prurience — from the likes of *Last Tango in Paris* and *Shampoo* (Robert Alley) *Oh! Calcutta* (Kenneth Tyrian) to the unquestionably more popular offerings of the infamous scarlet women (Emmanuelle Arsan, Marilyn Chambers, Xaviera Hollander, Jackie Collins and Linda Lovelace). Next came that elite crowd of classics which by dint of their claims to literary merit were less likely to arouse the baser passions, but which were tempered nonetheless as a matter of intuitive caution — *MF, Napoleon Symphony* and *Earthly Powers* (Anthony Burgess), *Fanny Hill* (John Cleland), *The Black Book* (Lawrence Durrell), *Tropic of Cancer* and *Tropic of Capricorn* (Henry Miller), *Myra Breckinridge* and *Myron* (Gore Vidal) — many of which have since been unbanned. An even more exclusive group comprised the ancient and medieval classics — *Satyricon* (Petronius), *The Perfumed Garden* (Nefzawi), and *The Kama Sutra* (Vatsyayana) — presumably suppressed on the basis that antiquity is no guarantee against libidinous arousal.

Then there was that morally subversive mixture of bawd, satire and irreverence — *The Ginger Man* and *The Onion Eaters* (J. P. Donleavy), *Riotous Assembly*, *Indecent Exposure*, *Wilt* and *The Wilt Alternative* (Tom Sharpe), *Midpoint and Other Poems*, *Couples*, *Rabbit Redux* and *Marry Me* (John Updike); followed closely by the smutty, salacious and scurrilous — *The Marx Brothers Scrapbook* (Richard Anobile and Groucho Marx), *How to Talk Dirty and Influence People* (Lenny Bruce), *Billy Connolly: The Authorised Version* (Duncan Campbell), *The Essential Lenny Bruce* (John Cohen), *Ladies*

²⁵ What follows is a brief survey of some of the myriad books banned by the Rhodesian and later the Zimbabwean Board of Censors between the years 1967 and 1985. The starting point coincides with the inception of the present Act, while the terminal point is dictated by the non-availability of any systematic compilation of censored literature after 1985.

and *Gentlemen, Lenny Bruce!* (Albert Goldman), *Hello Sailor* (Eric Idle), *A Little Treasury of Limericks Fair and Foul* (John Letts), *Kiss Me Goodnight, Sergeant Major — The Songs and Ballads of World War II* (Martin Page).

The next group was composed of matter which, although probably learned and highly instructive, was to be eschewed by all simply because it might have fallen into the hands of the perverted few. Here we have that mixed assemblage of sexually oriented sociological, psychological and historical studies — *Sex in Literature* (John Atkins), *The Prostitute in Society and Prostitution and Morality* (Benjamin, Harry and Masters), *Sex Crimes and Sex Criminals* (Alan Bentham), *The Sociology of Sex* (Fernando Henriques), *A History of Pornography* (Montgomery Hyde), *Pornography and the Law* (Kronhausen, Eberhard and Kronhausen), *Oriental Sex Manners* (Howard Levy), *Origins of Sexual Impulse* (Colin Wilson), *Sex Jokes and Male Chauvinism* (George Fine); coupled with sex guides, manuals and encyclopedias — *You and Sex: A Family Guide* (Robert Chartham), *The Sex Book: A Modern Pictorial Encyclopedia* (Goldstein, Harberle and McBride), *Sex in Marriage* (Koble, Wendell and Warren), *The Good Sex Guide* (Steward and Downes), *The Illustrated Manual of Sex Therapy* (Helen Kaplan); as well as the less earthy texts concerned with astrology, dreams and the occult — *Sexuality, Magic and Perversion* (Francis King), *The Satanic Bible* (Anton Lavey), *1001 Erotic Dreams Interpreted* (Graham Masterson), *Sex and the Occult* (Gordon Wellesley), *Sex and the Stars* (Martin Pentecost).

