

THE PROBLEM OF PORNOGRAPHY

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1. Introduction

It might seem obvious that some attempt at definition would be a necessary preliminary to any serious discussion of pornography; for the problem of pornography is itself essentially a matter of determining limits. Yet not all writers on the subject have felt this necessity. Some, after a conducted tour of the dictionaries, conclude that the task of definition is impossibly difficult; and dispense with it. Others, less diligent, ignore this tiresome requisite altogether.

Yet a brief ritual gesture of some kind is commonly made. Thus, Walter Allen in an essay in a volume devoted to "original studies in the nature and definition of 'obscenity'" entitled *To Deprave and Corrupt . . .* says, "As soon as we try to define . . . we find ourselves floundering in the morass of the subjective".¹ But his "I think I can recognise it when I see it"² does little to help extricate us from the morass. Sir Herbert Read's treatment of the matter in his contribution to the symposium *Does Pornography Matter?* is equally exiguous. He states summarily on his first page, "I accept the definitions of pornography given by other contributors to this symposium . . .",³ and this dark saying, with its air of urbane catholicity, serves to gloss over the problem. Such definitions as are provided in the literature range from the totally obscure, through the glibly equivocal, to the arbitrarily restrictive. In the circumstances it is not surprising that arguments at cross purposes proliferate and confusion abounds. Accordingly we begin with an attempt at clarification on the subject of the definition of pornography. Fortunately what needs to be said, can be said quite briefly.

2. Definition

The word is derived from the Greek *pornographos* which is commonly translated as the writings of harlots. Etymology, however, is an unreliable guide to meaning here. The writing of harlots is rarely pornographic in any generally accepted sense of the term. Kinsey defines pornography as "literature or drawing which has the erotic arousal of the reader or observer as its deliberate and primary or sole objective".⁴ By this standard the literary productions of prostitutes are singularly devoid of pornographic elements. Thus, to take a fairly recent and typical example, the anonymous author of *Street Walker*⁵ displays a reluctance to be specific about sex combined with an attitude of chill revulsion to it which is absolutely anaphrodisiac. Nor is this altogether surprising. For, as the Kinsey researchers discovered, although the amount of deliberately pornographic material that the human race has produced is

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¹ W. Allen, "The Writer and the Frontiers of Tolerance" in J. Chandos (ed.), *To Deprave and Corrupt . . .* (1962) 143.

² *Ibid.* 144.

³ Sir Herbert Read, Ch. II in C. H. Rolph (ed.), *Does Pornography Matter?* (1961) 11.

⁴ A. C. Kinsey, W. R. Pomeroy, C. Martin and P. Gebbard, *Sexual Behaviour in the Human Female* (1953) 671.

⁵ Anon., *Street Walker* (1959).

quite incalculable in extent, "it is exceedingly difficult to find any that has been produced by females".⁶

It could, of course, be argued that sexual excitation may be brought about incidentally, without any deliberate purpose being attributable to the author or artist. Thus Walter Allen remarks that "the mind intent on pornography will always find it" and, in this connection, reports that certain colour-plates in *Chambers' Encyclopaedia* were for him, in his childhood, "the furthest imaginable in lubricity".⁷ This aspect of the matter is reflected in Gershon Legman's ironic definition of pornography as "any passage of text, or any picture, that gives seven of twelve good men and true an erection . . .".⁸ It is also emphasized in the philosopher Abraham Kaplan's essay on "Obscenity as an Esthetic Category". He maintains that pornography is "fundamentally . . . a category of effect. To say that a work is pornographic is to say something about the feelings and actions which it produces in its respondents".⁹ Now on this definition of pornography it is, of course, conceivable that much of the literature produced by prostitutes could be included within the category. But then so could much other work not ordinarily regarded as pornographic. Indeed, so unaccountable are the vagaries of sexual taste and so wide is the variety of subjects that may prove erotically stimulating to some individuals, that it might be difficult to decide which novels, poems, paintings, drawings or pieces of sculpture could be certainly excluded.

No doubt it is this difficulty which has led a number of writers to identify pornography by its subject matter as the description or depiction of sexual action or the genital organs of either sex. Kinsey, incidentally, notes that "a great deal of pornographic literature turns around detailed descriptions of genital activity and descriptions of male genital performance".¹⁰ Geoffrey Gorer says, quite explicitly, that "Pornography is defined by its subject matter and its attitude thereto. The subject matter is sexual activity of any overt kind, which is depicted as inherently desirable and exciting".¹¹ Yet this definition, too, is not without difficulties, two of which may be briefly noted. We would ordinarily be reluctant to classify as pornographic a text book on marriage guidance, for example, which dealt candidly with sexual techniques. On the other hand, it is not uncommon to classify as pornographic, photographs of passive nude females engaged in no kind of overt sexual activity whatever.

There is in fact little doubt that in common usage the word pornography frequently conveys something more than Gorer's somewhat vague reference to the author's or artist's intention. This is evident in the Kinsey definition cited above.¹² It can be found, too, in St. John Stevas' definition of a pornographic book as one "deliberately designed to stimulate sex feelings and to act as an aphrodisiac".¹³ And despite the curious critical dogma according to which the author's intention is irrelevant to the assessment of a work of art, and to take account of it is to commit "the intentional fallacy",¹⁴ the fact is that in certain contexts the relevance of intention to interpretation is indisputable. In *this* context it is notable that Lord Birkett goes so far as to say that "the essence of pornography . . . (is) . . . the deliberate excitation of sexual feelings".¹⁵

⁶ Kinsey *et al.*, *op. cit. supra* n. 4 at 672.

⁷ *Ibid.* 144.

⁸ G. Legman, *Love and Death* (1949) 20.

⁹ A. Kaplan, "Obscenity as an Esthetic Category" (1955) 20 *Law and Contemporary Problems* 548.

¹⁰ Kinsey *et al.*, *op. cit. supra* n. 4 at 672.

¹¹ Gorer, Ch. III in *op. cit. supra* n. 3 at 30.

¹² Kinsey *et al.*, *op. cit. supra* n. 4.

¹³ N. St. John Stevas, *Obscenity and the Law* (1956) 2.

¹⁴ For definitive critical discussion of this doctrine see F. Cioffi, "Intention and Interpretation in Criticism" (1963) 64 *Proceedings of the Aristotelian Society* 85.

¹⁵ Lord Birkett, Ch. I in *op. cit. supra* n. 3 at 4.

Yet in going so far Lord Birkett surely goes too far. Kaplan, one feels, is unquestionably right in that many art objects, however chaste in conception, may serve a pornographic purpose; and, for example, as is widely attested, be found sexually stimulating by schoolboys. Just as, conversely, material designed to stimulate sex feelings may, if we are not to discount a considerable cloud of witnesses, induce nauseated repugnance.

It is scarcely surprising that this kind of circular discussion has led some writers to conclude that the nature of the subject matter is such that attempts at clarification or definition are inevitably doomed to frustration and must always end in an impasse. Yet the commonplace fact of the matter is simply that the meaning of the term varies according to the context in which it is used. It may be employed to refer to the subject matter of a work, the intention of its creator, its actual, potential or putative effect or even, as with a Pompeian wall painting for example, its history. It is not that Lord Birkett is mistaken about the nature of pornography but rather that there is no essence of pornography to be distilled by analysis or argument. This not very recondite point, however, has important implications. Failure to recognize it has resulted not only in illusory unanimity but also in groundless variance both in regard to the nature of specific works and the advisability of particular policies. Not uncommonly the result is total confusion which is all the more misleading for being masked by apparent agreement. The point is of sufficient importance to warrant illustration.

