A NOTE ON ENGLAND'S PROPOSALS FOR RESTRICTING AND PROHIBITING PORNOGRAPHY

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In July 1977 a Home Office departmental Committee was set up under the chairmanship of Professor Bernard Williams to undertake a 'fundamental review' of the laws of obscenity, indecency and censorship. The Committee's Report,[1] published on November 28th 1979 recommended that the principal object of the law should be to prevent certain kinds of material causing offence to reasonable people or being made available to young people, with only a small class of material being suppressed completely.[2] To secure this object, it was proposed that, except in the case of films,[3] two categories of offences should be created, 'restriction' offences and 'prohibition' offences.

Restriction Offences

For these offences, there were effectively two matters for the Committee to determine; first, what sort of material should be restricted, and secondly, what the restrictions on that material should be. As to the sort of material to be restricted, the Committee concluded that the present criteria such as 'tendency to deprave and corrupt' and the words 'obscene' and 'indecent' were now useless: 'The charges of vagueness and confusion were so widespread that it was clear to us that we should break with the past completely.'[4] In deciding what material should be restricted, the Committee considered three fundamentally different approaches. The first was to use some 'catch-all' word or phrase as the law uses at present, the second was to be totally specific by listing in detail what it was that should be restricted, and the third was to abandon formulae or lists in favour of a personal judgment with a tribunal determining exactly where the line should be drawn in each case.

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1 *Report of the Committee on Obscenity and Film Censorship* [1979] Cmnd 7772.

2 See proposals 4 and 5, and paras 9.7 and 10.8.

3 There were separate proposals for films. See the forthcoming article by the author on 'The Williams Committee and Film Censorship' to be published in *Public Law*. The offence also would not apply to broadcasting, since this was excluded from the Committee's terms of reference.

4 Para. 9.21.

As to the third approach, the Committee felt that a system of pre-censoring publications would be

> quite unacceptable in this country and should be ruled out without detailed consideration of the practicalities. It seemed to us, that there were strong objections to the idea that publications should be subject to vetting before being put on sale, even if the vetting were confined to a certain class liable to be at risk of restriction and even granted that the aim was not to ban publications entirely but only to confine their sale to certain outlets.[5]

Pre-censoring of publications has not been found to be unacceptable in other countries, such as Australia and New Zealand, and the Committee advance no reasons as to why it would be unacceptable here nor as to what the 'strong objections' would be. Perhaps it was considered unacceptable because in general there has been no such pre-censorship in England over the last few hundred years—the last occasion on which there was pre-censorship of literature was in 1695[6]—and when there has been such pre-censorship it has often proved unpopular, particularly when exercised by the Lord Chamberlain in respect of stage plays.[7] But the Committee, whilst mentioning that there was some support for a pre-censorship publications tribunal,[8] made no mention of any opposition to it.

Further, the Committee 'also found it hard to imagine how such a tribunal would be recruited, what suitable people would be willing to serve on it, or by what means it could hope to gain public acceptance'.[8] There are a number of points here. First, why is it hard to imagine how such a tribunal would be recruited? Would it be any harder to recruit than other types of tribunal? Other countries seem not to have thought so. Nor, indeed, did the Committee themselves have any difficulty when it came to recruiting members for their proposed Film Examining Board, which would pre-censor films.[9] Secondly, as to what suitable people would be willing to serve on it, it is suggested that, as in other jurisdictions adopting pre-censorship tribunals, members could be

5 Para. 9.22.

6 In this year the licensing decree of Elizabeth I, under which a licence had to be obtained prior to publication, was repealed.

7 But this does not mean t at pre-censorship by a publications tribunal need be unpopular. A tribunal would be far more representative, involving a number of individuals with relevant specialist qualifications—the New Zealand tribunal, for example, has five members who include a legally qualified chairman and at least two others possessing expertise in the field of literature or education. The Lord Chamberlain, who needed no particular qualifications, was, on the other hand, the sole arbiter.

8 Para. 9.22.

9 See para. 12.30.

selected from those involved in the literary world (such as authors, publishers and critics), educationalists, child psychologists, lawyers and academics. Thirdly, since the Committee made no mention of opposition to such a tribunal, why should it *not* gain public acceptance? Surely such a tribunal would gain acceptance in the same way as anything else given the force of law by Parliament—it would as such be accepted and respected by the public. It is submitted that the Committee's reasoning here leaves a good deal to be desired and that if pre-censorship was to be rejected it should not have been 'without detailed consideration of the practicalities'[10] but only after a full review of the issues.

