

COMMENT

AUSTRALIAN CENSORSHIP 1964

At the time of writing the article, "Obscenity in Literature; Crime or Free Speech", published in the *Sydney Law Review* last year,¹ an attitude was prevalent, and indeed was being fostered by the Minister for Customs himself, that there had been a pronounced liberalisation of official views towards the censorship of literary works in Australia. Even before the article appeared in print it became known that a major review of the list of prohibited literary works was being undertaken by the Literature Censorship Board; it was predicted in Canberra that the Board would recommend a wholesale reduction of the list to hard core pornography. Early newspaper reports suggested that the Board did in fact recommend release of a large number of works including *Lady Chatterley's Lover*, *The Tropic of Cancer*, *Peyton Place*, *Lolita* and others. Unfortunately the actual recommendations of the Board are shrouded in secrecy² but the outcome, after Ministerial and perhaps Cabinet consideration, was the reduction of the list by a mere 33 titles, of which the majority were foreign language works of small literary value.³ If, as was pointed out at the time, the Minister's reputation as a liberally minded administrator of censorship was at stake, he certainly did little to enhance it. Release of John O'Hara's *Butterfield 8*, a competent but not outstanding novel (indistinguishable as to any "obscene" content from the freely available *From The Terrace*), was more than offset by the addition to the list of James Baldwin's *Another Country*, a book which has been praised as an outstanding literary work in all English speaking countries.

A comment that "our existing legal framework of censorship law is capable of being exploited in a most illiberal fashion"⁴ has unfortunately been proved correct, and the familiar controversy between those who value the freedom to read what they wish and those who would limit such freedom to the reading of books (and for that matter the seeing of films and works of art) which officially or self-appointed censors find morally unobjectionable, has re-appeared in the correspondence columns of the newspapers. The official approach is apparently well indicated by the remarks of Senator Henty, the Minister for Customs, during a television interview on 10th August, 1963. It was his opinion that "normal healthy Australians would not be interested in the works of D. H. Lawrence and Henry Miller anyway". His ideas as to the literary interests and sensibilities of women were made obvious by the comment that he had released James Jones' *The Thin Red Line* only because it would be

¹ Harry Whitmore, "Obscenity in Literature: Crime or Free Speech" (1963) 4 *Sydney L.R.* 179. This article contains a survey of the development of censorship law in Australia, the United States and the United Kingdom, and an account of modern State and Federal censorship law in Australia.

² This, in itself, is one very unsatisfactory aspect of the Federal censorship system.

³ *Commonwealth Gazette*, 1 Aug. 1963.

⁴ *Supra* n. 1 at 180.

read mainly by men!⁵ Another Minister's view,⁶ that he should be free to watch the non-cultural television programmes he likes without interference by some controlling body, is not apparently shared by his colleagues when the issue is freedom to read books of cultural value. It is again unfortunate that a central point of the whole controversy centres on such words as "cultural", "literati", "intellectual", and so on. Those who insist on the freedom to read are assailed by Ministers, Clergymen (with some notable exceptions), Aldermen and Councillors, and miscellaneous Reasonable Men, as being "intellectuals" who are in a small minority and who are to be contrasted with "normal healthy Australians".

The falsity of this line of argument scarcely needs to be proved—it is obvious from the indignant letters to the editors of our daily papers from persons who would certainly lay no claims to being "intellectual" except perhaps in the sense that they have learned to think for themselves; it is obvious from the discussions between ordinary people prompted by the latest exercise of stupidity in censorship; it is obvious from the wide reading public reached in other countries by books appearing on the Australian prohibited list; lastly, it is obvious from even a cursory examination of the banned books.

The Books

It is clearly impossible to discuss the full list of 188 books prohibited from importation into Australia. Apart from limitations of space, there is the insuperable difficulty arising from the non-availability of most of the titles in Australia. All that one can do is examine some of the well-known books which are freely available overseas and have been reviewed.

The prize for the greatest blunder by the Commonwealth authorities must surely go for the prohibiting of James Baldwin's *Another Country*. So far as literary merit is concerned, the English *Sunday Times* critic was of the opinion that it was "an astounding and important novel". The *Manchester Guardian* considered that few writers "had driven their words with such passion or signed them with such a distinctive writing personality".⁷ The *Sydney Morning Herald* critic, H. G. Kippax, found the story to be "serious, wounding and stringently moral". Lawrence Collinson, in *Overland*, describes the major themes running through *Another Country* as being: (a) the emotions and problems of people absorbed in heterosexual relationships (a common theme of unbanned novels); (b) the emotions and problems of people absorbed in homosexual relationships (such subjects were until recently taboo, but now books with such themes are usually admitted); (c) the obsession of "black" and "white" Americans with the colour of their skin (surely a subject of more than passing interest in Australia). Mr. Collinson assures us that there is nothing in the language or description that has not its equivalent in many unbanned novels. Why, then, was the book prohibited? The probability is that only Senator Henty can answer that question. One thing is certain, however: a very large number of Australians would like to read such a book at this time.