3. *The Undesirability of Pornography*

"Most people," says Lord Birkett, "object to pornography and support the laws suppressing it. . . ."¹⁶ He goes on to say that although there is a dissident minority which shares "the views of men like Havelock Ellis and D. H. Lawrence . . . the considered opinion of those who give any thought to the subject is solidly on the side of the law when it seeks to stamp out pornography in every form".¹⁷ In passing it may be observed that this statement is doubly misleading. In the first place D. H. Lawrence in a lengthy essay entitled "Pornography and Obscenity" states quite unequivocally: "But even I would censor genuine pornography rigorously".¹⁸ In the second place Lord Birkett overlooks a considerable group of persons who disapprove of both pornography and censorship. There are many, who have given thought to the subject, who agree with Lord Russell that "a taste for pornography . . . is created by secrecy and tabu" and, like him, favour "the total repeal of the laws against obscenity".¹⁹ Thus John Chandos, editor of a volume to which Lord Birkett contributed,²⁰ speaks of certain pornographic works as "infantile coprology, wholly unattractive and repellent" involving "the degradation of sex from an operation of healthy delight to one of gloating, ritual, self-conscious defilement".²¹ Yet at the same time he is categorically opposed to censorship. "For my part," he says, "I feel obliged to treat freedom to communicate as indivisible, and to defend the right of my neighbours to write and read what they choose. . . . And if pornography happens to be what they choose to read, then I will defend their right to read pornography. . . ."²² He also states that "Pornography would wither in the open air; it thrives on secrecy and prohibition".²³ Sir Herbert Read is another who has no love for porno-

¹⁶ *Ibid.* 2.

¹⁷ *Loc. cit.*

¹⁸ D. H. Lawrence, "Pornography and Obscenity" (1929) in *A Propos of Lady Chatterley's Lover and Other Essays* (1961) 67.

¹⁹ B. Russell, "Virtue and the Censor" (1954) 3 *Encounter* 10.

²⁰ Lord Birkett, "The Changing Law" in *op. cit. supra* n. 1.

²¹ J. Chandos, "Unicorns at Play" in *op. cit. supra* n. 1 at 192-3.

²² J. Chandos, "My Brother's Keeper" in *op. cit. supra* n. 1 at 49-50.

²³ Chandos, article cited *supra* n. 21 at 204.

graphy. "Modern society is sick, disgustingly sick,"²⁴ he says, and "Pornography is a sign of the diseased condition of the body politic."²⁵ Yet he maintains that "prohibition and censorship are brutal methods which succeed only in aggravating the disease".²⁶

Yet Lord Birkett is certainly right in that there does appear to be a large body of persons who "object to pornography"; and there does appear to be a striking consensus, amongst the great majority of those who write on the subject at any rate, regarding the *undesirability* of pornography, if not on the necessity for some degree of control. Indeed it is noticeable that even the holdest champions of freedom in art and literature customarily hasten to add that they personally dislike or disapprove of pornography and find it repugnant. Can we assume, then, that apart from a dissident minority "the considered opinion of those who give any thought to the subject" is that pornography is undesirable? We can, of course, and with some justification. But what is it that we are assuming? In other words, what is it that so many persons appear to be united in condemning or deploring? What is it that it is so widely felt should be suppressed or at least have its disappearance facilitated? What is it that is thought to be on the one hand so insidiously vital that rigorously enforced laws are necessary to control it, and on the other hand so anaemic that a blast of free fresh air would kill it? That is the crucial question. It also happens to be unanswerable. And it is unanswerable for precisely the sort of reasons indicated in the foregoing discussion of definition. For we are scarcely justified in going beyond the fact that the authors cited are concerned about some aspects of the treatment of sexual matters in literature and art. It is certainly not possible for example to deduce from their statements where any one of them would stand in relation to a particular work. To take a concrete instance, it is not even possible to say whether John Cleland's *Memoirs of a Woman of Pleasure* is an example of the type of pornography which John Chandos believes "would wither in the open air" or not. It is true that he says it is "an epitome of erotic books" and "predominantly erotic or pornographic in intent"; that it is "emotionally anaemic", lacking "organic vitality", and reflects "a perennial daydream of masculine immaturity". But he also says that it "stands alone in its time in English", "moves with a racy yet elegant confidence and a polished felicity of phrase" and that "the narrative sketches introducing each new character or situation are consummately skilful";²⁷ all of which suggest that he regards it as more than merely meretricious bawdry. But, if we don't know what Chandos, who devotes some pages to the topic, feels about this matter, how much less do we know what Lord Birkett, Lord Russell, Sir Herbert Read, or D. H. Lawrence, who don't even mention it, would feel. We are certainly not entitled to assume that they would be united in condemning as undesirable this work which has been hailed as "one of the few masterpieces of English pornography".²⁸

4. "Hard-Core Pornography"

The problem of defining precisely what it is that is felt to be undesirable has led some writers to employ the concept of "hard-core pornography" in this context. This is defined by Paul and Schwartz in their valuable and informative book *Federal Censorship* as "material *solely* devoted to depicting, verbally or pictorially, the sexual act"; and they remark that this "has the

²⁴ Sir Herbert Read, article cited *supra* n. 3 at 25.

²⁵ *Ibid.* 18.

²⁶ *Ib.* 17.

²⁷ Chandos, article cited *supra* n. 21 at 182-4.

²⁸ Gorer, article cited *supra* n. 11 at 29.

merit of reducing the element of vagueness . . . to a minimum".²⁹ Yet they are forced to add that "one need not strain his imagination to conceive of material—ranging from writing to motion picture scenes—that would fall outside of the . . . definition . . . ; yet this material could be extremely erotic . . .".³⁰ They might also have added that it would be equally easy to conceive material (for example, of a scientific nature) that would fall *inside* the definition which would not be in the least erotic. Two others who have written widely on the subject of obscenity and the law, W. B. Lockhart and R. C. McClure, define hard-core pornography as material which has "as its sole purpose the nourishment of the erotic fantasies of sexually immature persons . . . (and is) . . . grossly shocking as well".³¹ They appear to regard this concept, thus defined, as a "satisfactory tool",³² but in reality it has the cutting edge of a rubber knife. A moment's reflection suggests pertinent questions not only as to whose susceptibilities would have to be grossly shocked but also about the apparent exclusion of material calculated to nourish the erotic fantasies of sexually *mature* persons.

Perhaps the most ingenious and interesting attempt to define "genuine pornography"³³ is that made by Eberhard and Phyllis Kronhausen in their *Pornography and the Law*. But although their book is valuable and informative the distinction drawn between "*hard-core obscenity or pornography* and what we shall call *erotic realism*"³⁴ is by no means clear. If there is a "basic and unmistakable difference between these two types of literature, namely erotic realism and hard-core pornography" the authors fail to make it as "clearly evident"³⁵ as they suppose. That they are aware of some difficulty is obvious, for finding "the task of conceptualizing . . . the true difference . . . completely unmanageable" they attempt "to establish testable criteria of pornography" largely by "contrasting examples of erotic realism with those of hard-core obscenity".³⁶ It is their contention that the difference can "be made clear from three aspects, namely intent, content and effect".³⁷

With regard to *intent* it is said that pornographic works are "products of sheer fantasy . . . not bound by the realities of existence"³⁸ and are "designed to be psychological aphrodisiacs",³⁹ this being their main although *not* necessarily their "*only aim*".⁴⁰ With works of erotic realism on the other hand, although they may also contain "fantasy material"⁴¹ and are also likely to act as "psychological aphrodisiacs",⁴² "truthful description of the basic realities of life, as the individual experiences it, is of the essence".⁴³ If this is less than luminously clear it becomes even more inscrutable when applied; for, as examples of erotic realism, we are referred to Casanova's *Mémoires* and Frank Harris' *My Life and Loves*. Moreover these two sexual Münchhausens are described respectively as a "champion of realistic romance"⁴⁴ and a "fighter for the holy spirit of truth".⁴⁵ Incidentally the authors appear to accept as literal truth one of Harris' apocryphal encounters with the eminent in which Maupassant confides, amongst other intimate details, "I can make my instrument stand whenever I please".^{46,47} It is difficult to feel

²⁹ J. C. N. Paul and M. L. Schwartz, *Federal Censorship* (1961) 209.

