

HALDANE SOCIETY OF SOCIALIST LAWYERS

COMMENTS ON THE REPORT OF THE WILLIAMS COMMITTEE
ON OBSCENITY AND FILM CENSORSHIP

Cmdr 7772 November 1979

1. In general we support the proposals of the Committee, and in particular those proposals which would
 - a) Scrap the existing law and promulgate a comprehensive new statute and abandon the existing tests (paras. 2.29 and 9.21)
 - b) Stop prosecutions by private individuals
 - c) End non-criminal forfeiture proceedings (para 10.19).
2. However there are a number of proposals that we cannot support and which do not seem consistent with the general tenor of the Committee's Report.
3. Where an age restriction is felt to be necessary, this should be 16 rather than 18, as the committee has suggested. At 16 people have the right to marry (albeit with parental consent) and to engage in heterosexual activity. It is needlessly restrictive to restrict those aged 16 and 17 from access to restricted photographs and performances. Similarly, we see no need for film category (18).
4. We do not accept that a film should ever be classified for restricted exhibition to be shown only in specially designated cinemas. Whilst supporting the planning functions of local authorities, we agree with the Committee's views that local authority cinema licensing powers should not be available for censorship. To allow the same authorities to designate cinemas where restricted films could be shown is inconsistent with this general view, and a needless interference with liberty. Accordingly we see no need for the category (18A).
5. We do not believe that (with the exception referred to below) a film should ever be refused a certificate. If it contains material prohibited by law the correct way to deal with this is by means of a criminal prosecution with all the attendant safeguards. The Committee's other test for refusal (para 12.45) is not workable. The Film Examining Board cannot perform the balancing act suggested. The only restrictions on the showing of films should be by certification as category 11A or 16, by ex post facto prosecution, or where the conditions set out in paragraph 10.6 of the report apply. If a film incites to racial hatred it should be prosecuted under the race relations legislation (amended to that effect, if necessary).

6. We do not accept that live performances should be prohibited. We think it wrong to draw the kind of distinction that the committee does between films and shows, and do not believe that the latter should be restricted to any greater extent than the former.
7. On a procedural matter, we would suggest that no prosecution be undertaken except by the D.P.P. (or such independent prosecuting agencies as may be developed in the near future). To allow the police to conduct prosecutions on their own behalf gives too much public policy making power to Chief Officers of Police, and creates unacceptable degrees of enforcement discrepancies between different police force areas. Furthermore, prosecutions should commence by way of summons, rather than arrest, unless there is a serious risk of the defendant/suspect absconding. Consequently, no new powers of arrest should be given to the police.
8. We oppose the recommendation that the police be given powers of search for restricted material. Possession of such material is not ipso facto unlawful and such powers are unnecessary and undesirable.
9. Any offence should carry the right to trial by jury if
- i) it carries with it the availability of imprisonment as a punishment
- OR
- ii) it involves the court in any assessment of the material.
- Any offence serious enough to merit imprisonment should carry with it the right to trial by jury. Any assessment of the material should be regarded as a question of fact to be decided by the jury.
10. In all prosecutions, the burden of proof of each element of the offence should be on the prosecution, to prove beyond reasonable doubt. No incursion on this principle (as suggested in places by the committee) should find a place in the new legislative code.