THE CASE AGAINST SEX CENSORSHIP: A CONSERVATIVE VIEW

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INTRODUCTION

When in the autumn of 1990 I helped form Conservatives Against Sex Censorship, I never supposed that I was setting out on a fast or an easy campaign. Granted, the Party leaders had for years been talking of freedom with all the apparent fervour of converts.[1] Granted, the Party was filled at every level with adulterers, paedophiles, sado-masochistic leather worshippers and enthusiastic users of pornography. Even so, it had also proclaimed itself the Party of "Family Values"; and whatever these things actually were, the right to look at frank portrayals of the sexual act was not among them.

Accordingly, I was neither surprised nor disappointed to read in the 1992 Conservative Manifesto that

> [w]e have the toughest anti-pornography laws in Western Europe, and we will keep them that way.[2]

I take this not as an indication of failure, but as an incentive to work harder. Even if it may not be possible in the short term to end these hypocritical shifts among the leadership, we shall certainly be able to let the public know that on pornography, as on many other issues, the Conservative Party does not always speak with a single voice.

As part of this greater effort, I begin by rehearsing some of the arguments against the suppression of pornography, and describe some of the laws by which the Government continues to try suppressing it.

THE CASE AGAINST SUPPRESSION

Now, I might, in common with some other liberals, try to get by here with a staightforward syllogism. I am a classical liberal. A belief in free speech is a part of classical liberalism. Pornography is speech. Therefore, there should be no controls on the publication of pornography.

Speech and Non-Speech

I do not accept this syllogism. It does apply to much that has, and that might, be considered pornographic. *Lady Chatterley's Lover* by D. H. Lawrence, *The Well of Loneliness* by Radcliffe Hall, the novels of William Burroughs and John Rechy — these have all to some extent been classed as obscene. I have no doubt that many of them have been found sexually arousing by some people. But they are also speech. Each propagates, with varying degrees of success, a certain view of life and how it is to be achieved or defended. Pasolini's *Salo* and Rainer Werner Fassbinder's *Querelle* both come also within this category, together with many other films. So too do many statues and paintings. J. P. David's *Rape of the Sabine Women*, for example, and the *Tyrannoctonoi* of Critias and Nesiotes, both represent nudity. One, indeed, represents two nude homosexual lovers, one of whom was considerably below the age of 21. But each work of art, what ever other use it may allow, is undeniably a political statement. There are, of course, many other masterpieces of Western art, any one of which might be regarded by someone as arousing, and by someone else as indecent, but are also statements of certain ideals that cannot be reduced to any simple message — or even properly to words.

But the word "pornography" also covers things that cannot really be classed as speech. Frederick Schauer hypothesises an extreme example of "hard core pornography". He imagines a film ten minutes long that consists of nothing but close shots of the genitals of a man and woman while performing the sexual act. The film is shown to paying customers who either experience spontaneous orgasm or are led to masturbate. He argues

> that any definition of 'speech'... that included this film in this setting is being bizarrely literal or formalistic. There are virtually no differences in intent and effect from the sale of a plastic or vibrating sex aid, the sale of a body through prostitution, or the sex act itself. At its most extreme, hard core pornography is a sex aid, no more and no less, and the fact that there is no physical contact is only fortuitous.[3]

I agree with Schauer. To bring all pornography under the principle of free speech is to weaken that principle by expanding it beyond what it can reasonably cover. It is also to put up a defence of pornography too weak to be sustained.

Though it can stand by itself — and ought in our everyday practice to be regarded as standing by itself — the principle of free speech is, to a consistent liberal, a specific application of a more general principle. That principle is the right of adult human beings to run their own lives — a right limitable only by the need to protect the equal rights of others. To show a film that does nothing but portray a sexual act may not be speech, but is still a use of freedom.

It is also a beneficial use of freedom. Sex is good. It is good as part of a loving relationship. It is good in itself. Thinking about it is obviously good. For many whom emotional or physical circumstances restrain from forming any relationships, there is no alternative to masturbating while thinking about it or watching representations of it. At the very worst, there are some people whose tastes are such that they should be positively encouraged to satisfy them through solitary means.

Pornography, then, is to be defended because it is a use of freedom. It is to be seen as good because it contributes to human happiness — or at least may relieve misery.

OBJECTIONS

National Decline

There are two standard arguments against this point of view. The first is that pornography in some way rots the moral fibre of the nation. It produces an increase in the number and variety of sexual relationships. And an excess of pleasure, according to some people, leads through personal ennervation to national decline. Take, for example, Mr C. Hill:

> It is worth remembering that of the 27 civilisations the world has so far known each one has collapsed through moral disorder and corruption ... The same fate will overtake Britain in the near future with the systematic perversion of our children and the corrupt personal morals of large numbers of our citizens.[4]

This type of reasoner usually points to the selfless restraint of our ancestors who built the British Empire, and compares this with the Romans, whose private vices brought on the collapse of their empire.

The argument is not always pitched quite so crudely. But, however well-expressed and qualified, it is factually wrong. There is no necessary disjunction between sexual licence and great achievement. The evidence points in quite the opposite direction. Latin literature began its golden age during the lifetime of Catullus. His excellence in the simpler lyric metres was never rivalled by any other Roman poet. His obscenity has led to the omission of at least one of his pieces from every edition annotated for use in the schools.[5] The Roman Empire reached its greatest geographical expansion during the lifetimes of Juvenal and Martial. Though each is different in his tone, both describe a moral climate that makes Berlin during the Weimar Republic petty bourgeois by comparison. Only after the authorities had become more puritan did the Empire begin its decline.[6]

Our own greatness was not founded on restraint. There were extremes of continence; but everyone knows how the Victorians made sexual hypocrisy into a system. Families were large. The cities teemed with prostitutes of both sexes. The criminal laws against immorality, though more colourful than our own, were scarcely more strictly enforced. For those who were cramped in England, the colonies offered endless opportunities. How these were used is described in a most interesting book by Ronald Hyams.[7] As soon as they were suppressed, the light of genius began to fade from our imperial administration. At home, our sternest age of moral purity — the first half of this century — coincided with our fall from greatness.[8]

I do not seek to draw any causal scheme from these correlations. I mention them only to show the feebleness of this type of argument.

Sexual Crimes

The second argument is more simple. Pornography, we are told, encourages coercive sexual aggression. Not even Mary Whitehouse, or her "feminist" sisters, would claim that everyone who reads or watches pornography will become another Bundy. But it is claimed that there are some weak-minded people whose inhibitions may be temporarily overborne, or who may become persuaded that women and even children are legitimate targets — whether or not they consent, whether or not the law permits. If this were so, there might well be a case for legal control, in order to protect the equal rights of others. For once freedom becomes unequal in this respect, it is transformed at once into power — and into power of the worst kind.