³⁰ *Ibid.* 209.

³¹ W. B. Lockhart and R. C. McClure, "Why Obscene?" in *op. cit. supra* n. 1 at 68.

³² *Ibid.* 68.

³³ E. and P. Kronhausen, *Pornography and the Law* (1959) 22.

³⁴ *Ibid.* 18.

³⁵ *Ib.* 244.

³⁶ *Ib.* 20-22.

³⁷ *Ib.* 18.

³⁸ *Ib.* 264.

³⁹ *Ib.* 262.

⁴⁰ *Ib.* 265.

⁴¹ *Ib.* 92.

⁴² *Ib.* 265.

⁴³ *Ib.* 18.

⁴⁴ *Ib.* 93.

⁴⁵ *Ib.* 106.

⁴⁶ *Ib.* 121.

⁴⁷ Other commentators have been somewhat less impressed by Harris' devotion to "the holy spirit of truth". In this connection see Hugh Kingsmill, *Frank Harris* (1932) or Vincent Brome, *Frank Harris* (1959). Brome refers to *My Life and Loves* (1925-9) as

much confidence in this particular testable criterion of pornography.

With regard to *effect* it is admitted that "the effects are at times identical".⁴⁸ Indeed, not only is erotic realism sometimes as aphrodisiacal as hard core pornography, but it appears to be a necessary feature of it that it should be so. "If while writing realistically on the subject of sex the author succeeds in moving his reader" the Kronhausens say "this too, is erotic realism, and it is axiomatic that the reader should respond erotically to such writing"⁴⁹ (their italics). Possibly this is why the authors say that "the ultimate test of whether something is 'obscene' (that is, genuinely pornographic) or not cannot be conclusively deduced from its effects; it can only be determined on the basis of a content analysis of the book itself".⁵⁰ Yet even in regard to *content* almost all the "major criteria"⁵¹ listed, such as Seduction, Defloration, Incest, "Dirty" Words, Supersexed Males, Nymphomaniac Females and Homosexuality, are present in both works of erotic realism and hard-core pornography. It is true that we are told that it is not the mere appearance of these criteria which defines the nature of a work but that they "must be evaluated . . . as a *configuration* and *cluster* of factors".⁵² But here again the acid test of the meaningfulness of the distinction would be in its application to some such work as Cleland's *Memoirs of a Woman of Pleasure*. And it is a remarkable thing that this work is nowhere referred to in the text of Kronhausen's book, nor is it listed in their quite lengthy bibliography. Indeed, despite their evident sincerity and admirable candour, the authors succeed no better than anyone else in their search for definitive criteria. It seems clear, in fact, that the concept of hard-core pornography is yet another example of the perennial fascination of the quest for the *essence* of pornography. Such considerations as these inevitably lead us to recognize initially the primary importance—the necessity in fact—of deciding what sort of questions can properly, or at least profitably, be discussed in connection with the subject of pornography. For, clearly, the unsatisfactory nature of the answers we usually get in this context is to some extent determined by the nature of the questions posed.

5. *The Formulation of a Question*

Experience suggests that the very worst kind of question to ask is the type most favoured as a subject for symposia and general discussion: portentous questions like "What is Pornography?" or "Does Pornography Matter?". The latter being the title of a book, to which reference has already been made,

"a monument of profligacy, sexual swagger and distortion". Kingsmill in his *Progress of a Biographer* (1949) lists a number of "striking episodes" from Harris' autobiographical writings thus: "Harris consoling Carlyle for his failure to consummate his marriage with Mrs. Carlyle; . . . Froude and Lecky in the porch of Westminster Abbey at the funeral of Robert Browning dissociating themselves from Harris' views on prostitution; Ruskin failing to make it clear to Harris whether he watched by the bed of the dying Rose La Touche or got into it; Maupassant succeeding in making it clear to Harris that he stood well with the opposite sex; . . . Harris helping a muzzy Walter Pater into a hansom cab; Harris walking by the side of a weeping Thomas Huxley; Harris wishing godspeed to Trotsky in New York; and Harris telling the exact truth to President Kruger in Pretoria".

He indulged in "romancing on a scale which can never have been surpassed" said Kingsmill, "and which Casanova alone, of liars I am acquainted with, has come anywhere near equalling".

What appears to be another quite extraordinary example of "erotic realism" cited by the Kronhausens is Mark Twain's essay *1601* to which they devote nearly a whole chapter (41-56). Judging by their detailed—and eulogistic—description of its content, this piece of Twain *curiosa* is little more than a protracted schoolboy snigger; in which, as Dwight Macdonald puts it "repressed sex explodes into scatology". (D. Macdonald in an essay on "Mark Twain" in his *Against the American Grain* (1963) 107).

⁴⁸ Kronhausen, *op. cit. supra* n. 33 at 18.

⁴⁹ *Loc. cit.*
⁵⁰ *Ibid.* 265.

⁵¹ *Ib.* 243.

⁵² *Ib.* 244.

clearly worried its editor a little. Acknowledging the difficulty of satisfactorily defining either "pornography" or "matter" he hopefully quotes a remark by the editor of the *Times Literary Supplement* to the effect that "If your writers are good and brave enough you can depend on them to have a go at any question however framed".⁵³ But, if it is churlish not to applaud the spectacle of the good and valiant "having a go", it is nevertheless difficult not to feel that their energies might have been better directed. Similar considerations apply to the volume of *Law and Contemporary Problems* devoted to the subject of Obscenity and the Arts.⁵⁴ The editor in a brief foreword to the symposium says, "Assuming that there is general agreement that obscenity should be suppressed, the basic problem of definition presents itself: What is obscene? . . .".⁵⁵ Here, one is surprised at the curious assumption of unanimity regarding the desirability of suppressing some unidentified phenomenon. The "basic problem of definition", one feels should surely, if it was going to present itself at all, have had precedence. Yet it is not at all surprising that in the end the basic question is not satisfactorily answered; nor that the editor is forced to seek "some consolation . . . in the hope" that this and other failures "may serve further to stimulate thought and study in this area".⁵⁶ Yet, if the further "study" is to be purely empirical it seems probable that the consolation is delusive. In this connection it is worth remarking that much of what Mortimer Adler has to say about research in this area in the devastating analysis provided in his *Art and Prudence* (1937)⁵⁷ applies with equal force to subsequent efforts. A vast miscellany of information is already available. What is one to make of the U.S. Treasury Department official who judged photographs of the paintings on the ceiling of the Sistine Chapel to be obscene;⁵⁸ of the "cultivated Chinese gentleman" who found the pronounced and regular rhythms of the Sousa march "The Stars and Stripes Forever" played by a Marine band, "almost unbearably lascivious and suggestive of coitus";⁵⁹ of Anthony Comstock whose life-long campaign against obscene literature apparently "assumed, for him, the proportions of a sexual substitute"?⁶⁰ Or, on a less eclectic level, have we advanced very far when we learn that whereas the respiratory rate, the galvanic skin response and the secretion of acid phosphatase by the prostate gland is significantly increased in those aroused by pornographic material, in those who are repelled no such increase is found?⁶¹ After the hundredth re-discovery that one man's religious art (for example, Hindu temple sculptures) may be another man's obscenity, we come back once again to Lockhart and McClure's often quoted conclusion that "no one seems to know what obscenity is".⁶² Paul and Schwartz succinctly sum up their survey of the available empirical evidence regarding the nature of response to erotic stimuli as follows: ". . . There is empirical evidence that the same erotic material may have quite a different effect on different persons and a quite different effect on any particular person, depending on where, when, and

⁵³ C. H. Rolph, Ch. VII in *op. cit. supra* n. 3 at 101.