As to the second approach, that there should be a specific and comprehensive list of what should be restricted, this was considered in detail but was rejected, principally because it would be difficult to keep in step with changing public attitudes:

> Where, as we propose, the object of the law is to prevent offence, it must necessarily apply to what is generally found offensive and it is therefore essential in our view that the law should be responsive to flux in public opinion. To specify exactly what we regard as representing the level of offensiveness against which the law should act involves fixing a standard relative to our conception of current reactions. But that standard may no longer be valid even when legislation comes to be enacted; and once it is enacted it will become an extremely inflexible standard which will tend to attract even more ridicule and odium to the law.[11]

Rejection of this approach brought the Committee back to its first possibility, some catch-all phrase. Having rejected the existing terminology,[12] a qualified concept of offensiveness was proposed and this was to apply to some but not all kinds of publication. It was proposed that restrictions should apply to matter 'other than the printed word, and to a performance whose 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'.[13]

10 Para. 9.22.

11 Para. 9.24. For other reasons advanced for rejecting this approach see paras 9.25-9.27

12 See supra at 2.

13 See paras 9.36 and 11.8, and Proposal 7. Little indication is given, however, as to the meaning of some of these terms e.g. no mention is made of the scope of 'horror' other than a statement that this would apply to horror comics of the kind that the Children and Young Persons (Harmful Publications) Act 1955 was aimed against (para. 9.37); nor of 'cruelty'. Quaere whether this would include mental cruelty. Also, what is meant 'by reason of the manner in which it portrays . . .'? Is this to be equated with the giving of undue emphasis or undue exploitation, which is a criterion adopted in other jurisdictions such as Canada and the Australian states of Queensland and Victoria?

This proposal, if implemented, would involve some important changes in the existing law. In the first place, there would be no restriction on the written word. The Committee felt that the printed word was neither immediately offensive nor capable of involving the harms which they wished to prevent, and further that unrestricted free expression here was justified because of the overriding importance in conveying ideas.[14] This would be a significant departure from the present law, which draws no distinction between written and pictorial matter, both being subject to regulation equally. This is in fact the case in most countries, though a notable exception has been Denmark where legislation repealing the prohibition on obscene books was introduced in 1967.[15] Presumably, if there is to be no restriction, there would be nothing to prevent printed descriptions of sexual activity being exhibited to anyone or in any place.[16] Perhaps not surprisingly, this proposal has encountered some criticism.[17] Also excluded from restriction is the showing of films, though as has been mentioned,[18] this is because the Committee proposed separate controls for this. It is, then, only pictorial matter which is to be subject to restriction.

A second important change would be a new criterion of offensiveness. This would mean that there would no longer be differing standards (as at present), where material might be declared indecent though not considered to be obscene, as in *Stanley*.[19] The necessity for a tendency to deprave and corrupt, laid down at common law for obscene libel in

14 Para. 7.22. Obviously, pictorial obscenity does not contain ideas, though it may well stimulate ideas in others. Why is the containing of ideas, and not the stimulating of them, seen as being of overriding importance?

15 This followed the majority recommendation of the Permanent Criminal Law Committee the previous year. This recommendation was based on two main considerations: (1) that there was no evidence to suggest that there was more than a remote risk of harmful effects from reading descriptions of sexual activity; and (2) the existing law had been so literally interpreted that very few books were found to be obscene. When the prohibition of obscene books was lifted, there was a considerable decline in the number of such books. In the light of this, and in view of enforcement difficulties in relation to the considerable increase in obscene pictorial publications, a fuller liberalisation took place in 1969—see Appendix 3 of the Williams Committee's Report, paras 102-104.

16 Quaere whether the public display of such a description would be a public nuisance, or would there be a provision preventing such a charge being used?

17 For example, by Lord Wigoder and by the Bishop of Durham in a debate on the Report in the House of Lords—see *404 HL DEB.* 1980 Col. 126 and 160-1. The Government also appeared to have reservations, for during the same debate Lord Belstead, Under-Secretary at the Home Office, remarked that if the proposals as to the written word were rejected, this would not be fatal to the broad scheme proposed by the Committee, since the written word could be incorporated within the restriction offences; id., col. 244.

18 See supra at 1.

19 [1965] 2 Q.B. 327.