There are diverse opinions as to the literary merits of *Lady Chatterley's Lover*. At the trial of *Penguin Books Ltd.* following their publication of the unexpurgated version in England, the most eminent writers and critics were prepared to testify both as to the literary merits and moral aims of Lawrence's work. Others, although they objected to the banning of the novel, did not hold it in high esteem from a literary standpoint. Senator Henty has now taken full

⁵ Most women who have read the book seem to have found it a "powerful" war novel but much less provocative from a sexual point of view than *From Here to Eternity*. This seems to indicate that boring repetition of "the word" has little effect on feminine sensibilities.

⁶ Senator Gorton, Speech in the Senate reported in *The Sydney Morning Herald*, 31 Oct. 1963.

⁷ See the comments of Max Harris, *Overland*, July-Sept. 1963 at 20.

responsibility for the continued listing of this book (despite two recommendations by the Literature Censorship Board that it be released—one made before the trial in England) and he excuses himself by saying that all difficulties are solved by the fact that the book will be released to intellectuals (who, you will remember, are those who have this obsession with “dirty” books) and to academics for serious study. An examination of book sales statistics would probably prove to Senator Henty that there are thousands of Australians, as there are thousands of Britons and Americans, who enjoy reading the works of D. H. Lawrence. It is generally accepted that the main reason for the ban is Lawrence’s use of Anglo-Saxon four letter words (it is not a sense of aversion or propriety that prevents my use of the words—merely a reluctance to have the Sydney University Law School prosecuted by the State authorities). The curious aspect of the whole affair is that the same words appear in many other books (some of which, like *The Thin Red Line*, have been banned in the past) in equally erotic settings. No doubt the Customs officers missed “the word” in John Master’s *To The Coral Strand* because they would have had to read the whole book to find it.

Even less defensible is the banning of *The Trial of Lady Chatterley*. This book is a well presented account of the trial edited by C. H. Rolph. It does not appear on the proscribed list because the Customs Department considered that it was of no literary merit⁸ and, therefore, need not be submitted to the Board. Any suggestion that the book was obscene or pornographic must surely be discounted when a recording of the same material is prefaced by an introduction by Lord Birkett, P.C. It is difficult to understand how a book containing literary criticism by persons of the eminence of E. M. Forster and Rebecca West can be classified as of no literary merit, and no doubt there are thousands of healthy Australians who would wish to read such a book. In addition, because it is an accurate report of an important trial, the book is of great interest to lawyers—it is difficult to know whether they could be classed as “intellectuals”! Although the use of words must again be a factor, one is left with the uncomfortable feeling that the prohibition was imposed because, to the average man, the book might give an impression that Senator Henty and his colleagues are being rather foolish and extremely narrow-minded.

The *Kama-Sutra of Vatsyayana* in various editions still appears on the list although it is now on sale in England and the United States. It is a book dealing with the art of sexual love and is thus in the same category as *The A.B.Z. of Love* by Inge and Sten Hegeler, which does not appear on the list because it is claimed to have no literary merit, but is nevertheless a banned import. In the opinion of the writer there can be no other word but “prurient” to describe those who find frank discussion of sexual love to be obscene or immoral. As Stable, J. put it: “It is not our fault that but for the love of men and women and the act of sex, the human race would have ceased to exist thousands of years ago.”⁹ Both works are selling extremely well overseas and again only the prurient could possibly imagine that the readers are buying in search of pornography. The appeal of such books indeed is likely to be to healthy Australians who have a desire to remain healthy and to build a good, happy and continuing sexual relationship with their partners in marriage. In the *Times Literary Supplement*¹⁰ the question was directly asked: Is the *Kama Sutra* pornography? The answer is given in the clearest possible terms:

This can best be answered by asking to whom it is that pornography

⁸ An amusing but rather frightening account of “My Affair with Lady Chatterley” is given by Gordon Hawkins in *The Bulletin*, 16 Nov. 1963. The eventual outcome was the release of the book to him by the Minister.

⁹ *R. v. Martin Secker & Warburg Ltd.* (1954) 2 All E.R. 683 at 687.