There is a vast empirical literature on this point. Some studies conclude that there is an encouragement to crime. Others claim that there is none, or that pornography may discourage by its cathartic effect. Others come to no firm conclusion either way. For myself, I doubt that there is a causal link. The most recent official study, commissioned by the Home Office, and costing £650,000, supports my doubt. Its authors, Dr Guy Cumberbatch of Aston University and Dr Dennis Howitt of the University of Loughborough, urged further research, but deny the existence of any obvious causal link. They find that

> sexual crimes and violent sexual crimes may be carried out by people who seem to have a special interest in certain kinds of pornography ...
>
> [But] [t]he evidence does not point to pornography as a cause of deviant sexual orientation in offenders. Rather, it seems to be used as part of that deviant sexual orientation ...
>
> It is unlikely that pornography is the only determinant of sexual and other forms of violence, and that pornography can be influential in the absence of other conducive factors ...
>
> It is known that exposure to such material is common in later childhood and adolescence, but apart from reports of children used in producing pornography or exposed to pornography as part of sexual abuse, little evidence exists that pornography is harmful.
>
> Indeed, evidence exists that exposure to pornography relatively later in life than normal is more likely to be associated with sexual problems ...[9]

Even, moreover, if some definite link could be established between pornography and coercive sexual aggression, there would remain one very strong reason for not taking action against it. That reason is freedom of speech. I am dealing here only with that sort of pornography that can be brought under the heading of speech. I recall it claimed somewhere that the murders committed by Myra Hindley and Ian Brady were partly inspired by reading the works of the Marquis de Sade. I recall it equally claimed that the murders committed by Gilles de Rais in the high middle ages were partly inspired by reading chapters lxiii-iv of the *Vita Tiberii* of Suetonius. If this really be so, are we to prohibit de Sade and censor Suetonius? The former is a key figure in the history of the French Enlightenment. He was a major influence on Baudelaire and Swinburne, to name only two great poets of the following century. Interspersed among all the whippings and brandings in his works, there is a moral philosophy that can be used to attack the utilitarianism of which it is more than a parody. Suetonius is, with Tacitus and to a lesser extent Dio Cassius, our best remaining narrative source for the first century of the Roman Empire. The offending chapters are either omitted from most translations, or left in its original Latin. But they are of great historical importance.[10] There are many

other works against which the same charge may be laid and the same defence made.

To alter the charge somewhat, how many murders have been inspired by the works of Karl Marx? 50 million? 100 million? Who knows? For every one man or woman whose imagination may have boiled over from reading about the Imperial orgies on Capri, there must have been a hundred fanatics sent out of control from reading *The Communist Manifesto*. For every woman and child left dead or bleeding by a lone attacker, there must have been thousands murdered during the Stalin Terror. Every argument against de Sade and those like him can be intensified a hundredfold against Karl Marx. And Karl Marx, whatever else may be said against him, is perhaps the one writer who must be read if any sense is to be made of our often catastrophic century.[11]

Think, yet again, of the *Bible*. Christianity may truly be a religion of peace and freedom. Until around two centuries ago, it was regarded as anything but that. From its first establishment by Constantine, in the third century, until the triumph of that school headed by Voltaire, in the eighteenth century, its most prominent divines believed no less firmly in the mission of Jesus Christ than in the absolute duty of the magistrate to seek out and punish the smallest hint of religious non-conformity. There were the Arian and Monophysite and Monothelite controversies. There was the crusade against the Albigenges. There were the Reformation and Counter-Reformation. There were the wars of religion. There was the ruthless — and, to our minds, the insane — persecution of witches. It is impossible to calculate even the number of lives destroyed by Christian enthusiasm, let alone the quantity of misery created by it. It is, however, easily comparable with Marxist-Leninism as one of the great scourges of humanity. The single text, "Compel them to come in",[12] has inspired more violence than the whole vast mass of the pornography that sends the National Viewers' and Listeners' Association into paroxysms of outrage and terror. Are we on that account to suppress the *Bible?*

I might also say that some of the most horrifying sexual crimes have been committed by men for whom no connection has been alleged or proved with pornography. There was Peter Sutcliffe, the "Yorkshire Ripper", who claimed to have killed in obedience to direct instructions from God Almighty. Only recently, I have read of the case of Andrei Chikatilo, "believed to be this century's most prolific and sadistic mass killer". I quote from my newspaper report:

> He has already admitted killing and raping most of the [53] victims, many boys and girls as young as eight. He is accused of prolonging their death agonies to derive maximum pleasure.
>
> No clue was left behind at the scene of the crimes, except for a mutilated and disembowelled corpse. Body parts were missing, cut out or bitten off. Sexual organs were eaten and incisions made in the eyes.[13]

I have so far read nothing of Mr Chikatilo's supposed "addiction" to hard-core pornography. I shall, indeed, be surprised to hear of any. The former Soviet Union had controls on pornography that might satisfy even Mary Whitehouse.

Pornography, then, cannot be claimed a sufficient or even a necessary reason for the commission of sexually violent crimes.

THE LAW CONCERNING PORNOGRAPHY

As the Manifesto boasts, our laws on pornography really are, with the possible exception of the Irish Republic — which was until 1922 part of the United Kingdom anyway — the most repressive in Western Europe and probably are also in the English-speaking world. The Police are able, on a Magistate's warrant, to seize anything that they consider "obscene". The Defendant can have the matter taken into court and argued before a Jury. But there is not, and never has been, an objective test of obscenity. The Jury is not called on to decide a question of fact, but of opinion. It must decide whether the item before it is such as to tend to deprave and corrupt those likely to be brought in contact with it. To this undefinably vague test, nearly the whole of everything we read, listen to or look at is subject.

Until 1959, the law was more repressive. Before then, not one of the novels mentioned above was legally available in this country. *Lady Chatterly's Lover* was available in a version from which all 14 graphic depictions of sex and all the naughty words had been carefully Bowdlerised. *The Well of Loneliness* had been suppressed in 1928 on account of just one sentence — "And that night they were not divided" — that hinted at a lesbian relationship.[14] Pornography had always been for sale on the black market; and the titles alone of some Victorian works remain as curious reminders of what our ancestors found exciting.[15] But the law was strict. Publication was a criminal offence carrying both fines and imprisonment.

There is no history of film censorship in itself in Great Britain. But the Cinematograph Acts 1909 and 1952 allow local authorities to require a licence to be taken out before any premises can be used for showing films to the public. Intended originally to cover fire and other safety regulations, these provisions have long since been used to justify local censorship. The usual practice of the licensing authorities has been to forbid cinema owners to show any film that has not been granted a certificate from the British Board of Film Censors—despite its name, a private body dating from 1913 and run by the film industry. The obscenity laws fully apply to film. But the practice has been not to prosecute where a certificate has been granted. Since the BBFC has always been rather cautious in its granting of certificates, there has been room for the development of private cinema clubs, to show films that have not been certificated, but are probably not within the legal definition of obscene. Those that do come within the definition are liable to forfeiture and destruction, and their distributors to the normal penalties.