Hicklin,[20] and now required under the *Obscene Publications Act* 1959, would also disappear.[21] The new term of offensiveness was qualified in that the matter must be offensive to reasonable people by reason of the manner in which it dealt with violence, cruelty or horror, or sexual, faecal or urinary functions or genital organs. This would make it clear that violence, cruelty and horror, as well as sexual conduct, would be included in the concept of offensiveness, the present law being uncertain in this respect. The existing *Children and Young Persons (Harmful Publications) Act* 1955 was passed on the basis that violence and horror did not come within the law of obscenity[22] and no mention was made during the passage of the *Obscene Publications Act* 1959 of the concept of obscenity applying outside the field of sex. On the other hand, the portrayal of horrific and violent scenes and other material tending to induce violence has been assumed to be capable of depraving and corrupting, thereby qualifying as obscene under the 1959 Act.[23] So, violence, cruelty and horror would be included in the concept of offensiveness. What would not be covered would be anything else apart from conduct of a sexual nature. This would represent a change in the existing law—incitement to drug taking, held to be obscene in *John Calder (Publications) Ltd.* v *Powell,*[24] would not be considered offensive under the Williams Committee's proposals.

A third change would be that sale or distribution of offensive material would not be prevented but merely restricted within certain confines, whereas under the present law *any* sale or distribution of indecent or obscene matter is prima facie an offence whatever the circumstances. Much the same would be true of offensive performances—performance of *any* obscene stage play is presently an offence under the *Theatres Act* 1968, whereas under the Committee's proposals the performance of offensive plays would only be restricted and not prohibited.[25]

A fourth significant change would be that no material or performance found to be offensive would be exempt from restriction on the

20 (1868) L.R. 3 Q.B.D. 360.

21 This would be consistent with a general trend in other jurisdictions away from the Hicklin concept of obscenity; for example, in the United States (Roth v. U.S. (1957) 354 U.S. 476), Australia (Crowe v. Graham (1968) 12 C.L.R. 375), New Zealand (Police v. Drummond [1973] 2 N.Z.L.R. 263 and R. v. Dunn [1973] 2 N.Z.L.R. 481) and India (a 1969 amendment to the Indian Penal Code).

22 See 537 *HC DEB.* 1955, cols 1072-73.

23 See Director of Public Prosecutions v. A. & BC Chewing Gum Ltd. [1968] 1 Q.B. 159 and R. v. Calder & Boyars Ltd. [1969] 1 Q.B. 151, and Appendix 1, para. 28 of the Report.

24 [1965] 1 Q.B. 509.

25 There would, however, be circumstances where live performances would be prohibited—see infra at 14-15.

grounds of any intrinsic merit it might possess.[26] There would thus be no defence of public good, or anything equivalent to it, as there is at present under the *Obscene Publications Act* 1959. The Committee rejected this possibility, principally on the grounds that such a defence has proved to be unworkable in practice,[27] and that in any event works of literary merit (at which the defence under the 1959 Act was for the most part aimed) would no longer be subject to prosecution since the restrictions were not to apply to the written word.[28]

Having decided how to define material that is to be subject to restriction, it remained to consider what restrictions there should be on such material. In accordance with the Committee's aim of protecting the public and the young, it was proposed that it should be an offence to display, sell, hire etc. offensive matter or to present offensive performances unless in premises (a) to which persons under the age of eighteen are not admitted; and (b) to which access is possible only by passing a prominent warning notice in specified terms; and (c) which make no display visible to persons not passing beyond the warning notice, other than the name of the business and an indication of its nature.[29] It would also be an offence to send or deliver restricted material or advertisements for such material to persons who the sender knew or ought reasonably to have known (a) are under the age of eighteen or (b) had not solicited the material.[30] One problem with these proposals is the adoption of eighteen as the age limit. As the Committee recognised, this would mean that people between the ages of sixteen and eighteen would be free to engage in heterosexual activity but could not view the portrayal of sexual activity by others.[31] The Committee favoured eighteen for a number of reasons. These included the fact that this is the age adopted for 'X' certificate cinema films, that pornography is unlikely to portray straightforward sexual activity,[32] that eighteen is the age customarily adopted by owners of existing pornography shops and that 'the evidence we received gave some grounds for thinking that many young people of sixteen might still be vulnerable'.[33] That the age of eighteen is in part justified by this last factor is itself interesting. A sub-