Again, the sexual taboos peculiar to a racially segregated society were also evidenced by the containment of material which might be taken to commend or condone the possibility of inter-racial sex — *Black/White Sex* (Grace Halsell), *The Black Decameron* (Leo Frobenius), *Wanton Black Nurses* (Manuel Marr), *Black Stud* (Robert Tralins).

The final net was cast to catch that which was deemed positively pernicious by virtue of its deleterious impact, real or imaginary, on the minds and psyches of its readers. Making up this group were the books, both fictive and analytical, dealing with homosexuality and lesbianism — *Lesbian Love Old and New* (Walter Braun), *The Homosexual Handbook* (Angelo D' Arcangelo), *The Joy of Lesbian Sex* (Harris and Sisley), *Gay Love Signs* (Michael Jay); publications advocating unrestrained resort to drugs, with or without sexual activity — *The Cannabis Experience* (Berke, Joseph and Hernton), *The Politics of Ecstasy* (Timothy Leary), *LSD: The Consciousness-Expanding Drug* (David Solomon), *Drugs and Sexuality* (Solomon and Andrews), *LSD: The Problem-Solving Psychedelic* (Stafford and Golightly), *Sex and Drugs: A Journey Beyond Limits* (Robert Wilson); and works which were unduly concerned with violence, horror, torture and sado-masochistic practices — *Skinhead* (Richard Allen), *The History of Torture Throughout the Ages* (George Scott) as well as *Dog Day Afternoon*

(Patrick Mann), *The Marquis de Sade* (Simone de Beauvoir), and the renowned *A Clockwork Orange* (Anthony Burgess).

Moving into the political arena, we find that most of the publications concerned were proscribed during the UDI period (1965–1980) and were subsequently unbanned in the years immediately after independence. Given the highly sensitive nature of the prevailing political climate, almost everything that was perceived as being potentially subversive was declared undesirable.

This ranged from appeals to humanism and liberalism — *The Trumpet of Conscience and Strength to Love* (Martin Luther King), *Why Are We in Vietnam?* (Norman Mailer) — to the radical extremism of Black Power advocacy — *The Autobiography of Malcolm X* (Malcolm X and Alex Haley), *Soul on Ice*, *On Lumpen Ideology and Revolution in the Congo* (Eldridge Cleaver), and *Black Power* (Stokely Carmichael and Charles Hamilton).

Straddling the ground between was the vast array of nationalist writings of varying political persuasions — *The Struggle Continues, Handbook of Revolutionary Warfare and Class Struggle in Africa* (Kwame Nkrumah), *Revolution in Guinea* (Amilcar Cabral), *The Struggle for Mozambique* (Eduardo Mondlane), *The Gospel According to the Ghetto* (Canaan Banana), *Letters from Salisbury Prison and Frelimo Militant* (Ndabaningi Sithole), *Crisis in Rhodesia* (Nathan Shamuyarira), *Rhodesian Black Behind Bars* (Didymus Mutasa), *Zambia Shall Be Free* (Kenneth Kaunda), *Origins of Rhodesia* (Stanlake Samkange), *An Ill-Fated People* (Lawrence Vambe), and *No Easy Walk to Freedom* (Nelson Mandela).

Equally dreaded, though intellectually less accessible, were the works of radical theorists, historians and commentators — *Black Skins, White Masks* and *Toward the African Revolution* (Frantz Fanon), *Black Orpheus* (Jean Paul Sartre), *The Liberation of Guinea* and *In the Eye of the Storm* (Basil Davidson), *How Europe Underdeveloped Africa* (Walter Rodney); as well as the pamphlets and diaries of the Great Reds — *Principles of Communism* (Friedrich Engels), *Marxism and the Trade Unions* (Leon Trotsky), and *Bolivian Diary* (Che Guevara). Again, it was also deemed necessary to avert the nefarious influence of political literature on young minds — *Lenin for Beginners* (Appignanesi and Zarate), *The Little Red School Book* (Hansen, Soren and Jensen), *Student Power* (Cockburn, Alexander and Blackburn).

