

**PERMISSION AND REGULATION: SEXUAL MORALITY
AND THE CRIMINAL LAW IN BRITAIN, 1955-75.**

by

TIM NEWBURN

A Thesis submitted for the Degree of Doctor of Philosophy

University of Leicester, 1988.

CONTENTS

	<u>Page</u>
ACKNOWLEDGEMENTS	i
CHAPTER	
Introduction	1
1. 'Permissiveness': Accounts, Discourses and Explanations.	6
- The Conservative Historians	6
- The Liberal Historians	14
- The Marxist-Gramscian Approach	19
- The Eliasian Approach	25
- Conclusion	30
2. Permissiveness and Moral Protest: Mary Whitehouse and the National Viewers' and Listeners' Association.	35
- The National Viewers' and Listeners' Association	36
- Broadcasting and the NVALA	45
- Obscene Publications and the NVALA	53
- Sex Education and the NVALA	56
- Later Campaigns: Blasphemy and Homosexuality	61
- Christianity and Politics	68
- The New Morality	73
- Other Moral Entrepreneurs	76
- The Emergence of Moral Campaigns	80
- Conclusion	87
3. The Wolfenden Report and Legislative Change	96
- Build-up to Wolfenden	96
- The Wolfenden Report	100
- Wolfenden and Prostitution	102
- Wolfenden and Homosexuality	108
- Law and Morals	133

- Morality and Social Solidarity	144
4. Obscenity and the Law: The Permissive Years?	154
- The State of Affairs Before 1959	156
- Public Reaction to the Events of 1954	163
- The Obscene Publications Act, 1959	174
- Lady Chatterley's Lover	178
- The Ladies Directory	187
- Fanny Hill	192
- The Obscene Publications Act, 1964	198
- The Arts Council Joins the Debate	208
5. Obscenity and the Law: Backlash?	225
- Enter Lord Longford	225
- The Longford Report	233
- Responses to the Report	241
- The Underground Press	250
- International Times	252
- The Mouth and Oral Sex	255
- The Trial of OZ	257
- The Little Red Schoolbook	272
- Nasty Tales	278
- Conclusion	280
6. 'A Woman's Right to Choose'? Abortion and the law in Post-War Britain	296
- Before Steel: Abortion in Britain before 1967	296
- The Abortion Act, 1967	310
- After Steel: The 'Backlash'	321
- Summary	330

7. Conclusion: Morality, the Law and Contemporary Social Change	341
- Functional Democratisation	342
- Separate But Equal? Women and the Ideology of Permissiveness in Post-war Britain	351
- 'Dope, rock'n'roll and fucking in the streets': Permissiveness and Post-war Youth	364
- Secularisation and Post-war Social Change	380
- A Double Taxonomy?	391
- Summary	394
BIBLIOGRAPHY	404

ACKNOWLEDGEMENTS

There are few opportunities to express gratitude adequately. I very much want to thank those who have helped me in my academic career, not only as a postgraduate, but also as an undergraduate. Mike Kelly, Sid Holloway and Eric Dunning were my academic tutors in my three years as an undergraduate. All three, in their very different ways, taught me a great deal, and without their guidance I would never have been able to continue my studies. Thanks must also go to Ilya Neustadt and Ivan Waddington whose textual analysis course in my final year was inspirational. My gratitude also to John Williams and Pat Murphy who, as friends and colleagues, supported and helped in many ways.

This thesis would never have been completed without the help and encouragement of many people. First of all I should like to thank my parents who have always urged me to finish this task and have never ceased to view it as worthwhile. I am thankful for the financial support received from the Social Science Research Council and from the Home Office. The staff of the libraries at Leicester University and the Home Office patiently put up with endless requests for esoteric and occasionally pornographic material, little of which was returned on time. A great deal of time has been saved over the last year through the assistance of the VAX/VMS at the Home Office and, in particular, the person who breathes life into it, Derek Clifford. I am also very grateful to Beryl and Hartley for helping at such short notice with the proof-reading. The thesis would probably never have been started, let alone finished, without the support and encouragement of my supervisor, Eric Dunning. Despite the frequent mutation of the thesis into forms increasingly unlike what had originally been proposed, Eric has continued to believe that I would one day finish this project. My thanks to him for his always inciteful (and sociological) comments and his patience.

Finally, I should like to record my gratitude to Mary, Gavin and Robin. Mary not only supported and encouraged, but also applied her considerable sociological expertise to the final draft. To all three my love and thanks.

INTRODUCTION

The cultural critic Robert Hewison has argued [1] that each decade appears to have its own myth. Such myths seem to capture the feeling of the decade. He suggests that, in the 1940s, it was the sense of community engendered by the Blitz, in the 1950s the aggressive ambitiousness of the 'Angry Young Men' and in the 1960s, 'Swinging London'. Swinging London and what it was supposed to represent formed the heart of our major 'sustaining image' [2] of that period: 'permissiveness'.

The 1960s have probably attracted more critical attention than any other decade of the twentieth century. Sociologists and social historians, particularly the new breed whose major concerns appear to be popular culture and style, have documented the rise of the affluent teenager, the growth of mass consumption and the spread and proliferation of working-class subcultural styles, all of which have become closely associated with that particular historical period. Contemporary politicians have singled out the sixties as the source of almost all our current social ills. According to these ideologues, what we have failed to recover from is a period of moral decline, or permissiveness, that they suggest characterised sixties society. The Conservative M.P. and ex-headmaster, Rhodes-Boyson has suggested, for example, that:

Children were brought up in a pathless desert where the world was to be explored, not served... there was a cheapening of human life and young people were brought up to be selfish, pleasure-seeking or irresponsible. In schools we had child-centered education which led to deprived children, lower standards, disorderly classrooms, and defenceless and disillusioned

teachers. Our present ills are the ripened and bitter crop of those seeds of the 1960s.[3]

'Permissiveness', or the historical period that was supposed to be characterised by it, forms the subject-matter of this thesis.

Whilst there is little agreement as to what permissiveness means or on what characterised its purported growth in the 1960s and what the ensuing results have been, few have come forward to challenge the idea, or to suggest that permissiveness may be a product of our historical imaginations. Several questions immediately arise. Firstly, what is the permissiveness of the 1960s supposed to have consisted of? Secondly, can a process of growing permissiveness - however it is defined - be said to have occurred in post-war British society? Thirdly, what was it about whatever was happening in Britain at this time that allowed the period to be plausibly described as permissive?

This thesis aims to tackle some of these questions. It does so by focussing, in three separate case studies, on a number of changes in the criminal law in this period. The thesis begins, however, by taking a critical look at the notion of 'permissiveness' itself. Chapter one concentrates upon the accounts of the period provided by sociologists, journalists, politicians and other commentators. By examining their accounts and their explanations for the changes they identify, an attempt is made to build up a composite picture of the idea of permissiveness.

Chapter two builds on this composite. Whether or not the changes discussed in chapter one may be described as permissive, it is clear that many commentators believed (many continue to believe) that Britain was in the grip of something called 'permissiveness'. Chapter two takes as its focus one of the central characters of the debates over morality and the law in the 1960s. Mrs Whitehouse is used as an example of a position adopted by moral entrepreneurs in this period, not because, by any means, she is the only one, but because her views in this regard are ideal-typical. A close look at her concerns makes visible the preoccupations that underlay the debates over permissiveness.

Having discussed the concept of permissiveness in the first two chapters, Chapter three, the first of the case studies, considers the various ways in which the relationship between the criminal law and morality has been theorised, taking as its starting-point the Wolfenden Report and the legislation in the two areas that it covered: homosexuality and prostitution. Two basic relationships are identified, these being themselves based upon the respective positions adopted by Patrick Devlin and H.L.A. Hart in their famous debate on jurisprudence in the early 1960s. The function of this discussion is to enable a critical appraisal of both the legislative changes described in the case-studies, and of the concept of permissiveness to be undertaken.

Chapters four and five look at the obscenity laws and their operation, and Chapter six considers the change in the legal position of abortion. Each of the case-studies seeks not only to describe in detail the debates surrounding each of the legislative changes, to

relate the changes identified to the debates outlined in Chapter three (and to each other), but also to look at the concerns that underpinned each. That is, it seeks to uncover what appear to be the hidden agendas or subtexts of the debates in the areas under consideration.

In conclusion, the thesis returns to the questions outlined in the introduction. The usefulness of the concept of permissiveness in understanding the legislative changes outlined in the three case-studies is discussed. It is argued that, whilst such a one-dimensional concept is of limited value for sociologists, it nevertheless appears to have strong ideological resonance. Thus, despite its limitations, the term permissiveness has become an accepted and seemingly self-explanatory tool for many commentators on the 1960s. Permissiveness has become an all-embracing term covering a series of analytically separable concerns. It has come to refer to what has been perceived to be one major social transformation. Here, however, it will be argued that three distinct processes - changing balances of power between men and women; changing balances of power between adults and youth; and the declining influence and centrality of the Church - were the major components of the processes of social change which gave rise to the series of concerns eventually subsumed under the generic term permissiveness. Finally, it is suggested that, as a result of these processes, post-war British society must be described as morally pluralistic, and that, consequently, it has become increasingly difficult to sustain the argument - although Mrs Whitehouse amongst others occasionally still attempts to do so - that we live in an age of moral consensus.

[1] Hewison, R. (1986) Too Much!: Art and Society in the Sixties.
1960-75 Methuen. p.76.

[2] ibid.

[3] quoted in Masters, B. (1985) The Swinging Sixties Constable.

Chapter One. 'Permissiveness': Accounts, Discourses and Explanations.

The aim of this chapter is both to document the ways in which 'permissiveness' has been variously described, and to look at the ways in which it has been explained. Whilst for the sake of clarity it would no doubt be preferable to approach these tasks separately, it is not altogether possible to do so. The reason is that in the writings of many authors these two elements are not easily separable. Consequently, the usual road of description followed by analysis is eschewed here for an approach which combines the two.

There are essentially four broad approaches to the subject of permissiveness that may be identified. These I have called the 'conservative-historical', the 'liberal-historical', the 'Marxist-Gramscian' and the 'Eliasian'. The categories are neither intended to be mutually exclusive nor all-embracing. Not every author who has something to say on the subject of post-war sexual morality is included in the following discussion of each of the four categories, but rather those who are considered to be most representative of each genre are discussed.

The Conservative Historians

The conservative-historical approach to permissiveness or post-war morality can be distinguished from the liberal-historical in a number

of ways. Reading accounts of the period one is immediately struck by the differences in tone adopted by authors in different camps. At its crudest the conservative-historical is but a mourning for a lost 'golden age', an expression of grief for the passing of a time when questions of morals supposedly appeared much simpler, more straightforward and certainly less contentious and open to question. The liberal-historical approach by contrast is more forward-looking in character. The tone is different; it is more optimistic, more likely to assume that the process of historical change being viewed has at least some positive attributes, and less likely to dwell on social 'ills' or problems. It is, in a word, more modernist.

It would be dangerous to assume from this simplification, however, that the two perspectives can be easily separated by the ideological position each adopts; the former tending to see 'permissiveness' as bad, the latter seeing it as good. This tends not to be the case. Whilst the liberal-historians are less likely to be openly damning of the social changes they identify than are the conservative-historians, this should not be read as a sign of their approval. Permissiveness, as will become clear, is used almost universally as a pejorative term.

At the core of the conservative-historical position is the suggestion that the constitution of British society underwent a radical transformation in the 1950s and 60s, and that this transformation included a significant alteration in the society's moral code. The use of the singular 'code' is important as will become clear below. This standpoint is also characteristic of the liberal-historical position, but the former may be distinguished from the latter by its tendency to view this transformation in an almost wholly negative

light. Perhaps the clearest example of such an approach is illustrated by John Selwyn Gummer[1]. The essence of his argument is that British society has, during the course of the twentieth century, been characterised by increasing economic regulation and increasing moral licence. We are, he suggests, much less economically permissive than the Victorians, constraining business enterprise, terms and conditions of employment, advertising and so on, whilst morally and sexually becoming less restrictive. Indeed '(w)e are as restrictive materially as the Victorians were morally', he argues [2].

Gummer takes this argument one step further. The new permissive society differs from its Victorian predecessor not only by virtue of its sexual and moral freedom, but also because it is characterised by lack of agreement over questions of morality, and over the role of the state in the enforcement of morals. This is in direct contrast, he argues, to Victorian society:

In the nineteenth century, men had few such worries. They accepted that the state had a duty to uphold morality and that private morality ought to be subject to the law as it affected society. They then experienced little difficulty in deciding of what private morality consisted. There was a consensus - at least among the articulate. People knew what standards were - at least among the articulate. People knew what standards were and when they and, more particularly, others were falling short of them. [3]

For this author, the crucial change has been the breakup of consensus. Even though in the passage above Gummer undermines his own argument (through his use of the phrase 'at least among the articulate', he implies this consensus is confined to a certain section of society) it is crucial to his thesis that the changes to be identified under the rubric of permissiveness should be viewed against the backcloth of an alleged Victorian moral consensus.

To anyone familiar with the writings of authors such as Gummer who are critical of the changes that have taken place in post-war Britain, the characteristics he highlights will be similarly familiar. Firstly, he identifies 'a lack of respect for authority' resulting from the decline of moral consensus or firm moral guidelines. For such authors this generally means one of two things; diminishing respect by the young for adults, or diminishing respect by the working class for traditional, ie. middle class values (religion, sobriety, hard work etc). Gummer's attention is focused upon the young:

Thus youth, singled out as important by the commentators and advertising men, is increasingly unfettered by the conventional sanctions which a balanced community imposes. It doesn't matter what Mrs Jones thinks because Mrs Jones doesn't know or care. What is more, because this youthful community has little contact with the older generation it has increasingly little reason to see why it should defer to the older generation's judgement. It is here that the oft discussed breakdown of authority becomes most apparent.[4]

The result of lack of respect for authority can be seen in higher, and ever increasing, crime rates, in increased drug use and sexual promiscuity. One must add to this the spread and easier availability of pornography, television which not only normalises such changes, but on occasion appears to be in support of them, and the lack of a firm moral grounding in sex education. All this, it was suggested, was met by very little resistance from the Church or other parts of the establishment, and yet it would be wrong, he argues, to feel that there was popular support for permissive morality.

Gummer makes no pretence of objectivity in his text. Although he suggests he is not wholly against the permissive society, all that he can find to say in its favour is that it points to the continual

necessity to make traditional values relevant to contemporary society:

The assault (on traditional values) is well worth while. It has made us face up to the fact that the sanctity of human life, the importance of the family the very principle of order itself - all of these are not universal principles, readily and completely accepted by all. [5] (my emphasis)

The challenge, Gummer argues, is to make these fundamental principles work in the new situation. The key phrase in the above passage is 'the importance of the family', for this is the only concrete reference to what makes up 'the essential pattern of life' he outlines. Gummer calls for the reassertion of the importance and centrality of the religiously sanctioned, monogamous heterosexual relationship to our culture. Within such an institutional arrangement there is by implication little room for alternative practices, including those possibilities opened up by the women's and gay liberation movements of the period, and it is such an arrangement that constituted, for Gummer, the previously existing moral consensus.

Although the authors in this 'school' focus on different aspects of permissive Britain, they are all united by their acceptance of the idea that previously existing moral consensus has given way to confusion and uncertainty. Brian Inglis has even suggested that this was a widely held belief in the period. He argues that up until the early 1960s the British people considered themselves subject to strong, long-standing and clearly definable moral rules [6]. Permissiveness, however, cast some doubt upon this self-image. In particular, he refers to the Profumo affair, the surfacing details of Rachmanism in north London, scandals surrounding the police, and the Argyll divorce case. These supposedly cracked the image of Britain as a moral land. For the conservative-historians it was the Profumo

affair that most forcefully illustrated the altered circumstances that 1960s Britain found itself in. Christopher Booker's thoughts on the subject are worth quoting in full for he manages to incorporate a good quota of folk-devils in his account, and provides almost a blueprint of the conservative-historical position:

The events of the following weeks and months had little real connection with the personal indiscretion of two summers before which was nominally their occasion. The Profumo affair was merely the focus and catalyst for the coming to a head of that revolution in the mood and character of English life which had begun to show itself in the late summer of 1955. It was the end of a trail which had had its beginnings in those first rumblings of Henry Fairlie against the Establishment and Malcolm Muggeridge against the Monarchy; a trail that had led on through the Angry Young Men and all the resentments sown by Suez, through the heyday of affluence, through all the mounting impatience with convention, tradition and authority that had been marked by the teenage revolution and the CND and the New Morality, through the darkening landscape of security scandals and What's Wrong With Britain and the rising aggression and bitterness of the satirists, in ever more violent momentum. And now, in that wet and windy June, the climax had arrived. Not one ingredient was missing. With Profumo's admission of guilt, all the swelling tide of scorn and resentment for age, tradition and authority, all the poisonous fantasy of limitless corruption and decay into which it had ripened, were finally unleashed in their full fury. [7]

In Booker's eyes Profumo set the seal on the long process of British moral decline, the essence of which was a 'lack of respect for authority' in all its guises - the Establishment, the Monarchy, political leaders, the Church and so on. Inglis argued that Profumo, Ward, Keeler and others involved in the scandal in 1963 were but 'symptoms' of something wrong with the constitution of society [8]. The essence of this constitutional malaise was, for both authors, the changing attitude of the young toward those in authority. It was not that this could be attributed to a weakening of moral fibre on their part, but rather that they had grown up in a society in which there

were few straightforward moral guidelines:

..the young have grown up into a community which is thoroughly confused about morals, and... their behaviour reflects that confusion [9]

The phrase 'New Morality' was coined around about the same time, and although originally referring to perceived changes in the Church of England's stance on matters of morality, it soon came to apply more generally to those attitudes more often referred to as 'permissive'. As with other institutions in, and other sectors of, society at this time, the Church of England was subject to the same pressures. The publication of John Robinson's Honest to God (also in 1963) led many to question the uniformity of the Church's position, for the 'Southbank' theologians, as they came to be known, appeared to some to be challenging what they had felt to be many of the Church of England's most fundamental moral teachings. That such a debate should arise and preoccupy the Church is taken by the conservative-historians as further evidence of the decline into moral confusion being experienced in Britain. Bernard Levin explicitly linked this situation in the Church with the type of attack upon 'authority' so graphically described by Booker. Referring to the theological debates he said:

As with so much in the sixties, it was Authority that was challenged, and challenged by men who had seen it from the inside, so that if the foundations were shaking they were doing so because they were being sapped from beneath rather than battered from without. [10]

The Church was therefore perceived as being involved in the process of 'moral decline' at two levels. Like many other institutions it was supposedly affected by the unparalleled 'lack of respect for authority' characteristic of modern society. On the one hand the

Church's authority within society was, according to commentators like Levin, declining, but also on the other hand the rise of the new theology was seen as contributing towards the general challenges to traditional mores characteristic of the period.

Confusion and uncertainty are the major characteristics of the permissive society according to the conservative-historians. Pamela Hansford Johnson suggested that modern Britain was 'affectless'. It was a society, she felt, which was emotionless, in which people committed the most vicious crimes seemingly without motive or purpose, lacking all regard for human worth or dignity [11]. Johnson's book was written in response to another set of events that attracted much publicity during the sixties, the Moors Murders and the ensuing trial. Although Johnson does not go so far as to claim that the affectless society was responsible for the Moors Murders, she does feel able to argue that the general atmosphere in society at the time had 'infected' the social system, and that "Brady possibly, Hindley almost certainly, have been victims of fallout" [12].

Beginning with the publication of Lady Chatterley's Lover, she argues, the floodgates to total permissiveness were opened and a society in which 'the permissive intellectual's anything goes' was created. A series of murders of young children were, she implies, the corollary of the disintegration of moral rules characteristic of sixties Britain:

It seemed to us that April that we were seeing one of the results of total permissiveness in a rather comely young man and woman, ill-educated, but neither of them stupid, on trial at Chester Assizes for multiple murder. A wound in the flesh of our society had cracked open, we looked into it,

and we smelled its sepsis. [13]

It is no distance from this position to that adopted by Rhodes-Boyson, quoted in the introduction. Such commentators have argued that the breakdown of morality in the sixties has had lasting effects on the social landscape. As Brian Masters states succinctly:

The generation of the sixties inherited such a(n) (established moral) code and rejected it; that of the eighties has had no firm code to inherit [14]

The Liberal Historians

'Moral collapse' or synonyms for such a phrase rarely find their way into the accounts of the period provided by 'liberal-historians'. Much of this is because the changes identified in the sixties are viewed through different historical lenses. From this perspective the previously existing moral order is not seen as being wholly positive, and consequently its destruction - for both the conservative and liberal-historians identify such a process - is not necessarily perceived as being problematic. More particularly, different aspects and different consequences of this previous moral order are identified. Bridget Pym emphasises the 'joyless morality's' concentration on the integrity of the family and monogamy as the only available form of sexual expression. Fear of promiscuity and perversion, she argues, found expression in laws against abortion and homosexuality, and restrictive attitudes toward contraception. Despite this very different interpretation of pre-permissive morality, there are nevertheless distinct parallels between the conservative and liberal-historical analyses of cultural change in post-war Britain.