26 Paras 9.41 and 11.10.
27 See paras 2.19-22 and 8.19-24.
28 See supra at 6-7.
29 Para. 9.15 and Proposal 8.
30 Paras 9.18-19. This would replace the existing provisions in s.4(1) of the Unsolicited Goods and Services Act 1971.
31 Para. 9.39.
32 Does this mean that 16-18 year-olds will engage only in straightforward activities? Is there any evidence to this effect?
33 Para. 9.40.

jective criterion is used here: it is enough that there are *some* grounds for thinking that people of sixteen *might* be vulnerable. This is in marked contrast to the Committee's approach elsewhere, where it adopted an objective criterion and seemed to require proof taking on the character of scientific testing. For example, when considering research studies on human responses to pornography, any link between pornography and criminal conduct was rejected because 'we consider that the only objective verdict must be one of not proven'.[34] Again, the contention that participants in pornography are harmed and exploited was rejected because 'although allegations to this effect were sometimes made to us . . . we received little evidence of a more objective kind'.[35] Further, on a more general level, the Committee required that causation of harm, in order to justify criminal sanctions, should be established 'beyond reasonable doubt'.[36] It might well be questioned whether it should be enough here that the evidence gave *some* grounds for thinking people of sixteen *might* be vulnerable (and indeed vulnerable to what?) for the approach is hardly consistent. It is suggested that sixteen and not eighteen might have been the better age, for this would avoid the odd situation of a person being able to engage in but not view the portrayal of sexual activity. At its most absurd, this would mean that a person of sixteen could engage in and be photographed taking part in offensive sexual activity,[37] but could not enter premises to buy those photographs of himself. This surely cannot be right.

Another problem with the proposals for restriction is the degree of *mens rea* (if any) required for the offences. The *mens rea* for sending material to persons under eighteen or to persons who have not solicited it is clear—the sender will be guilty only if he knew or ought to have known of that fact.[38] But the position is not so clear where material is displayed, sold or hired from premises in contravention of the restrictions. It will be an offence unless, *inter alia*, persons under the age of eighteen are not admitted,[38] but the Committee omitted to mention if liability would depend on whether the occupier knew or ought to have known of that fact. Would the occupier be liable if an entrant was under eighteen but was believed by the occupier on reasonable grounds to be over eighteen? This, regrettably, is a question which the Committee did not answer. That no mention was made of any requirement for

34 Para. 6.21.
35 Para. 6.71.
36 Para. 5.31.
37 This is provided the performance was not live, in which case engaging in such activity would be prohibited—see infra at 14.
38 See supra at 10.
38a See Proposal 15, and paras 9.43 and 11.16.

knowledge, whereas such a requirement was stated for the offence of sending material, may tend to suggest that knowledge would not be required. This may be rather harsh, especially as restriction offences can carry a sentence of up to six months' imprisonment.[38a]

Prohibition Offences

These would prohibit the publication of material entirely on account of the material involving participation by children or physical injury to participants. It would be an offence to produce or distribute material[39] 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.[40] Why the age of sixteen here? If the Committee, when considering restriction offences, felt (as it did) that 16-18 year-olds should not have access to offensive material because of their possible vulnerability (whatever that might mean),[41] why did it not feel that they would be similarly vulnerable if they actually participated in pornographic activities, especially where this participation involved them being sexually exploited? This again emphasizes the problems of selecting different different ages for participation in and access to publications of sexual activity.

Also included in the category of prohibition offences are live performances involving (a) actual sexual activity of a kind which, in the circumstances in which they are given, would be offensive to reasonable people (sexual activity including the act of masturbation and forms of genital, anal or oral connection between humans and animals as well as between humans); or (b) the sexual exploitation of a person under the age of sixteen.[42] It would be an offence to present, organise or take part in such a performance.[43] Thus actual sexual activity performed live would be prohibited, but simulated or represented sexual activity performed live would fall only within the category of restriction offences.[44]

39 'Material' would comprise photographs and films, although this would not include any film exhibited under the authority of a film censorship certificate (para. 12.47).

40 Para. 10.13.

41 Supra at 11.

42 Para. 11.15.

43 Para. 11.16. It would, however, be no offence if such performance took place in a private house with no person under the age of eighteen being present and with no charge being made: para. 11.17.

44 As the Committee put it, 'for any given activity that occurs in the course of live entertainment there will be two questions: is it real or simulated? Is it offensive or not? What is real and offensive is prohibited; what is simulated and offensive is restricted; what is real but inoffensive, such as kissing, gets off'; para. 11.11.