Then, of course, there were those works of imaginative literature which were possibly more successful in their criticism of the *status quo* by deploying the insidious device of interweaving political fact with social fiction — *Why Are We So Bled?* (Ayi Kwei Armah), *Another Country* (James Baldwin), *Guerrillas* (V. S. Naipaul), *The Golden Note-Book and Nine African Stories* (Doris Lessing), *Coming of the Dry Season* (Charles Mungoshi), and *Black Sunlight* (Dambudzo Marechera).

Last but by no means least, and cutting across the conventional political lines, was that vanguard of feminist literature which challenged the bastions of male domination — *The Female Eunuch* (Germaine Greer), *Sexual Politics* (Kate Millett), *Down Among the Women* (Fay Weldon), *Fear of Flying* (Erica Jong), and *The Women's Room* (Marilyn French).

SUBSTANTIVE AND EMPIRICAL PROBLEMS

The foregoing survey hints at some of the problems of interpretation and application inherent in the task of literary censorship. Obviously, one cannot presume to comment on every conceivable facet of a function which is as varied as the subject matter that it must contend with. Instead, I propose merely to broach two general points which highlight the difficulties that bedevil the performance of the censor's mandate.

The first relates to the notion of political freedom generally. It is axiomatic that the proper functioning of any democracy is predicated upon the existence of free channels of expression and information. Of course, the forms of communication will vary from one time to another and from place to place depending on the material and technical resources available. But the extent to which ideas and information can be disseminated without official hindrance provides a telling index of the degree of political freedom at play in any given system.

In the context of 'political' literature, the Zimbabwean experience cogently illustrates the determinant role of official policy and practice in regulating the flow of such literature. The substantive and procedural rules of censorship have not been significantly altered since 1967 — nor has the constitutional definition of the freedom of expression. The fact that the Declaration of Rights has since 1980 been a justiciable one is not without consequence but cannot be regarded as a key factor in the liberalisation of political publications. Both before and after 1980, the constitutional freedom was qualified by the injunction to subserve the interests of public safety and public order and this was amply recognised in the censorship laws. What has changed is the political environment in which executive power is articulated and exercised. In broad effect, the dominant ideology of a beleaguered minority has been supplanted by that of a less monolithic majority. And it is this that has reshaped the official perception of what is or is not politically acceptable for public consumption.

Whatever the prevailing ideology, the notion of national or public security is not one of fixed content but rather a malleable concept capable of sustaining whatever interests the policy-maker may choose to pursue. The law is reluctant to interfere with the merits or correctness of any policy decision taken in this sphere — unless the decision is shown to be manifestly and grossly irrational. Given this latitude in the practical

application of the law, it is imperative that censorial discretion be exercised with great circumspection and with due deference to the political judgement of the reading public. After all, history has shown time and time again that the suppression of political ideas is the surest way of planting the seeds of subversion.

The second fundamental issue concerns the notion of obscenity and the yardstick by which it is to be measured. Here too, we are faced with a concept which is inherently fluid and for which no universal and immutable test can be devised. Social mores are eminently subject to regional and temporal variation and the law is obliged to adapt if it is to avoid becoming obsolete.

Applying the law in tune with the prevailing moral mood is fraught with difficulty in the post-modern world. Apart from the absence of any coherent ideological perspective, no society or nation can lay claim to social or cultural uniformity. Of course, it may be possible in limited circumstances to invoke some form of 'national identity' or similar social construct tending towards homogeneity. But the reality is one of nations and societies divided by class, riven by race and further differentiated by language, custom and religion. This social and cultural diversity renders it difficult to devise any common moral standard — even with respect to something so fundamental to the human condition as sex and sexuality.²⁶ And even if some kind of 'domestic' standard could be formulated, it would still be necessary to take into account the inescapable impact of 'foreign' imports on local culture.

There is also another level at which the definition of obscenity becomes problematic. The question that arises is this: what behavioural response is it that the law seeks to curb or eliminate? Is it feelings of disgust, the sense of shame, tendencies to sadistic cruelty, unbridled lust or merely the sensual urge — or is it all of these things?