Censorship of the theatre began in 1551, to curb the discussion of religious topics before an illiterate audience. This law fell gradually into abeyance. Another was passed in 1739 by the Walpole Government, to prevent satirical attacks on itself. The Lord Chamberlain was given the power to grant or refuse a licence for any public performance. Unlicensed performances were to be punished by closure of the theatre and imprisonment of the actors. This power was extended by the Theatres Act 1843. Works by

Dumas and Ibsen were refused licences, as was Wilde's *Salome*. Even *The Mikado* had its licence withdrawn for a year in 1907, on the occasion of a visit by the Japanese Crown Prince. Before 1968, theatres were prevented from staging any play uncut that mentioned homosexuality, venereal disease or birth control, among much else. In that year, a new Theatres Act was passed that removed the Lord Chamberlain's licensing power, and plays were left subject only to the law of obscenity.[16]

The Obscene Publications Act 1959 was a step in the right direction. It was not intended as a liberal measure. It was announced in its preamble as "an Act to strengthen the law concerning pornography". But its effect was liberal. It divided obscene publications into two categories — pornography and literature. The former was to be hunted down exactly as before. Indeed, aided by a further Act of 1964, the hunt was made easier by giving the authorities greater powers of entry and search. But the latter was to be preserved from suppression. It was left to a Jury, assisted where necessary by expert testimony, to decide whether a publication had or had not sufficient redeeming merit as literature or significance on some other ground to sanction its preservation. For the first time, moreover, it was permitted for a work to be considered as a whole, and not only as a few isolated passages or words.

The first test of the new Act was the celebrated *Lady Chatterley* trial. Looked at after 30 years, the Defence was farcical. Here were the greatest critics in the land, together with an Anglican Bishop, trooping through the witness box to find infinite beauties in an indifferent novel about adultery written by an avowed pagan. But the prosecution failed. Over the next few decades, censorship of the written word insensibly evaporated. In that area, we do have at the moment something like a genuinely free press. During the same time, film censorship has greatly diminished. We are now able to watch what until fairly recently would have had the Police raiding the cinema.

But the censorship of purely pornographic films and picture magazines — of that pornography which cannot rightly be called speech — continues. Articles that may freely be bought and sold in Washington and Paris are illegal in London. For some years, corruption within the Metropolitan Police ensured their ready availablity, if at a price. But that corruption has largely been eradicated. I do not say it has been entirely eradicated. For total honesty in the face of such huge temptation is not possible among any considerable body of men. But the more glaring corruption is no longer visible. The black market still flourishes; and its management has now passed into purely criminal hands; and its profits allow a degree of permanent organisation of crime that would not otherwise exist. This is the natural consequence of penalising what cannot be prevented.

As for our freedom of the written word, even that is not securely founded. The existing state of affairs rests on a series of Jury verdicts that reflect the more relaxed moral climate of the years since 1960. There is nothing to prevent future Juries from consenting to a fresh persecution. Also, the old laws of seditious and blasphemous libel remain in existence. The former has not been used by the authorities since 1948, and then unsuccessfully. But the latter, having been thought obsolete since 1922, was put to an ingenious, though thoroughly bad, use in 1978. I doubt if anyone who followed it in the newspapers will ever forget the case of Whitehouse v Lemon & *Gay News*.[17] In the absence of a clear law confirming the freedom of the press, what we have now is not so much freedom as permissiveness. What we have we hold not by right but on sufferance. That is undeniably bad.

PROPOSALS FOR REFORM

In the July of 1977, the Home Secretary in the Callaghan Government appointed a Committee on Obscenity and Film Censorship. Chaired by Bernard Williams, its task was

> to review the laws concerning obscenity, indecency and violence in publications, displays and entertainments in England and Wales, except in the field of broadcasting [at the time under investigation by the Annan Committee], and to review the arrangements for film censorship in England and Wales; and to make recommendations.[18]

The result was one of the clearest and most liberal state papers of modern times.

The Committee reviewed the existing law, and found it hopelessly vague and contradictory. It invited and examined evidence as to the corrupting effects of pornography. That submitted by the pro-censorship faction was rejected with well-merited contempt. Where not unsupported assertion, much of it was found to rest on an empirical base so narrow, so flimsy as to be laughable.[19] It concluded on the basis of the evidence available that no measurable harm could be ascribed to the influence of pornography. It did, however, bear in mind that the public display of certain material was deeply offensive to many members of the public; and that it was entirely legitimate to seek ways of preventing, or, at least, of minimising this offence. It also bore in mind the very reasonable need to protect children and young persons. Its main legislative recommendations were as follows:

* That all the existing laws relating to pornography should be repealed and replaced with a single comprehensive statute;
* That there should be no restrictions or prohibitions on the printed word;
* That, in order to prevent the giving of undue offence and to protect children and young persons, certain kinds of material should be restricted to sale only in special, clearly distinguished premises, that would be forbidden to mount offensive displays in their windows;
* That, in distinguishing this class of material, terms such as "obscene" and "indecent" and "deprave and corrupt" should be abandoned as both vague and obsolete;
* That in their place should be substituted the following formula: that the matter to be restricted should be that "which, not consisting of the written word, is such that its unrestricted availability is offensive to reasonable people by reason of the manner in which it portrays, deals with or relates to violence, cruelty or horror, or sexual, faecal or urinary functions, or genital organs";[20]

* That a smaller class of material should be entirely prohibited — this to "consist of material whose production appears to the court to have involved the exploitation for sexual purposes of any person, where either

  (a) that person appears from the evidence as a whole to have been at the relevant time under the age of sixteen, or

  (b) the material gives reason to believe that actual physical harm was inflicted on that person";[21]

* That the existing censorship of films should be abolished and a new one established to give effect to the reforms suggested above.

The effects of such a statute would be wholly beneficial. A vast burden of censorship would be lifted without shocking a mass of prejudice. Those who wanted pornography would be able to go into any special shop and find it as freely available there as almost anywhere in the world. Others would be able to go into their local newsagent, and never again be reminded that there were coloured photographs to be had of naked men and women. The authorities would have their efforts confined to the seeking out and destruction of material that comprised perhaps less than a hundredth part of the market in pornography, and the suppression of which would be warmly applauded by nearly everyone. Corruption would cease. The mafias would go bankrupt. The Police and courts would have more time to deal with crimes against life and property. The only objectors would be Mary Whitehouse and her followers —for whom the offence lies not in the sight but in the mere availability of pornography — and a few paedophile voyeurs.

THE CONSERVATIVE RECORD: TEXT AND PICTURES

But the Thatcher Government, which came to power almost immediately after publication of the Williams Report, did little to bring about its suggested reforms. It did implement those that, by themselves, tended to further control. There was the Indecent Displays (Control) Act 1981 — brought in by Tim Sainsbury, but given Government support. This obliged sex shops to black out their windows, to prevent access to young persons, and to warn all other customers of what lay behind the blackened windows. There was a provision in the Local Government (Miscellaneous Provisions) Act 1982. This empowered local authorities to license sex shops and similar premises. The effect of this was to allow total suppression in some areas, where Councils just would not grant licences. Where there was not suppression, there was often tight restriction. Of course, not demand, but only competition, was reduced; and the remaining shops were able to profit enormously from the closure of their rivals.

These Acts were a mild indication of what was to come. I blush as a Conservative to relate them. Yet, though I blush, I must relate them even so.