¹⁰ 26 April 1963.

can appeal. Surely it is only to those whose own love lives are unfulfilled and frustrated through ignorance and repression. The aim of the *Kama Sutra* is to remove ignorance and repression and teach the possible methods of fulfilment. Thus the publication of the book is itself a blow at the existence or possibility of pornography. The text with its spare abbreviated style, has not the remotest intention of arousing sexual desire. It accepts such desire as naturally present and explains how it may be best employed. Plans are afoot to publish the *A.B.Z. of Love* in Australia and one can only hope that the State authorities will be more aware of the social factors involved than is the Minister for Customs.

As one might expect from the Minister's remarks, Henry Miller's works figure prominently on the banned list. He is, of course, an author of considerable reputation in those countries where his works may be read. His *Tropic of Capricorn* has been on sale in the United States for two years and has sold in large numbers. *Tropic of Cancer* has recently been cleared of the charge of obscenity by the United States Supreme Court¹¹ and will now be distributed generally. Both books are available in England. Once again it is the preoccupation with and frankness in language concerning sexual love that raises the censor's ire in Australia. *Peyton Place*, by Grace Metalious, remains on the list; so, too, do Nabokov's *Lolita*, Brendan Behan's *Borstal Boy* and Vance Bourjaily's *The Confessions of a Spent Youth*. None of these may be great novels, but there has been no suggestion that the large sales overseas have been primarily due to obscene or pornographic content. Ian Fleming's *The Spy Who Loved Me* is another of the non-listed prohibited books. No one would claim that this is anything but an ordinary Fleming, and the problem is to see where it differs from its unbanned companion volumes. Simone de Beauvoir, a holder of the *Prix Goncourt*, appears on the list with her book, *The Marquis de Sade*. The book has been well reviewed overseas and the main warrant for its listing appears to be the title. As a critic puts it: "To ban this mild and reasonable essay simply because it is about de Sade is to prohibit not only the man himself but all discussion of his case."¹²

To the ordinary man who reads fairly widely there are two rather mysterious aspects to the listed and unlisted banned books. Firstly, if *The A.B.Z. of Love* and Ian Fleming's works do not even merit consideration by the Literature Board of Review, why are titles such as *Road Floozie*, by Darcy Clinto, and *Twelve Chinks and a Woman*, by James Hadley Chase, considered by the Board and included in the list? Secondly, how do the censors, including the Minister, distinguish between the various modern books which deal with the realities of sex in its multifarious forms? If emphasis on sex and use of language is the test it seems quite impossible to differentiate between titles listed and others that are freely available. To be consistent, all such books should be banned, and we could go back to reading Victorian novels (with some exceptions!).

The Magazines

It is of considerably less importance that magazines are also prohibited by the Customs Department and its Ministers, and it is considerably more difficult to make a case for their free entry. No doubt the majority of magazines which are prohibited are either "girlie" or horror and violence magazines of little literary or artistic merit. But this is not always the case. For example, many issues of the literary magazine, *Evergreen Review*, have been proscribed primarily, it seems, because they included excerpts from prohibited books.

¹¹ *The Times*, 17 Dec. 1963.

¹² David Malouf, "Must We Burn De Sade", *Overland*, July-Sept. 1963 at 27.

The most well-known prohibition was applied to *Playboy* magazine and it is known that the Department has for long been in a quandary—the problem being whether to ban the magazine outright or merely to ban single issues in which the photographs display slightly more of the female torso than usual. As it happens, the shilly-shallying has had the desired effect, for the importers cannot stand the financial losses resulting from the Department's stop and go policy. The State authorities have assisted in New South Wales by various broad hints that booksellers might be prosecuted. So the covers of *Playboy* no longer decorate our news-stands. Most people will say this is no loss, but it is worth bearing in mind that they would have said the same of the pre-war *Esquire*. In the years between the wars this magazine published some of the finest short stories ever written. There are signs that *Playboy* is moving in the same direction and it will be a pity if Australians cannot read such short stories because some prudish clerk in the Department is offended by semi-nude photographs.

Commonwealth Censorship

(a) The Literature Censorship Boards

Of the two Boards, the one of real importance is the Literature Censorship Board itself. Appeals taken to the Appeal Board are so few and far between that its influence in the censorship field generally is negligible. The Customs (Literature Censorship) Regulations¹³ provide that the Minister or the Comptroller-General may refer any literature imported to the Board in order to determine whether such literature is, in the opinion of the Board, within the proscribed categories—"blasphemous, indecent or obscene". There is, then, an absolute discretion in the Minister or the Comptroller-General as to whether or not books should be so referred, and the official attitude at present appears to be that the obligation is to refer books of literary merit only, and further, that it is only books referred to the Board that should be gazetted for public information. The Department is, of course, the final arbiter as to what is, or is not, of literary merit. This fact at once destroys to a large extent any value which the Board might have. The whole structure takes the appearance of a giant confidence trick when a fairly well qualified board is by-passed to give clerks in the Department the final say as to whether a book has sufficient merit even to be considered by the Board. No information is available as to the criteria used to reach this decision but doubts must arise as to the reliability of such criteria when a book such as *The Trial of Lady Chatterley* is denied the accolade of literary merit.