⁵⁴ (1955) 20 *Law and Contemporary Problems* No. 4.

⁵⁵ M. G. Shimm, Foreword to "Obscenity and the Arts" (1955) 20 *Law and Contemporary Problems* 532.

⁵⁶ *Loc. cit.*

⁵⁷ M. J. Adler, *Art and Prudence* (1937) Chs. 10 & 11 *passim*. See also Kronhausen, *op. cit. supra* n. 33 at 261-89.

⁵⁸ A. Haight, *Banned Books* (1955) 12.

⁵⁹ W. Laparre, "Obscenity: An Anthropological Appraisal" (1955) 20 *Law and Contemporary Problems* 536.

⁶⁰ A. Comfort, *Sex in Society* (1963) 47.

⁶¹ C. M. Drisesens & P. W. Woods, "Psychophysical Behaviour under Various Types of Literature" (1936) 30 *Journal of Abnormal & Social Psychology* 484; also L. C. Clark & P. Treichler, "Psychic Stimulation of Prostatic Secretion" (1950) 12 *Psycho-somatic Medicine* 261.

⁶² W. B. Lockhart & R. C. McClure, "Literature, the Law of Obscenity, and the Constitution" (1954) 38 *Minnesota L.R.* 320.

how he is exposed to the material".⁶³ Of course, we cannot tell whether future researches will merely vouchsafe further glimpses of the obvious or alternatively, as has been opined, "may bring some surprises".⁶⁴ Nevertheless it can scarcely be seriously maintained that discussion must cease until all relevant empirical research is completed; if only because of the political implications of such an evasive attitude. In the circumstances, therefore, we must ask and attempt to answer certain questions. And for the purpose of this paper what is required is a question which is clearly defined, relatively narrow in scope yet with a bearing on some decisive aspect of the matter under discussion.

Now we have already observed that most of the writers cited here appear to have at least this in common, that they are concerned at some point with the treatment of sexual matters in literature and other forms of art and in particular with the limits of the acceptable in such treatment in our society. And it is clear that here at any rate we have a topic which, whilst it may not embrace the whole of what is customarily included under the heading of pornography, is of crucial and central importance. Moreover, if for the purpose of this discussion we confine ourselves to the treatment of sexual matters in *writing* and as far as possible exclude from consideration the portrayal of sexual subjects in painting, drawing, sculpture, etc., we can achieve yet a further narrowing of focus. As it happens, although most writers seem to prefer a wide ranging discursive approach, a notable exception to this can be found in the philosopher F. H. Bradley's posthumously published paper "On the Treatment of Sexual Detail in Literature",⁶⁵ which in certain respects might well serve as a model for the discussion of such subjects. Bradley there addressed himself to "the question as to the right of the novelist to present and dwell on sexual detail".⁶⁶ Thus he achieves the requisite degree of concentration at the outset and his manner of dealing with the question may be noticed briefly. Characteristically he says that he makes no pretence "to freedom from bias" and declares himself "wholly on the side of liberty in science, literature and art".⁶⁷ Incidentally some years later when a "flood of erotic novels" was said to have "swept over the English reading public",⁶⁸ he added a Note to his article in which he said

I hold unreservedly to the position set out in the above article. I am wholly on the side of freedom in art and literature, and against those who would adapt them to the weaknesses, real or supposed, of young persons, or estimate their character by its effect on their own uncultivated or perhaps vicious personality.⁶⁹

Bradley's method of argument was first to set out "the real essence of the attack" on novelists blamed for their treatment of sexual matters and next to "explain the proper line of defence".⁷⁰ For a variety of reasons it is unlikely that today over a half a century later Bradley's actual arguments will seem as cogent or conclusive as perhaps they might have done to his contemporaries. Amongst other defects he has a somewhat peremptory and elliptical way of dealing with some of the crucial points. Art, he admits, can be "intended and used" on occasion "merely (to) disturb and excite". "But," he continues, "here assuredly, so far and to this extent, we have not to do with genuine art."⁷¹ This leaves us wondering whether the intended implication

⁶³ Paul and Schwartz, *op. cit. supra* n. 29 at 296. See also Kronhausen, *op. cit. supra* n. 33 at 261-89.

⁶⁴ Chandos, article cited *supra* n. 21 at 207.

⁶⁵ F. H. Bradley, 2 *Collected Essays* (1935) 618-27.

⁶⁶ *Ibid.* 618.

⁶⁷ *Ib.* 618.

⁶⁸ *Ib.* 618.

⁶⁹ *Ib.* 627.

⁷⁰ *Ib.* 618.

⁷¹ *Ib.* 621.

of this remark is that only "genuine art" will qualify for unrestricted circulation; and also whether a good deal of controversial material might not be found to come somewhere between Bradley's "genuine art" and say D. H. Lawrence's "genuine pornography".⁷²

Yet, if the content of Bradley's arguments may not be wholly satisfactory, his selection of a clearly defined topic and his dialectical *mode* of argument make a refreshing contrast to the confused and tendentious treatment commonly found in this field. In the circumstances, clarity being the *desideratum*, a good course will be to follow Bradley's example to the extent of framing a specific question and then attempting to state the essence of the possible alternative answers to it. And it will be convenient and conformable to the foregoing discussion to adapt for our purpose the very question which Bradley himself posed.

6. A Question Posed

Let us then pose the question: "Should any limits be imposed on the writer's freedom to present and dwell on sexual detail?"

Before going further, however, it is interesting to note that Bradley found it necessary at this point to state the case for censorship "not quite as it is usually made, but as it must be made if it desires to be logical and consistent".⁷³ It is significant that anyone following his steps today faces the same necessity. A major difficulty here is that, as Eric Larrabee (amongst others) has pointed out, "the subject of sex is charged with anxiety".⁷⁴ So that a great many people appear to be unable to retain their equanimity or come to terms with reality when discussing sexual matters. This is no less true incidentally of those who oppose than of those who support censorship. An extraordinary lack of candour and clarity seems to affect participants in the debate on both sides.⁷⁵

Consider, by way of example, the disingenuous or at least equivocal arguments of those who defend John Cleland's *Memoirs of a Woman of Pleasure* on the ground that it is "an historical novel".⁷⁶ The truth is that Cleland's book is concerned almost exclusively with physical sex and is composed largely of a series of extremely explicit, if somewhat flowery, descriptions of sexual activities. Yet, as the *New Statesman* pointed out recently, its defenders appear at times to be assuming that "it is only by virtue of its occasional *failure* to refer to sexual matters that the novel can be admitted as fit for publication". So that, "the plea of historical interest is urged largely on behalf of those pieces or 'snippets' of the novel which embody this failure; the aphrodisiac regrettably administered in the course of it . . . is redeemingly contained in . . . an item of historical interest".⁷⁷

On the other hand, take D. H. Lawrence on the necessity for the rigorous censorship of "genuine pornography". Why does he think it necessary? "Pornography," he says, "is an invariable stimulant to the vice of self-abuse, onanism, masturbation, call it what you will. In young or old, man or woman, boy or girl, modern pornography is a direct provocative of masturbation. It cannot be

⁷² D. H. Lawrence, article cited *supra* n. 18 at 67.

⁷³ Bradley, *op. cit. supra* n. 65 at 618.

⁷⁴ E. Larrabee, "The Cultural Context of Sex Censorship" (1955) 20 *Law and Contemporary Problems* 672.