The Customs and Excise take over

According to section 42 of the Customs Consolidation Act 1876

> [t]he goods enumerated and described in the following table of prohibitions and restrictions inward are hereby prohibited to be imported or brought into the United Kingdom, save as hereby excepted.

All that now remain in this table are

> indecent or obscene prints, paintings, photographs, books, cards lithographic or other engravings, or any other indecent or obscene articles.

This section gives the Customs and Excise a wider power over what we may read or look at or use than the Police enjoy. The Police are obliged to proceed under the Obscene Publications Act 1959, and must convince a Jury that the article in question has a tendency to "deprave or corrupt". The Customs and Excise need only persuade a Magistrate that it falls into the looser category of what is "indecent or obscene". They are able, moreover, to prosecute anyone who deals with the article after its importation. In consequence, in many questions involving allegedly pornographic material, the authorities gave up seeking enforcement of the 1959 Act in favour of the 1876 Act.

In 1982, a company called Conegate tried to import into this country from West Germany a number of inflatable rubber dolls. These when inflated became life-size replicas of a woman's body, complete with three orifices. They were seized by the Customs and Excise as "indecent or obscene articles". The seizure was upheld in the condemnation proceedings before the Magistrates and on appeal to the Crown Court. But Conegate appealed next to the High Court, claiming that the seizure contravened Articles 30 and 36 of the Treaty of Rome.

Since 1973, our country has been a member of the European Economic Community. This is not merely a free trade organisation, but also an embryonic superstate. Its present final objective appears to be the subjugation of the United Kingdom to the status of an outlying province of a united Europe. Aided and abetted by certain misguided Britons, Jacques Delors may well achieve what Hitler and Napoleon, and every other foreign leader since the Emperor Claudius, failed to achieve. Already, our own laws have yielded priority to European law in our courts. Already, we can be made subject to laws that our own Parliament has not made, and to which it might take the strongest exception.

The great majority of Community decisions binding on us have been grossly illiberal. In 1989, for example, the Council of Ministers decided to ban the sale within the Community of any cigarette with a tar content of more than 15mg.[22] To come into effect from the end of 1992, this ban will prevent the sale of Senior Service, Capstan, Gold Flake and many other fine and historic brands. Again, the Germans have for several years been pressing for a Community law against Sunday trading more restrictive than any that has ever existed in English law, and that no British government could by itself hope to soften.[23] These are laws that should not be made nationally, let alone by the central institutions of the Community. They, and hundreds and thousands of others no less objectionable have done much to weaken the regard in which the Community ought to be held by liberals. But the European Court is able not merely to load us with unwanted restrictions, but also to free us from the oppressions of our own government.

Article 36 of the Treaty of Rome allows the placing of restrictions on imports for the sake or preserving "public morality, public policy or public security". It does not, however, allow restrictions to "constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States". It was claimed for Conegate that since there was no prohibition of the manufacture and sale of inflatable dolls in the United Kingdom, there ought to be none of their importation from elsewhere in the Community. To allow otherwise was to allow an "arbitrary discrimination or a disguised restriction on trade between Member States". The High Court referred the matter to the European Court, which found for Conegate.[24] The dolls were returned, and remain freely available.

In itself an important case, this immediately had a wider effect than on the right to import aids to masturbation. Conegate had the money to mount a long and expensive appeal for its right to do business. But its victory established a principle that automatically governed all similar cases. In 1985, 37 customs officials, evidently having nothing better to do, entered into Gay's the Word, a small bookshop in Bloomsbury that imports literature by and about homosexuals. This entry — codenamed "Operation Tiger" — resulted in the seizure of books by Oscar Wilde, Gore Vidal and Christopher Isherwood among others. 70 of these books were selected for prosecution under the 1876 Act. It was beside the point that many of them had been openly on sale here for generations; that they had been freely available even under our old obscenity laws. All that mattered was that they had been imported and might therefore be eased into the category of the "obscene or indecent". The proprietors of the bookshop if found guilty faced sentences of up to two years in prison. The prosecution was dropped as soon as the Conegate decision was announced.

Our authorities have thus been restricted in their use of the 1876 Act. Formally, they need only liberalise imports from within the Community. But it would be impracticable to apply different tests to imports from different parts of the world. Even if they did, the American suppliers would simply reroute their goods through Holland or Germany. The Customs and Excise have duly been ordered to apply the more liberal test regardless of the exporting country. The European Court has done more for the cause of liberty in this respect than the Thatcher Government had the least inclination to do. The Government had, indeed, sanctioned the prosecutions, even if it had not actively directed them.

THE CONSERVATIVE RECORD: THE ELECTRONIC MEDIA

I have not so far mentioned television and video. They are both comparatively recent developments, and their legal treatment is largely separate from that of the other media. The Williams Committee considered neither. Its neglect of the former was required by its terms of reference. Its neglect of the latter cannot be explained unless we conclude that its members were blind to the revolution taking place even while its members were deliberating. Both are supremely important. They are already our prime form of mass communication; and their primacy seems to be assured well into the next century.

Compared with the cinema, the television screen appears a very feeble thing. Anyone who has seen *Gone With the Wind* at the cinema, and then broken in halves on the television, will understand what I mean. For sheer overwhelming impact, there is no comparison. But television more than compensates by its ubiquity. In many households, it is on nearly the whole time. Its effect is magnified by repetition. In the cinema, except for a few adverts, we are shown a set programme that we have chosen in advance. At home, we sit back for the most part and watch what is beamed at us. Because of its special status, television is deemed peculiarly suited to State regulation.

There are three main arguments to justify this. First, there is the supposed need to maintain the "quality" of programmes. Unless something better is rammed down our throats, we are told, we shall give ourselves up wholly to trivia. This is a patronising argument, and a false one. In a free broadcasting market, people are shown what they want to watch. What they want to watch is determined by certain pre-existing standards of taste. Too much has been said about the supposed badness of American taste. I look instead at Australia, where broadcasting has been deregulated for some years. From there we have had *Anzacs* — to my mind the most powerful and authentic series ever screened about the Great War. It easily beat historically inaccurate and melodramatic *The Monocled Mutineer* from the BBC Drama Department. From there we have *Neighbours* — for me quite simply the best soap on television. It shows attractive people in attractive situations. Its scripts are of a generally high standard. I recall one very funny episode in which Mrs Mangel was trying to ensnare someone into matrimony. In its tension and denouement, it easily rivalled anything even in Sheridan. As for the quality of our own television, the BBC has spent far more of the Licence-payers' money on Terry Wogan and Bruce Forsyth than it ever has on Shakespeare.[25]

Second, there is the argument over political balance. Television programmes are not to give too one-sided a view about political matters. I need say nothing more about this than that this argument — and the controls imposed by the Broadcasting Acts and the BBC Charter — have enabled the suppression of unpopular or unwanted views. Whatever we think of unilateral nuclear disarmament — and it did not turn out to be necessary for avoiding war with the Soviets — I find it disgraceful that *The War Game* was kept off our screens for more than two decades by an essentially political censorship. If such a censorship were ever applied to the press, I have no doubt but there would be an explosion of outrage. Broadcasting may be special for the reasons given above. It is not that special.