Distinctions between real and simulated or represented activity may be fine ones and may not always be easy to draw in practice. This was recognised by the Committee, who acknowledged that it would be 'foolish to deny that the business of applying such distinctions to actual cases could raise problems', but dismissed such problems on the ground that 'we just do not believe that difficult cases would arise very often'.[45] This may perhaps be rather optimistic.[46]

Recommended Procedures for Restriction and Prohibition Offences

The Committee proposed that restriction offences should be triable only by magistrates, with maximum penalties of a £1000 fine and six months' imprisonment, and prohibition offences triable either in the Crown Court or by magistrates, with maximum penalties of an unlimited fine and three years imprisonment.[47] The police would have power to obtain a magistrate's warrant to enter and search premises for material they believed to be prohibited or to be contravening the restrictions, and to seize such material as may be needed for the purposes of evidence in any prosecution.[48] There would, however, be no separate procedure aimed at the forfeiture of restricted or prohibited material—the power of search and seizure would be available only for the purposes of obtaining evidence for a prosecution, and a forfeiture order could be made only following a successful prosecution.[49] On the question of search and seizure, however, the Committee made no recommendations to deal with complaints which they had heard about the way that the police sometimes exercised these powers. The complaints centred on the fact that the police often did not give a receipt or some other form of record of what had been taken. The Committee, disappointingly, refrained from proposing a formal requirement that a receipt be given

45 Para. 11.11.

46 Quaere whether a person charged with a prohibition offence where the activity was found to be simulated not real could be convicted instead of a restriction offence.

47 Paras 6.43 and 11.16, and 10.15 respectively. Apart from the increased maximum monetary penalty for restriction offences, the penalties are similar to those presently specified in the Obscene Publications Act 1959: see s.2(1).

48 Paras 9.45 and 10.17. If the person prosecuted was convicted, the court could, if it thought fit, order that the seized material be forfeited: paras 9.46 and 10.19.

49 Paras 9.46 and 10.19. The Committee rejected forfeiture proceedings for restriction offences on the ground that it was not the material which offended against the law but only its mode of sale, and that the proper course therefore was to proceed not against the material but against the person dealing in it illegally. This argument clearly did not apply to prohibition offences where the material *does* offend against the law. The Committee rejected forfeiture proceedings here, however, on the ground that such offences were too serious not to be prosecuted and merely permitting forfeiture would be to minimise the seriousness. Does this mean that the police should prosecute in *all* cases?

on seizure, and contented themselves with expressing the view that one should be given at the earliest practicable opportunity.[50] Nor was there any proposal that the police should commence proceedings within a certain time after the seizure. This again has given rise to complaints, though no mention of this seems to have been made by the Committee. In addition to this power of search and seizure, the police would also have a power of arrest for prohibition offences to enable them to take more effective action.[51]

A number of changes in the existing law would take place if these proposals were implemented. The two offences, their modes of trial and maximum penalties would replace a plethora of existing provisions with a wide range of different procedures and different penalties.[52] A criminal prosecution for either offence would also be the only method of proceeding. There would be no separate procedure aimed at the forfeiture and destruction of offensive material, as is available at present under section 3 of the *Obscene Publications Act* 1959 and which has been available since Lord Campbell's Act of 1857. On the other hand, the police would now have a power of arrest for prohibition offences, whereas at present they have no such power under the 1959 Act in relation to any obscene material.[53]

Further proposals which would affect existing enforcement procedures relate to the right to initiate proceedings. The present law lacks any consistent approach to this problem. Sometimes proceedings can be brought only by or with the consent of the Attorney-General, for instance under the *Theatres Act* 1968[54] and under the *Children and Young Persons (Harmful Publications) Act* 1955[55]. In other cases they can be brought only by or with the consent of the Director of Public Prosecutions, for example under the *Unsolicited Goods and Services Act* 1971[56] and under the *Protection of Children Act* 1978[57]. In yet other instances any individual may institute proceedings, whether a police officer or a private citizen, as for example with all relevant common law offences and also the various nineteenth century enactments relating to indecent display, such as the *Vagrancy Act* 1824 and the *Indecent Advertisements Act* 1889. The Committee proposed that in the case of

50 Para. 9.45.
51 Para. 10.17. This power would not be available for the less serious restriction offences: para. 9.46.
52 For a list of these, see Appendix 1 of the Report.
53 Para. 10.17.
54 s.8.
55 s.2(2).
56 s.4(3).
57 See s.1(3).