⁷⁵ The English satirist Michael Frayn, writing recently on the subject of Pornography, remarked the conspicuous absence of a witness prepared to admit frankly ". . . I enjoy it. I think everyone does. We're titillated and aroused by it. It has a definite and pleasurable tumescent effect on us. That's what it's for, after all". *The Observer Weekend Review* (London) (16.2.64).

⁷⁶ In this connection see "Golden Bowl and Silver Porringer" (1964) 67 *New Statesman* (No. 1718) 212-14.

⁷⁷ *Ibid.* 212.

otherwise."⁷⁸ And he goes on to say that "masturbation is certainly the most dangerous sexual vice that a society can be afflicted with".⁷⁹ This appears at first sight to have an air of rationality about it. Yet read in conjunction with his earlier remarks on the subject of pornography a different impression emerges. For a few pages before in the same essay he has described pornographic picture postcards as being "of an ugliness to make you cry" and pornographic books as "either so ugly they make you ill, or so fatuous you can't imagine anybody but a cretin or a moron reading them or writing them".⁸⁰ So that it is difficult to be sure whether he wanted pornographic works censored because they were fatuous, because they made him weep, because they made him ill, or because they made him masturbate. All that does emerge is that he apparently felt strongly on the subject. All this is not to say that the arguments for and against censorship in this field cannot be stated clearly and rationally but only that they very rarely are.

We may here begin then by outlining the arguments for the curtailment of freedom for writers to produce and publish material dealing with and dwelling on sexual detail. A careful survey of the available literature suggests that the cardinal points in the case for imposing limitations can be set out as follows, *seriatim*.

7. The Case for Censorship

(A) The first point is one which Bradley himself phrases as follows. "It is a recognized law that all ideas have a tendency to work themselves out into personal emotion and action. This law obviously holds good in the case of amatory sexual ideas. However they are suggested, these ideas tend to develop themselves within me into emotional disturbance and this disturbance tends to carry itself out in action".⁸¹ In other words, we must face the fact that readers of erotic material having been subjected to its libidinous impact may be stimulated either to attempt to execute in real life the sort of conduct they have been reading about or to engage in some sort of sexual activity. Even if it is true that there is no statistical scientific evidence relating the reading of erotic material to sexual activity, nevertheless prudence suggests that we should not ignore the widespread and strongly felt belief that such reading does have such consequences. As Paul and Schwartz put it:

Scientific certainty is difficult if not impossible in this field . . . conclusions must be based on fragmentary data and acknowledgeable conjecture, and the beliefs or intuition of an overwhelming majority are not to be set aside by reason of the doubts of a few or the unavoidable dearth of scientific data.⁸²

Moreover in this connection mention should also be made of the suggestion made by some psychiatrists to the effect that a major social danger lies in the possibility that pornographic material may stimulate sexual misbehaviour or even crime on the part of sexually maladjusted persons.⁸³

(B) One of the primary functions of censorship in this sphere is the provision of protection from shock or offence to the feelings. In other words, a major function of controls is to prevent the infliction of mental disturbance or psychological hurt on those who read literature in which sex is described in a manner which offends their sense of propriety or decency. This argument is closely akin to the "justification" of censorship suggested by Professor Van Den Haag in his essay "*Quia Ineptum*".

⁷⁸ Lawrence, article cited *supra* n. 18 at 71.

⁷⁹ *Ibid.* 73.

⁸⁰ *Ib.* 67.

⁸¹ Bradley, *op. cit. supra* n. 65 at 618-19.

⁸² Paul & Schwartz, *op. cit. supra* n. 29 at 196.

⁸³ *Ibid.* 294.

"The explanation if not the justification of censorship", he asserts, lies in the fact that it represents a compromise between our "wish to indulge . . . all sexual desires and the later wish to control them";⁸⁴ and the existence of censorship or control helps to reduce the anxiety occasioned by this conflict.

(C) Another objection to allowing writers the freedom to disseminate material which may be aphrodisiacal (either incidentally or intentionally) is really a variation of the first argument above, reformulated with reference to a specific form of sexual activity. The argument is to the effect that the reading of such material leads to masturbation and that even if we no longer regard masturbation as always an evil thing we should recognize that it may have undesirable consequences especially in regard to the immature. One danger being that masturbation may remain as Gorer puts it "the preferred mode of gratification when sex with a partner is available"; and that "this can almost certainly be interpreted as neurotic, as a failure to achieve the degree of psychosocial development general within the society".⁸⁵

(D) A further and related point also brought out by Gorer concerns the suggestion that "through pornography the immature will be precociously excited into sexuality". He points out that the development of complex literate civilizations appears to depend on "prolonging social childhood for several years beyond physiological childhood", and that "the more complex the contents of necessary education the longer this social prolongation has to be".⁸⁶ In the circumstances we wish to avoid sex becoming a major preoccupation of the young of either sex whilst they are still in the process of education. Therefore in view of the possibility that exposure to pornography or near pornography may be overstimulating, Gorer argues that "as a matter of public policy its circulation should be restricted . . .".⁸⁷

(E) An argument of a rather different kind refers to the possibility of the use of erotic literature as an aid to the seduction of the innocent. The suggestion is that feelings of sexual arousal having been induced by such stimuli, seduction which might, without such adventitious aids, have been stoutly resisted, will be facilitated.

(F) Finally it may be urged that writers should at least be prevented from publishing works of a purely aphrodisiacal kind whose only object is to stimulate a morbid interest in sexual activities. Such works it is said "form no useful part in the exposition of ideas or the advancement of the arts".⁸⁸ In this connection Dr. Leonie Kramer's recent remarks in reference to Cleland's *Memoirs of a Woman of Pleasure* have some relevance. "It is without doubt in intention and design a pornographic book," she says, and adds:

I do not accept the view that pornography can be literature and vice versa. The impulse and intention of a pornographic work is, I believe, not only to shock by crudity, but actually to stimulate feelings of a prurient kind. When Cleland describes Fanny Hill's mounting sexual excitement as she watches the engagement of two 'lovers' he hopes to produce in his reader the effect that he is describing in his heroine. This kind of aim has nothing to do with literature.⁸⁹

It can, therefore, be argued (although Dr. Kramer does *not* draw this inference) that, whatever the truth may be regarding the socially harmful effects of pornography, works such as Cleland's "may still be suppressed at the will of the majority because they are socially useless; they stimulate glands alone—not the intellect, nor . . . the human spirit".⁹⁰

⁸⁴ Van Den Haag, "Quia Ineptum" in *op. cit. supra* n. 1 at 122.

⁸⁵ Gorer, article cited *supra* n. 11 at 39.

⁸⁶ *Loc. cit.*

⁸⁷ *Ibid.* 40.

⁸⁸ Paul & Schwartz, *op. cit. supra* n. 29 at 200.

⁸⁹ L. Kramer, "Matter of Sex" (1964) 29 *Quadrant* 52.

⁹⁰ Paul & Schwartz, *op. cit. supra* n. 29 at 200.