For instance, it has become legally fashionable to distinguish the tastefully 'erotic' from the distastefully 'pornographic'. The dividing line, however, is not an easy one to draw. It is one that invariably shifts according to the sensibilities of the reader: his or her social upbringing,

²⁶ The English Court of Appeal, in *R v Staniforth and Jordan* [1976] 2 W.L.R. 849, at p. 856, had to concede that:

The difficulty, which becomes ever increasingly apparent, is to know what is the current view of society. In times past there was probably a general consensus of opinion on the subject, but almost certainly there is none today. Not only in books and magazines, on sale at every bookstall and newsagent's shop, but on stage and screen as well, society appears to tolerate a degree of sexual candour which has already invaded a large area considered until recently to lie within the forbidden territory of the obscene . . . However conscientiously juries approach this responsibility, it is doubtful, in the present climate of opinion, whether their verdicts can be expected to maintain any reasonable degree of consistency.

cultural background, age, education, psychological make-up, etc. Obscenity, so to speak, is in the mind of the reader — largely a matter of subjective response.

Even assuming the possibility of some objectively ascertainable response to what is obscene, the paradox is that the charge of obscenity may be avoided by raising the 'aversion' defence. The argument, so it runs, is that material cannot be deemed obscene if it is so repulsive that it discourages the sexual drive rather than stimulates it. This argument, although verging on sophistry, has been propounded and accepted in several instances as a means of exculpating literature of merit.²⁷

CONCLUSION

In the preceding pages, I have endeavoured to articulate the difficulties of censorship flowing from the highly subjective nature of political and moral judgement and the problems of subordinating that judgement to clearly discernible objective criteria. These considerations must inevitably raise the question that lurks behind any serious discussion of censorship: should literature be subject to censorship at all?

The question is not new and certainly not peculiar to our times. In 1644, John Milton penned his eloquent plea to the English Parliament, under the title 'Areopagitica', in favour of the unlicensed printing of books. In this powerful polemic against censorship, he likened the attempt to keep out evil doctrine to 'the exploit of that gallant man who thought to pound up the crows by shutting his park gate'.

In 1979, the Williams Committee on Obscenity,²⁸ in recommending certain reforms to the prevailing English law, proposed that

The printed word should be neither restricted nor prohibited since its nature makes it neither immediately offensive nor capable of involving the harms we identify, and because of its importance in conveying ideas.

Milton would certainly glow at this confirmation of his pronouncements — but he would also feel affronted that Parliament had still not heeded his plea over three centuries later. And this despite his resounding entreaty, 'Give me the liberty to know, to utter, and to argue freely, according to conscience, above all liberties.'

²⁷ The most noteworthy instance being the decision of an American court in *US v One Book Called 'Ulysses'* 5 F. Supp. 182 (SDNY 1933) holding that,

Whereas in many places the effect of *Ulysses* upon the reader undoubtedly is somewhat emetic, nowhere does it tend to be aphrodisiac.

In *Roth v US* (1957) 237 Fd. 796, the court captured the irony that,

If the argument be sound that the legislature may constitutionally provide punishment for the obscene because, anti-socially, it arouses sexual desire by making sex attractive, then it follows that whatever makes sex disgusting is socially beneficial.

²⁸ *Report of the Committee on Obscenity and Film Censorship* (Cmd. 7772/1979), para. 13.4.6.

If the problems adverted to earlier are adequately pondered, I think it will be fairly evident that the practice of censorship in most instances is bound to be informed largely by subjective considerations. However, the subjectivity inherent in this process does not necessarily entail its condemnation on strictly juristic grounds. As already indicated, the laws which enable censorship are generally defensible as permissible derogations from the freedom of expression, while the rules which govern the exercise of censorial discretion tend to restrain interference by the courts. In any event, insofar as concerns politics or morality, it is probably fair to say that the strain on judicial objectivity in these spheres is especially acute. We are thus left with a situation where both the process of censorship and its legal scrutiny are fraught with the possibility of arbitrariness. And if these assumptions are correct, as I believe they are, it seems difficult to avoid the conclusion that the censorship of literature cannot as a rule be justified if the freedom of literary expression is to be exercised without arbitrary interference.