restriction offences it should not be freely open to any individual to institute proceedings, and that prosecutions shouid be brought by the police or by or with the consent of the Director of Public Prosecutions.[58] For prohibition offences, it was proposed, in view of the seriousness of the offences and the fact that they involved the effective suppression of certain published works, that prosecutions should be brought only by or with the consent of the Director of Public Prosecutions.[59] These recommendations are to be welcomed for they would remove much of the controversy surrounding the existing enforcement of the obscenity laws and go a considerable way towards putting law enforcement on a more rational and uniform basis.

Conclusion

Overall, the Committee's proposals are to be welcomed. For the first time some attempt has been made to strike a balance between the various competing interests. Where the balance should be struck is, of course, a contentious matter, and there clearly will be those who disagree with the Committee's proposals.[60] However, at least the Committee have made *an* evaluation of the various interests and made proposals based on and intended to give effect to that evaluation. Nevertheless, there are a number of inconsistencies in the Committee's Report. In particular, there is a wide variety of criteria employed when it comes to accepting or rejecting propositions. Also, some possibilities are dismissed out of hand without any consideration of the arguments. This is true, for example, of whether there should be a pre-censorship tribunal for publications.[61] For some reason, the Committee seem to have taken objection to this in principle. Further, some possibilities are not even considered at all. There is no mention of the merits or otherwise of a system of proceedings *in rem*, where in effect the publication itself is put on trial rather than the publisher, the distributor or any other person

58 Paras 9.50 and 11.16. The Committee did not feel it to be in the public interest for private individuals 'to be able to use the courts for the purposes of pursuing their own unrepresentative view of offensiveness, particularly as the offence of which they are complaining will not be against them in particular . . .': para. 9.49. Individuals were felt to have sufficient means at their disposal to ensure that the law was being enforced, such as 'generally making a fuss and writing letters to the Chief Constable or the newspapers or the local M.P., or by bringing a formal complaint if the circumstances made that appropriate, or by instituting proceedings by prerogative order of mandamus . . .': Id.

59 Para. 10.20.

60 See, for example, the divergent views expressed during a debate on the Report in the House of Lords: 404 *HL DEB* 1980 Col. 115 et seq.

61 Supra at 2-4.

concerned with the dissemination of the publication.[62] Surely it would have been desirable to have considered such a possibility. Another matter which is not even mentioned is the use by the police of disclaimer notices.[63] In view of the widespread use of these, particularly by the Metropolitan Police, surely this was something which the Committee ought also to have considered and made some recommendation on. But despite these shortcomings, it is suggested that, if legislation were implemented along the lines of the Committee's proposals, this would be a considerable improvement on the present law.[64]

62 Such a system operates in Massachussetts where, as an alternative to an ordinary criminal prosecution, the book itself can be put on trial in a civil equity suit brought by the State Attorney-General or any district attorney—see Mass. Gen. Laws Ann., c.272, ss. 28C-28H (noted at (1946) 59 *Harv. L.R.* 813) and Graham Zellick, 'A New Approach to the Control of Obscenity' (1970) 33 *M.L.R.* 289.

63 These are notices given by the police to possessors of obscene material inviting them to disclaim ownership of it. The possessor signs the disclaimer notice and the material is then taken away by the police and destroyed. The material thus never comes before any court or tribunal. This system evolved in the 1940s and has continued ever since. Although referred to by the 1957 Select Committee on the Obscene Publications Bill as an 'undesirable practice', no direct recommendations were made to alter the position, and the practice appeared to receive the tacit approval of the Court of Appeal in R. v. Metropolitan Police Commissioner ex parte Blackburn (No. 3) [1973] 1 All E.R. 324 at 331 per Lord Denning, M.R. declaring: 'I can see the practical advantages of the procedure adopted by the police. There is a good deal to be said for it.'

64 The Government has, as yet, given no indication whether it intends to legislate. Judging by the comments made by Lord Belstead, Under-Secretary at the Home Office, during a debate on the Report in the House of Lords, however, it seems that the Government has reservations at least about some of the recommendations—in particular about the proposal to except the written word from control (supra at 7 n. 13) and about abolishing the control of films by local authorities and the British Board of Film Censors which were steps 'not to be taken lightly'. 404 *HL DEB.* 1980 Col. 245-6.