These are some of the more substantial arguments in favour of imposing some limits on the writer's freedom to present and dwell on sexual detail. Undoubtedly there are others; and conceivably a lengthy book rather than a paper of this nature would be required to do full justice to them. Nevertheless for present purposes the above outline will have to suffice. Let us then take the arguments briefly sketched above and consider point by point in the same order what is, to use Bradley's phrase, "the proper line of defence".⁹¹

8. *The Case Against Censorship*

(A) Scientific research into the effects of exposure to pornographic material is currently being undertaken on a large scale by the Kinsey Foundation at the University of Indiana. It is conceivable that "apart from a transitory state of excitement"⁹² and occasional masturbation it will be found to have no overt effects whatever. Nevertheless it is arguable that a policy of prohibition if successfully carried through could have harmful social effects in that it could lead to an increase in aggressive sexual misbehaviour or crime on the part of those for whom pornography had previously provided a fantasy outlet. It is suggested that something like Feshbach's "substitution" hypothesis⁹³ according to which the fantasy release of impulses tends temporarily to reduce their real effective strength may hold good here. A report of a recent inquiry into the trade in pornography in the United Kingdom, incidentally, suggests that those who purchase it fall into three main groups:

- (a) cripples and outcasts, who are poor and looking for a cheap alternative to the real thing;
- (b) wealthier men who are sexually maimed;
- (c) married men who do not wish to be unfaithful but who get a vicarious sense of infidelity from erotic books and pictures.⁹⁴

At any rate the pornographic bookseller's most common justification, "I think it's better that people should read them than go and attack somebody in the park"⁹⁵ is not without a certain *prima facie* plausibility. It is true that as far as maladjusted persons are concerned there does not appear to be any consensus among psychiatrists regarding the effects of reading erotic material. Nevertheless a great many authorities feel that the experience may not be harmful but on the contrary provide a useful and harmless release for suppressed impulses.⁹⁶ As regards those who are vulnerable to books as stimulants to anti-social behaviour a point made by McKeon, Merton and W. Gellhorn in their *The Freedom to Read* is worth noting. "To provide a thoroughly antiseptic environment for such people," they say, "would require measures to exclude them from the world of books altogether, a step which has yet to be advocated by any contemporary censor."⁹⁷ In the circumstances it is suggested that we should not lightly disregard the possible dangers of suppression because of a somewhat implausible and unsubstantiated cause-and-effect hypothesis. It is notable in this connection that although there is a vast literature dealing in great detail with murder it is not usually suggested that its readers are in danger of committing murders. As G. Legman puts it: ". . . If reading is ideomotor, if he and she who read of sex will try it out when no one is watching, why will not they who read of murder try that

⁹¹ Bradley, *op. cit. supra* n. 65 at 618.

⁹² Gosling, Ch. V in *op. cit. supra* n. 3 at 58.

⁹³ S. Feshbach, "The Drive-reducing Function of Fantasy Behaviour" (1955) 50 *Journal of Abnormal Social Psychology* 3-11.

⁹⁴ G. Smith, "Books that Miss the Bonfire", *The Sunday Times* (London) (16.2.64) 30.

⁹⁵ *Loc. cit.*

⁹⁶ Paul & Schwartz, *op. cit. supra* n. 29 at 293-4.

⁹⁷ R. McKeon, R. K. Merton and W. Gellhorn, *The Freedom to Read* (1957) 75.

too when they have a chance?"⁹⁸ Indeed there are no better grounds for believing that pornography will induce ordinary citizens to "forthwith become promiscuous or anti-social"⁹⁹ in their sexual conduct, than there are for believing that the devotees of murder fiction are likely to become homicidal. (B) There seems to be little doubt that there are, in our society, numbers of people who are offended not only by pornography but by almost any explicit discussion of or reference to, sexual matters. The history of the campaigns for censorship¹⁰⁰ makes it plain that there have always been persons who would be distressed by freedom of publication and who, implicitly at any rate, demand protection from this form of distress. Thus, in the absence of evidence that pornography does deprave or corrupt, it might be suggested that the question whether it should be suppressed could turn on whether or not it is felt that the offence to feelings and distress occasioned by its publication would be sufficiently deep, widespread and serious to justify the curtailment of freedom involved. In reply to this two points may be urged. Firstly it should be borne in mind that there will be very little individual liberty or freedom of expression if only that is permitted, or can be published which does not distress anybody at all; for there have always been vocal minorities of the neurotic and hypersensitive ready to campaign for prohibition and suppression, and there is no reason to believe that this may not be a permanent feature of human society. Secondly there is the point made by Alex Comfort in his *Sex in Society*. He admits that "We have to recognize the rights of sexually squeamish people—they are entitled to ask that things which upset them should not be forced needlessly on their notice"; but, he adds, "In the case of written matter . . . a book stays closed until it is open, and it can be voluntarily closed at any moment".¹⁰¹ In short the distress, shock or offence to feelings involved could surely only be of the kind arising from the knowledge that *other* people are reading the literary material to which objection is taken. Yet, as H. L. A. Hart has put it,

Recognition of individual liberty as a value involves, as a minimum, acceptance of the principle that the individual may do what he wants, even if others are distressed when they learn what it is that he does—unless, of course, there are other good grounds for forbidding it. No social order which accords to individual liberty any value could also accord the right to be protected from distress thus occasioned.¹⁰²

(C) The argument that writing which may stimulate sexual arousal should be censored because its dissemination may induce more frequent masturbation and that masturbation is in itself a social evil rests on two questionable premises. In the first place, as Walter Allen says, "It would be a better case were it not obvious that throughout the ages masturbators have resorted to their practice without benefit of dirty books . . .".¹⁰³ Secondly, there is no objective evidence that even frequent masturbation is harmful provided that parents or other adults do not stimulate guilt or anxiety feelings about it.¹⁰⁴ Indeed it is arguable that, as far as males are concerned at any rate, "frequent early masturbation might provide valuable training for later married life by lowering the sensitivity of the penis and prolonging the interval before orgasm: (for) strenuous abstinence is, in practice, a common precursor of premature

⁹⁸ Legman, *op. cit. supra* n. 8 at 95.

⁹⁹ Paul & Schwartz, *op. cit. supra* n. 29 at 193.

¹⁰⁰ See for America P. Coleman, *Obscenity, Blasphemy, Sedition* (1962) for Australia; St. John-Stevas, *op. cit. supra* n. 13 for England; and Paul & Schwartz, *op. cit. supra* n. 29.

¹⁰¹ Comfort, *op. cit. supra* n. 60 at 76.

¹⁰² H. L. A. Hart, *Law, Liberty and Morality* (1963) 47.

¹⁰³ Allen, article cited *supra* n. 1 at 144.

¹⁰⁴ H. Lewinsky, "On Some Aspects of Masochism" (1944) 25 *International Journal of Psychoanalysis* 150-5.

ejaculation".¹⁰⁵ Furthermore, even if it could be shown that the masturbator might do some harm to himself the harm which he does to society is, if any, absolutely minimal.

(D) Although it is common to stress the harmful effect of pornography on youth rather than adults, almost the only careful investigation, that carried out by Kinsey and his associates, indicates that the group most likely to be affected or erotically aroused by it is the *adult male*. They found "nearly no cases of females utilizing erotic books or pictures as sources of stimulation during masturbation".¹⁰⁶ For the pre-adolescent and the teenage male erotic literature appears to be neither a necessary nor an important factor in arousing sexual desire. It is notable in this connection that even St. John Stevas who says "the law is rightly used to suppress the social evil of pornography"¹⁰⁷ admits (somewhat paradoxically) that "it is at least as probable that it is sexual desire, especially if frustrated, that creates the taste for pornography and not pornography which stimulates sexual desire".¹⁰⁸

The truth is probably that the youthful male will always find aphrodisiac material of some kind if he wants it even if it takes the form of passages from classical literature.¹⁰⁹ As to preventing sex becoming a preoccupation of the young by the censorship of erotic writing: this seems little short of ridiculous when as Eric Larrabee points out "popular culture is saturated with sexual images, references, symbols, and exhortations"¹¹⁰ and our adolescents are continuously overwhelmed with erotic stimuli of various kinds. As a matter of fact it seems probable that the efficiency of erotic literature as a stimulant is subject to diminishing returns¹¹¹ and that, as is often suggested, the demand for it is in part a function of prohibition and secrecy. John Chandos, speaking of his own experience, says that "a likely cure of any curiosity about pornography would be an enforced course of reading of obscenity, supplemented by the obligation to make a detailed report on the material".¹¹² In the circumstances it is by no means improbable that the free circulation of straightforward pornography would put an end to the constant pressure of furtive titillation to which young people in our society are subjected.