Both involve the identification of a previously existing, now largely defunct, set of moral imperatives which have given way to a new order in which control, particularly of sexual conduct has diminished. Both suggest that in the area of sexual morality the change has been towards less restraint, less control and more choice. Writing in 1972, McGregor suggested that:

The last two decades have witnessed the cumulative removal of restraints both of custom and law upon certain forms of sexual satisfaction and behaviour, and upon their public portrayal in print or in the visual arts. [15]

For McGregor, like Pym, the major changes centred around the family system which prescribed the conditions for sexual relationships, changes which resulted in loosened bonds of matrimony, increased choice and reduced frustration and suffering. In this manner certain aspects, at least, of the process of permissive change are presented as having been positive and beneficial, in direct contrast to the view of the conservative-historians.

Marwick, like McGregor, looks at legislative change in the period, and describes it generally as both liberal and (in Roy Jenkins' sense) 'civilizing' [16]. Although he comes across exceptions to the rule, such as drug control, most legislation in the period, he argues, removed restraints, undermined fears, and "encouraged the active sexual life as normal"[17]. He views the changes as involving the destruction of Victorian hypocrisy, quite unlike, say, Gummer's mourning of the passing of Victorian consensus. Again it must be re-emphasised that the liberal-historians themselves also express reservations about the changes they identify. Marwick, for example, highlights the rising crime rate from the mid-1950s onward, which

included such highly publicised events as the Moors Murders, the Great Train Robbery, the Shepherds Bush police murders, and the arrest and trial of the Kray twins. Although with regard to young offenders he cites possible mitigating factors such as the temptations of the affluent society and the frustrations of dead-end jobs, he nevertheless lays the blame at the door of the 'new aggressiveness and hostility to authority'. As has been argued above, there are certainly differences between the conservative and liberal-historians on the question of 'permissiveness', but there are also similarities as well. Marwick himself illustrates the point well:

Perhaps the standards of civic loyalty and respect for law and order have never been as high as conservative romantics affected to believe. There is no easy way of rooting out deviants in society; but certainly the special conditions of the late fifties onwards gave deviants full rein. [18]

Coming from the critical position that they do, the conservative-historians have little difficulty in deciding whether or not the changes they have identified in either post-war sexual morality, or legislation relating to sexual morality, can be plausibly be described as 'permissive'. The liberal-historians, on the other hand, tend to find themselves in a somewhat more tricky position. Whilst they usually dismiss the more extreme claims made by the conservative-historians, they are, by and large, convinced that something approaching 'permissive morality' could be found in sixties Britain. In a number of cases this leads to some confusion, one of which is worth considering in some detail.

In a book entitled Britain's Decline [19] Alan Sked examines the frequently voiced opinion that modern Britain has experienced a period of significant decline. One of the possibilities that he considers is that Britain may have experienced a process of moral decline. The most relevant section of his response for present purposes is the section in which he deals with sexual behaviour. Here he gets into a tangle, and one which is symptomatic of the liberal-historical position adopted. Whilst there appears to be considerable evidence that throws doubt on notions of permissiveness, he cannot bring himself to let go of the concept. He asks himself the following question, interesting in itself, for it assumes that a sexual revolution has taken place:

If 'secularisation' therefore, cannot in itself account for the permissive society of the 1960s, what other factors should we take into account to explain the shift in values? [20]

One of the crucial areas, he suggests, is advances in medical knowledge. The major innovations were the oral contraceptive pill and the development of antibiotics. As a result of these innovations sex became increasingly risk-free, he argues, and this trend was reinforced by the increased legal availability of abortion. Consequently, he adds, there can be "little wonder a 'sexual revolution' was possible"[21]. This statement is then followed by a brief review of the research that has been done on sexual behaviour, primarily of young people, the group that it is suggested were in the vanguard of the sexual revolution. Within a paragraph, Sked is able to conclude:

...modern advertising, modern contraception, the establishment of family planning and venereal disease clinics, not to mention the lyrics and behaviour of rock'n'roll idols, convinced conservatives that a sexual revolution was

underway. The truth, however, seems to be that sexual behaviour changed very little. [22]

The truth is that Sked is somewhat confused. Although he arms himself with plenty of evidence to reject, quite forcefully, the suggestion that Britain has experienced any major change, in sexual behaviour at least, he nevertheless still concludes by describing the 1960s as permissive. The question then is, if there has been little change in sexual behaviour, what can permissiveness be taken to mean? If it is attitudes or mores - which is what he seems to be suggesting - unaccompanied by similar changes in behaviour, how significant is the change anyway, and to what extent can it be described as permissive? All these questions remain unresolved in the liberal-historical perspective. What is certain is that Sked does not use the term 'permissiveness' in the same way it has been used by John Selwyn Gummer, Pamela Hansford Johnson or Rhodes-Boyson. He does not invest it with the negative connotations that they do. Sked, like others in the liberal-historical camp views permissiveness in a more positive light:

The truth may be rather that instead of moral collapse, the permissiveness of the 1960s represented only a small increase in individual freedom and that in this important area a great deal more remains to be done. [23]

For both the conservative and liberal-historians legislative change is of central importance to an understanding of the permissive society. The conservative-historical analysis takes certain legislative changes as being fundamentally permissive in outlook, and even suggests that the reforms of the law can be used as a barometer of the times. Bernard Levin, for example, suggests that:

..the sixties in Britain produced an extraordinary number of legislative reforms, which carried to

extraordinary lengths the new spirit of tolerance and its codification in the law. [24]

The law is viewed as an index of wider social changes. Christie Davies probably presents this argument at its starkest:

One demonstrable sign of the growth of permissiveness in British society has been the consistent tendency over the last twenty years for Parliament to alter laws governing moral conduct in a permissive direction. Activities which society had previously disapproved of and banned, are now permitted and can be freely indulged in. [25]

The liberal-historians, on the other hand, whilst being generally more sceptical of the extent of permissiveness, nevertheless argue that sixties Britain is characterised by a greater degree of freedom, the limited nature of which is nonetheless guaranteed by law. Thus for both groups the major legislative changes of the period - the Obscene Publications Act, the Sexual Offences Act, the Street Offences Act, the Abortion Act, the Theatres Act - are significant for their 'permissive' or 'liberalising' character. Although interpretations differ, particularly ideologically, they share a common thrust.

The Marxist-Gramscian Approach

This is also true of the Marxist, or more strictly, Gramscian approach to the question of permissiveness, taken by Stuart Hall and others. It is a considerably more sophisticated approach, although as should become clear, not without its flaws. The authors of Policing The Crisis [26] although concerning themselves primarily with

the 'mugging panic' of the 1970s, also focus on what they take to be the changing moral climate in 1960s Britain. The fundamental change is conceived of in terms of the 'crisis of hegemony' that is experienced by the modern capitalist state when the basis of its cultural authority becomes contested. As the ability of the state to mould popular consensus diminishes, so the argument goes, the method by which hegemony is achieved moves from consent to coercion. This can be seen, they argue, in ever more direct forms of state intervention. More particularly, Hall et al suggest that the discrete moral panics associated with the permissive age, eg. those around abortion, VD, drugs and pornography, form the backdrop to the 'general crisis of the state' which was identified in panics around violent conduct like 'mugging'. Little evidence is presented that would support the claim that the moral panics associated with permissiveness were linked to the latter panic over street crime. This is one of the weakest points in the analysis, for having suggested that the 1960s were characterised by a series of discrete panics around moral issues, there is neither an account - other than an essentially economic one - of the aetiology of such panics, nor an explanation of the way(s) in which they can be considered to be discrete. The difficulty with the moral panic theory is not simply at the level of evidence. As a theory it tends to foreshorten analysis. Panics appear and disappear, being generally exaggerated or distorted accounts of 'real' events. As such inadequate attention is paid to the longer term historical processes which underpin the developments of apparently individual or discrete moral panics. As Simon Watney has expressed it:

Moral panics seem to appear and disappear, as if representation were not the site of permanent ideological struggle over the meaning of signs. A particular moral panic

merely marks the site of the current front line in such struggles. We do not in fact witness the unfolding of discontinuous and discrete moral panics, but rather the mobility of ideological confrontation across the entire field of public representations, and in particular those handling and evaluating the meanings of the human body, where rival and incompatible forces and values are involved in a ceaseless struggle to define supposedly 'universal' human truths. [27]

Hall et al do bring into play Becker's notion of 'moral entrepreneurship' [28] and Gusfield's 'moral indignation' [29] to explain why certain social groups were prime movers in the development of moral panics over permissiveness in the 1960s. The brief history of the National Viewers' and Listeners' Association in Chapter 2. suggests that this is, however, an incomplete conceptualisation.

The key point in the development of a general moral panic, was for Hall et al, not the watershed year cited by moral entrepreneurs and historians alike - 1963 - but rather 1966, when such diverse subjects as the dissemination of pornography, the capture of Harry Roberts, and the Moors Murders all hit the headlines. From this point moral indignation became more than simply a grassroots phenomenon:

In these campaigns, politicians, Chief Constables, Judges, the press and media joined hands and voices with the moral guardians in a general crackdown on 'youth' and the permissive society. [30]

Moral regulation was now more often brought about through coercion rather than consent. Laws which had in the early 1960s been 'liberally interpreted and allowed to lapse' were applied with increased rigour. The liberal interlude, as they call it, where laws, such as those over obscene publications, were allowed to lie fallow, soon came to an end. The laws, they argue, were soon dusted off and

exercised to the full. This somewhat over-simple view of permissiveness followed by backlash will also be challenged in later chapters.

Stuart Hall does, however, employ a rather more sophisticated approach in an article for the National Deviancy Conference on 'consenting legislation' [31]. In this he suggests that description in terms of either permissiveness or control would be too simple and too binary, and thus it is to the nature of reformism that one must look. In the 1960s moral reformism, he argues, was aimed most specifically at sexual practices, and particularly those of women. The role of women from the 1950s on, contained an inherent contradiction, he suggests, a contradiction between what have been termed the ideologies of consumption and domesticity [32]. For the new post-war ideology of consumption to be stimulated it was necessary for women to remain in the home, yet at the same time to enter the labour market to supplement the 'main income' to sustain the family's purchasing power. During the 1960s, however, this traditional role was partially disarticulated, and replaced with a recognition of women's sexual pleasure and satisfaction. This shift was largely made possible by the breaking of the tie between female sexuality and reproduction, particularly through new contraceptive techniques. Women, Hall suggests, were the key interpellated subject of the new legislation:

Overwhelmingly, it was the position of women in the field of sexual practice, which provided the legislation with its principal object/subject. What is proposed, in sum, was a measure of relaxation in the social and legal control of selected aspects of female sexual practice. It meant, in effect, a new 'modality' of control over these aspects - a more privatised and 'person-focused' regulation [33]

This 'legislative moment' incorporating all the major changes which Hall places under the title 'legislation of consent', lasted roughly from 1959 (Wolfenden, and the Obscene Publications Act) to 1968 (end of theatre censorship and the Wootton Report on drugs). This was followed, the authors of Policing The Crisis suggest, by two 'waves' of social reaction. The first wave was organised around social, cultural and moral issues, the second around the politicisation of the counter-culture. The major contrast between the two is that in the latter, 'youth' had become more than mere 'agents' of change, and were identified as 'subversive' [34]. In terms of concrete events, the first wave of the backlash was associated with Mrs Whitehouse, the Longford Report, the Festival of Light, and the Society for the Protection of the Unborn Child (SPUC). The second wave included such 'events' as the prosecutions of OZ, IT and The Little Red Schoolbook. Whilst this is a generally convincing thesis, closer examination reveals some historical contradictions. The first wave of reaction is described by Clarke et al as an "organised anti-permissive backlash" [35]. Whilst what is meant by 'organised backlash' is never made clear, it is probably not unreasonable to infer that it implies that it occurred after 1968 and within a limited historical period. Looking at the specific people and events mentioned, the degree to which one might talk of 'organisation' seems somewhat open to question. Mary Whitehouse's 'moral crusade' began in 1963/4 with the setting-up of the Clean-up TV Campaign. SPUC took off in 1966/7. The Festival of Light was launched in September 1971, and the Longford Report was published in September 1972. The earliest date at which these four could have formed part of an 'organised backlash' would have been at least eighteen months after what Hall et al describe as the 'full repressive closure' of 1970 [36]. Furthermore if the idea of a first and second wave is to be sustained, then - in

Clarke's, Hall's and others' formulations - it must be shown that one wave in some senses follows the other. The three major trials mentioned by the authors as being part of the second wave - those of International Times (November 1970), The Little Red Schoolbook (March 1971) and OZ 28 (June 1971) all occurred before the publication of the Longford Report or the launch of the Festival of Light, put forward as being part of the first wave. Whilst it is not incorrect to identify all of these as sources, or illustrations, of moral indignation of one sort or another - indeed there are significant connections between them - attempting to fit them into a historical framework which appears to allow only for movements in one direction, ie. permissiveness followed by control, results in a degree of historical inaccuracy.

The other element which is largely missing from the Marxist account, in contrast to either the conservative or liberal-historical approaches, is reference to the role of religion in contemporary society. For both the conservative and liberal-historians, the process of 'secularisation' is identified as a necessary if not sufficient condition for the rise of the permissive society. From the Marxist point of view, a process such as secularisation takes a more secondary role in relation to features more closely associated with the functioning of a capitalist economy, and particularly changes in the class structure. As an example, as has already been suggested, the authors of Policing The Crisis explain the existence of moral entrepreneurial groups in the 1960s by reference firstly to their common location in the class structure, and only secondly by reference to their religious views, and their perception of the modern 'secular' world. The following chapter on the role of the NVALA in the 1960s,

and the following case-studies, will consider evidence which casts doubt on this order of priority.

The Eliasian Approach

The final approach to the question of permissiveness identified in this chapter, the Eliasian, as adapted by Cas Wouters, places even less emphasis on changing religious influences on contemporary moral codes, than does the Marxist. Indeed notions of moral indignation, moral panic or moral conflict are not used in this perspective at all. The major focus is upon human interdependency, its levels of organisation, and the concomitant balance of social and self-controls that results. That there have occurred changes which may be described as permissive is not doubted:

We have experienced a change in standards of conduct which one might also describe by reversing Caxton's quotation. One might say: 'Things formerly forbidden are now allowed'. These changes have popularly become known by the name permissiveness, [37]

Wouters refers to this process as 'informalisation'. The major example that he gives of informalisation is what he takes to be the decrease of social restraints, particularly in the middle classes, imposed upon sexual behaviour and other connected spheres of conduct. As a result of these changes it has become possible, among other things, to show more of the male and female body. It has become possible to talk more freely and openly both about sexual experiences, and other bodily functions such as menstruation. In essence, he argues, certain forms of conduct which were once forbidden are now

allowed, and are regulated much less formally than they once were. These areas of conduct have become more subject to self-constraint and less subject to external constraint.

Having suggested the predominant direction in which the movement has gone, ie towards informalisation, Wouters sets out to explain it. In his first article on the subject [38] the focus was on what he, following Elias, termed the 'changing balance of power between the classes'. Specifically he referred to the changing balance between the middle and working classes, but he suggests that the balance of power between the generations within the middle class also changed. It is not clear from the article to what extent it was Dutch society that he was basing his analysis on, but given that he appears to be making a general point about changes within Western Europe, it is important to point out that most of the literature on youth, adolescence and relations between the generations in Britain, has tended to concentrate on, to use Elias' term again, the changing balance of power between the generations within the working class [39]. Wouters' more recent writings on the process of informalisation begin to plug another gap in his early conceptualisation by focussing on the changing balance of power between the sexes [40].

Wouters' project is to build upon Elias' theory of the 'civilising process', and to show how informalisation, far from contradicting Elias' thesis, can actually be incorporated within it. Elias' theory of the civilising process has also been described as a history of manners, in which changing patterns of living are documented, and within which what he refers to as 'affect' becomes increasingly regulated. Emotion becomes ever more constrained by feelings of

shame, repugnance or propriety. Changes in standards of conduct in Europe since the Middle Ages have so far generally proceeded, he argues, in the direction of increased civilisation:

Whatever may be the differences in detail, the the overall direction of change in behaviour, the trend in the civilising movement is everywhere the same. The change always presses toward a more or less automatic self-supervision, the subordination of short-term impulses to the commandment of a habitual long-term perspective, and the cultivation of a more stable and differentiated super-ego apparatus [41]

Wouters' dilemma is that the changes identified as being part of the process of informalisation appear to involve declining rather than increasing levels of 'affect control'. Informalisation or permissiveness is seen as involving increasingly less regulation and less formality over rules of conduct, a relaxation in standards that seems at odds with the civilising movement identified by Elias. However, Wouters suggests that Elias was in fact aware that the process he had identified was not unidimensional:

One has the impression that in the time that followed the war, compared with the pre-war period, there occurred a change which might be called a loosening of manners. A number of restraints imposed upon conduct before the war became weaker or have even disappeared. Many things previously forbidden are now allowed. Thus the movement, seen from closeby, appears to go into reverse gear. It appears to lead to a lessening of the constraints imposed upon the individual by the social way of life. On closer inspection, however, it is not difficult to see that this is a rather mild counter-movement, one of those smaller eddies that spring up again and again from the many-layered structure of historical change within every stage of more comprehensive processes [42].

In defending the theory of the civilising process, Wouters argues that informalisation is not inimical to civilisation, but can in fact be integrated into the overall theory. He uses an example to explain how

this is to be done. Comparisons of pre- and post-First World War parent-child relationships show that such relations have become more informal, and that parents put, or intend to put, fewer formal restraints on their children. In order to illustrate such an example he gives another example. If children are beaten with a stick by their parents when they transgress, he suggests that they will tend to avoid transgressing on those occasions when their actions are not concealed from their parents. They will not in this way learn to control those impulses which lead them to transgress. Being governed more by fear than by guilt they will be unable to control their impulses when their parents - or other authorities - are absent. Through this example, he suggests that, although a lessening of power inequalities - a concomitant of informalisation - involves a lessening of formal restraints, it also induces and requires more deeply built-in self-restraints. In this way, it is justifiable to talk not only about changes in the pattern or type of self-controls, but also in the level of self-control:

Thinking of the almost natural way in which particularly young middle class girls, but by no means only they, repressed all behaviour and thoughts concerning sex, one could say, that in many respects the preceding middle class generations had to restrain their sexual - and possibly other - urges and inclinations, because these controls functioned quite blindly, beyond the conscious control of the individuals concerned.... In comparison, many people today have learned to a far greater extent to express these urges and emotions in a controlled way, that is also socially accepted [43]

Thus it would be wrong to suggest that the young can behave uninhibitedly in contemporary society. They are, rather, expected to express their impulses in certain ways, ways that do not cross the more lenient standards of modern times.

At this point, one encounters two similarities between Wouters' analysis and those of the conservative and liberal-historians. First of all, he accepts that standards are more lenient than those of the preceding periods. Thus whilst he has rebutted the charge that permissiveness represents a simple diminution in control, he nevertheless asserts that within the new control structure there are greater possibilities for the expression of emotion. The second point of similarity emerges from the point of his analysis where he talks of changing codes of conduct. With the changing balance of power between the working and middle class, it is suggested that we have witnessed the destruction of traditional codes which have yet to be replaced by a similarly coherent new set:

One cannot quite understand the process of informalisation in European countries if one does not take into account that here too one can observe upward movements of working class traditions and downward movements of middle class traditions of conduct, although it is not possible to speak of the emergence of a new more firmly established code of conduct. It is precisely because such a code does not exist, that we live in a period of uncertainty and experimentation [44]

The essence of his argument is that changes in behavioural codes reflect changes in the power and dependency relations they are rooted in. The most recent wave of informalisation reflects a change in the balances of power between classes, the generations and the sexes. As higher levels of self-restraint have been achieved, so the social regulation of behaviour has become more lenient, more flexible and more differentiated. In this process of informalisation 'dominant modes of social conduct' have been violated by the upwardly-mobile groups, and have given way to new codes which allow for a greater variety of behavioural alternatives.