Third, there is the argument over indecency. Now, here we come not only to the general case for control given above, but also to the protection of children. We can shut them out of the bookshops and cinemas and theatres. But television goes straight into the home. We can make the broadcasters show their more adult programmes after 9pm. But many children either sit up late every night or have their own televisions. There is a danger that they will be able to watch whatever is shown at whatever time. Parents can make their own rulings. But they are not always around to enforce them.

But this point touches on one of the central problems of a free society. There are two classes of persons among us. There are free adults and unfree children, and we must do what we can to maintain the distinction between them. There is no alternative to this. We could try abolishing the distinction altogether. We could lower the one class or raise the other. But this would not be advisable. Instead, we must do our best to find a balance between the need to maintain the freedom of adults and to protect the children. There is no completely obvious place where this balance can be found, and there is room here for legitimate disagreement. My own view is that, where television is concerned, we must devolve the question from the State to parents. We must let them decide what their children are to watch, and hope that they have the judgment to decide properly and the will to uphold their decisions. If they choose too unwisely, let them by all means be punished when the facts come to light. But, as with drinking and smoking, where similar problems arise, the first line of defence, on any Conservative view, must be the individual household.

I deplore the restrictive provisions of the Broadcasting Acts and the BBC Charter. But, since these were in place long before the first election of the Thatcher Government, and were only renewed by it, they fall outside my present enquiry. I note with approval the breaking of the duopoly with the establishment of Channel Four in 1982. I note with approval the projected breaking of the triopoly in the New Broadcasting Act. I fear the regulatory powers given to the Standards Council headed by Lord Rees-Mogg, but have as yet no idea how they will be used. In any event, the introduction of satellite broadcasting may effectively have abolished the old regulations. It will be hard for domestic broadcasters. But, when viewers can watch whatever they like, beamed into their satellite dishes from outside the British Government's jurisdiction, it may no longer matter what any particular Statute will say.

It is a different matter with video tapes. Unless recordings are to be made from satellite broadcasts, or smuggled in — and at least the latter is illegal — these must be bought or hired in this country. They are amenable to regulation. In one respect, they are more powerful still than television. Not only do they flow from the screen, but they can also be stopped and rerun. They can be frozen. They can be run forwards or backwards in slow motion. Before long, it will be possible to enlarge specified areas of the screen. They are ideally suited to the closest attention — and not just by the critics. A film or a television programme may contain one graphic scene of violence or coercive sex, but may be balanced by the rest of the narrative of which it forms a necessary part. But a video tape can be run through and watched again and again for that one scene alone.

What About "Snuff Videos"?

At this point, I feel, a brief digression is in order. One of the more lurid claims made in favour of control is that there exists an active market in "snuff" videos — films in which real suffering, including death, is inflicted. I admit that such films may exist. They are technically possible. There is an audience that would delight in watching them. But common sense alone is enough to tell me that they are incredibly rare. With a few exceptions that can probably be counted on the fingers of one hand, the only snuff that any British citizen has ever seen is the kind that is bought in jars at 72, Charing Cross Road. Consider:

First, it is illegal to make, or be in any way involved in the distribution of, a snuff film. The crimes involved are only incidentally covered by the Obscene Publications Act. They are covered by the law of murder or the Offences against the Person Act 1861. The maximum penalty is not a fine or a fairly short spell in prison, or both, but imprisonment for life. Bearing in mind this risk, I doubt if any such film could be brought to market at any but the most prohibitive price. That market must be limited not only to those who find pleasure in watching unsimulated torments, but to those who can also afford to watch them.

Second, even if a competent crew could be persuaded to take part in the filming, unsimulated torments must be of a generally lower quality than simulated ones. At least since the 1920s, art has been more convincing than life. Imagine that you are making a snuff film. A safe location has been found — in itself, no easy matter. A child has been bought and is now suffering all the tortures of the damned. Half way through the shoot, it dies. Or, all goes as planned until the culminating moment of death. Then the camera is knocked over, or the lighting is wrong, or something else happens to spoil the shot. In an ordinary studio, the special effect can be recreated, and the scene can be refilmed. In this hypothetical studio, you must either find another victim and start over again, or be content with a botched effort. It really is both better and cheaper to hire a special effects crew.

This has been found to be the invariable practice of film makers — whatever publicity claims they may rely on. Not one snuff film has ever fallen into Police hands, in this country or in the United States. All that have been seized have turned out on investigation to be fakes. I quote one British distributor:

> Nobody had heard of *Cannibal Holocaust* till I wrote to Mary Whitehouse complaining about it. Once she got in on the act I couldn't run off enough copies to meet demand.[26]

Then there was *Snuff*, perhaps the most successful fraud ever perpetrated in this market. Many of the tabloid newspapers still refer to it as though the truth were unknown. It was released in America in 1976 by one Alan Shackleton. He had bought a low-budget zombie horror film called *Slaughter* from a Latin American company. He spent about $5,000 on a surprise ending, and packaged it as

> the film that could only have been made in South America — WHERE LIFE IS CHEAP! ... He not only hired protesters to picket cinemas, but paid actors to pose as FBI agents and interrogate members of the audience, demanding the identity of the cast and crew, whose names were purposely kept a secret.[27]

It may have been this film that Clodagh Corcoran had in mind when she claimed to have seen a snuff movie:

> I want to describe it to you in detail. But I can not, because my mind won't let me. What I can tell you is that on that night I watched a man participate in the act of sex with a woman, and during that act he plunged a large hunting knife into her stomach and cut her open from vagina to breast. He then withdrew the

> knife and stuck it into her left hand, removing the first three joints from her fingers, which fell from the bed. The woman's eyes remained open, she looked at the knife and said "Oh God, not me". It took her approximately three minutes to die. The camera was left running. The film was then canned and put on the commercial market as entertainment.[28]

There are certain problems with this description. Is Ms Rogers describing a film that she saw in the cinema? — in which case the last sentence is redundant. Or is she describing what she saw during the alleged making of this film? — in which case she should have gone to the Police long before she sat down in front of her word processor. In any event, she has never to my knowledge shown her copy of the film: at a press conference to discuss her book, she claimed that her video player was broken.

Most recently, there were the "Shropshire 15" — the consenting adults sentenced by Judge Rant QC for the hideous — though hitherto unknown — crime of beating each other up in the privacy of their own homes.[29] They had filmed some of their more adventurous exploits on video. The tapes were seized by the Police, who were at first convinced that they had stumbled on a snuff operation. They were almost sorry when the truth came out. Detective Superintendent Michael Hames, head of Scotland Yard's Obscene Publications Squad, had to content himself with the observation that

> sadistic pornography was becoming more bizarre, more violent and more widespread. He issued a warning that it would eventually lead to a death being filmed.[30]

I repeat — I admit that snuff films may have been made, and that one or two of them may have been transferred from celluloid to video tape. But they must be unbelievably rare — and beyond the purse of anyone but some very decadent mafia boss. They are certainly so rare that, for all the feverish searches of the past generation, not a single real example has ever been discovered by the authorities. If one ever does come to light, it certainly ought to be suppressed. Its makers and distributors ought to suffer the sternest consequences prescribed by law. All copies ought to be destroyed. That is my opinion. That is the opinion of almost everyone. There is a much larger — though, comparative to the whole, a limited — category of films that also ought, on the Williams criteria, to be prohibited. There is a still larger category that ought to be restricted in their distribution to adults only. The Williams Report is annoyingly silent where video tapes are concerned. But its prescriptions are easily applied to the new market. If they were so applied, there might be a few dozen films made unavailable, and several hundred more to be had only from those specialist shops dealing in other erotica. But, in its legislation here, the Thatcher Government chose to ignore the Williams Report both in letter and in spirit.

