

Notes of Lecture delivered by Ted Goodman, Solicitor and member of the National Campaign for the Reform of the Obscene Publications Act (NCROPA) & Libertarian Alliance one day conference "Censorship, Free Speech and Pornography" held on Saturday 9th August 1986

---

### Censorship : the Current Legal Position

There is statutory pre-publication censorship of video recordings in the United Kingdom by virtue of the Video Recordings Act 1984. The Home Secretary designates the censoring body. He has appointed the British Board of Film Classification. It adopts a stricter standard of video censorship than for films on the grounds that videos are watched at home. No concessions for consenting adults in the privacy of their own homes!

Video recordings classified as "18R" can only be sold in licensed sex-shops. They cannot be sold by mail order. Under the Local Government (Miscellaneous Provisions) Act 1982 local authorities can refuse to license any sex-shops. In order to avoid controversy most have adopted this soft option. Therefore in most of England and Wales there are no sex-shops and "18R" videos are unobtainable.

In practice this doesn't make any difference since James Ferman, Secretary of the British Board of Film Classification, has said that even in "18R" videos and films he will not allow close-up shots of human genitals (GLC Cinema Policy Conference 30th May 1984). This defeats the whole object of the "18R" category which was to provide an outlet for "soft porn".

No other country in the European Community has video censorship (as opposed to classification). Only the Republic of Ireland is considering introducing it. Britain's overt state censorship of video recordings was appropriately enacted in 1984. Not one Member of the House of Commons had the courage to vote against the measure (as opposed to merely criticising it). By contrast in the Upper Chamber, Lord Houghton gallantly opposed it, clause by clause.

The chill factor in the elected chamber was caused by a carefully timed and planned Orwellian propaganda campaign, which falsely claimed that a high proportion of British children were watching "video nasties" (ie violent video recordings). Instead of limiting censorship to violence however, the British Board of Film Classification also cuts all the explicit sex.

The system of video censorship is not even logical since even if a video is classified under the Video Recordings Act it enjoys no immunity from prosecution for obscenity. Thus classification does not mean legality!

Film censorship in the United Kingdom is governed by the Cinemas Act 1985. This imposes the requirement of local authority licensing on cinema clubs as well as public cinemas. Such licences will only be granted if <sup>all</sup> the films or video recordings shown are ones granted classification certificates by the British Board of Film Classification. Such films are censored or refused a certificate. Last year (1985) 17% of films shown in British cinemas had been cut by the BBFC.

Unlike video censorship, film censorship was introduced surreptitiously. The original Law was enacted in 1909 to deal with the fact that films were then highly inflammable. Licensing of public cinemas was therefore introduced to ensure adequate fire escapes. The system was however used as an instrument of censorship, since local authorities would grant licences only if the films shown were categorised by the British Board of Film Classification. In 1982 this was extended to cinema clubs. In 1985 the law was consolidated in the Cinemas Act and the British Board of Film Censors was hypocritically renamed British Board of Film Classification while retaining its censorship function.

Film censorship has been, or is in the process of being abolished in every other country of the European Community except Ireland. As other Western countries liberalise, the United Kingdom becomes more censorious! Unlike video censorship, the system for films does at least guarantee immunity from prosecution for obscenity <sup>regarding those passed by the British Board of Film Censors (because the consent of the Director of Public Prosecutions is required under</sup> Section 53 Criminal Law Act 1977).

Regarding publications in the United Kingdom self-censorship is necessary to comply with the Obscene Publications Act. This law is used by the Establishment to try and suppress the publications it considers anti-social. The fear of raids by the Obscene Publications Squad (the Orwellian Thought Police) operates as a chill factor enforcing self-censorship.

Prosecutions have been brought to extend the scope of the Act by securing convictions for a wider range of publications. In 1967 the case of DPP-v-ABC Chewing Gum Ltd showed that non-sexual violence could contravene the Obscene Publications Act. In 1984 a conviction was secured in the Airlift Books case regarding an American book about illegal drugs. In other words a publication which contained neither sex nor violence could be illegal in the United Kingdom.

On the 21st March 1984 it was revealed that the Metropolitan Police had seized over two million publications in Greater London under the Obscene Publications Act during the previous year (case of R-v-Snaresbrook Crown Court ex parte Commissioner of Police of the Metropolis). Not content, however, with the draconian effect of this Act, the Establishment has resurrected the old common law offence of "conspiracy to corrupt public morals" <sup>in order</sup> to prohibit even more publications.

In December 1985 in a test case brought by the Director of Public Prosecutions for such a "conspiracy", two directors of Rendezvous Contract Magazine were convicted. The "chill factor" which the DPP wanted to generate has had the

desired effect. Some contact magazines are now operating a system of self censorship and declare that they will not accept certain types of advertisement.

British television is also effectively controlled by the Government. The Governors of the BBC control BBC Radio and Television. The members of the IBA control independent radio and television. They are all appointed by the Home Secretary and have the legal obligation to prevent the broadcasting of anything which "offends against good taste or decency or is likely to encourage or incite to crime or lead to disorder or to be offensive to public feeling". (BBC's Licence and Agreement 1981, the Broadcasting Act 1981 and The Television Act 1981). British cable television is prohibited from showing "obscene" programmes (Telecommunications Act 1984). By contrast in France code (cable) television is allowed to broadcast hard-core pornography and in Italy soft-porn is permitted on private (non-State) television stations.

The import of anything indecent is prohibited by Section 42 of the Customs Consolidation Act 1876. Indecent has been defined in the courts as including anything "immodest or unbecoming". This is a much stricter definition than obscenity. In 1984 Customs officers raided gay bookshops throughout Great Britain, searching for and seizing indecent books of foreign origin. They took eight hundred books from "Gays the Word" bookshop in London and instituted the prosecution of the shop's manageress and the eight other directors.

Salvation came from the Continent. On the 11th March 1986 the Court of Justice of the European Communities ruled, in the case of Conegate v H M Customs and Excise, that it was against Common Market Law for the United Kingdom to have a stricter prohibition for imports (indecent) than for home produced products (obscenity). As a result on the 27th June 1986 H M Customs discontinued its prosecution of Gays the Word.

The Theatres Act 1968 abolished censorship by the Lord Chamberlain but prohibits obscene performances. Other European Community countries are more tolerant. Live sex-shows are lawful in France, Netherlands, Portugal, Spain and West Germany.

The Official Secrets Act imposes a blanket prohibition, including even trivial information. This allows Government cover-ups such as the Westland affair. By contrast other Western countries have Freedom of Information Laws.

There is a definite dichotomy between the United Kingdom and the Continental countries of the European Community. It is based on British nannyism, secretiveness and guilt about sex. This causes adulterous Tory politicians to condemn public immorality and demand more stringent laws against pornography. By contrast in 1984 the French Minister of Culture publicly stated that his government did not

seek to control what adults read and viewed. The authoritarian squirarchical attitude of the British Establishment precludes any such government statement here.