Conclusion

All four major approaches to the subject of changes in post-war morality would accept, to a greater or lesser extent, that the term 'permissiveness', whilst not ideal, nevertheless does describe, albeit partially, the changes they identify. Interestingly, it is only the conservative-historians who use the term 'permissiveness' to refer to changes in actual behaviour. They reference rising rates of illegitimacy, abortion, venereal disease, crime, drug abuse and so on, as indicators of the fact that standards of behaviour are declining. They suggest, by implication at the very least, that modern society is characterised by greater promiscuity, greater sexual licence, by altogether less controlled or constrained sexual behaviour. The liberal-historians also tend to suggest that permissiveness has allowed greater freedom for sexual (and other forms of) expression. Both the Marxist and the Eliasian approaches, on the other hand, although implying that there may have been great changes in sexual behaviour, fall short of actually saying so. Hall et al talk of a 'changing moral climate' and point to legislative change that decriminalised certain forms of behaviour, but further than that they do not go. Wouters turns Caxton's famous quotation on its head and says "things formerly forbidden are now allowed", but not only does he not go into detail as to what these things might be, he certainly does not suggest that 'things now allowed are actively engaged in'. For most commentators, permissiveness refers to a process of liberalisation, informalisation or differentiation in attitudes or moral rules. Rarely is any reliable evidence provided which charts changes in sexual behaviour. Alan Sked, having reviewed the available evidence, suggests that sexual behaviour has changed very little.

As was intimated in the introduction, although there is little evidence to suggest that sexual behaviour changed greatly in the period, the feeling remained for many people at the time that this was nevertheless what was happening. Something was happening in Britain that allowed the period to be plausibly described, both at the time and later, as permissive. For many of the authors discussed above, it was changes in the rules (however defined) governing behaviour. Whatever these changes were, many who witnessed them found them worrying and unsettling. The following chapter looks at the debates over permissiveness in more detail, by examining the preoccupations of the moral entrepreneurs of the period, and in particular, Mary Whitehouse and the National Viewers' and Listeners' Association.

- [1] The Permissive Society Cassell and Co. (1971).
- [2] *ibid.* p.5
- [3] *ibid.* p.7
- [4] *ibid.* p.20
- [5] *ibid.* p.181
- [6] Inglis, B. (1965) Private Conscience Public Morality New English Library
- [7] The Neophiliacs Fontana 1970
- [8] Inglis (1965) *op. cit.* p.13
- [9] *ibid* pp.40-1
- [10] The Pendulum Years Jonathan Cape (1970) p.115
- [11] On Iniquity (1967) Macmillan
- [12] *ibid.* p.37
- [13] *ibid.* p.18
- [14] The Swinging Sixties (1985) Constable p.45
- [15] McGregor, O.R. (1972) 'Equality, Sexual Values and Permissive Legislation: The English Experience' Journal of Social Policy p.44
- [16] In his book, The Labour Case Jenkins suggested that a 'civilised' society would be characterised by "a climate of opinion which is favourable to gaiety, tolerance and beauty and unfavourable to puritanical restriction, to petty-minded disapproval, to hypocrisy, and to a dreary, ugly pattern of life".
- [17] Marwick, A. (1982) British Society Since 1945 Penguin
- [18] *ibid.* p. 149

- [19] Basil Blackwell. 1987
- [20] *ibid.* p.49
- [21] *ibid.* p.50
- [22] *ibid.* pp.50-1
- [23] *ibid.* p.56
- [24] Levin, B. (1970) *op. cit.* p.189
- [25] Davies, C. (1975) Permissive Britain Pitman p.13
- [26] Hall, S., Clarke, J., Critcher, C. and Roberts, B (1978) Macmillan
- [27] Watney, S. (1987) Policing Desire: Pornography, AIDS and the Media Comedia
- [28] Becker, H. (1963) Outsiders: Studies in the Sociology of Deviance Free Press
- [29] Gusfield, J. (1963) Symbolic Crusade: Status Politics and the American Temperance Movement Urbana. University of Illinois Press.
- [30] Clarke, Hall, Jefferson and Roberts (1976) 'Subcultures, Cultures and Class' in Hall and Jefferson (eds) Resistance Through Rituals Hutchinson p.73
- [31] 'Reformism and the legislation of Consent' in, NDC (eds) Permissiveness and Control Macmillan 1980
- [32] Tolson, A (1975) The Family in a Permissive Society. Working Papers in Contemporary Cultural Studies. CCCS University of Birmingham.
- [33] Hall (1980) *op.cit.* p. 21
- [34] Clarke et al (1976) *op.cit.*
- [35] *ibid.* p.72
- [36] Hall et al (1978) *op.cit.* p260

[37] Wouters, C. (1977) 'Informalisation and the Civilising Process' in, Human Figurations Gleichmann, P Goudsblom, J and Korte, H (eds) Amsterdams Sociologisch Tijdschrift p.437

[38] *ibid.*

[39] see for example the reading in Hall and Jefferson (1976) *op.cit.*

[40] 'Developments in the Behavioural Codes between the Sexes: The Formalisation of Informalisation in the Netherlands, 1930-85' Theory, Culture and Society (1987) 4, 405-27

[41] quoted in Wouters (1977) *op.cit.* p.437

[42] *ibid.* p.441-2

[43] *ibid.* p.447

[44] *ibid.* p.449

Chapter Two. Permissiveness and Moral Protest: Mary Whitehouse and the National Viewers' and Listeners' Association.

As has already been suggested, so pervasive has the term permissiveness become that there are few, if any, commentators (be they sociologists, journalists, pressure group spokespeople etc) who are prepared to argue that the term is one that mystifies rather than elucidates. Many would argue that the idea of permissiveness has been overstated, exaggerated or misapplied, but few seem to doubt the underlying reality of this supposedly permissive Britain of the 1960's. In this chapter, then, the term 'permissiveness' is subjected to further critical scrutiny, and an attempt is made to isolate those 'factors' or characteristics that are most usually invoked by moral entrepreneurs in their discussions of the 'permissive society'. The chapter takes as its focus the work of Mary Whitehouse and the organisation with which she is most closely associated, the National Viewers' and Listeners' Association (NVALA). Using auto-biographical, biographical, journalistic and academic accounts of their campaigns and concerns, the picture of 'permissiveness' built up in chapter one is expanded.

It will be argued that the focal point of the NVALA's concern with 'permissiveness' was with a perceived decline in moral standards, at the heart of which lay a dismay with the declining force of religion in contemporary society. The NVALA, it will be shown, have been much more concerned with religious decline than many of the commentators covered in chapter one. The latter, particularly the historians, take up in their accounts of the changing social landscape many of the

issues and ideas now so closely associated with the campaigns of groups such as NVALA, but without the religious connotations of the latter.

The second half of the chapter takes the question of moral protest in this period one step further. Why should groups like the NVALA develop (there are and have been many other groups of a similar genre, both in this country, eg the Nationwide Festival of Light, the Order of Christian Unity, and in other countries, see eg Zurcher's accounts of anti-pornography groups in the USA), and why should such a group engage in moral protest on these particular issues at this particular time? As was suggested in chapter one, Hall et al, in their accounts of the period, used the approach of Gusfield and others in accounting for the rise of moral entrepreneurs (such as the NVALA), and this approach is questioned later in this chapter when other possible explanations are considered. Looking critically at the work of Gusfield, Wallis, and Tracey and Morrison among others, it is argued that a revised formulation of Wallis' notion of 'cultural defence' is the most satisfactory method of accounting for the activities of the NVALA.

The National Viewers' and Listeners' Association

The National Viewers' and Listeners' Association developed out of an organisation called 'The Clean-Up TV Campaign' launched in January 1964 by Mary Whitehouse and Norah Buckland, the wife of the Rector of

Langton in Staffordshire. Both were concerned with what they saw to be 'declining' standards on television, and the problems that they felt were created or exacerbated by this 'decline'. Feeling that little was to be gained by personal protest either to the BBC or through their local MP to Parliament, they decided that the best approach was to issue a Manifesto which, if they could get twenty signatures on each one they had printed, would then be seen to represent the views of 40,000 people. It is worth reproducing the Manifesto in full at this point, for many of the major planks of future NVALA 'policy' were contained in this Manifesto in embryonic form. It read:

1. We women of Britain believe in a Christian way of life.
2. We want it for our children and for our country.
3. We deplore present day attempts to belittle or destroy it, and in particular we object to the propaganda of disbelief, doubt and dirt that the BBC projects into millions of homes through the television screen.
4. Crime, violence, illegitimacy and venereal disease are steadily increasing yet the BBC employs people whose ideas and advice pander to the lowest human nature and accompany this with a stream of suggestive and erotic plays which present promiscuity, infidelity and drinking as normal and inevitable.
5. We call upon the BBC for a radical change of policy and demand programmes which build character instead of destroying it, which encourage and sustain faith in God and bring Him back to the heart of our family and national life.[1]

The campaign was launched via an article in the Birmingham Mail with a promise from Mrs Whitehouse to hold the initial meeting in Birmingham Town Hall. The meeting took place on 5 May 1964 and was attended by approximately 2000 people, causing The Times to comment:

Perhaps never before in the history of Birmingham Town Hall has such a successful meeting been sponsored by such a flimsy organisation. There are no committee members, no officers, and no hard plans for the future, except for the hope that the people at this meeting will

go out and spread the word in other parts of the country.[2]

Telegrams of 'interest' and 'support' were received from the Archbishops of Canterbury and York respectively, and by the end of the year Whitehouse and Buckland were claiming to have over a quarter of a million signatures on the Manifesto. As Tracey and Morrison point out, however[3], CUTV were soon criticized for their negative stance and consequently metamorphosed from being merely a protest group into a campaigning organisation with more reformist goals. By November 1965, the National Viewers' and Listeners' Association was being launched in London to the full glare of press publicity by James Dance, MP for Bromsgrove, by then another leading figure in the campaign. The first aim of the NVALA was to establish a Viewers' and Listeners' Council which would consist of elected representatives of the "churches, women's organisations, magistrates, doctors, educationalists, parents, youth, social workers, police, political parties, local government and writers." [4] The aim of this Council was putatively to "represent the opinions, ideas and experience of the whole country to the broadcasting authorities." [5] This leads to the question of from where it was that Mrs Whitehouse and the NVALA actually claimed to gain support.

Opinions have differed widely, from, on the one hand those who claimed, at least in the early days, that the campaign was no more than the minority group Moral Re-armament (MRA) by a different name, to Mrs Whitehouse herself, on the other, who clearly believes that the organisation represents the 'silent majority' in the country. As far as claims that the NVALA is but a front for MRA go, the position seems fairly clear. Mrs Whitehouse, at what was a troubled period in her personal life, joined the Wolverhampton Oxford Group in 1935. The

Oxford Group was founded in the early years of the century by Frank Buchman, a Lutheran Minister, whose controversial evangelistic movement was based on the four principles of Absolute Honesty, Absolute Purity, Absolute Unselfishness and Absolute Love.[6] In a speech in 1938, Buchman suggested that "...nations must re-arm morally" [7] and the phrase stuck, the Oxford Group becoming known thenceforward as the Moral Re-armament movement. Tracey and Morrison in their book on Whitehouse point to several similarities of outlook between supporters of the NVALA and MRA. They argue that, for Whitehouse in particular, though after the War her formal ties with the Oxford Group diminished, her years of close association with it provided her with a very clear intellectual approach to the perceived ills of the modern world. Mrs Whitehouse herself has never sought to deny the intellectual and theological debt she owes to the Oxford Group and the MRA, but has been quick to silence those critics who have suggested the existence of more formal links between the NVALA and MRA:-

The often repeated suggestion that Moral Re-Armament was behind our campaign was also meant as a smear, but as time went on the press, and everyone else, it seems came to accept what we ourselves said about the matter. My position was clear. I owed much to the Oxford Group and MRA for it was through these movements that I found again my personal faith, and developed that concern for the country which, along with my deep sense of responsibility for the children I taught, led me into this campaign. But during the last seven years my time has been given over completely to the work of National VALA, and our association is exactly what it says it is - a union of all people who want to see that broadcasting is used for the building up, and not breaking down, of our country and its people. We decided to raise a flag, and let the movement stand or fall according to the numbers that rallied to it. At no time have we received any financial backing, of any kind, from MRA - or from anywhere else - and all our decisions and plans are made within our own association without reference to any other body.[8]

From its Midlands grassroots in the Clean Up TV Campaign, the NVALA has grown into an organisation with over thirty thousand members,[9] and has on several occasions organised nationwide petitions which have secured a formidable number of signatures. It is the success of these petitions that Mrs Whitehouse feels are a more realistic indicator of her support, and she claims that the 31,000 or so members that pay the annual subscription of £1 are but 'the tip of the iceberg'[10]. She estimates that the NVALA has the block support of organisations totalling up to three million people, and in defence of the NVALA's 'mandate' points to the memberships of the British Humanist Society and the National Council for Civil Liberties which she quotes as standing at 2,000 and 6,000 respectively. Whatever the reality of the membership and support situation, two important points emerge from a reading of NVALA literature, and Mrs Whitehouse's autobiographical writings. Firstly, she, as has already been suggested, feels that the true campaign she is involved in gives a voice to Britain's silent moral majority. Secondly, and related to this, opponents of the silent majority are seen as being a small, but fairly influential and vociferous elite.

This elite, otherwise referred to by Mrs Whitehouse as the 'humanist lobby', is left in no doubt by her that it is the influence of their humanism to which she most vociferously objects:

It is vital to any understanding of the present state, both of public debate and personal morality, to realise the part played by what might generally be called the 'humanist lobby'. This works, not only through the British Humanist Association, but through the various other anti-Christian pressure groups which proliferated in the sixties ...

and, she continued

Today's militant humanists not only reject God, they are anti-Christian, from political as well as 'theological' conviction. [11]

The 'humanist' pressure groups, and what she identifies as a 'secular intellectual elite', were the major protagonists for 'permissive' change in the 1960s according to Whitehouse. These groups represent a minority opinion, she suggests, and it is up to the NVALA and groups like it to defend and reassert 'traditional' values before humanism takes a grip of society generally, rather than just at the BBC where it is viewed as already having a stranglehold. To confirm her assertion that there are radicals and revolutionaries in every corner of contemporary social life who are campaigning to overthrow the 'traditional' moral order, Mrs Whitehouse reels off a formidable list of 'folk devils'. Pride of place in this list goes to Hugh Carleton Greene, Director-General of the BBC from 1960 to 1969, who was viewed by Whitehouse as being almost single-handedly responsible for all the ills of the supposed 'permissive society':

If anyone were to ask me who, above all, was responsible for the moral collapse which characterised the sixties and seventies, I would unhesitatingly name Sir Hugh Carleton-Greene He was in command of the most powerful medium ever to affect the thinking and behaviour of people - television. His determination to give the freedom of the screen to the protagonists of the new morality, excesses of violence and sex, had the most profound effect upon the values and behavioural patterns of the day.[12]

There are two important points in this quotation which will be returned to during the course of this chapter. The first is Whitehouse's emphasis on the power of television as a medium, the second the notion of the 'new morality' which was widely used in the mid-1960's and which Whitehouse focused upon in her attacks on both broadcasting and the 'South Bank' theologians.

As noted earlier, most prominent among the 'Soth Bank' theologians was John Robinson, the Bishop of Southwark, whose book, Honest to God, divided theological opinion when it was published in the early 1960s. Robinson, and the controversy surrounding his book, are discussed in the final chapter when the role of the Church in this period is considered in more detail. At this point, it is more important to consider what Robinson and the 'South Bank' theologians stood for, and why they were so strongly condemned by Mrs Whitehouse. Briefly, Robinson had argued that the Church was in a critical position in that it was becoming ever more remote from modern society and that it must therefore rethink its position. For Robinson, it was necessary to cease to talk in terms of moral absolutes and, consequently, he argued, "nothing can of itself always be labelled as wrong". This position, part of a wider body of thought known as 'situational ethics', was anathema to Mrs Whitehouse and her supporters, whose world-view was constructed very much in terms of absolutes. However, the significance of the 'South Bank' theologians was not only to be seen in their effect on the Church, but also, according to Mrs Whitehouse, in their affinity with the secular intellectual elite which held sway in the 1960's.

This was a period in which the universities and polytechnics were expanding particularly quickly, and within this context the discipline of sociology was expanding rather more rapidly than most, a discipline seen to be a particularly productive breeding ground for some of the values feared by Mrs Whitehouse:

The significance of the support for the Southwark (sic) theologians which flooded in from left-wing humanists, will not be lost on anyone who had learned, the hard way, that these people, who reject all concept of man as a child of God both for themselves and everyone else,

make common ground with soft permissives wherever they can find them - in or out of the Church.[13]

Representing the 'degenerate youth' in Mrs Whitehouse's litany of folk devils was Richard Neville, who, as one of the defendants in the OZ trial, represented the antithesis of all that Whitehouse wished to see in modern youth. Neville and his co-defendants James Anderson and Felix Dennis, were found guilty in 1971 of publishing an obscene article, namely OZ 28, otherwise known as 'Schoolkids OZ', and were given prison sentences ranging from nine to fifteen months. The sentences, however, were suspended and reduced on appeal. For Whitehouse, Neville's avowed 'revolutionary' stance was aimed particularly at the young and innocent and was a form of 'ideological warfare' from which they needed to be protected. Mrs Whitehouse had no doubts about the damage of Neville's influence, nor the response of parents:

But thousands of parents who had seen their children's life style changed through the impact of the underground press were only too well aware of its significance. They knew Richard Neville not as some hard-done by humourist but as the author of the paperback Playpower which became the handbook of the international drop-outs and bemused the pot-smoking youngsters, persuaded to believe that society was rotten, life was too tough and the odds too heavily stacked against them - the best thing to do was to drop out and bum around.[14]

Themes that arise time and again in Mrs Whitehouse's writing are present in this passage. Firstly, the power of the media to shape and influence opinion and behaviour - in this case the medium being an underground magazine. Secondly, the idea that permissive changes were focused upon the young, and finally that the political intent behind the attack on traditional morals is essentially revolutionary. This particular passage ends with the sentence:

The purpose of the underground press is 'not so much to dissent as to disrupt', and its editorial policies explicitly and implicitly seek to overthrow society as we know it, and of this it makes no secret.[15]

This concern with 'revolution' will be dealt with in more detail below as one of the central organising themes in Mrs Whitehouse's and the NVALA's attack upon 'permissive morality'. The list of folk devils doesn't end with Greene, Robinson and Neville, however, although they represent the three crucial stands in Mrs Whitehouse's philosophical position - broadcasting, the church and rebellious youth. Also in the list and discussed below are, Alex Comfort and Dr Martin Cole in the area of sex education, John Calder the publisher, John Trevelyan the erstwhile film censor, Roy Jenkins, Labour Home Secretary in the 1960s, as well as John Mortimer, the barrister, novelist and playwright, and what Mrs Whitehouse referred to as his "travelling circus of expert witnesses" who were regularly in court to defend publications charged under the Obscene Publications Act. There were many others playing more minor roles. Nevertheless, this list covers a group of people whom Mrs Whitehouse and the NVALA saw as being in the frontline of the attack on established values. In each of the areas of major concern for the NVALA, there appeared to them to be influential individuals whose determination to 'push back the frontiers of permissiveness' was seen as the greatest threat to traditional Christian morality.

Having seen how the Clean Up TV Campaign, and later the NVALA grew out of a concern with what appeared to a particular group of people to be an increasing emphasis within the BBC on secular or humanist considerations in the area of sexual morals, and the effect that they felt this would have upon the young, these issues must now be taken

separately and considered in greater detail. By proceeding in this manner, the way in which the NVALA's concern with 'permissive' morality developed, and what in essence it consisted of will become clearer. The first area dealt with is the one most central to the work of the NVALA: broadcasting.

Broadcasting and the NVALA

Mrs Whitehouse's concern with the output of the major broadcasting companies began in the early 1960's and is still going strong today in the late-1980's. Particular attention will be paid in this connection to one of two programmes or issues that particularly disturbed Whitehouse and the NVALA for they sum up quite neatly the major ways in which broadcasting is seen by them as falling short of the standards that, they suggest, ought generally to apply.