The Video Recordings Act

The current Obscene Publications Act, though dating from 1959, is sufficiently wide in its drafting to include video tapes. After a few months of legal ambiguity, it was held by the Court of Appeal that they were subject to prosecution in the same way as any other item that might be considered obscene. The one difference concerned what had to be taken into account by the Jury. Certain books and what was shown at the cinema might safely be presumed to be available for the most part only to adults. But videos were designed for home viewing; and it was pertinent to decide whether children might have access to them.[31] In 1983, a Jury convicted the distributors of *Nightmares in a Damaged Brain*. But the video revolution led to a fierce moral panic. There might already be a law in place. That law might already have been pronounced unnecessarily strict. But a supposed plague of video "nasties" was cried up in the press, and the usual sorts of politician began to demand a "tough new law".

At first, there was legal chaos. The Police began to raid video hire shops and confiscate as obscene films that had been granted certificates by the BBFC and had been freely shown in the cinemas. Then, pending legislation, the Attorney General issued a list of 60 films that would entail a prosecution if found for hire or sale. This quietened the Police and was greeted with relief by the trade. Those films listed nearly vanished from circulation. Almost no one pointed out the similarities of this list in principle with the famous *Index of Forbidden Literature* by which the Roman Catholic Church tried until the middle of the nineteenth century to keep its flock from knowing about the work of Copernicus, Bacon and Galileo. Almost no one pointed out the novelty of this list in English law. Some of the films condemned by it had been acquitted by Juries. Others were considered to be masterpieces.

So that these 60 films could be legally suppressed, the Video Recordings Act was passed in 1984. If the Attorney General's list was a legal novelty, this Act revived in full the principles of the Licensing Act that expired in 1695. Before then, all books, with a few exceptions, had to be submitted to a central agency for approval. Some were prohibited in full. Many were approved only after deletions or other alterations. It was an offence to publish without the required licence. After the Act expired, the doctrine of prior restraint was to vanish from these islands for the next 289 years. Then it reappeared.

The BBFC was finally recognised in law, the "C" sanitised from Censors to Classification. Its staff was increased from 12 to 50. It moved to larger premises. It acquired two Vice Presidents, both appointed by the Home Secretary. It now has the duty and the power to examine every item released on video, excepting a few of a scientific or educational nature, and to see whether it is fit for "viewing in the home", and if it is, for which age groups it is fit. Of those not judged fit it is to insist on the necessary alterations. Those judged altogether unfit are to be refused a licence. Anyone involved in the distribution of an unlicensed tape is liable to a fine not exceeding £20,000.

That the contents of any video tape have previously been on general release in the cinemas, or shown on television, does not at all imply that a licence will be granted, or that cuts will not be required. Nor does it matter whether they are for hire or sale only in sex shops. The test, it must be emphasised, is not obscenity, nor any of the regulations that govern broadcasting. The test is suitability for "viewing in the home". It may be, as Geoffrey Robertson argues,[32] that this imposes a less severe censorship than was at the time feared or promised. The BBFC is required, on granting a licence, to indicate for which age group a film is suitable.

Parliament might, had it wished, have insisted that all videos be suitable for family viewing. It did not. Instead, it created a system of age classification. Therefore, it left room for parental responsibility. It is left to parents to keep their children away from material classified as suitable for adults only. On this view, no statutory justification exists for demanding cuts from adult material save in those cases where a prosecution might be expected under the Obscene Publications Act or some other law.

This view, however, is not taken by the BBFC itself. Its *Guidelines on Violence* state that

> where horror material is concerned, we have exercised a restraining hand on the explicitness of gory imagery because of our awareness that children and younger teenagers may be particularly tempted to watch such material.[33]

Accordingly, it has become an absurdly repressive body where the portrayal of violence is concerned. Its victims have not been confined to the cheaper and nastier end of the market. It demanded four minutes of cuts from Hitchcock's *Frenzy* — a film that had twice been already shown unexpurgated on television. It refused a licence altogether to *Death Wish* — a film that has been shown several times on television. Five seconds were cut from the Douglas Fairbanks version of *The Thief of Baghdad.* 24 seconds were cut from something called *Nikki, Wild Dog of the North*.

Not surprisingly, it is also absurdly repressive where the portrayal of sex is concerned. In 1989, a short film about Saint Theresa of Avila was submitted for classification. *Visions of Ectasy* had no dialogue, but what it showed was somewhat controversial. In the first section, a heavily made-up Theresa stabs herself with a large nail and smears the blood over her body and her habit, which becomes disarranged. The accompanying note explains that this represents her religious longings. Next, a scantily-dressed woman appears and embraces Theresa. This, according to the note, is her unconscious self. After some fondling of each other, the two come across the body of the crucified Christ. He is not wearing many clothes. The ladies turn their attention to him.

This was refused a licence on account of its alleged blasphemy. It was refused on the advice of the BBFC's lawyers. There was no trial. Instead, the censors decided, following all their customs, old and new, to play safe. As we all ought by now to realise, the modern law of blasphemy has no existence except as an adjunct to the law of obscenity. The maker of the film might have safely made an epic of simple blasphemy. He might have reviled God as a Lord High Bogeyman, and Christ as a Pauline fake. He might have raised all those embarrassing questions about the chronology of Abraham's father. He might, in short, have repeated all the arguments that have contributed to the decline of Christianity since 1700, and suffered no legal consequence whatever. But he mixed his blasphemy with sex, and had his film prohibited. Even the Obscene Publications Act would not have touched him. But there is another law in reserve for such cases — a law that dare not speak its real purpose, which is to strike at the unwary pornographer.

The Video Recordings Act is bad in itself. It is an attack on freedom of speech and on our more general freedom to do as we please without harming others. But there are attendant circumstances that make it worse than that. A film may be granted a licence by the BBFC. Its distributors may advertise that fact on the case and in the tape's protocollein. It can still be seized by the Police and condemned as obscene by the courts. The distributors are placed not in double, nor even in treble, jeopardy by the law. They are placed in quadruple jeopardy. If they release a film on video tape, they must apply for a licence. If they obtain a licence, they must still avoid a prosecution for obscenity. If they avoid that, they may, where relevant, be liable to a prosecution for blasphemy. If they avoid that, but the video tapes are imported, already recorded, they must avoid having the tapes seized as obscene or indecent articles. I am confident that no other country in the civilised world allows its laws to bear so heavily yet so vaguely.