The Board itself appears to be doing the best job it can in the circumstances. There is no doubt that its approach has altered with the changing times. As the social attitude to sex and sexual mores has become more liberal so, too, has the attitude of the Board. Its recommendations for the release of *Lady Chatterley* and many other books still on the list have, it is well known, been overruled by the Department and its Minister. Even so, it has fostered a somewhat more enlightened approach by customs officers to books imported by travellers for their personal reading. The main faults of the Board are probably not of its choosing. It is a fault that recommendations are not made public. Similarly the fact that publishers, importers, writers and so on are not allowed to put their views to the Board detracts from its value as a tribunal. But it is fairly certain that these faults could be remedied only by a much more open administration than is at present in power in Canberra.

When account is taken of the limitations on the Boards—the books which

¹³ Commonwealth Stat. Rules, Vol. II, 1769, as amended by Rule No. 50, 1960.

are not submitted, the recommendations which are not accepted, the apathy which must inevitably result—the reality is that they are being used as a front for puritanical political censorship devoid of any regard for social, cultural and literary values.

It could be strongly contended that if censorship is necessary it may be best undertaken by properly constituted and conducted administrative tribunals. The tribunals should contain, as they do at present, a high proportion of expert members; but since it is in the last resort a legal test which must be applied (however fictitious that test may be), there should be a legal member on each tribunal. Since it is also essential that the tribunals conduct their affairs in orderly fashion, admit expert evidence, allow legal or other representation to parties concerned and give reasoned decisions, it may be most convenient for the legal member to be chairman. Above all, it is essential that the decisions of the tribunals be final and not subject to overriding political control. It is probably no coincidence that a Federal election followed the latest rejection of the Censorship Board's recommendations.

In New Zealand this pattern has been partially followed by the Indecent Publications Act, 1963. A five member tribunal has been set up under the chairmanship of Sir Kenneth Gresson, a former President of the Court of Appeal.¹⁴ The familiar obsession with secrecy mars the system, however, for the decisions of the tribunal are not to be published.

(b) *The Department of Customs*

The Department's moral vigilantes operate at two levels. Firstly, the importers are required to submit fortnightly returns which are examined against an index of books already approved; no book may be offered for sale until so approved.¹⁵ New titles are examined and if the book is deemed objectionable it is either banned outright or if considered to be of literary merit, submitted to the Censorship Board. If the second course is taken there is a delay of several months before a decision is given; complaints of such delays are by now commonplace. Secondly, the Customs inspectors seize books either carried by or mailed to ordinary members of the public. Gordon Hawkins' account of his attempts to regain possession of *The Trial of Lady Chatterley* after seizure¹⁶ illustrates the procedure adopted in this type of case.

The stupidity of the procedure, and incidentally the effect on otherwise friendly nationals of other countries, is well illustrated by a recent personal experience. An American visitor to Australia ordered an American publication reviewed very favourably in the *New York Times* (a fairly reputable paper). In due course, instead of the book, he received a notice of seizure from the Department. He called to see me and asked what could be done. He wanted the book for personal reading and certainly did not intend to sell it. I attempted to assist him by telephoning the Sydney office of the Department. At first no one would talk to me at all, but persistence and sundry threats eventually brought the responsible officer to the telephone. He informed me that the book was prohibited under regulation 4A, but to save my friend the trouble and expense of legal action if he wished to challenge the ban the Department would consider written representations. I remarked that this was very good of them and asked whether, to permit our preparation of representation, we could have temporary possession of the book. This was out of the question. The American therefore threw up his hands in disgust. "How can I possibly prepare a case when I don't know what is in the book or what

¹⁴ *The Sydney Morning Herald*, 10 Jan. 1964.

¹⁵ *The Sydney Morning Herald*, 29 June 1963.

¹⁶ *Supra* n. 8.

the Department objects to?" A fair question to which, of course, there is no answer. An American can be pardoned for thinking that we have little regard for our civil rights in Australia.

The situation has now been reached where customs officers will spend time looking for "dirty" books and almost completely disregard dutiable articles. Presumably the answer the Department would give if questioned on the need for this persecution of individual travellers would be that there must be no loopholes in the system. The reality is that almost any book can be obtained by the determined reader. It is not unreasonable to suggest, therefore, that the Department confine its activities to importers and booksellers and stop this time and money wasting activity at the docks and airports.