The late-night satirical shows such as 'Not So Much A Programme, More A Way of Life' and 'That Was The Week That Was' (TW3) were among the first to cause the NVALA concern. TW3, staffed by the likes of David Frost, William Rushton, Bernard Levin (who in later years became a critic of 'permissiveness'), and a future bete-noir of Mrs Whitehouse, John Mortimer, was, in its short history, massively popular and controversial. In 1963, having perhaps insulted one Prime Minister too many in the run-up to a general election, TW3 was taken off the air, although it was stoutly defended by Hugh Greene. Mrs Whitehouse viewed these programmes as having no redeeming qualities whatsoever,

and it was not long before she herself became the subject of a satirical programme in her own right. Entitled 'Swizzlewick', it 'starred' a Mrs Smallgood, a Councillor Salt - the chairman of the NVALA committee was a Birmingham councillor by the name of Pepper - and Ernest the postman, Ernest being the name of Mr Whitehouse and 'Postman's Piece' the name of the house they were living in at the time. The programme marked perhaps the beginning of Whitehouse's attempts to influence the content of particular programmes. She was sent the script for one of the episodes - she has never said by whom - and was so enraged by one scene in which the councillor was to have been seen leaving a prostitutes' room doing up his trousers, that she sent it straight to the Postmaster General, the Minister responsible. In the end the scene to which she had objected was cut, making Mrs Whitehouse a persona non grata at the BBC for eleven years.

The BBC at this time was also thought by Mrs Whitehouse to be 'theologically biased'. It was what she saw as the excessive time and attention given to the 'South Bank' theologians which she objected to most strongly, feeling that it would only be a matter of time before the Governors took action to alter the position. She wrote to the Director General, was invited to meet, and met, his Deputy, Harman Grisewood, who impressed her with his sympathy for her concerns. However, not long after, Grisewood resigned and Mrs Whitehouse later commented:

He was, to my mind, too sincere and too gentle a Christian to be at ease amongst the demolition men who frequented the BBC at the time.[16]

Little seemed in Whitehouse's eyes to change at the BBC and, in early 1964, the Corporation's Charter was renewed for a further twelve years

without any of the additional 'safeguards' that Whitehouse would have liked to have seen written in. It was roughly at this time that the Clean-up TV Campaign was launched.

The 'theological bias', the humanism, the anti-establishment propaganda, the 'declining' moral standards, and the increasing use of 'foul' language, for which Mrs Whitehouse continually criticized the BBC, were almost all to be found aplenty she felt, in one particular television programme, and the battle over this series is, in many ways illustrative of the wider battle between the NVALA and the Corporation at this time. 'Till Death Us Do Part', with its intended anti-hero Alf Garnett, was one of the BBC's most popular shows in the late 1960's and early 1970's. There has been much written about the central character in the programme and Johnny Speights's intentions in creating a 'foul-mouthed bigot' such as Garnett. Speight described it as follows:

As for Alf Garnett, well I've written him as I saw him. To me there are prototypes of Alf all over the country: far too many of them in fact. And if I didn't use words like 'blast' and 'blow me' and so on, he wouldn't be a real character. And he is a real character. But what I set out to do was to show the idiocy of his ideas by bouncing them against other ideas, some of them perhaps equally extreme and absurd. (emphasis in the original).[17]

Two episodes in particular are mentioned by Mrs Whitehouse as exemplifying the series' worst qualities. The first, is described by Tracey and Morrison as the 'Virgin Birth' episode because of its controversial subject-matter. The offending section involved Alf and his wife Elsie discussing a conversation they had 'unfortunately' overheard in the pub. The conversation concerned the question of Mary's virginity and why she had had only one child. Mike, their

son-in-law, then suggested that as that was two thousand years ago, "they could have had another fifteen hundred by now" and, sensing his in-laws' disapproval, continued "unless they're on the pill"[18]. Mrs Whitehouse wrote immediately to the Minister of Posts and Telecommunications to complain about the episode, receiving an apologetic reply from Lord Hill of the BBC.[19]

The second episode which Whitehouse says she remembers with a mixture of "amusement and incredulity" involved a scene in which Alf and his son-in-law were in the living room reading: Mike, a football book, and Alf a book that cannot at first be seen. Alf is periodically nodding at his son-in-law and suggesting that he would be better off if he read the book Alf has in his hands. The book turns out to be Mrs Whitehouse's newly published volume, Cleaning up TV. Mrs Whitehouse describes the rest of the scene as follows:

The whole episode was built around the book and before very long, and not for the first time, the fascist implications were there again, not only as far as Alf was concerned but, by implication, involving me too. The whole country needed 'cleaning up', particularly of the 'coons', Alf ranted (can anyone imagine that happening now?) And with the usual loud-mouthed flourish he marched off to the lavatory taking my book with him. The twist to the story came when the old man was found to be a carrier of the very germs that he blamed the coloured people for bringing into the country. How else could he have contracted them but by reading my book? So what was the best thing to do with that? Burn it, of course. And the programme ended as it dropped onto the fire to a chorus from the rest of Alf's family of 'unclean, unclean'.[20]

As Tracey and Morrison have argued, 'Till Death' "was clearly an assault through humour on certain areas of British social life and belief." [21] Although many areas of our social life were attacked, it was the general ridicule to which Christianity was subjected that

caused Mrs Whitehouse and the NVALA most difficulty. That this was true for NVALA supporters generally and not just for their figurehead is shown by the large correspondence the programme generated within the Association [22]. As will be seen throughout this chapter, this is perhaps the central plank in the overall ideological position adopted by Mrs Whitehouse and the NVALA. The declining importance of religion in social life in general, and in particular the declining influence of Christianity on the great moral questions of the day was (and is) the spur to action that has kept the NVALA going for over twenty years. Although the campaigns in which Whitehouse and her associates have been involved during this period may, on the surface, seem particularly disparate and eclectic, if one looks below the surface - as Tracey and Morrison have done particularly thoroughly [23] - then it is the diminishing influence of the Church in moral issues that lies at the heart of NVALA action and concern.

Apart from the issue of declining moral standards, which Mrs Whitehouse and the NVALA thought characteristic of television and the BBC in particular, from the early 1960's onward, there is another important strand in the NVALA stance with regard to the media. It is one thing to assert that things are "not what they used to be" and that this is part of the more 'general malaise' in society. It is quite another to suggest, as they did and still do, that television in general, and Hugh Greene's BBC in particular, were also somehow partially, but nonetheless importantly, responsible for bringing about, or encouraging, the decline in standards that, they argue, characterised the 1960's and 1970's. Television, for the NVALA, is a uniquely powerful medium, and one therefore that can have devastating effects on the social fabric, if it is not checked. If we consider

this aspect more closely, another important strand in the Whitehouse/NVALA 'philosophy' becomes apparent.

The BBC is seen by Whitehouse as not only reflecting the changes that were occurring in that period, but also as actively encouraging or even precipitating them. She suggested in Cleaning up TV [24] that the forces pushing for 'permissive' reform were in large part the British Humanist Association, the National Secular Society, the Homosexual Law Reform Society and the Abortion Law Reform Society. That, as pressure groups, they are free to campaign openly for the changes, Mrs Whitehouse accepted. However, she felt that they had a particularly powerful and inappropriate ally in the BBC. She argued:

... no-one has given the BBC a mandate to promote their causes. It is surely no coincidence that plays dealing with homosexuality and abortion were shown on BBC at the time when these issues were to be debated in the House of Commons and the Press.[25]

The BBC was, then, in her view a propagandist for the various liberal and humanist causes circulating in the 1960's. Mrs Whitehouse is concerned not only that television companies are using their influence to promote political causes but, as was suggested above, that they are in many ways responsible for the 'moral decline' which she has identified. This power can be seen very clearly in her attitude towards two major events in recent years: the 1981 Urban riots and the 1985 Brussels football tragedy. Mrs Whitehouse was one of the first commentators (there were many others) to suggest that the television coverage of the urban riots could have a 'copycat effect'. She criticised the showing on television of

... pictures of young black teenagers taking calculated
- and cheerful - running kicks at plate-glass shop

windows, coolly helping themselves to the goods inside, shoes, shirts or whatever they could lay their hands on.[26]

In response to the news coverage of the disorder, she sent telegrams to both the BBC and the ITA asking them to 'please consider whether the massive television coverage of acts of vandalism and violence is contributing to the spread of the riots.' [27] Both companies issued statements saying that there was no conclusive evidence that television could affect behaviour in the manner suggested, but Mrs Whitehouse has still claimed that the coverage in the following days had been considerably transformed, using 'stills' rather than action sequences, and long shots rather than close-ups. The use or significance of 'stills' and long-shots in this context is that they tend to lessen the impact of the coverage, making it less attractive and exciting, thus diminishing, so the argument goes, the likelihood of imitation. In much the same way, she suggested that, in the aftermath of the tragedy at the Heysel Stadium in Brussels, the television companies might care to take a long hard look at themselves when seeking to account for the behaviour of the young fans at the European Cup Final:

Of course the culprits in those terrible events must be punished. But do not let us allow their punishment to salve our consciences. No requiems should give us peace. The answer lies deep in us all and demands a whole reorientation of our values. That will perhaps take generations. But one practical contribution could be made at once by the IBA and the Governors of the BBC. Let them govern, not sit comfortably back with the occasional 'tut tut' after the event.[28]

On both these occasions, Mrs Whitehouse suggested that the declining moral standards which she feels characterize the output of both broadcasting companies are not unconnected with the violent scenes witnessed in Brixton, Toxteth and Brussels. In the case of the urban

riots, it is the nature of the television coverage which is in essence inciting other young people in different parts of the country to civil disobedience, whereas in the case of football violence, the implication is that the perceived lack of moral leadership by the broadcasting corporations has led over a period of years to a general moral climate in this country which fails to provide adequate controls over the behaviour of the nation's youth. The strand of the overall Whitehouse philosophy that was referred to above, and which, perhaps, is only implicitly suggested by the two examples discussed, is the particularly vulnerable position which, she feels, young people occupy, especially with regard to the pernicious influences of the mass media.

Mrs Whitehouse has campaigned for over twenty years now to try to persuade the television companies to reconsider the methods by which they decide what may be broadcast, and what in their opinion is unfit. Although the following statement refers to a particular set of films that incensed Mrs Whitehouse, her response can be taken as broadly typical of her general attitude to broadcast material:

In all our deliberations on such matters the fact that many children are watching such material is paramount. The BBC and IBA defend their policy of showing these films by stating that their responsibility effectively finished at 9 pm, when all children and young people, they appear to claim, should be in bed.[29]

Whitehouse goes on to present evidence which suggests that 42% of 11-14 year olds watch television up to 10 pm, thereby suggesting the 9 pm rule that has been used by the BBC since 1960 is of little value. However, on occasion Mrs Whitehouse has also used the existence of this rule to attack the broadcasting times of certain programmes.

In November 1985, she wrote to the then Chairman of the BBC, Stuart Young, seeking an assurance that the 9 pm rule was still in operation. The complaint she was making was with regard to the BBC soap opera 'Eastenders', and in particular the part of the storyline in which Mary, the unmarried mother, became a stripper. The reply to the NVALA's criticism came from the then controller of BBC 1, Michael Grade:

The whole point of Mary becoming a stripper is that it is a real solution for many unsupported mothers like her with no qualifications at all.[30]

Mrs Whitehouse's reply covers both her concern with the power of broadcast material, and the very particular influence she feels it has on the young:

I am more than tempted to say that if that is the level of thinking within the BBC, then heaven help us all - not least those young girls who might well get the message and find themselves involved in dangerous and demoralising situations.[31]

Obscene Publications and the NVALA

The NVALA's concern for the welfare of children - young people would perhaps be a more accurate term, given the ages Mrs Whitehouse generally included in her statements - extends further than television to the printed picture and the word. As will later become clear, Mrs Whitehouse has been involved in many campaigns in this area but there are two in particular which are of immediate relevance to this discussion. The first is of these campaigns involved OZ magazine whose editors were prosecuted for obscenity. OZ 28, otherwise known as the 'Schoolkids Issue', was described by Tony Palmer in the

following way:

OZ 28 has 48 pages, all two-tone in colour. It is typographically ingenious, with the usual tendency thereby to illegibility. Apart from the front and back cover, it has 31 pages of text, 11 pages of advertisements and 4 pages of photos, 30 cartoons, and 20 separate articles, not including an editorial and the various biographies of the contributors and editors. [32]

It was called 'Schoolkids OZ' not (solely) because it was aimed at schoolchildren, but because it was largely written and edited by them. However, this fact was largely ignored during the trial. Indeed, during what was the longest obscenity trial in British publishing history, great play was made of the involvement of school children, one of the charges being:

that they had conspired with certain other young persons to produce a magazine that would corrupt the morals of young children and other young persons and had intended to arouse and implant in the minds of these young people lustful and perverted desires.[33]

It was the fact that the young were the supposed 'object' of the publication that most concerned Mrs Whitehouse. Indeed, after the three defendants successfully appealed against the prison sentences she accused them of endangering British youth:

I do not have anything personal against the three men but I think it is an unmitigated disaster for the children of our country. If they cannot be protected by the law from this kind of material then the law should be tightened up.[34]

The other related campaign in which Mrs Whitehouse was involved at this time - and more centrally than in the OZ case - was the prosecution brought against the publisher of a book of advice for schoolchildren called The Little Red Schoolbook. The book was small in format, although 208 pages long. It was divided into chapters,

each of which contained advice on a separate topic such as homework, teachers, discipline, drugs etc. The central cause for concern was the twenty page section devoted to advice on sexual matters. (A description of this case is contained in chapter 5).

Although proceedings were not instituted as a result of Mrs Whitehouse's intervention, she had nevertheless brought the book to the Director of Public Prosecutions' notice. This particular publication is of particular interest here because it pulls together several themes pertinent to a consideration of Mrs Whitehouse and the NVALA. When considering Mrs Whitehouse's views on the links between sexual and political revolution, the book will surface again. At this point, it is sufficient to note the focus of concern in the note she sent to the DPP:

I would like to draw your attention to the chapter on sex. This book is now being sold freely to children of all ages and it is intended by the publishers to be read by children of eight years upwards. In my view this book would deprave and corrupt young children and I draw your attention in the sincere hope that you will find it possible to take action against the publishers.[35]

Protection of the young has ostensibly been a central and ever-present concern in Mrs Whitehouse's and the NVALA's campaigns ever since they began. The following heartfelt plea towards the end of Mrs Whitehouse's book, Whatever Happened To Sex?, sums up her thinking on the subject:

Public opinion long ago condemned and outlawed the exploitation of child labour by nineteenth century industrialists. Yet, today, our society ruthlessly exploits the minds and emotions of young people - and now, may God forgive us, the bodies of children - for financial and political capital. Children are fodder, not for industry, but for ideas. They are no longer sent up chimneys, but they are pressured

into alien patterns of behaviour to line the pockets of unscrupulous publishers and to further the cause of revolution by stealth. A nation's youth is its greatest asset. We are poor guardians if we do not ensure its unalterable right to childhood, to mystery, to dreams, to tenderness and to love; if we do not realise that by ceasing to provide authority we may also cease to care; if we do not conscientiously maintain the spiritual foundations without which the young cannot build anew; if we do not teach that there is a third way, neither reactionary nor libertarian, which still waits to be explored.[36]

It is clear from the last sentence in the quotation that Mrs Whitehouse does not view her position in the way some of her critics have done in the past, as reactionary or illiberal. She argues for a 'third way', and it is one of the aims of this chapter to analyse the characteristics of this third way.

Sex Education and the NVALA

Another area of concern for Mrs Whitehouse, which also takes as its focus the young, is sex education. Sex education draws together much of the Whitehouse 'philosophy', for not only does it explicitly focus upon the young, but also it carries at least an implicit stance on the role and utility of the contemporary family. The issue also raises questions about love, sex, marriage, religion and morals. Sex education as a subject is important in any discussion of the work of Mrs Whitehouse, because her experiences of it as a teacher and parent, indirectly, if not directly, led her into the public domain of the politics of sexual morality.

As a teacher in the early 1960's at Madely Secondary Modern School in what is now Telford New Town, Mrs Whitehouse was Senior Mistress 'responsible for the moral welfare of the girls'. In that connection she became involved in the Headmaster's plans to invite marriage guidance counsellors to present several sex education films. She and other teachers, insisted on the right to attend these lessons, and were taken aback by what they perceived to be the absence of a moral framework in what was, as it turned out, an 'entirely factual' approach to sex education. After this, the school itself took complete responsibility for sex education, and as has recently been mooted in public debate in the late-1980's, they operated a system of 'opting in' rather than 'opting out' by which parents were asked whether they wished their children to participate.

Although Mrs Whitehouse recounts stories of the 'embarrassing' moments she experienced when discussing certain matters with her pupils, it appears from her accounts of this period that the school-based sex education programme she was involved in was, for her, a positive and satisfying experience. All this was to change, however, in the year she describes as 'extraordinary', 1963, as a result of what she took to be the effect that television was having on public debate. She describes the incident that sparked off, or at the least increased, her concern about the content of contemporary television programmes, as happening at the height of the 'Honest to God' debate.

The girls came into school discussing the merits of a programme they had seen the previous evening, a 'religious' programme, Meeting Point, which had been about pre-marital sex. One of the girls had apparently rushed into class to inform her teacher, Mrs Whitehouse, that she now

knew what was 'right'. This, it turned out, was "that we shouldn't have intercourse until we're engaged" [37]. The incident is particularly revealing of Whitehouse's position, and indeed made a 'tremendous' and lasting impression on her. As far as the programme itself was concerned, it was for her

a classic example of the way in which the BBC, with its penchant for 'South Bank' religion was allowing itself to be used as a launching platform for the 'new morality'. [38]

'South Bank' religion has already been briefly discussed. The 'new morality' is discussed below in more detail. Essentially, Mrs Whitehouse's argument was that 'traditional' Christian morals were no longer adequately presented on television, and that a new radical theological orthodoxy was in the ascendant. The result of this change was that one could no longer rely on notions of 'sinfulness' being used with regard to certain acts. Particularly important in this context for Mrs Whitehouse was the position adopted by the representatives of the Church:

My objection was not to discussion of the subject, but to the refusal of those who might be expected to be clear and able spokesmen of the Church, to commit themselves to a firm position on right and wrong. The programme remains as a landmark in the creation of the 'permissive society' and a classic example of the power of television to create and change patterns of thought and behaviour. [39]

Mrs Whitehouse clearly felt that the religious spokespersons should be able to deal in terms of 'moral absolutes'. 'Right' and 'wrong' are, for her, immutables drawn from religious teaching, which are necessary as a context for sex education, and around which a previously existing consensus was being subverted by 'propagandists' for 'permissiveness'.

Mrs Whitehouse was also centrally involved in two major public campaigns which had at their heart of which were questions of sex education and, in particular what children should be shown or told. The first campaign centred around a sex education film entitled, Growing Up, made by a Dr Martin Cole, of Birmingham University. The film was controversial for its explicitness. It contained a fifteen second sequence of copulation, and shots of male and female masturbation. According to Mrs Whitehouse, it not only condoned, but advocated, teenage sex, and finally:

...brought out into the open, in no uncertain fashion,
the nature of the contemporary assault upon the young
and upon the ethical structure which should support them.
[40]

Mrs Whitehouse's response is an interesting one. She wrote to the then Archbishop of Canterbury, Dr Michael Ramsay, and, in her own words, issued a challenge to him. She asked him whether he would see the film and "issue a statement about it both to encourage anxious parents and to ensure that the Church was seen to be caring about the matter." The reason for approaching the Archbishop in such a manner was essentially to 'force his hand' as, according to Mrs Whitehouse, he had frequently seemed unwilling to become involved in public debates on questions of morals. Having complained on several occasions of the Church's reticence to take the moral lead, on this occasion her plea was successful. The Archbishop did issue a statement condemning the film as 'diverging from Christian ideas of education'. The female teacher who took part in the film lost her job, and the film itself was never shown in schools.