Added to these uncertain costs of bringing video tapes to market is the more certain cost of having them licenced. The BBFC is financed not by the taxpayer, but by the fees charged on every film examined. The current charge is calculated at just under £5 per minute of running time. The total cost has kept many silent and foreign and other minority interest films from being released on video.

CONCLUSION

I repeat — this campaign will not be fast or easy. So far as its immediate purpose is to change thinking within the Conservative party, it may not even be successful. The final purpose, which is to bring about a reform of the law, will be achieved — though, again, not necessarily by us. For the completion of the Single European Market in 1993 may force on our authorities some faint glimmer of common sense. Then again, it may not. According to the 1992 Manifesto,

> British domestic controls on pornography will remain in place even after the completion of the single European market.[34]

But this is perhaps more promise than intention. The Ministers will struggle. They will complain in Brussels, whining about "subsidiarity". They will listen attentively to Mrs Mary Whitehouse. But they will finally have to bring our own censorship laws into line with those of our more liberal Community partners. I contemplate this with a keen sense of humiliation. Once more, we shall have been made to do the right thing by the wrong body. But, considering how badly the Thatcher and Major Governments have handled this matter, I must look forward to foreign pressure as a great, if ambiguous, benefit.

In the meantime, however, it is worth campaigning — to try to change thinking within the Conservative Party; and to try to ensure that such liberalisation as may eventually be dictated from Brussels either will not be necessary, or will only complete the victory of an essentially domestic campaign.

NOTES

1. See, for example, John Major:

   "At the heart of our philosophy is a determination to reinstate the individual to his or her rightful place in society. To offer him new incentives and opportunities to use his initiative. To deploy his talents. To demand something of him. To enable him to achieve something for himself and his family. And to take control of his own life ...

   [The role of government] is to take the steps which will enable people to help themselves. Left to their own devices, people will create a spontaneous, well-ordered society ...

   Our appeal is unashamedly populist. Quite simply, it is that people know best. That they should choose for themselves, and not have the choices made for them by politicians, self-styled experts, or, for want of a better word, the establishment" From a speech given to the Radical Society in late 1989 — quoted, *The Sunday Times*, 2nd December, 1990.

2. *The Best Future for Britain: The Conservative Manifesto*, 1992, Conservative Central Office, London, 1992, p. 25.

3. Frederick Schauer, *Free Speech: A Philosophical Enquiry*, Cambridge University Press, 1982, p. 181.

4. 'Address to the Order of Christian Unity', in *New Humanism*, Autumn 1984, quoted, W. Thompson and J. Annetts, *Soft-Core: A Content Analysis of Legally Available Pornography in Britain 1968-90 and the Implications of Aggression Research*, Published at Reading University, September 1990, p. 32.

5. For my readers' edification, I hereby supply this omission:

   Paedicabo ego uos et irrumabo
   Aureli pathice et cinaede Furi
   qui me ex uersiculis meis putastis
   quod sunt molliculi parum pudicum.
   Nam castum esse decet pium poetam
   ipsum uersiculos nihil necesse est
   qui tum denique habent salem ac leporem
   si sunt molliculi ac parum pudici
   et quod pruriat incitare possunt
   non dico pueris sed his pilosis
   qui duros nequeunt mouere lumbos.
   Vos qui milia multa basiorum
   legistis male me marem putastis?
   Paedicabo ego uos et irrumabo
   Catullus, Poem XVI.

   I'll fuck your arses and give you my cock to suck,
   Passive-positioned Aurelius and rent-boy Furius,
   who think me indecent because of my decadent verses.
   For while the poet himself ought to be pure,
   his works are another matter — which works,
   undeniably elegant and charming
   (even if decadent and indecent)
   and able to set the lustful going,
   I address not to boys but to hairy brutes
   who just aren't up to pelvic thrusts.
   Do you, who read about my "many thousand kisses",
   think me a bad man?
   I'll fuck your arses and give you my cock to suck.

6. On this point see John Boswell, *Christianity, Social Tolerance and Homosexuality: Gay People in Western Europe from the Beginning of the Christian Era to the Fourteenth Century*, University of Chicago Press, London, 1980. In general, I cannot recommend Boswell too highly. He is, in my view, the greatest living historian who writes in English. No one who reads him will ever again have cause to deride gay history as turgid propaganda decked out as scholarship.

7. Empire and Sexuality: The British Experience, Manchester University Press, 1990. Take, for example, this extract from the 137 page verse autobiography of Kenneth Searight, a "dashing young officer" and defender of the Raj:

   And now the scene shifted and I passed
   From sensuous Bengal to fierce Peshawar
   An Asiatic stronghold where each flower
   Of boyhood planted in its restless soil
   is — *ipso facto* — ready to despoil
   (or be despoiled by) someone else; the yarn
   Indeed so has it that the young Pathan
   Thinks it peculiar if you would pass
   Him by without some reference to his arse.
   Each boy of certain age will let on hire
   His charms to indiscriminate desire,
   To wholesale Buggery and perverse letches ...
   To get a boy was easier than to pick
   The flowers by the wayside; for as quick
   As one went out another one came in ...
   Scarce passed a night but I in rapturous joy
   Indulged in mutual sodomy, the boy
   Fierce-eyed, entrancing ...
   And when his luscious bottom-hole would brim
   Full of my impoured essenses, we'd change
   The role of firing point (but not the range)
   Until his catapult, e'er strongly charged,
   The target with a hail of sperm enlarged.
   Then half an hour ... and back again I'd come
   To plunge my weapon in his drenching bum. (p. 131)

   Take again:

   "Some of the early London Missionary Society missionaries in Tahiti slept with Tahitian women. Some defected from the mission for Tahitian or Tongan women, among them B. Broomhall, T. Lewis and G. Vason, the latter taking several wives. Sex was pressed upon the missionaries. Mostly they resisted, but their children often did not, finding the pervasive sensuousness of the South Seas most enjoyable. Missionaries soon aimed to send their children back to Britain for their education, in order to reduce their 'premature' exposure to sex." (Ibid, p. 103)

8. Prudery, of course, did not wholly conquer the Empire.

   "Perhaps the most ambivalent and controversial eccentric in the African episcopate was Canon W.G. Lucas, first Bishop of Masasi, 1926-44, who was responsible for pioneering (several years earlier) a Christian jando or initiation ceremony for boys in their early teens. It was a seriously thought-out attempt to formulate a syncretistic rite, but the combination of circumcision and confirmation was rejected by most other missionaries as 'little better than an orgy', although, as Ranger points out, the local people liked it. Lucas (without a hint of irony) claimed that 'a wonderful opportunity is given in this way to the Christian priest of getting into real personal touch with his boys'. He put 700 boys through this rewarding ritual, but had no plans to extend it to girls. Clitoridectomy posed problems too daunting even for a High Anglican Bishop." (Ibid, pp. 105-6)

9. Quoted, *Daily Telegraph*, 21st December, 1990. See also Thompson and Annetts, *op. cit. supra*.

10. Therefore, I quote some of it:

    "Having settled on Capri, Tiberius had a special room fitted out for his secret debaucheries, in which selected groups of girls and well-hung youths practised monstrous forms of intercourse. These forms he called 'spintrian postures'. In one of them, the young people would form a triplet, and so give themselves up to mutual defilements in his presence, so reviving by the sight of this his waning passions ...