(F) Despite Casanova's claim to have used an illustrated edition of the Sonnets of Aretino as an aid to seduction,¹¹³ there are reasons for thinking that Gorer is right when he suggests that "the impact of pornography (is) marginal, compared with the other techniques available to the seducer".¹¹⁴ In particular there is the Kinsey finding that pornography which males find stimulating commonly brings no more than minimal responses from females.¹¹⁵ Incidentally

¹⁰⁵ Comfort, *op. cit. supra* n. 60 at 108.

¹⁰⁶ Kinsey *et al.*, *op. cit. supra* n. 4 at 668. But see *ibid.* 688 where it is pointed out that "there is tremendous individual variation" in female response to "psychologic stimuli". See also letter cited *infra* n. 109.

¹⁰⁷ St. John-Stevas, *op. cit. supra* n. 13 at 201.

¹⁰⁸ *Ibid.* 196.

¹⁰⁹ And not only the youthful *male* apparently despite the Kinsey finding cited *supra* n. 106; as witness the following extract from a letter which appeared in 86 *Bulletin* (1964) (No. 4397) 4: "When I was 13 and attending an English girls' boarding school . . . I used to read 'Venus and Adonis' as pornography. I got the same pleasure from 'The Rape of Lucrece', Marlowe's 'Hero and Leander', and later from Chaucer's 'Troilus and Cressida' . . . nothing I have read since has made the same sensual impact on me as 'Venus and Adonis' did; . . ."

¹¹⁰ Larrabee, article cited *supra* n. 74 at 683.

¹¹¹ Kronhausen, *op. cit. supra* n. 33 at 263, where the authors say: ". . . the aphrodisiacal effect of 'obscene' books seem to follow the law of diminishing returns after a certain saturation point is reached." See also Kinsey *et al.*, *op. cit. supra* n. 4 at 660, for a similar finding in respect of the effect of observing "burlesque" shows.

¹¹² Chandos, article cited *supra* n. 22 at 47.

¹¹³ This incident is referred to by Gorer, article cited *supra* n. 11 at 38. See also Kronhausen, *op. cit. supra* n. 33 at 99.

¹¹⁴ Gorer, article cited *supra* n. 11 at 38.

¹¹⁵ Kinsey *et al.*, *op. cit. supra* n. 4 Ch. 16 *passim*.

Mr. Godfrey Gold, the English publisher and bookseller, who figured in a recent prosecution¹¹⁶ for selling Cleland's *Memoirs of a Woman of Pleasure*, observed the other day, "If you give a girl a dirty book she'll just say how disgusting. Give her a few gins and it's a different story".¹¹⁷ And the evidence does seem to suggest that pornography is more likely in the vast majority of cases to inhibit than to excite female erotic responses. Insofar as this is true its employment as part of a technique of seduction might merit the approval of the moralist as tending to make successful seductions less frequent. (G) The suggestion that some books may be banned because they possess no redeeming social or aesthetic value implies that these are generally recognized and agreed criteria of social or aesthetic worth and that objective judgments or appraisals of books can be made in accordance with these criteria. Yet not only is this untrue, but furthermore in this connection we come up against that "paradox of censorship" which Mortimer Adler says was made "so plain" by John Milton "that it has never been avoidable in all subsequent discussions of the problem".¹¹⁸ Unfortunately it has too often been avoided. But no one has yet satisfactorily answered Milton's question how, if men are harmed by what they read, we shall find censors "unless we can confer upon them, or they assume to themselves, above all others in the land, the grace of infallibility and uncorruptedness?"¹¹⁹ Curiously enough, throughout history there has been no evident shortage of those prepared to arrogate to themselves the requisite wisdom, knowledge and incorruptibility. But we must surely recognize that "some things which are quite obscene may also be important reflections of man's culture, thinking and ideas";¹²⁰ and recognize, too, that our judgments on these matters are no less likely to be crass and purblind than those of our predecessors. And this brings us to what is perhaps the really crucial issue in relation to the problem of pornography and one which merits treatment in a separate and final section.

9. Can Pornography Be Literature?

In this connection John Cleland's *Memoirs of a Woman of Pleasure*, to which a number of references have already been made, will serve admirably as a concrete example. This book says St. John Stevas "was written as a straightforward sexual aphrodisiac in the best pornographic tradition";¹²¹ and happily both its defenders and its critics appear to agree about that, if little else. Dr. Kramer, for example, has no doubt that it is a pornographic book and maintains that all the arguments which have been advanced in defence of it are "specious". Although she does not say that it should be suppressed (nor is there any necessity to say so in Australia) she argues that "the opponents of all forms of censorship have not faced all the issues which are raised by the publication of a book such as this".¹²² No doubt she is right on this last point; nor is it likely that *all* the issues will be faced here.

Yet surely Dr. Kramer herself evades one of the principal issues. "I do not accept the view that pornography can be literature . . ." she says. "And," as Dr. Johnson might have said (*did* say in another context) "there's an end on't". But we can scarcely ignore all those critics who have testified that the book has literary merit. What about Professor Iain Watt, for example? Professor of English Literature and Dean of English Studies at Norwich Uni-

¹¹⁶ See *The Times* (London) (11.2.64) for trial report.

¹¹⁷ Smith article cited *supra* n. 94.

¹¹⁸ Adler, *op. cit. supra* n. 57 at 106.

¹¹⁹ J. Milton, *Areopagitica* (ed. Sir Richard Jebb 1918) 24.

¹²⁰ Paul & Schwartz, *op. cit. supra* n. 29 at 201.

¹²¹ N. St. John-Stevas, "Prosecutor's Choice", *The Sunday Times* (London) (16.2.64) 30.

¹²² Kramer, article cited *supra* n. 89 at 52.

versity, he stated unequivocally that the book belonged "in the history of literature, not the history of smut". At Bow Street Magistrates' Court, London, he testified recently that "It is a good book, because it is interesting, well written, of considerable interest in the development of the English novel, and one which on balance, I should say, would increase the understanding of gaiety and pleasure in the world".¹²³ What about Peter Quennell, a critic not altogether lacking in literary sensitivity, who wrote the introduction to the recent U.S. edition of Cleland's book? "*The Memoirs*," he writes, "has literary qualities. . . . No other book of the same kind possesses so much elegance and energy; it is a genuine tale, told with considerable art, and gives us a graphic picture of its social age."¹²⁴ Others too numerous to cite here—or to ignore—have testified to similar effect. Indeed this is why the book poses a problem, as St. John Stevas points out, for those who wish to draw "a distinction between pornography on the one hand and literature with an incidental obscene content on the other". The difficulty about the book is, he continues, "that it refuses to be fitted into either of these convenient and neat categories but awkwardly straddles them. 'Fanny' is undoubtedly pornographic but equally clearly it is a book of considerable literary merit"¹²⁵

Yet Dr. Kramer is not entirely peremptory and does in fact support her contention as follows, in a passage already quoted above. "When Cleland describes Fanny Hill's mounting sexual excitement as she watches the engagement of two 'lovers' he hopes to produce in his reader the effect that he is describing in his heroine. *This kind of aim has nothing to do with literature*"¹²⁶ (my italics). Now there is something wrong with the passage Dr. Kramer is referring to, undoubtedly. It is in fact, somewhat implausible, because females very rarely, if ever, respond sympathetically to the spectacle of other persons engaged in sexual activity; nor is this likely to be due to cultural tradition, for a similar lack of response is found in the females of other species of mammals.¹²⁷ But the extraordinary doctrine implied in the words italicized is surely untenable. Can it seriously be maintained that all works, or passages in works, in which the author's intention was to produce in his readers the effects described in his hero or heroine cannot be regarded as literature? If this is accepted the field of literature would be grotesquely restricted; and the ranks of the novels which could be regarded as literature would be decimated. It is, of course, possible that Dr. Kramer's dictum is not meant to apply when a hero or heroine is described as being engaged in such activities as eating, drinking, murdering or playing cricket but only in the case of sexual activity. But if this is so, although there may well be moral or expeditious grounds for such a distinction, there are none in aesthetics. The pursuit of reader identification or empathy is aesthetically just as legitimate in the one sphere as in the others. What Cleland calls "the old last act"¹²⁸ is certainly not intrinsically objectionable or illegitimate material for art. Indeed, as Walter Allen says, "After half a million years of man on earth during which time every single human being has been produced by sexual intercourse one might have expected that by now sex would present no difficulty".¹²⁹ And the point is well made, despite the fact that Allen appears not to have heard of artificial insemination. Does Dr. Kramer want to say that here we have an aspect of experience, a feature of life which cannot be the subject of imaginative literature? It seems unlikely, for she speaks approvingly of "a good story from

¹²³ See trial report in *The Times* (London) (3.2.64).