The second campaign was one already touched upon, that against The Little Red Schoolbook. As has already been suggested, the twenty page section on sex was the subject of most of the furore. The book is quite explicit, and at no point does it describe practices as 'right' or 'wrong'. It was viewed by Whitehouse as 'another threat to the rights, the security and the character of the child'. The 'rights' she is referring to are, she would suggest, rights to 'innocence', and the 'security' of moral certainty. The book's candid discussion of sexual matters, the fact that it aimed at children as young as eight, and the lack of a Christian moral framework - as well as its perceived 'revolutionary' nature which will be discussed later - all therefore contributed to its downfall. Mrs Whitehouse believed that sex education, and in particular, discussion of sexual issues on television was coming to be dominated by atheists and humanists, with a concomitant decrease in emphasis on the 'proper' moral context of sexual behaviour. This moral context would, for Mrs Whitehouse, stress the need for chastity, for an avoidance of pre-marital sex or 'trial marriage', an emphasis on marital fidelity, as well as, by implication perhaps, support for the view of homosexuality as 'unnatural'.

As anyone who is familiar with Mrs Whitehouse and the NVALA's work will know, they have been concerned not only with explicit material that is designed to be shown to children and young people, but also with films, books and other publications produced for an adult market. Greater consideration will be given to Mrs Whitehouse's role in the debates around the issues of obscenity and pornography in coming chapters. However, it is worthwhile at this point considering one or two particular campaigns which highlight, once more, certain important

facets of her general or overall 'philosophical' position.

Later Campaigns: Blasphemy and Homosexuality

In 1976, a Danish film-maker called Jens Jorgen Thorsen came to Britain with the intention of making a film, called provisionally 'The Many Faces of Jesus'. The intended film was to be about the sex life of Christ, and supposedly was to involve both heterosexual and homosexual acts. Given the outlook of Mrs Whitehouse and the NVALA, it is not surprising that, on learning of the Thorsen's intention to film in Britain, immediate action was taken. Mrs Whitehouse wrote on behalf of the NVALA to the then Home Secretary, Roy Jenkins, asking if he would declare Thorsen an 'undesirable alien', to which they received a negative reply. Opposition to the film was, however, building up more generally, with many column inches in the national press devoted to the story, and to indignant letters from outraged readers. Both Cardinal Hume and the Archbishop of Canterbury declared their intention to fight the making of the film, and the Prime Minister declared that Thorsen would be "a most unwelcome and undesirable visitor to these shores." [41] If this list of opponents to the film makes impressive reading, then it was soon to become even more so. In response to a letter from an NVALA member, the Queen replied expressing her concern that such an 'obnoxious' film might be made in Britain.[42] The NVALA got hold of a copy of the proposed script for the film, arranged to have it translated, and sent a copy on request to the Shadow Home Secretary, William Whitelaw. Another request was made by the NVALA that Thorsen should not be admitted to

the country, and he was indeed excluded "on the grounds that (his) exclusion (was) conducive to the public good", when he tried to enter early the following year.

At what should have been a time to reflect on a most successful campaign to unite both Church and public in defence of fundamental Christian beliefs, Mrs Whitehouse was 'rocked' by the breaking of another controversy. This one, however, was to be far more personally taxing for Mrs Whitehouse, for the apparent consensus of opinion that surrounded her campaign against Thorsen, evaporated as quickly as it had developed. In November 1976, Mrs Whitehouse first came across edition 96 of Gay News. It contained a poem by James Kirkup entitled 'The Love That Dares to Speak Its Name'. The title of the poem was a reference to a poem by Lord Alfred Douglas entitled 'The Love That Dare Not Speak Its Name'. Tracey and Morrison, describe the poem and its general tenor as follows:

The deletion of the negative by Kirkup matched well the new more assertively public attitude of homosexuals in the 1960's and 1970's; his means, the depiction of a homosexual relationship between a Roman centurion and the crucified body of Christ, depicted in the most physical sensual terms, was nothing if not polemical. It even raised adverse comments within the correspondence columns of Gay News itself.[43]

Mrs Whitehouse's response was again immediate, and she says that she thought that the poem was 'like the recrucifixion of Christ, only this time with twentieth-century weapons' [44]. She wrote straight to her solicitor, and by the end of the month had applied to a judge of the High Court for leave to institute a criminal prosecution for blasphemous libel. There are two facets of the campaign that are important for the discussion here. The first is Whitehouse's

relationship with, and attitude toward, the Church, and in particular the Church leaders' response, or lack of response, to the claimed blasphemy of the poem, in contrast to the Church's response in the Thorsen case. The second is Whitehouse's attitude to homosexuality and homosexuals, which became quite a major issue during the course of the case.

The poem, and the editor of Gay News, Denis Lemon, were vigorously defended in public by among others, the National Secular Society, the Rationalist Press Association, and the Defence of Literature and the Arts Society. Mrs Whitehouse, in turn, began to organise those organisations on whom she felt she could count for support. She wrote to the Archbishops of Canterbury and York, but both declined to appear as witnesses in the trial, Dr Coggan arguing that a jury were far more likely to be influenced by ordinary people testifying to the poem's blasphemous nature than by 'professional' Church leaders. Mrs Whitehouse, in her account of the campaign, argued that the real reason why they did not wish to become involved was because of the topic of the poem - homosexuality - rather than its blasphemy. The Church, then, neither publicly condemned the poem, provided explicit support for Mrs Whitehouse, nor even appeared able to produce a united front in response to the prosecution. Mrs Whitehouse consequently felt particularly isolated:

In no way could I ever have imagined that this poem could have done anything but rouse the Church to action. Now I find myself alone - that is irrelevant in terms of what happens to me, but for the idea that the Lord was homosexual, and for the perverted practices on his dead body not to be seen to be blasphemous if the case is lost - about that I am lost for words![45]

Although on several previous occasions Mrs Whitehouse had felt that

either the response, or the public face that the Church presented was unsatisfactory - for example over the 'Honest to God' debate - this case with the vociferous support for Gay News, made her feel particularly vulnerable. At the finish, Lemon was found guilty, and received a suspended prison sentence. Mrs Whitehouse proclaimed herself very happy with the outcome, although she had no wish for Lemon to be jailed. Tracey and Morrison suggest that what she was trying to achieve in bringing the prosecution:

lay not in punishing Lemon, nor in a sense bringing back to life the blasphemy laws. Both those were necessary means towards a much more profound end, which was re-establishing the role of God within social life.[46]

The Gay News Defence Committee organised many forms of protest, including a march and meeting in Trafalgar Square which attracted 5,000 people. Mrs Whitehouse was portrayed in many circles as being anti-homosexual. This opposition, she felt, was orchestrated by the 'homosexual/humanist/intellectual lobby' [47] - adding homosexual to the usual list - who were well organised and united in a way the Church was seen not to be. Mrs Whitehouse's attitude to homosexuals and homosexuality, though is somewhat more complex than was perhaps allowed for at the time. She sets out her position in detail in her book Whatever Happened To Sex?, and repeats it in full in A Most Dangerous Woman? in her own defence. She is also quoted at length by Tracey and Morrison. What she wrote is worth repeating here:

When I say what is true - that I am not against homosexuals as people, but believe homosexual practices to be wrong, I am very conscious of the inadequacy of what probably sounds a very negative declaration. Homosexuals have as much right to be understood, to be treated with compassionate love as the rest of us. And as people they should be 'judged' no more, no less, than are those of us whose problems

are perhaps less obvious but equally undesirable. Compassion without patronage, but without compromise - how to achieve it? The natural repugnance which most people feel when homosexuality and lesbianism is mentioned can result in a harshness of attitude and thinking, which is, at least, unhelpful and certainly as unChristian as the perverse practices which are condemned. But to go to the other extreme and elevate people suffering from such abnormalities into a norm for society not only threatens society but is dangerous to the individuals themselves, since it excludes them from the consideration of help and treatment. Society to its shame, once hurled that word at the homosexual. In our crazy 'value-free' society the 'shame' is now attached only to those who dare to say that homosexuality is less than 'gay'. Such an attitude is as dogmatic, doctrinal and restrictive in its own way as was the fearful silence or sniggering scorn of earlier decades.[48]

Mrs Whitehouse was accused at many points of being motivated by 'hatred' of homosexuals, and whilst the extract suggests that her attitude was not one of 'hatred' - indeed far from it - by including in her attitude to homosexuality such words as: undesirable, repugnant, perverse, suffering and abnormal, it is also easy to see how the 'gay' community might be less than happy with the description. Mrs Whitehouse's position was, then, that homosexual behaviour was abnormal and sinful. Given that, as Tracey and Morrison point out, her stance on sin would also involve condemning a number of heterosexual practices - her position was not simply something that was specifically 'anti-homosexual'. The point of this discussion has been to illustrate the view of 'legitimate' sexual relations which is explicitly part of Mrs Whitehouse's 'theological' position, and is central to the type of society that she would wish to see.

Her attack on the poem in Gay News, then, was an attempt to reassert the importance of Christianity, to re-establish the centrality of 'traditional' Christian teaching, which would provide the moral basis for a society in which homosexuality would be once again viewed by all

as perverse, yet requiring of sympathy and treatment. Homosexuality, though, was, not really the target. It was the 'symbol' of a wider goal:

...Whitehouse's was not primarily an attack on homosexuals: it was in the first instance an attack on the imputation of a sexual context to Christ's death; in the second it was a confrontation with an anti-Christian and, to her, sexually-obsessed society, and it was this latter symbolic aspect to the events of the blasphemy trial which was the main point.[49]

The issue of 'homosexual practices' was to rise again in another case in which Whitehouse was a central figure. In 1980 the National Theatre staged a play entitled 'The Romans in Britain', in which there is a scene where three Roman soldiers sodomise a young Briton. The scene caused quite a stir, and although there were threats about grants being withdrawn etc, there was no talk of prosecution. Mrs Whitehouse was determined that something should be done, and arranged for a QC to visit the theatre and watch a performance.

John Smyth QC reported to Mrs Whitehouse that, "having seen the play I have no doubt whatever that a prima facie case exists that a criminal offence has been committed." [50] An application was then made to the Attorney-General for permission to take action, but this was turned down. The solution to this problem was for Whitehouse personally to take a private prosecution of the play's director, Michael Bogdanov. The statute chosen for the prosecution was the Sexual Offences Act, under which it is a criminal offence to procure persons for acts of gross indecency in a public place. The hearing was held at Horseferry Road Magistrates Court where it was eventually decided that there was a case to answer, and Bogdanov was committed for trial. The trial did not last long, for once the Judge decided that public performance in

the theatre was in fact covered by the Sexual Offences Act, 1967, and that Mrs Whitehouse was therefore able to bring a prosecution, the case was withdrawn. There was some confusion in court as to whether a private prosecution can be withdrawn once it has been decided that there is a case to answer. In the end, the Attorney General issued a nolle prosequi and the case came to an end. Much was made in the press of the sudden climax to the case. Some argued that the case had been brought to an early end as there was little chance of the prosecution being successful, others suggesting that the case had in all but final verdict already been won.

Mrs Whitehouse suggests that, having achieved what she argues they set out to do - show that the Sexual Offences Act covered all 'public' acts of gross indecency, including simulated acts in the theatre - it would have been oppressive to have continued a private prosecution against the director of the play. This is not inconsistent with statements made by Whitehouse in previous cases. As was shown at, for example, the close of the Gay News case, Mrs Whitehouse suggested that she was pleased that the paper's editor, Denis Lemon, was not sent to prison for she had nothing against him personally. However, what is slightly more problematic than the end of the prosecution is why it was brought in the first place. In the previous two cases considered above, it was explicit attacks upon the Church that prompted action by Mrs Whitehouse and the NVALA, but there was no such dimension in the 'Romans' case. Mrs Whitehouse explains the rationale thus:

I have felt troubled because I am lacking in regard to 'The Romans' prosecution the same sense of identification with Jesus that I felt in the blasphemy case. That was very personal; this is not. But of course they are quite different by their very nature. Last time it was an expression of love, this time a matter of law. Which brings me to the heart of the

matter - how important is it to God that the law is upheld? In that such material on stage degrades not only those who play but those who watch - it is important. I need to see this action as one step - even if we lose it will perhaps serve to show the nation how far it has fallen, that it no longer is concerned that such things happen in its midst.[51]

For Mrs Whitehouse the case was but one step in the attempt to preserve our 'national morality' and our 'culture'. Many cases documented in the following chapters on obscenity, in which Mrs Whitehouse is involved, be it either centrally or peripherally, may, quite unlike the Gay News or Thorsen cases, have no direct or obvious link with Christianity. Both those cases involved blasphemies, Mrs Whitehouse felt, and therefore there was no question in her mind that she would become involved. To understand her involvement in the cases where there is no such link, it is to her explanation of her involvement in the 'Romans' case to which one must turn. Each of these campaigns must be viewed, as she says, "as one step" towards the protection of traditional values and morals, and the re-establishment of a society in which those values are paramount.

Christianity and Politics

There are a number of connections between elements in the Whitehouse/NVALA philosophy and aspects of the relationship between law and morality described by Lord Devlin in The Enforcement of Morals [52]. In both, it is assumed that the criminal law can and should be used to protect or to reinforce moral principles. In both, it is argued that the basis of moral principles in this has been, is and

should be, Christianity. A third connection between the two is the importance attached to the notion of a 'shared morality'.

Lord Devlin argued in The Enforcement of Morals that a shared morality is necessary for the continued existence of society, an assumption also central to Parsonian sociology. This is the manner in which he justifies legal intervention. For if a shared morality is necessary in this sense, then anything which threatens it, also threatens society, and the law may therefore be used to protect it. Hart, in criticising Devlin's position, suggested that his conception of morality was like that of a 'seamless web' where attacks on one part were seen as threatening the life of the whole. A closer look at the Whitehouse/NVALA stance on the 'politics of morality' makes visible a somewhat similar position. Turning once more to the campaign surrounding The Little Red Schoolbook, this point should become clear.

Mrs Whitehouse, as has been shown, drew the attention of the DPP to The Little Red Schoolbook (LRSB) as soon as it was published in this country, arguing that it was a 'threat to the rights, the security and the character of the child'. For Whitehouse and her supporters, public actions such as this were dangerous not only because of their sexual content, but because of their political stance. Mrs Whitehouse, for example, says she received a phonecall at the time of the case from an evangelist who was travelling in Denmark. The evangelist had managed to obtain an affidavit from one of the three Danes responsible for the publication of LRSB, but who had since become a Christian, stating that 'Mao money' had financed the publication of the book in Denmark.[53] Ross McWhirter, a supporter of the NVALA and a campaigner in his own right, wrote to the Guardian,

and made the point even more clearly:

The real issue is, in my submission, that the book is not only obscene, but also seditious. [54]

The link between what are referred to as 'sexual anarchists' (for example, David Tribe of the National Secular Society) and 'political anarchists' (for example, the publishers of the LRSB) is one that is frequently made in Whitehouse's writings. Her concern, then, is not a narrow one of how sexual matters should be treated and presented, but how one is to construct and preserve a society in which the dominant values are Judaeo-Christian. The campaign against the LRSB illustrates this well:

It is part of our thesis that sexual and political revolution go hand in hand and that indeed the first is prerequisite of the second. That The Little Red Schoolbook was a revolutionary primer there can be no question. [55]

Morality is attacked for political reasons, she argues, and the political beliefs at the core of the attack are fundamentally anti-Christian. Political and sexual revolution is a recurrent theme in Mrs Whitehouse's books and articles. Whilst she frequently attacks Marxism and Communism, it is not simple political opposition, but rather an attack on what she sees as the effects of the spread of Marxism for Christianity:

It is of no mean significance that the secular/humanist/Marxist philosophy makes the destruction of Christianity one of its main priorities. It understands its importance in relation to character and morale, to the standard of values and behaviour. [56]

Implicit in this quotation is the notion that Christianity is not only under threat from political revolution, but that it is the last line

of defence against such revolution.

The 'permissive revolution' that many people felt gripped Britain in the 1960's was, for Mrs Whitehouse, in many ways a political revolution. One might almost suggest that, in her terms, there was a plot by - whatever one might wish to call them - Marxists, Communists, Humanists, Libertarians etc to transform society. This revolutionary change would be achieved most simply by attacking moral standards and promoting sexual revolution. Whitehouse considered moral order to be synonymous with Christian moral principles, and therefore any attack on the former was perceived as being an attack on the latter. The full scale attack which she believed to be taking place was therefore seen as a fundamental and all-encompassing attack upon Christianity.

There were, of course, many very clear signs that organised religion was feeling the effects of rapid social change, and this served to reinforce the general philosophical position adopted by people such as Mary Whitehouse. Max Caulfield in his biography of Mrs Whitehouse, sums up the argument in one sentence:

As to the purpose of all this frenzy - it was easy to explain that the forces of revolution, unable to achieve their objectives at the ballot box or, because of the existence of the nuclear bomb, by full-scale war, were endeavouring to encourage moral decay.[57]

How does Mrs Whitehouse make the connection between sexual and political revolution? She has, she suggests, ample evidence from history. One example that she uses is Nazi Germany:

Both before, and when, the Nazis took over Poland they flooded the bookstalls of that country with pornography. This is a fact. Why did they do so?

Because they believed - and we had better believe it also - that if they could make individuals conscious only of the need for personal gratification, they would have neither desire nor energy to combine and work for the downfall of the enemy. The Nazis' scheme was the deliberate use of pornography as the means of social castration. [58]

Having established both the 'purpose' of revolution, and the existence of what appears to be 'revolutionary change', the final task is to find the revolutionaries. A number of people who have been singled out by Whitehouse as playing particularly crucial roles in the process of supposedly 'permissive change' have already been mentioned. Perhaps one person in that list, however, stands out, as representing in the early 1970's almost all that Mrs Whitehouse was fighting against. Richard Neville, one of the editors of OZ magazine, was referred to frequently by Whitehouse, as a revolutionary. She has made much of statements made by Neville, and has quoted him as saying that "the weapons of revolution are obscenity, blasphemy and drugs" [58] and as saying during the OZ trial that the whole point of pornography was to promote promiscuity.[60] In the passage quoted from Whatever Happened to Sex? when Richard Neville was discussed above, Whitehouse described his book Playpower as 'the handbook of the international drop-outs', the purpose of the underground as 'not so much to dissent as to disrupt' and the implicit and explicit goal contained in OZ editorial policies as the overthrow of society.

Whether or not the likes of Richard Neville were accurately described in this manner by Whitehouse and other members of what Neville and his associates perceived to be the 'establishment', or whether they could genuinely be described in Cohen's terms as 'folk devils', "persons emerging to become defined as a threat to societal values and

interests", it is clear that, for Mrs Whitehouse, they represented a grave threat to all that she held dear. As has been suggested, it was particularly the perceived threat to the importance of organised religion that they represented which galvanized Whitehouse and others into action.

In the course of this discussion it is Christianity, and the Christian basis of 'moral values' which have emerged as the key to understanding Mrs Whitehouse's and the NVALA's response to the cultural, social and political transformations occurring in post-war Britain. Included in this overview have been the campaigns against the Thorsen film and James Kirkup's poem in Gay News, where blasphemy was the central explicit issue; Mrs Whitehouse's criticism of television, in particular the BBC's supposed bias toward 'South Bank' theology, and 'Till Death Us Do Part's' irreverence towards Christianity; the perceived lack of support for the NVALA from Church leaders. It has also been suggested that there were many signs available to Mrs Whitehouse that, in her terms, all was not well within the Church, and that this reinforced her view that the established order was under threat, and that urgent action was necessary.

The New Morality

Perhaps the most symbolically significant event in the general area of religion and morals in the early 1960's - if not the whole period under discussion - was the publication of John Robinson's

Honest to God in 1963. The 'radical theology' contained in the book formed the basis of the movement called 'situational ethics' which proposed that:

Our moral decisions must be guided by the actual relationships between the persons concerned at a particular time in a particular situation, and compassion for persons overrides all law. The only intrinsic evil is lack of love.[61]

For Mrs Whitehouse, the publication of Honest to God, although it was only one - albeit significant - event, was a key moment in the emergence of what both she and John Robinson described as 'the new morality'.

Mrs Whitehouse felt that this 'new morality' was given far too much publicity and even support by the BBC, particularly at the expense of the proponents and supporters of 'traditional Christian ethics'. She identifies a 'golden age' of broadcasting, which was essentially contemporaneous with the 'Reithian' era at the BBC, where some sort of Christian moral absolutism held sway. With the continued rise of secular attitudes, it became increasingly apparent to the Church - or certain sections of it - that it was, or was in danger of, becoming ever-more marginal or peripheral to contemporary social concerns.