    "His turpitude went still further, to such disgusitng lengths that they can scarcely be described. He had little children, barely weaned from their mothers, taught to play between his legs as he swam in his bath. He called them his little fishes on account of how they would bite and lick him, and to fellate him as though they were still taking suck from their mothers. To such pleasures had age and inclination disposed him."

11. Even so, it is well-known how works far more valuable than anything by Marx have been attacked for some alleged immoral tendency. Thus, W. H. Lecky on a charge made against Linnaeus: "Some good people in Sweden desired, it is said, to have his system of botany suppressed, because it was based upon the discovery of the sexes of the plants, and was therefore calculated to inflame the minds of youth" (*History of the Rise and Influence of the Spirit of Rationalism in Europe*, 1865, Watts & Co., London, 1946, Part II, p. 16, note 8).

12. Luke, 14:23.

13. "Sadistic Russian Serial Killer Faces Death Sentence", *The Daily Telegraph*, October 14th, 1992.
14. In 1974, it was read as a "Book at Bedtime" on BBC Radio 4.
15. Geoffrey Robertson lists the following: *The New Lady's Tickler* (1860), *Lady Bumtickler's Revels* (1872), *Colonel Spanker's Experimental Lecture* (1879), *The Story of a Dildoe* (1880), *My Secret Life* (1885), *Raped on the Railway: A True Story of a Lady who was First Ravished and Then Flagellated on the Scotch Express* (1894) — see his *Freedom, the Individual and the Law*, Penguin Books, London, 1989, p. 181.
16. This is not strictly the case. In 1980, the indefatigable Mrs Whitehouse found a loophole in the Act that allowed her to begin a prosecution against the director of Howard Brenton's tiresome play *The Romans in Britain* under the Sexual Offences Act 1956, on the grounds that he had allegedly procured an act of "gross indecency between males".
17. See Geoffrey Robertson, senior Defence counsel:

    "The Prosecutrix led prayer meetings in the corridors; the Bible replaced Archbold as the basic forensic reference; the jury (all of whom had taken the Christian oath) were supplied with Test-match scores by the judge — who later wrote a book congratulating himself, the deity and Mrs Whitehouse on the result. He confessed an "extraordinarily unreal sensation" in writing and delivering his summing-up, which he attributed to his "being guided by some superhuman inspiration". (ibid, p. 211)
18. The Williams Report was published in 1979 by HMSO as Cmnd. 7772. Its membership was: Bernard Williams, B. Hooberman, John Leonard, Richard Matthews, David Robinson, Shiela Rothwell, A. W. B. Simpson, Anthony Storr, M. J. Taylor, John Tinsley, Polly Toynbee, J. G. Weightman, V. A. White. I am currently quoting from para 1.1.
19. See, for example, the evidence submitted by one Dr Court, reviewed at para 6.31: "First, in relation to the availability of pornography in England and Wales, it needs to be said that no information exists to provide any kind of index. In the papers submitted to us, Dr Court did not attempt to provide such information. He does however treat Britain as a "liberal" country in which the detrimental effects of pornography are to be seen, and he identifies two times at which, he suggests, pornography became increasingly available—first with a change in the law introduced by the Obscene Publications Act of 1964, and subsequently following the impetus of the American Commission Report on Pornography in 1970. Dr Court offers nothing to substantiate his statement and we find his explanation of the significance of these two dates less than convincing. As we have explained earlier, the Obscene Publications Act 1964 was a minor measure designed to strengthen the existing law by plugging two loophols which had been found in the Act of five years previously. Dr Court cites as the only authority for his suggestion that pornography became more available after the enactment of the 1964 Act an article by Mr Ronald Butt on 5 February 1976 which attacked what Mr Butt then found to be the ineffectiveness of the law in controlling pornography. Mr Butt argued that the intention of the 1959 and 1964 Acts had been systematically destroyed over the years by the exploitation of their letter, but nothing in his article supports the idea that the 1964 Act opened the way to the greater availability of pornography. Nor do we know of any authority for the suggestion that pornography became more freely available here after 1970 as a result of the influence of the Report of the US Commission. It seems to us that the choice of the years 1964 and 1970 as crucial in the increading availability of pornography is purely arbitrary."
20. Ibid, para 9.36.
21. Ibid, para 10.6. I should prefer this actually to specify "non-consenting physical harm".
22. *The Daily Telegraph*, 14th November 1989. This restraint was objected to by the British Government — though not, I must confess, on the grounds that it was an unwarranted interference with our rights; but only on the grounds that such decisions are made more appropriately by the national governments than by the central institutions of the Community.
23. *The Daily Telegraph*, 29th September 1990.
24. Conegate v Commissioners of Customs and Excise (No 121/85) Queen's Bench (1987) 254.
25. To do him credit, Wogan has been known to make an effort. Some time in 1988, he remarked on how well Sylvester Stallone was doing out of his films about the French poet Rimbaud. Unfortunately, the joke fell flat. It raised not a titter among the carefully selected studio audience.
26. Quoted from a briefing paper shown me by David Botsford, whose company, Outlaw Films, is considering a series of documentaries on the pornography trade. I record my thanks.
27. Ibid.
28. Clodagh Corcoran, *Pornography: The New Terrorism*, Dublin, 1989 — quoted Thompson and Annetts, op. cit., p. 181.
29. For further information on this bizarre case, see Anthony Furlong, *Sado-Masochism and the Law: Consent versus Paternalism*, Legal Notes No. 12, Libertarian Alliance, 1991.
30. *The Times*, 20th December, 1990. They were perhaps very sorry. It has long been claimed by the Police that "participants in many of the ugly scenes have been drugged in order to withstand the brutality that is inflicted on them. ... They believe that, after filming, many of the players are secretly treated by doctors who may be part of the small group of 'porn entrepreneurs' providing the material for the black market." ("Hard-Core Porn Haul to be Shown to MPs", *The Daily Telegraph*, 16th September, 1990.) Note the mood of doubt or hypothesis in this claim. There is no proof that any of this happens, but the Police are inclined to believe that it does: and so they lobby for further laws — which they will then use, not against snuff makers, but against any club of consenting adults with a taste for sado-masochism and the ability to use a video camera.
31. Attorney-General's Reference, No 5 of 1980 [1980], *All England Reports*, 816.
32. Op. cit., p. 225.
33. Ibid.
34. *Manifesto*, op, cit,. p. 25.

I wish to record my thanks to David Webb, Director of NCROPA, the National Campaign for the Reform of the Obscene Publications Acts (15 Sloane Court West, London SW3 4TD), for his assistance in the CASC campaign. David has been running his campaign far longer than any of us; and, in any future account of the rearguard actions against the puritan onslaught since the 1970s, David's name will be prominently mentioned.