Probably the most objectionable feature of the Department's activities is that the decision as to what you and I can read is reached, sometimes with and sometimes without advice from the Censorship Board, by some anonymous official or officials of the Department. Even where the decision is that of the Minister—he presumably acts on official advice. What are the qualifications of these officials? What are their backgrounds? What procedure do they adopt? Do they isolate selected passages to judge a book's obscene content? What effect do photographs and illustrations have on the decision? These are questions which the public are entitled to have answered. But they will never be answered while the present system continues.

State Censorship

Because of the activities of the Commonwealth censors there has been little important activity in the States. The deficiencies of a State system of censorship which depends on police prosecution before stipendiary magistrates are underlined by the *Sepik River Carving Case*¹⁷ in New South Wales. The case should never have been brought and the very least that should have been done to discourage repetition and to assuage the hurt to the person prosecuted would have been the award of costs against the police.

Informal Censorship

A great deal of recent controversy has been sparked by the removal from a Council Library of James Jones' *The Thin Red Line*. This is not an isolated occurrence but it received a deal of publicity because of the book's recent release by the Minister. The merits of the book are hardly an issue—it purported to be a realistic portrayal of an American infantry unit in action in the Pacific campaign. Arguments pro and con the book mainly centre on the use by Jones of the four letter word (I believe on some 80 odd occasions). The literary merit of the work must be a matter of opinion, but I am quite sure that no fighting soldier, whether he be Australian, American or British, would deny that a realistic reproduction of his everyday conversation, especially under stress, would have to include such words in considerable profusion. Any argument to the contrary is based on an idealised picture of men at war.

The more important issue is whether private citizens, local officials and church leaders are to be allowed to impose small areas of censorship by removal of books from libraries, boycotts on booksellers and such like stratagems, after the central government has released a book. Perhaps this is no great problem as yet but care must be taken that it does not become one. It may be necessary to develop the injunction, as the Americans have done, to protect civil rights in this area.

¹⁷ *The Sydney Morning Herald*, 25 June 1963.

Conclusion

Recent developments have done much to convince many people that censorship does more harm than it does good. No doubt psychiatrists could produce convincing arguments to this effect in relation to the suppression of books dealing with sexual love. Removal of all censorship must be the aim of those who hold such views. To those who favour some censorship it must be apparent that the Commonwealth system has broken down. It is clearly under political control decisions are irrational, there is too much unwholesome secrecy, and there is no effective judicial review. The reforms advocated in a previous article are now more desperately needed than ever. A basic civil right is being submerged in a formless quagmire of inefficiency and prejudice.

Postscript

Since this comment was written the subject of censorship has again become a political storm centre. This time the storm broke over the rather distasteful manoeuvres of State censorship authorities, particularly in New South Wales and Victoria, directed towards suppression of Mary McCarthy's novel "The Group"—an imported book passed by the Commonwealth authorities for distribution in Australia. In Victoria the effective censors were the police who succeeded in having the book withdrawn from circulation. The police obviously aspired to a similar role in New South Wales, but the Chief Secretary endeavoured to ride out the storm by referring the book to an informal "panel of people who have a literary knowledge in the Education Department". The book is not, however, on general sale.

In the meantime the New Zealand Indecent Publications Tribunal has found that James Baldwin's "Another Country" is not an indecent book within the meaning of s.10(A) of the Indecent Publications Act, 1963. The chairman, Sir Kenneth Gresson, announced that in the tribunal's opinion "the book is a serious, powerful and effective portrayal of life in the Negro community of New York". The tribunal refused to agree to a submission that the name of the book be not published, it refused to apply adolescent standards and it ruled that the "character of a book is not to be assessed from a consideration of particular passages or words divorced from their context". On the other hand, the tribunal declined to apply "community standards" and held that its findings must be subjective.

In the words of the Prime Minister, the Australian situation is now "confusing, dangerous and ludicrous", and the Minister for Customs has announced that he is examining proposals for uniform censorship. A meeting of Commonwealth and State authorities is to be held later this year. The Sydney press has already pointed out the obvious danger that uniform censorship will be at the most restrictive level; most arguments against uniform censorship are based on the assumption that this will be the inevitable outcome.

If we are to be forced into uniform censorship the plea must be made that it be embarked upon only after full consideration of overseas legislation and practice, and after thorough examination of such alternative techniques as trial by judge and jury, trial by administrative tribunal, trial by judges and so on. Surely Australia must not be permitted to isolate itself from the main streams of contemporary literature on a basis of ignorance and prejudice.

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