There were basically two major responses. Firstly by those who tried in a manner similar to Mrs Whitehouse, to re-establish the importance of the Church through a critique of contemporary social forms. That is, Whitehouse and the traditionalists within the Church were extremely critical of what they perceived to be the 'character' of modern society, and their solution was largely backward-looking, dominated by the desire for the retrieval of a 'bygone golden age'

where traditional religious teachings and the Church generally were a more central part of the social fabric. The second response was more forward-looking and concentrated on presenting the Church in a manner that would be more acceptable to, more relevant to, and essentially more 'in-tune' with contemporary social concerns. These more 'radical' theologians formed the basis of the intellectual group that was identified with the 'new morality'.

For Mrs Whitehouse, this radical theology constituted a new moral orthodoxy, and one which, in an inaccurate paraphrasing of John Robinson's argument, it was believed that 'God is Dead'. Here Mrs Whitehouse spells out the message:

One would imagine that it is a long, long way from the Church to Soho. But most certainly the road to the latter, with its decadence and exploitation, has been made a great deal smoother, shorter and more popular by the compromise and self-interest of the clerics and assorted fellow travellers of the so-called 'new morality' school. The permissive society did not begin with the publication of Dr John Robinson's Honest to God, but this certainly smote the ramparts of the established Church which, until that point, had been seen - mostly with approval - as the defender of the faith and of public and private morality.

[62]

According to Mrs Whitehouse, there was a time not so long ago when the Church was, and was seen to be, the defender of both public and private morality. Thanks to, among others, John Robinson and the radical theologians, however, the way has been paved for humanist concerns to become more widely accepted and for the established Church to lose its importance in the areas of both public and private morality. This is also the essence of Mrs Whitehouse's campaigns. Her long-term goal is the re-establishment of a society in which the Church once more occupies this central role. The 1960's seemed to

her, and her supporters, to be a watershed in the history of Christianity. For Mrs Whitehouse it seemed that the Church was under a concerted attack and that, if it was not vigorously defended, then there would be nothing to prevent 'the tide of permissiveness' or the advance of the 'new morality'. Publications in the 1960's, such as Honest to God and Toward a Quaker View of Sex, represented for her the encroachment or infiltration of a new moral orthodoxy into the Church itself. As has been suggested, the existence, seemingly side by side, of two distinct moral codes - a traditional Christian position and the 'new morality' - and the public 'battle' between the two, as new ideas came into conflict with old, gave the impression to many that the Church could no longer present a united front. For those like Mrs Whitehouse who believed in the importance of moral absolutes and moral certainty this was a crucial period. The Church appeared no longer to be the guiding force that she believed it once had been, and felt it ought still to be. Her aim has been to return British society to that former 'golden age'.

Other Moral Entrepreneurs

The National Viewers' and Listeners' Association is by no means the only 'moral entrepreneurial' group of this sort, although it is one of the most long-standing, and it has, through Mary Whitehouse, generally achieved a higher profile than many of the others. There have been during the period under discussion a considerable number of such pressure groups - for example, the Nationwide Festival of Light; the Order of Christian Unity; the Responsible Society; the Society for the

Protection of the Unborn Child, LIFE as well as a host of other, smaller groups - most of which actually originated in this period.

The Nationwide Festival of Light (NFOL) developed largely as a result of the work of one person, Peter Hill, an evangelical Christian who, on returning to this country after several years abroad, was shocked to find explicit sexual material on open sale. He believed that there should be some form of demonstration against such displays and set about organising the 'march for righteousness'. This was to be a 'one-off' event and was not conceived of as the beginning of a moral protest movement or group. The Festival of Light rally - the name had been thought up by Malcolm Muggeridge - took place in Trafalgar Square in September 1971, and attracted between 25-30,000 people.

The success of the one-off rally prolonged the life of the movement and although it kept its basically evangelical outlook for a couple of years, Roy Wallis suggests that the likes of Peter Hill began to be replaced by a leadership that was "more directly concerned with the civic-political aspects of moral reform, rather than with evangelism."

[63] With the changing outlook of its leadership, the NFOLs early concentration upon opposing pornography broadened out into a general opposition to the modern permissive society. Similarly to the NVALA, it was a return to what was perceived as a now lost age of Christian orthodoxy that was being sought:

Literature distributed at the rally and the speeches from the platform stressed respect for the Ten Commandments, deplored the loss of a firm traditional moral stand by national leaders, and called for a return to Christian moral standards, buttressed by firm legal controls and sanctions.[64]

The Nationwide Festival of Light is still in existence, although it has by now even outgrown its original name. In 1983 it became known as CARE (Christian Action Research and Education). The name change was necessary, it was argued, because the original name referred to a single event that had taken place over a decade previously, that it gave the wrong image, and didn't properly describe the work being done by the organisation. The stated aims of the organisation continue to be those originally associated with the NFOL, namely:

The advancement and propagation of the Christian Gospel in particular as it bears on or effects national or individual morality and ethics.[65]

Another organisation whose concerns and objectives have changed and broadened during this period is the Order of Christian Unity (OCU). Founded in the 1950's to encourage ecumenicalism, [66] by the early 1970's the OCU had become a campaigning moral protest group, opposing abortion, liberal divorce laws, and seeking the 'advancement of Christian values' in education and broadcasting. The Responsible Society is the one organisation working in this general field that is not explicitly Christian in outlook. Indeed, in proclaiming its independence, the Responsible Society argues that it is not affiliated to any political party, pressure group or religious body. Whilst it does not have the theological aims of the NVALA, the NFOL/CARE or the OCU, it still appears to have developed in response or opposition to many of same social trends highlighted by those other groups. The Responsible Society was formed in 1971 by a group of people 'concerned about the damage being done to human dignity, welfare and happiness by the misuse of new social freedoms' [67]. One of their original sponsors was Pamela Hansford Johnson, whose views on the permissive age were covered in chapter one. 'Sexual irresponsibility' is the

Society's major concern and their aim is to encourage responsible sexual behaviour through education. Responsible sexual behaviour is seen as taking place within 'the basic unit of society', the family, 'which is founded on marriage' [68]. In a pamphlet entitled, 'Saying NO isn't always easy ...!', the message is that 'casual sex' should not be confused with sexual liberation:

Real freedom comes from being true to your real beliefs. Saying 'no' isn't negative - 'no' to 'having sex' is saying 'yes' to a real caring relationship for the future. Sex is only really fulfilling when it's part of the total commitment of marriage.[69]

Responsible behaviour, they suggest - and this is another point of contact between their views and those of the NVALA, the NFOL etc - is also firmly heterosexual. They accuse the gay community of propagandising and leading the young to believe that, if they're actively heterosexual, then they must be repressing their homosexuality. "Don't be fooled", they warn, "It's rarely a biological condition. It's more a matter of conditioning. You don't have to be gay." [70]

What, if anything, connects these groups? They all arose, or at least underwent significant transformations, in the period generally described as permissive. They are all oppositional in character; that is, their major concern is with providing opposition to what they perceive to be changes of a generally negative kind in the British social or moral fabric. Although they vary either in their particular concerns or in the foci of their campaigns - even the Responsible Society which states that it does not take part in demonstrations and public protests, campaigns through its literature - yet it is 'permissiveness' or their particular interpretation or conception of

permissiveness that was the galvanising force behind their development. The central concern for all these groups is with what perceive to be declining moral standards.

The Emergence of Moral Campaigns

It is not immediately obvious why moral campaigns should have developed in post-war Britain. Why should organisations such as the NFOL, the NVALA and others have developed when they did? A number of authors, whose work will be considered below, have attempted explanations largely in terms of social class. It is suggested that support for such organisations is drawn disproportionately from the middle class, and in particular those sections of the middle class that feel most at threat from the structural changes taking place in contemporary British society. Other authors have suggested that it has been the process of secularisation which has been most central in giving rise to moral protest groups.

The final attempts at explanation have been in terms of 'cultural defence' and see moral protest groups arising in response to broader cultural changes, as opposed to changes in class structure or the role of religion. This is an important debate for the purposes of this thesis. As was suggested in chapter one, although many authors have intimated that there have been fundamental changes in sexual behaviour and standards and that these form the basis of what has become known as 'permissiveness', they have conspicuously failed to provide

empirical support for their claims. Despite this absence of supporting evidence, there is still an underlying assumption that something called 'permissiveness' did sweep Britain in the 1960's. This was certainly the case for the moral protest groups. The NVALA, as was shown above, arose in response to perceived changes in Britain's moral climate. The NVALA's concerns have been examined in some detail, yet the reasons for the development of this group, amongst others, have not as yet been explored. An attempt at such an explanation should bring consideration of the ingredients of permissiveness into sharper focus.

Examinations of the development of protest groups such as the NVALA invariably begin with the work of Howard Becker and his notion of 'moral entrepreneurship'. [71] Moral entrepreneurs engage in the process of establishing moral rules by attempting to define certain actions or forms of behaviour as deviant. As such, the term has been seen as being a particularly appropriate description for the endeavours of organisations involved in 'moral protest'. Perhaps the most widely quoted and influential study of 'moral entrepreneurship' is Joseph Gusfield's study of the American Temperance Movement [72]. Building on Weber's conception of 'status' and the way in which such social honour is differentially distributed between social groups, Gusfield notes that, at times of (rapid) social change, certain groups may experience an increase or loss of social honour. During periods of change such as this, what he refers to as 'status movements' may emerge which attempt, through symbolic rather than instrumental means, to increase or simply maintain the prestige or honour of a particular social group. Using this approach, moral reform movements are viewed as a form of status politics. By seeking support for a set of values

or beliefs, the social honour of the group(s) that adhere to them is symbolically affirmed. Gusfield does not suggest, however, that all moral reform movements are identical in approach and he distinguishes between two basic types. The first he refers to as 'assimilative', the second as 'coercive'.

The first, as is implied by its name, is sympathetic and persuasive, attempting to 'convert the deviant' to the dominant way of thinking and behaving. The coercive approach to moral reform, however, seeks either to change the law, or at least, to invoke legal sanctions in its attempt to reaffirm the status attached to a particular social group or class. The assimilative approach, Gusfield suggests, is associated with groups that are largely secure, where the values and opinions they hold either are, or are perceived to be, supported by the majority of the population. Coercive reform is associated with groups that feel threatened, with groups that feel their social superiority is being challenged or diminished.

In his study of the Women's Christian Temperance Union (WCTU), Gusfield argued that the movement shifted from assimilative to coercive reform as the old middle class lost ground to upwardly mobile immigrant groups and the new middle classes. As such, temperance became a significant symbolic difference between the old and the new:

The establishment of Prohibition laws was a battle in the struggle for status between two divergent styles of life.... A function of Temperance activities was to enhance the symbolic properties of liquor and abstinence as marks of status.[73]

The important word here is symbolic. According to the argument, it was the passing of the law that was important to the reformers, not

how effectively it was enforced afterwards. The values and beliefs of the reformers were enshrined in the law; 'it was their law that the drinkers had to avoid.' [74] As Gusfield argued:

Status issues function as vehicles through which a non economic group has deference conferred upon it or degradation conferred upon it. Victory in issues of status is the symbolic conferral of respect upon the norms of the victor and disrespect upon the norms of the vanquished. [75]

A certain similarity may be noted here between Gusfield's interpretation of the aims of the WCTU and Mrs Whitehouse's explanation for some of her own actions. Of all the campaigns Whitehouse has been involved in, one of the most contentious was the private prosecution of Michael Bogdanov over 'Romans in Britain'. As was suggested above, what was particularly contentious was the way in which the prosecution was eventually withdrawn. Although she was accused of backing down, Mrs Whitehouse firmly suggested that she had achieved what she set out to do, ie to show that certain acts could be defined as indecent within the parameters of the law as it stood. There can be little doubt that this was in essence for Mrs Whitehouse a symbolic or political victory. The intention behind Mrs Whitehouse's actions, was not that Bogdanov should be punished, but that the values and beliefs espoused by the NVALA should be seen to be supported, to be successfully and above all publicly defended from attack.

Suggesting, however, that the notion of 'symbolic politics' as used by Gusfield may be pertinent in some respects for an analysis of the campaigns of the NVALA and comparable groups, is not to argue that the full-blown theory of status politics used to explain the rise of the WCTU in the United States can be simply and completely applied to the

'moral crusades' of the so-called 'permissive era' in Britain. Although other American sociologists such as Zurcher and Kirkpatrick have (not uncritically) applied Gusfield's theory to contemporary anti-pornography movements, the most recent attempts at explaining the rise of groups such as the NVALA and the NFOL have been very critical of the theory of status defence. Examples are provided by Wallis (1977) and Tracey and Morrison (1979).

Wallis originally explained the rise of the NVALA in terms very similar to those used by Gusfield. He has, however, in his more recent writings on this subject repudiated this earlier position. Wallis is critical of Gusfield for failing to provide evidence of motivation in his study of WCTU participants in the movement. Whilst, on the surface, Gusfield's argument may seem a plausible one, Wallis argues that 'there are clearly other grounds for moral indignation than resentment at lost status' [75]. He suggests that Gusfield fails to provide evidence of such motivation in the accounts of movement participants. Indeed, Wallis argues that these would in fact be most unlikely. Wallis further throws doubt on Gusfield's claim that he had in fact identified a status group. Much of the evidence, indeed, suggests that a substantial section of support for the WCTU came from the working class, and that it was not homogeneously white, anglo-saxon, protestant, old middle class as Gusfield claims. Far from identifying a 'status group', Wallis argues that in fact the WCTU were in fact a 'cultural group'. Their crusade was to preserve a particular style of life, or culture, from increasing erosion in American society. This he refers to as 'cultural defence'. Although Wallis is extremely critical of Gusfield's theory of 'status defence', his own notion of 'cultural defence' is linked to Gusfield's through

Weber's conception of 'status groups'. Thus, whilst Wallis and Gusfield disagree over the likely causes of resentment, both appear to be identifying 'status groups' as central to moral campaigns. Wallis' identification of 'style of life' as the crucial component of moral entrepreneurial groups is also a characteristic of 'status groups' as identified by Weber. Such 'status groups', he suggests, engage in 'cultural defence', which he describes as follows:

There is no reason to believe that an increasing disparity between the standards of morality and behaviour which one has grown up to believe were true and right and those displayed and legitimated in the surrounding society can not of itself provide the ground for commitment to a movement of moral reform.[77]

One fundamental question remains, however. That is, why is it that some people rather than others who experience the type of disparity described above become committed to a movement for moral reform? The hypothesis put forward by Gusfield, that it is those people who have experienced status erosion who become committed remains, at least, a priori plausible. This is not to say that Wallis' notion of 'cultural defence' loses any value it may have. Rather, that Gusfield's theory may continue to have explanatory power, particularly with regard to the initial motivation of participants in such a movement. Where Wallis' work is important is in pointing to the cultural concerns that may also underpin the rise of specific moral entrepreneurial groups. The major remaining task of this chapter is therefore to identify those cultural changes that gave rise to such moral protest.

The earlier part of the chapter sought to describe in some detail the major concerns articulated by Mrs Whitehouse and the NVALA, the most basic of which, it was suggested, revolved around the perceived declining centrality of organised religion in British social life. The NVALA's long-term goal has been the re-establishment of a society in which the Church once more occupies a central role. This basic argument tallies with the general thesis put forward by Tracey and Morrison in their study of Whitehouse and the NVALA. Those authors suggest:

What is clear is that for (Whitehouse) and others like her, there is a determination to restore a Christian culture to Britain, and in that battle the greater availability of sexually explicit cultural forms, the easier access to abortion and divorce, the legitimation of homosexuality between consenting adults and so on are developments which must at all costs not only be stemmed but at some ill-defined date in the future actually reversed. It is a crusade to recapture Jerusalem, nothing short of a call for a new theocracy. [78]

What these authors are suggesting, although they do not use terminology derived from Gusfield or Wallis, is that the discrete campaigns (described earlier in this chapter) engaged in by Whitehouse and the NVALA were important symbolic battles in a larger cultural 'war'. It is a movement of 'cultural fundamentalism' [79] dedicated to the reassertion of 'traditional' values in the face of massive cultural change' [80], and in particular, for Tracey and Morrison, the process of secularisation.

Conclusion

There is ample evidence on which to argue, following Wallis and others, that the NVALA's campaigns should, in the first instance be viewed as shot through with 'cultural fundamentalism'. The same almost certainly applies to the NFOL, the OCU and even to the Responsible Society although their focus is a secularized version of the NVALA's. The concern of these groups has grown in response to a perceived widening of the gap between cherished moral values and actual day-to-day behaviour. Their general aim has been to recreate a perceived golden age', to secure a return to a status quo ante, where, they believe, divorce rates were low, children respectful of adult authority, and, most importantly, where religion was the binding force, the 'social glue' which provided moral authority. Whilst Wallis' notion of 'cultural defence' has been utilised here in addition to, rather than in place of, Gusfield's notion of 'status defense' in accounting for the activities of the NVALA, Wallis' explanation is perhaps not as comprehensive as it might be. That is, we are provided with only a partial picture of the cultural position that the NVALA are defending. Whilst the major focus in their campaigns may have been the declining centrality of the Church, the other major reformist concern is explicitly with the family and, by implication at least, with women and youth. The major 'victim' of permissiveness according to Mrs Whitehouse has been 'the child'. Indeed, the major underlying concern in debates over pornography, homosexuality, abortion, the age of consent, divorce and drugs, during the period under consideration here, has been the welfare of children. By association, therefore, there is a direct link, according to the ideology of groups such as the NVALA, with the role of the mother, and

the strength of the family.

As was noted in chapter one, Stuart Hall has argued that the key interpellated subjects of new legislation in the sixties were women. It can further be argued, and chapters four to seven will provide evidence for this, that the principal objects, or targets, of the new legislation were not only women, but also children. The cultural position being defended by the NVALA consisted of a society governed by a religious moral consensus and also, crucially, built on the back of the traditional nuclear family.

The debate over the family, its constitution and its role, forms a second major focus of organisations such as the NVALA, the NFOL and the Responsible Society. Indeed, Simon Watney suggests that this 'concern' underpins the current so-called 'panic' over AIDS:

We are not, in fact, living through a distinct coherent and progressing moral panic about AIDS. Rather, we are witnessing the latest variation in the spectacle of the defensive ideological rearguard action which has been mounted on behalf of 'the family' for more than a century.[81]

As the Bergers point out, the 'family has become a problem' in contemporary society. This has not consisted simply of middle-class reformers defining the working class family as problematic for which there is a long tradition. The ideological net has widened so that the idea of 'the family' as a given and immutable social unit is no longer accepted, rather, the family is generally problematized. It is the resolution of this problem that groups such as the NVALA seek. Their symbolic political struggle is in defence of a cultural order in which there exist strong moral rules to provide solutions to the

problems of the appropriate constituents and roles of the family.

Many of the commentators on the 'permissive era', discussed in chapter one, have suggested that it was a period characterized by radical changes in both behaviour and the rules that govern behaviour. Such commentators have, however, singularly failed to provide evidence to support the first argument, that there were radical changes in behaviour. And they have too readily assumed that legislative changes, such as the Obscene Publications Act, 1959, the Sexual Offences Act, 1967, the Abortion Act, 1967 and others, are sufficient evidence in support of the second, that the rules governing behaviour changed. The lasting impression of these accounts is that everyone agrees that there was a 'permissive age', or a process of change that can be described as 'permissive', but that no-one can actually agree what constituted 'permissiveness'.

This chapter has further developed the exploration of the meaning of 'permissiveness' by looking at the period it was supposed to characterise, and in particular by examining the major concerns of some of the 'moral entrepreneurs' of the age, as well as assessing some of the competing explanations for the rise of such moral protest groups.

Such an overview suggests that many things happening in the period were seen as being representative of significant social changes. These changes were of particular symbolic importance for these moral entrepreneurial groups. They brought into sharp relief what appeared to be the declining importance of certain social arrangements

concerning the family, and certain moral ideals and values affecting the social significance of Christianity. Most moral entrepreneurial groups contend that a (partial) sexual revolution has taken place, though little evidence of 'radical changes in sexual behaviour is forthcoming - other than evidence of a circumstantial kind. However, legislative change is generally treated by both moral entrepreneurs and other social commentators as being an accurate and reliable index of general changes in 'standards' or the rules governing behaviour.

The moral protest groups, by and large, have adopted what Gusfield has termed a 'coercive' approach to moral reform. Several of the legislative changes during or around the 1960's are viewed by them as being 'permissive' and as therefore sanctioning many of the forms of behaviour to which they object. Their response has been to aim for legislative repeal or reform. The chapters which follow look more closely at some of the relevant legislative changes that took place during this period, and the background and responses to these reforms.