¹²⁴ P. Quennell, Introduction to J. Cleland, *Memoirs of a Woman of Pleasure* (1963) (U.S. edition) x-xi.

¹²⁵ St. John Stevas, article cited *supra* n. 121.

¹²⁶ Kramer, article cited *supra* n. 89 at 52.

¹²⁷ Kinsey *et al.*, *op. cit. supra* n. 4 at 661-2.

¹²⁸ Cleland, *op. cit. supra* n. 124 at 32.

¹²⁹ Allen, article cited *supra* n. 1 at 142.

the *Canterbury Tales* or *Decameron* (which) can be frank, or even coarse and vulgar".¹³⁰ Yet, once it is admitted that sexual activity has a proper place as an ingredient in works of art, are there any valid grounds for suggesting that only *anaphrodisiacal* treatment of sexual matters should be regarded as acceptable or permissible?

It is, of course, possible to treat sex in a wholly antiseptic and clinical fashion. Although it may not be easy to do so; as witness Mary McCarthy speaking about her treatment of sex in her novel *The Group*:¹³¹

I think my idea, my hope about this book is that it's a book that contains passages about sex that are not sexy and I think that it is quite a feat; to write in great detail about sex without being in any way lascivious, conjuring up very voluptuous images. So this was my purpose, anyway, in these two chapters to write about sex in a detached way without any erotic overtones. And Chapter 2, the famous seduction chapter, I wrote over and over again to eliminate any hint of voluptuousness.¹³²

Now Miss McCarthy, who incidentally is "against censorship of any kind",¹³³ had a definite purpose in writing in the manner indicated; she wanted apparently to eliminate anything that would distract readers from her principal point which there concerned the influence of technology in the sphere of sex. But it can scarcely be urged that only "passages about sex that are not sexy" should be permitted; or that all writers on these matters, whatever their purpose, should write and rewrite in order to eliminate anything remotely aphrodisiacal. Certainly if their purpose were, as Quennell says Cleland's was, to treat "of pleasure as the aim and end of existence, and of sexual satisfaction as the epitome of pleasure"¹³⁴ it would be ridiculous for them to do so.

"And is there any pleasure you can name," Socrates asks Glaucon in Plato's *Republic*, "that is greater and keener than sexual pleasure?";¹³⁵ and Glaucon can't think of one. Perhaps they were wrong about this; but if a writer happens to agree, and sets out to celebrate that pleasure in prose or verse and also incidentally to excite the feelings of his readers, on what grounds can he be faulted? Not on aesthetic grounds, surely; except in so far as he fails to achieve his purpose. And here it becomes clear that the attempt to suppress pornography and yet allow freedom of publication to works of literary merit is not only impracticable but totally illogical. For, clearly, the aphrodisiac effect of a work may be reinforced by aesthetic merit. As Sir Herbert Read says, "there is cogent reason for the view that the more artistic images are made" — and he speaks here of either visual or verbal images — "the more effective they will be, and therefore the more reprehensible from the legal point of view".¹³⁶ And even Professor Van Den Haag, who appears to think that aesthetic merit may reduce the sensual impact of a work of art, says that "there is no doubt in my mind that the artistically most perfect representation of sexual matters may quicken sexual appetites in the most perfect observer".¹³⁷

Of course, it must be acknowledged that sexual relations are not only pleasurable, but are also productive of extremely complicated and even painful

¹³⁰ Kramer, article cited *supra* n. 89 at 52.

¹³¹ In a *TCN-Channel 9* interview in London following the Victorian ban on the book. For text see *infra* n. 132.

¹³² From the transcript of the interview referred to *supra* n. 131, as published in 86 *The Bulletin* (1964) (No. 4391) 5.

¹³³ *Ibid.* 5.

¹³⁴ Quennell, *op. cit.* *supra* n. 124 at xiv.

¹³⁵ F. M. Cornford (ed. & transl.), *The Republic of Plato* (1941) 89. Book III 402 in the traditional division into ten "books".

¹³⁶ Sir Herbert Read, article cited *supra* n. 3 at 12.

¹³⁷ Van Den Haag, article cited *supra* n. 84 at 118.

situations in human life. It cannot be seriously suggested, however, that this aspect of the matter has been neglected in the world's literature. The pleasurable aspects of erotic experience on the other hand have been neglected to a degree which almost constitutes deliberate falsification. "Argument," says Alex Comfort, "has so involved sexuality with debates over health and morals that we are apt to miss the fact that numerically at least the chief biological function of coition in man is play . . . the function of sexual intercourse in man is only comparatively rarely reproductive". And he goes on to say that it seems reasonable "to regard sexual intercourse as an important recreation which is biologically very well adapted to release residual anxieties of all kinds, and which has a physiological means of abreaction — the orgasm — 'built in'. It is in other words, the healthiest and most important human sport; and the need to consider it in other, medical or sociological, contexts, should never be allowed to obscure the fact".¹³⁸ Yet it is a fact, or rather an attitude, which has been deliberately obscured in our culture. It is no accident that, as Comfort points out, there is virtually no European "literature of sexual enjoyment".¹³⁹ On the contrary much time and energy is devoted to ensuring the suppression of erotic art and literature. There must be no "undue emphasis on matters of sex".

10. Conclusion

In his magnificent essay taking his "last leave of this world's pleasures" Montaigne remarks of "the acte of generation" that "we feare to speake of it without shame, and exclude it from our serious and regular discourses". And yet, he says, "we pronounce boldly, to rob, to murther, to betray; and this we dare not but between our teeth".¹⁴⁰ It is a perennial paradox. Nearly four centuries later Gershon Legman, in his provocative yet perceptive study of censorship, *Love and Death*, asks, "Why this absurd contradiction? Is the creation of life really more reprehensible than its destruction?"¹⁴¹ Perhaps we shall one day come to recognize, with Montaigne, that it is "a sign of our vanity and deformity" that we "terme that worke bestly which begets and which maketh us".¹⁴² And surely Bertrand Russell was right when he said: "It is not by ignorance, and still less by downright falsehood, that any virtue worthy of the name can be produced."¹⁴³

¹³⁸ Comfort, *op. cit. supra* n. 60 at 26.

¹³⁹ *Ibid.* 155.

¹⁴⁰ M. Montaigne, "Upon Some Verses of Virgil" in *Essays* (1580-8, transl. J. Florio 1603) Book III, ch. v, 70 (Everyman Ed.).

¹⁴¹ Legman, *op. cit. supra* n. 8 at 94.

¹⁴² Montaigne, essay cited *supra* n. 140 at 106.

¹⁴³ Russell, article cited *supra* n. 19 at 11.