- [1] Whitehouse, M. (1982) A Most Dangerous Woman? Lion. pp.14-15
- [2] Whitehouse, M. (1971) Who Does She Think She Is? New English Library. p.53
- [3] Tracey, M and Morrison, D. (1979) Whitehouse Macmillan. p.47
- [4] Whitehouse, M. (1982) op.cit. p.72
- [5] ibid.
- [6] Tracey and Morrison (1979) op.cit. p.61
- [7] More about the Oxford Group and MRA can be found in: Driberg, T (1964) The Mystery of Moral Re-armament Secker and Warburg.
- [8] Whitehouse, M (1971) op.cit. p.66
- [9] Caulfield, M. (1975) Mary Whitehouse Mowbray. p.73
- [10] ibid.
- [11] Whitehouse, M. (1971) op.cit. pp.70-1
- [12] ibid. p.15
- [13] ibid. p.11
- [14] ibid. p.239
- [15] ibid.
- [16] Whitehouse, M. (1982) op.cit. p.12.
- [17] Caulfield. (1975) op.cit. p.93
- [18] quoted in Tracey and Morrison (1979) op.cit. p.111
- [19] ibid. p.112

[20] Whitehouse, M. (1982) op.cit p.59

[21] Tracey and Morrison (1979) op.cit. p115

[22] ibid.

[23] Whitehouse (1982) op.cit.

[24] (1967) Blandford Press.

[25] ibid. p.167 and quoted in Tracey and Morrison (1979) op.cit. p.82

[26] Whitehouse (1982) op.cit. p.120

[27] ibid.

[28] Whitehouse, M. (1985) Obscenity That Fuelled The Brussels Brutality.
Guardian 10 June

[29] Whitehouse, M. (1982) op.cit. p.87

[30] Guardian 25 November 1985

[31] ibid.

[32] Palmer, T. (1971) The Trials of OZ Blond and Briggs p.25

[33] ibid.

[34] Daily Telegraph 6 November 1971

[35] Tracey and Morrison (1979) op.cit. p.135

[36] Whitehouse, M. (1977) op.cit. pp.256-7

[37] Whitehouse, M. (1971) op.cit. p.46

[38] ibid.

- [39] *ibid.* pp.46-7
- [40] *ibid.* p.145
- [41] Whitehouse, M. (1982) *op.cit.* p.137
- [42] *ibid.* pp.137-8
- [43] Tracey and Morrison (1979) *op.cit.* p.3
- [44] Whitehouse, M. (1982) *op.cit.* p.161
- [45] *ibid.* p163
- [46] Tracey and Morrison (1979) *op.cit.* p.15
- [47] *ibid.* p.18
- [48] Whitehouse, M. (1977) *op.cit* pp.82-3; Whitehouse, M. (1982) *op.cit* p.175; and Tracey and Morrison (1979) *op.cit.* p.18
- [49] Tracey and Morrison (1979) *op.cit.* p20
- [50] Whitehouse, M. (1982) *op.cit.* p.235
- [51] *ibid.* p.238
- [52] Oxford University Press (1959)
- [53] *ibid.* p.137
- [54] Tracey and Morrison (1979) *op.cit.* p.137
- [55] Whitehouse, M. (1977) *op.cit.* p.235
- [56] *ibid.* p.72
- [57] Caulfield (1975) *op.cit.* p.17

[58] Whitehouse, M. (1977) op.cit. p.228

[59] Whitehouse, M (1970) Promoting Violence. Royal College of Nursing Professional Conference "The Violent Society", 5 April 1970.

[60] Whitehouse, M. (1977) op.cit. p.230

[61] Welsby, Canon P.A. (1984) A History of the Church of England Oxford University Press. p.113

[62] Whitehouse, M. (1977) op.cit. p.

[63] Wallis, R and Bland, R. (1979) Purity in Danger: A Survey of Participants in a Moral-Crusade Rally, British Journal of Sociology vol.30 p.188

[64] ibid. p.189

[65] Letter from Lyndon Bowring, Chairman of NFoL/CARE, 1983.

[66] This account is taken from, Cliff, D (1979) Religion, Morality and the Middle Class, in King, R and Nugent, N (eds) Respectable Rebels Hodder and Stoughton.

[67] The Responsible Society (undated) An Invitation to Join.

[68] ibid.

[69] Saying NO isn't always easy..! (undated) Youth Concerned.

[70] ibid.

[71] Becker, H (1963) op.cit.

[72] Gusfield, J.R. (1963) Symbolic Crusade: Status Politics and the American Temperance Movement University of Illinois Press. Urbana,

[73] Gusfield, J.R. (1963) op.cit. quoted in Wallis, R. (1977) A Critique of the Theory of Moral Crusades as Status Defence. Scottish Journal of Sociology vol.2 p.196

[74] Zurcher, L.A., Kirkpatrick, R.G., Cushing, R.G. and Bowmar, C.K. (1973) Ad-hoc anti-pornography organisations and their active members: a research summary. Journal of Social Issues vol.29

[75] Gusfield (1963) op.cit. quoted in Clarke,A (1987) Moral Protest, Status Defence and the Anti-Abortion Campaign. British Journal of Sociology XXXVIII. 2.

[76] Wallis, R (1977) op.cit. p.197

[77] ibid.

[78] Tracey, M and Morrison, D (undated) The Jericho People: Mary Whitehouse and the National Viewers' and Listeners' Association. Report to the SSRC.

[79] Wallis, R (1976) Moral Indignation and the Media: An Analysis of the NVALA. Sociology 10.

[80] ibid. p.292

[81] Watney, S (1987) op.cit. p.43

[82] Berger, B and Berger, P (1983) The War Over The Family: Capturing The Middle Ground Pelican.

Chapter Three: The Wolfenden Report and Legislative Change.

This chapter attempts to evaluate the usefulness of the label 'permissiveness' in the interpretation of the legislative changes that affected homosexual relations and prostitution in the period under discussion. It will be argued that the label is, in fact, inadequate and that the legislation had, at one and the same time, dual features of 'permissiveness' and 'regulation'. Further it will be suggested that these dual tendencies are, in part, a direct result of the changing balances of power between youth and adults and women and men. The chapter will, for example, attempt to show that the major concerns of both those supporting and resisting legislative change were intimately bound to their perception of the 'sensitive' position of young people and the need to defend the nuclear family in modern Britain. The chapter will also consider the debate in jurisprudence between Lord Devlin and H.L.A. Hart which was itself stimulated by the publication of the Wolfenden Report. The positions adopted by these two authors in relation to the relationship between criminal law and sexual morality will inform the case studies that follow in chapters 4-6.

Build-up to Wolfenden

The decade after the end of the Second World War saw a substantial increase in the number of prosecutions for offences such as 'gross

indecent assault. Indeed, the size of the increases, together with the publication of the Kinsey Report in 1948 which suggested that homosexual behaviour was more widespread than had been commonly thought and the media-highlighted prosecution of Lord Montagu of Beaulieu on an indecency charge in 1954, culminated in what may reasonably be described as a 'moral panic' over homosexuality.

Although it was later denied any truth by Wolfenden, it has been suggested that the immediate post-war period witnessed a 'witchhunt' or 'purge' of homosexuals. [1] It has been claimed that the 'purge' occurred at the point at which Sir Theobald Mathew, a devout Catholic, was appointed as Director of Public Prosecutions in 1944. Mathew believed that the war was responsible for an upward trend in homosexual behaviour and, together with Herbert Morrison, a policeman's son, Labour right-winger and Home Secretary in the Attlee Government, sought to put an end to it.[2] They numbered amongst their methods the use of agents provocateurs in public conveniences and the promise of immunity for those who turned Queen's evidence. According to Hyde, the 'purge' only really took off after the Burgess/Maclean scandal in 1951 when the two diplomats fled to the Soviet Union [3]. The clampdown was continued by the appointments of Sir John Nott-Boyer as Commissioner of the Metropolitan Police - his stated aim was to "rip the cover off all London's filth spots",[4] - and a new Home Secretary, Sir David Maxwell-Fyfe, whose attitude toward homosexuals was that they were, in general:

... exhibitionists and proselytisers and a danger to others, especially the young. So long as I hold the Office of Home Secretary, I shall give no countenance to the view that they should not be prevented from being such a danger. [5]

The threat to the 'young' mentioned here by the then Home Secretary was probably the fear most frequently expressed by those who later resisted legislative change in this area. The possible corruption of youth was to be a powerful motif in future campaigns.

Despite the supposed permissiveness of the nineteen sixties, Sir David Maxwell-Fyfe's view of homosexuals as people who are promiscuous and thereby a danger is, as will be shown, one that pervades the Wolfenden Report. It was also an argument used both by those for and against legal reforms in this area. The implication of such arguments is that monogamous (heterosexual) relationships are the only legitimate, ie. non-threatening, sexual relations. As was argued in relation to the general campaigns of groups such as the NVALA and the NFoL in Chapter two, it was again here the case that it was the defence of the 'family' as the focus for such 'legitimate relationships' that concerned those resisting reform.

In 1953-4, the prosecutions of Lord Montagu, Peter Wildeblood, Robert Croft-Cooke and Michael Pitt-Rivers focussed the nation's attention on this campaign against homosexuals. Their trials, the sentence imposed on them and the police methods that had been used, caused a public outcry and, along with the publication of a couple of influential reports, put the government under great pressure. The increase in the number of prosecutions did not result in a feeling of sympathy for homosexuals. John Wolfenden in his memoirs makes the following statement:

... there was increasing public concern at what was regarded as the growing shamelessness of prostitutes ... but the complications in this area of human conduct were nothing to the tangle in the other one, of

homosexual behaviour between men ... Nobody had any idea how much of it there was ... but there was an impression that it was increasing; and there was a feeling that if it was then it ought to be curbed.[6]

Pressure on the Government to intervene was further increased by the publication in 1952 of the Church of England Moral Welfare Council's Report entitled, The Problem of Homosexuality [7], which advocated reform of the law. The Report distinguished between homosexuality as a 'condition' and homosexual behaviour, and, although it advocated the removal of the latter from the criminal law, it remained firm in its condemnation of homosexuality. Not long after its publication, the Montagu trial took place at Winchester Assizes. The twelve month prison sentences that he, Wildeblood and Pitt Rivers received added fuel to the reformist fire:

Regardless of the guilt or innocence of the defendants, of their social status, and of the humanity of the law relating to homosexuality, the Winchester trial provides, by itself, ample reason for an inquiry into the present methods of the Director of Public Prosecutions and the Police. It also makes abundantly clear the need for a permanent committee ... to review and as occasion demands to recommend reforms in the whole of our criminal law and procedure.[8]

Although the New Statesman suggested that it was possible abuses of the law that required assessment, much of the pressure for change, as has been shown, came from those who viewed with concern what appeared to be the increasing visibility of homosexuality.

As with the area of homosexual conduct, the origin of public concern about prostitution lay, not in some liberal or permissive attitude of tolerance, but in a 'moral panic' also over what was believed to be the increasing visibility of a form of deviant behaviour, this time

over the increasing visibility of prostitutes and prostitution. John Wolfenden described the feeling well:

...there was increasing public concern at what was regarded as the growing shamelessness of prostitutes, in the streets of London and some other big cities. Granted that prostitution was not itself an offence against the law, soliciting was, and it was becoming more open and more persistent. Besides breaking the law they were, by flaunting themselves and pestering passers-by, causing an intolerable degree of embarrassment and giving visitors a deplorable impression of London's immorality. [9]

Wolfenden also hints at the other motives behind the widespread public indignation. Firstly, the Festival of Britain in 1951 and the Coronation in 1953 had focussed the eyes of the world on Britain's streets, and the number of tourists over here in those years gradually gave rise to concern over the embarrassment caused by prostitution. In particular, it was feared that London was becoming known as the 'vice capital of the World'. Secondly, as Smart points out, [10] prostitution came to be linked with fears about immigration later in the 1950s, not only, she suggests, because prostitutes were often linked with pimps who were, for example, Maltese, West Indian or Italian, but because it was also believed, for instance by the Wolfenden Committee and many in Parliament, that the ranks of prostitutes were being swollen by large numbers of immigrant women.

The Wolfenden Report

In April 1954, the Government announced that it was proposing to appoint a Departmental Committee to examine and report on the law on

homosexual offences and the 'parallel' problem of the law relating to prostitution. Sir John Wolfenden, the then vice-chancellor of Reading University, was chosen to be its Chairman, a job which he was to hold for the three years that the Committee took to produce its Report.

The terms of reference of the Committee were that they were to consider, firstly the law and practice relating to homosexual offences and the treatment of persons convicted of such offences by the Courts; and secondly, 'the law and practice relating to offences against the criminal law in connection with prostitution and solicitation for immoral purposes'. [11] It is important to note here that its terms of reference precluded any consideration of the moral basis of either of the two areas to be investigated. All that the Wolfenden Committee was empowered to do was to consider the usefulness of applying the criminal law to these specific offences.

Unlike its recommendations on homosexual conduct, the section of the report that dealt with prostitution was largely uncontroversial. The Committee recognised that the greatest public concern had arisen as a consequence of the:

...presence and the visible and obvious presence of prostitutes in considerable numbers in the public streets of some parts of London and of a few provincial towns. [12]

The major plank of the Wolfenden philosophy was a distinction between 'public' and 'private' behaviour. Private behaviour was seen as the personal and private responsibility of the individual, and the law, it was argued, should only concern itself with those activities which constituted offences against 'public order and decency'. Along with

this distinction between 'public' and 'private', the Wolfenden Committee also distinguished between 'crime' and 'sin', making it clear that it was only concerned with the former. (However, it will be argued later that there is no doubt that the committee considered homosexual relations to be sinful).

Despite the differences in the content of, and the public reaction to, the two halves of the Report, it had an underlying philosophy which informed the proposals in both areas. As John Wolfenden pointed out:

...the two halves of our recommendations were governed by the same logic. We had argued, to put it very briefly, that since one of the law's concerns was the preservation of public order and decency, steps ought to be taken to remove the affront to public order and decency which was presented by the obtrusive presence of large numbers of prostitutes openly soliciting on the streets. At the same time we argued that private morality or immorality was a private affair and therefore that 'there must remain a realm of private morality or immorality which is... not the law's business'. It followed, or so it seemed to us, that while steps should be taken to clear the streets of soliciting prostitutes, the behaviour of consenting male adults in private was their affair and not the laws'.

[13]

Wolfenden and Prostitution

On these grounds the Wolfenden Committee decided that the abolition of prostitution was not something that it ought to recommend, or that if it did, could have any chance of success. It therefore asserted what it considered to be the position at which the public/private distinction should be fixed, a position which would allow prostitution to be effectively a private matter as long as it was not conducted on

the streets. The logical extension of this was, of course, increased commodification of prostitution, such as the increased use of advertising, but the Committee felt that the establishment of call-girl systems, for example, was a fair price to pay to free the major cities from what is visibly 'offensive or injurious'.

The Committee's recommendations on prostitution were acted upon with far more haste than those concerning homosexual conduct. Indeed the Street Offences Bill was in Parliament not much more than a year after the Report had been published. In debate, the Home Secretary reiterated Wolfenden's general position over the legal position of prostitution:

...it is not the object of the Bill to make prostitution illegal, or to provide a cure for prostitution. The object of the Bill is to help to clear the streets, and, for this purpose, to make it possible to charge prostitutes who ply their trade in the streets and to stiffen the penalties against them.[14]

The first major recommendation in the Bill was that the requirement to establish that the conduct of the prostitute caused annoyance to inhabitants, residents or passers-by should be removed. This increased the ease with which the police could prosecute prostitutes, as they no longer required the assistance of an 'offended' member of the public, despite the fact that it was the supposed 'public nuisance' of street prostitution that had given rise to the need for legislation.

The term, 'common prostitute', was retained in the Bill despite widespread objections, particularly from the women in Parliament who were critical of the stigmatisation that this would cause. It was defended in Parliament on the grounds that, along with the cautioning system that the police would employ, it would protect 'innocent women' from finding themselves before the courts on charges of loitering or soliciting. This cautioning system involved the police in cautioning a woman twice for soliciting before pressing charges.

The second section of the Bill enacted other parts of the Wolfenden proposals by increasing the penalties liable for offences under the new law, such as, loitering, soliciting, keeping or managing a brothel, or living on the earnings of prostitution etc. The Bill, although subject to some criticism in Parliament, had a relatively quiet passage, and became law less than two years after the publication of the Wolfenden Report.

Section one of the Street Offences Act 1959 states that "it shall be an offence for a common prostitute to loiter or solicit in a public place for the purpose of prostitution". Although there seems to be no binding precedent as to the meaning of 'loitering', 'soliciting' covers a wide variety of acts including speaking, 'various movements of the face, body and limbs, such as a smile, a wink, making a gesture and beckoning or wriggling the body'. [15] The domains of public and private are distinguished in law by the definitions of the terms 'street' and 'public place', definitions which have in certain cases been extended since the passing of the Act. In the Act, 'street' is described as:

any bridge, road, lane, footway, subway, square, court, alley or passage, whether a thoroughfare or not, which is for the time being open to the public; and the doorways and entrances of premises abutting on a street...and the ground adjoining an opening to a street, shall be treated as forming part of the street.

This definition has since been extended to cover soliciting from windows [16], and Sion [17] suggests that the same judgement would effectively cover soliciting from a car.

The Act provided no definition of a 'public place', but it refers to any place to which the public have access, irrespective of whether or not they have a legal right to go there, even when there are particular and restricted rules of entry. It would only become a private place if the entry was restricted to a specific class of persons only, although even this is unclear. As will be seen in chapter four, those who, like Frederick Shaw, try to bypass the law by publishing a directory or 'contact magazine', could be guilty of publishing an obscene article, living off the earnings of prostitution, and conspiring to corrupt public morals. Other pieces of legislation such as the Vagrancy Act 1898 and the Licensing Act 1964 have been used to tighten up what could be seen as loopholes in the law. The ownership of massage parlours and saunas is also no protection against charges of, for example, living off the earnings of prostitution. [18]

There are also small parts of the Act which do not reflect the wishes of the Wolfenden Committee. Clause two which is directed against such places as all-night cafes and refreshment houses where prostitutes might gather, is an extension of what Wolfenden would have considered

the boundary between public and private to be. Secondly, the period of imprisonment for those found guilty of living on immoral earnings was increased for both men and women (who exercise control over a prostitute), both seemingly as a result of private pressure. [19]

Most aspects of the new law involved either a strengthening of existing controls or the introduction of completely new ones. There was one area, however, which does not appear to come within the Wolfenden Committee's definition of the 'public', and that is male soliciting or kerb-crawling. During the Second Reading of the Sexual Offences Bill, as it was then called, the Home Secretary tried to offset criticism in this area by pointing out that, under section 32 of the Sexual Offences Act 1956, 'it is an offence for a man persistently to solicit or importune for immoral purposes'. It was, however, quickly pointed out to him that importuning was a much more serious offence, and not one that could be used against kerb-crawlers. Furthermore it differs in that it necessitates persistence, which soliciting does not. Moreover, previous convictions are not mentioned in court and precise evidence is needed to secure a conviction:

What is complained of by my Hon. Friends
...is that the legislative changes proposed
by the Bill, recognise hardly at all the
responsibilities of the male client, and
directs all the fire against the prostitute
alone...This is the basic reason why the Bill
has seemed unjust.[20]

Indeed, not only was this the case in 1959, but it was reiterated by the Working Party on Vagrancy and Street Offences in 1974 [21]. More particularly, the members of that group not only recommended that the law in this respect should remain intact, but justified it in the following manner, illustrating well the male-oriented assumptions upon

which the Sexual Offences Act, 1959, was based:

An important consideration in judging the probable effects of such a law is that the kerb-crawler may be a respected member of the community and much more sensitive to the stigma of a court appearance than say, the confirmed prostitute. [22]

A 'public' offence, then, that, as far as the authorities are concerned, has been far easier to convict women for, remains 'private' and essentially within the law for men. This double standard is generally justified for such reasons as, the difficulty of producing evidence, not wishing to endanger innocent people etc, both of which are apparently not problematic when it is a female prostitute who is being charged.

This is the central focus of the Sexual Offences Act, 1959. By using the dichotomy between 'public' and 'private', the Wolfenden Committee was able to propose an extended series of controls over prostitutes, particularly over those who were highly visible, although the law in practice has also been extended to other less visible sectors of prostitution. Essentially the Wolfenden recommendations and their legislative enactment were a public denouncement of prostitution and an affirmation of the importance of 'normal' sexual relationships (monogamous and within the family). To use Greenwood and Young's terminology [23], it was the 'ghettoisation' of one class of women, a reiteration of the division between 'normal' and 'deviant' [24] and the embodiment of this division in an Act of Parliament. This is seen, for instance, in the denial to prostitutes of 'normal' family relations through the existence and increased harshness of the offence of living on the earnings of prostitution, which effectively stops them from living with a partner.

Smart makes the point that prostitutes became the focus of a moral panic in the 1950s, in spite of the growing liberation of female sexuality [25]. She could, however, have taken this point one step further, for, given that, as has been shown above, the central organising theme of the Sexual Offences Act was the re-establishment, albeit in a modified form, of male control over one area of female sexuality and thereby indirectly over female sexuality as a whole, it would seem highly likely that the choice of prostitutes as 'folk-devils' occurred in large part in response to this growing liberation. Prostitutes, that is to say, therefore became the focus of a moral panic in the 1950s, at least partially because of the growing liberation of female sexuality. The legislative response reasserted the fundamentals of the status quo: the relatively dominant position of men, the need for monogamous sexual relationships and the primacy of the family.

Wolfenden and Homosexuality

The Wolfenden's Committee's 'utilitarianism', ie its declared aim of non-intervention where no public harm was caused, must be judged in the light of its recommendations, as must its supposed 'liberality'.

Its major recommendation, and certainly the one for which it is most often remembered, was 'that homosexual behaviour between consenting adults in private be no longer a criminal offence'. [26] It is important, however, not to read into this recommendation more than was

intended for, as will become clear, it was never the intention of either the Wolfenden Committee or those who were eventually successful in their campaign to incorporate the majority of its proposals in the criminal law, to remove the stigma from homosexuality:

It is important that the limited modification of the law which we propose should not be interpreted as an indication that the law can be indifferent to other forms of homosexual behaviour, or as a general licence to adult homosexuals to behave as they please.[27]

In this extract, some indication is given of the 'limited' nature of the reform being proposed. There is a reference, firstly, to 'other forms of homosexual behaviour', and secondly, to the fact that the proposed process of decriminalisation should only apply to adults. For this purpose, 'adulthood' was fixed at twenty-one. This was despite the fact that probably the most influential piece of evidence they received during the three years they sat, the Church of England Moral Welfare Council's (CEMWC) updated report, Sexual Offenders and Social Punishment, recommended a universal age of consent of seventeen. The CEMWC's suggestion of seventeen, as opposed to sixteen as the age of consent then was for heterosexual relations, was made on the basis that the higher age would provide 'better protection of youth'.[28] As was suggested above, the young were consistently represented as being in need of protection. At one point in the Report, the Wolfenden Committee argued that it was illogical to presume that boys needed greater protection from 'would-be seducers' than do girls.[29] Nevertheless, it went on to argue that a higher age of consent was necessary to protect the young from 'attentions and pressures of an undesirable kind'.[30] The Committee was explicit about what it considered these pressures to be:

We have, however, encountered several cases in which

young men have been induced by means of gifts or money or hospitality to indulge in homosexual behaviour with older men... [31]

The Committee were particularly concerned about the possible corruption of the young. That is, although they generally rejected the idea that people might be 'converted' to homosexuality through seduction, they suggested that some might be tempted into other corrupt activities:

...a boy or youth who is induced by means of gifts whether in money or in kind to participate in homosexual behaviour as a source of easy money or as a means of enjoying material comforts or other pleasures beyond those which he could expect by decent behaviour, and we have encountered cases where this has happened. Indeed, it is our opinion that this source of corruption is a more likely consequence than the possible conversion of the victim to a condition of homosexuality. [32]

As was suggested earlier, the arguments put forward both by reformers and their opponents were closely tied to what they considered to be the especially 'sensitive' position of the 'young' in modern Britain. Indeed the Committee even extended this logic to a position whereby they felt themselves able to justify the decriminalisation of adult homosexual behaviour in private, as a form of protection for the young:

With the law as it is there may be some men who would prefer an adult partner, but who at present turn their attention to boys because they consider that this course is less likely to lay them open to prosecution or to blackmail than if they sought other adults as their partners. If the law were changed in the way we suggest it is at least possible that such men would prefer to seek relations with older persons which would not render them liable to prosecution.[33]

The Report, as well as recommending that homosexual relations between adults in private should no longer be an offence, and that the age of

consent should be twenty one, also sought to increase substantially the maximum penalties in respect of certain offences. The maximum penalties for buggery with a boy under the age of 16 and indecent assault, were kept at life imprisonment and ten years' imprisonment respectively. The suggested maximum penalties for buggery committed by a man over 21 with a person over the age of 16 but under the age of 21, and for similar offences committed by a person under 21 years of age, were set at five and two years imprisonment respectively. As will be shown, the Report also recommended that indecency between males should be made triable summarily with the consent of the accused. In addition, provisions were made for the medical examination and if necessary treatment of persons found guilty of homosexual offences. There was only one dissenting voice in the Committee over its central recommendations with regard to homosexuality. Mr James Adair, in his minority report, argued that implementation of the major recommendation would lead to a weakening of the criminal law. This was firmly denied by the Committee, both before and after publication, who argued that to urge a change in the law was not necessarily to approve or endorse homosexual behaviour.

To an extent, Mr Adair's fears were reflected by some of the national press after the Report's publication. The Mail, Express and Sunday Times were worried about its effect on moral standards, but the majority of the national press were most favourable, particularly the Daily Mirror which exclaimed, 'Don't be shocked by this Report. It's the Truth, It's the Answer. It's Life'. [34] The balanced and reasonable manner in which the Report was written and presented, produced on the whole the same characteristics in the media coverage of the proposals it contained. Indeed, it is undoubtedly the

Wolfenden Committee who were responsible for the generally high level of debate concerning reform of the law in this area in the following eight or nine years.

The months after the initial furore over the Report's publication were fairly quiet, particularly as far as the possibilities of legislation on the matter were concerned. The subject returned to the public eye, however, with the formation by two Cambridge graduates of the Homosexual Law Reform Society, a pressure group whose aim was to see the Wolfenden proposals enacted. The Reverend Andrew Hallidie Smith and A. E. Dyson then went about the task of enlisting support for the organisation, a process which was successful, as can be seen from the 33 signatories (including Lord Attlee, the Bishops of Birmingham and Exeter, Isaiah Berlin, Julian Huxley, Bertrand Russell) to the letter that appeared in The Times in March 1958.[35]

The first appearance of the Report in Parliament was in November 1958, when the Home Secretary, R. A. Butler, moved the motion that "this House takes note of the Report of the Committee on Homosexual Offences and Prostitution".[36] Butler, far from pressing for early reform of the law, was at pains to dispel the fears of those who felt that the recommendations of the Report would lead to a sudden increase in homosexuality, or to its condonation:

An impression has undoubtedly gained ground - which I do not think is fair to the Wolfenden Committee - that the Committee desired to legalise homosexual conduct. This gives a sort of impression that it wished to make it easier. In fact what the members of the Committee wished to do was to alter the law, not expressly to encourage or legalise such practices, but to remove them, like adultery and other sins, from the realm of the law.[37]

What has since been called the 'Wolfenden strategy' is made explicit here. It consisted of an alteration of the relationship between law and morality that allowed the Committee to recommend a partial decriminalisation of homosexuality, rather than a defence of homosexuality itself. The essence of the change was the removal of sin from the ambit of the law. Butler nevertheless felt the public would still misunderstand the intentions of the proposed legislative change, and argued that they would be deeply outraged by what they perceived, however mistakenly, to be the approval by Parliament of homosexual conduct which was still regarded as a great social evil. Therefore, despite the fact that a little over a year had passed since the Report had been received, he suggested that the interval between publication and the debate was not a matter for regret.[38] Even before the debate took place, The Times was able to sum up the situation accurately:

Parliament debates the Wolfenden Report today. It is a foregone conclusion that the homosexual laws will not be reformed yet. It is equally a foregone conclusion that reform must come eventually. For the majority of well informed people are now clearly convinced that these laws are unjust and obsolete in a society which refuses to punish lesbian practices, prostitution, adultery, fornication or private drunkenness.[39]

There were those in Parliament who felt that things had already gone too far, despite the Home Secretary's reassurances that it was too soon for legislation. James Dance, the MP for Bromsgrove and future Chairman of Mary Whitehouse's 'Clean-up TV Campaign' had the following to say:

There are far too many people looking into the mind of the murderer and not at the agony of mind of the relations of the murdered person. There are far too many people looking into the minds of the Teddy cosh-boys and not into the minds of the old ladies who have been coshed.

In exactly the same way, too many people are looking into the mind of the homosexual rather than considering the repugnance that is caused to millions of decent people all over the country ... I feel that it was the condoning of these offences which led to the fall (sic) of Nazi Germany. Yes that is perfectly true. I believe that here at home if these offences are allowed to continue unchecked our moral standards will be lowered.[40]

It was almost two years before the question of homosexuality was debated in the House of Commons again. In the meantime, the second half (part three) of the Wolfenden Report had been debated and acted upon with surprising alacrity.

The House returned to the subject when Kenneth Robinson moved the motion "that this House calls upon Her Majesty's Government to take early actions upon the recommendations contained in Part Two (the proposals on homosexuality) of the Report of the Wolfenden Committee". As was suggested at the beginning of the chapter, the central concern of the reformers and their opponents was the sensitive position of the young in modern society, and this is well illustrated by Kenneth Robinson's opening speech in the 1960 debate. Talking about the effect that the proposals were designed to have, he argued that:

Far from removing any protection from the young that the existing law provides, (the Report recommends) increased penalties for sexual offences involving young persons in one particular category of case ... On ... the question of young persons, all the evidence suggests that the people who normally engage in homosexual acts between adults are not the same people who tend to seduce young persons. The paedophile is a rather special type and no relaxation of the law relating to adult acts could have any effect, except possibly a favourable effect, upon the risks to which young persons are subjected.[41]

Despite the fact that, as Robinson pointed out in the debate, the Archbishops of York and Canterbury, the Methodist Conference, the

committee set up by the Roman Catholic Church, as well as the majority of editorial opinion[26] were all in favour of the recommendations, the Home Secretary again argued that a full case had not been made for change, and that more research was still necessary before the practicalities of the types of changes to be made could be decided upon. Two major themes are distinguishable in the debate. Firstly, that the proposals of the Committee and the aims of the reformers involved elements of both 'permission' and increased 'regulation' in their overall strategy, and secondly that the major concern at the centre of all the arguments was the position of 'youth'. The MP For Rossendale, Anthony Greenwood summed up the position well:

... some papers have been apparently at pains to give the impression that the only effect of implementing the Wolfenden proposals would be to legalize homosexuality between consenting adults. I do not think that we can emphasize too frequently that the Wolfenden Report also calls for the imposition of heavier penalties for offences against young people and that it stresses the need for the rigorous enforcement of the provisions about public decency.[42]

In March 1962, Leo Abse MP introduced a limited Sexual Offences Bill in the House of Commons. Its purpose was, on the one hand, to dispose of the major problem of blackmail by repealing the Labouchiere Amendment to the Criminal Law Amendment Act of 1885, and on the other, to prevent 'witchhunting' by putting a time limit on what were known as 'stale offences'. [43] Through this amendment all male homosexual acts (buggery was already illegal) were made illegal:

Any male person who, in public or private commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of any act of gross indecency, shall be guilty of a misdemeanour and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years, with or without hard labour. [44]

The Wolfenden Committee stated that a number of those giving evidence to them had argued that this law provided considerable scope for blackmail, for those threatened with exposure by a blackmailer would not be able to turn to the police for fear of exposure. Even Leo Abse's very limited measure, however, did not command much support in the Commons and was 'talked out' without much difficulty.

The problem of the ease with which homosexuals could be 'blackmailed' was highlighted that year with the arrest of John Vassall who had worked in the British Embassy in Moscow. The Official version of the Vassall affair is that, as a practising homosexual who had worked in Russia for a number of years, he became entrapped, was blackmailed, and passed classified information for at least seven years. The Sunday Mirror responded to the case and the inability of the authorities to identify Vassall's 'weakness', with a double-page spread on, 'How to spot a possible homo', [45] perhaps not the most enlightened piece of journalism in the 'permissive age', but illustrative of the level of debate that was conducted in some quarters.

Prosecutions for homosexual offences continued unabated although, in late 1964, it was widely rumoured that the new DPP had instructed Chief Constables to report to him any such cases before taking action, an instruction which, it was thought, would effectively curtail such prosecutions. This turned out, however, not to be the case, for as the Lord Chancellor rightly pointed out:

What the Director can do, and has done, is to ask Chief Constables, to report these classes of case to him. He cannot enforce that if they do not do it and he can only give them advice which they

are under no obligation to take.[46]

Later that year there was a General Election which brought the Labour Party to power. This was a signal for reformers in this area - and in the area of abortion - to renew their efforts. A Bill was subsequently introduced in the House of Lords by the Earl of Arran. Before that, he introduced a motion to call attention to the recommendation of the Wolfenden Committee on homosexual offences. Opening the debate, he pointed out that the consensus of opinion in the country seemed to be that change in this area was bound to come sooner or later, the law was bound to be amended, so why delay any further, as it was already seven and a half years since the Wolfenden Committee had published its Report? Along with the Archbishop of Canterbury, he urged the Government to take the initiative. Lord Stonham on the Government's behalf, however, instructed the House that it was a matter for the individual conscience, and rightly, therefore, should be the subject of a Private Members Bill and a free vote.

The motion, like the other had vociferous critics, although the line of criticism was not new:

It has been argued, by the noble Earl, Lord Dundee, and clearly there is some force in this, that one of the dangers is that if the law is altered, it may appear that homosexuality is in consequence socially approved, and as a result more may be attracted to homosexuality.[47]

The argument received short shrift from the Marquess of Lothian, who himself had been a member of the Wolfenden Committee:

But looking back to when the Report was published, one gets the impression that many people, possibly the majority thought that the Wolfenden Committee were condoning homosexual crime, or at any rate appearing to play it down ... My Lords I believe

that this impression was based on a misreading of the Report ... while obviously I cannot claim to represent my colleagues in this, I am certain that, without exception, we took the view that homosexual acts are wrong and harmful - some very gravely so - and therefore to be deplored.[48]

It is important to take note of this point. In the mid-1960s, the high point of what has become known as the 'permissive age', supporters of legislative reform either felt, or were compelled to suggest, that homosexuality was immoral and therefore wrong. In all the Parliamentary debates in this period, there is practically no statement made that could be interpreted as giving support to homosexuality. Lord Arran did not press for a division, although the fact that eighteen of the twenty-two speakers had spoken in favour of reform would undoubtedly have meant that it would have gone in his favour. The other course of action open to him was to introduce a Bill in the Lords, and his Sexual Offences Bill had its Second Reading debate on 24 May, 1965. Again, Lord Stonham for the Government emphasised that it could not be a party issue and would be, if necessary, a free vote. Similarly it was again reasserted, this time by the Lord Bishop of Chichester, that despite the necessity of legislative change:

We must of course, continue to assert ... that homosexual acts are always in principle wrong. There is no intention on our part...[that] we should appear to be condoning such conduct.[49]

Despite this repeated assertion of the reformist position, the main argument used by the Bill's major opponent, Viscount Dilhorne, was that it would inevitably be interpreted as giving approval to homosexual practices, as condoning them. The Bill nevertheless received its Second Reading by a vote of 94 to 49.

Although it is difficult to assess its importance, on the eve of the debate a letter appeared in The Times, signed by eight peers, including Lord Devlin. It is worth quoting in full:

Sir - In 1957, the Wolfenden Committee recommended, after three years study of evidence that homosexual behaviour between consenting adults in private should no longer be a criminal offence. This proposal has been endorsed by the British Council of Churches, the Church Assembly, and the Moral Welfare Council of the Church of England, a Roman Catholic Advisory Committee, appointed by the late Cardinal Griffin, the Methodist Church, and leading spokesmen of many other leading Christian denominations, as well as by prominent humanists. It has received the support of the Howard League for Penal Reform and the Institute for the Study and Treatment of Delinquency, and also of other experts in Criminology, including several judges, as well as of very many doctors, psychiatrists and social workers.

The great majority of national daily and weekly newspapers have strongly and consistently advocated the reform. In February of this year a resolution calling for its enactment was passed by the Liberal Party Council, and it has also been supported by many individuals and groups in both the Labour and Conservative parties.

Seven years ago a distinguished list of signatories wrote in your columns [50] that the existing law clearly no longer represented either Christian or liberal opinion in this country, and that its continued enforcement would do more harm than good to the community as a whole.

We hope that in response to the Motion calling attention to the Wolfenden Committee's recommendations which Lord Arran is to move in the House of Lords on May 12, Her Majesty's Government will now recognise the necessity for this reform and will introduce legislation.[51]

The letter was signed by the Bishops of Birmingham, Bristol, Exeter, London and St Albans, as well as by Lords Brain, Devlin and Robbins.

Having received its Second Reading, the Bill went to Committee where many amendments were tabled, such as the raising or lowering of the age of consent, but few were accepted. Baroness Wootton tabled an

amendment that, had it been accepted, would have made it no longer an offence 'to procure or conspire to commit a homosexual act which by virtue of this Act is not itself an offence'. The question arose after the Ladies' Directory case (cf. chapter four) in which Frederick Shaw was convicted of 'conspiring to corrupt public morals', and in which one of the Appeal Judges, Lord Simons had stated:

there remains in the courts a residual power to conserve not only the safety, but also the moral welfare of the State.

Baroness Wootton's fears were in fact well grounded for as we shall see in Chapter 5, six years later International Times were convicted of 'conspiracy' when they published a list of 'contact' advertisements for homosexuals.

Due to pressure on Government time, the Bill was delayed for over three months before it re-entered the House for its Third Reading. The debate included all the, by now, usual arguments over declining moral standards and the 'encouragement' of homosexuality. For example, the Archbishop of Canterbury in his speech, suggested that the opponents of the Bill had put forward two main lines of criticism. Firstly that the passing of the Bill would be seen as giving licence to homosexuals to behave as they pleased, an argument that he firmly rejected by outlining the new and increased penalties that were also included in the proposed legislation. The second criticism was that, by legalising homosexual acts between adults, young people would be encouraged to think "that they could not really be so bad after all" and one more form of protection would be removed. His reply to this was that:

The law does protect young people, and I believe

that the present Bill, if it is carried has in some respects increased the protection the law will give to young people.[52] (emphasis added)

The Bill received its Third Reading by 96 votes to 31, but was not acted upon by the Government. It was left to a private member, Humphrey Berkeley, the MP for Lancaster, to pick it up and introduce it in the House of Commons. He pointed out to the House that, on the two previous occasions that the subject had been discussed in the Commons, the successive Home Secretaries had both resisted change by arguing that the time was not yet right. Neither Henry Brooke nor R. A. Butler had argued that the Wolfenden Committee's recommendations were undesirable in themselves. Nor had they argued that they were contrary to public opinion. (This, however, was not strictly true. Butler certainly argued that the recommendations would outrage some sections of the populace). They argued, instead, that the proposals were ahead of public opinion. By this time, it was nine years since the proposals had been published and twelve since the Wolfenden Committee had been established, and recent National Opinion and Gallup polls had shown the majority of the public to be in favour of reform.

During the debate, it was again argued, this time by Sir Cyril Osborne, that the Bill would take away some of the disagreeableness of homosexuality, an argument that was swiftly rebutted by both Richard Wood and Norman St John Stevas who stated:

... by making a change in the law one does not give moral approval to the homosexual. We are simply saying that criminal sanctions are inappropriate to deal with this subject.[53]

The Bill looked like being reasonably successful despite a reported last-ditch effort by the Bill's Conservative opponents. According to

The Observer on the 6 February 1966, it was revealed at a meeting of the Conservative backbench 1922 Committee that a 'private and anonymous circular' had been distributed with the warning that it should be destroyed immediately after reading. It simply appealed 'to all Conservatives to stand up and be counted against Humphrey Berkeley's Bill in favour of homosexuals'.

The phrasing here is interesting as it underlines the arguments that had taken place during all stages and attempts at reform. It also illustrates well just how little communication of intention there was between the two sides. As can be seen from the opponents' circular, their perception of the aims of the reformers was that the latter wished not only to strike a certain offence from the criminal law but that they also wished in some way to remove the stigma from homosexuality. As the reformers were at pains to point out, however, it was really the wish, at least of the majority of them, all along not only to continue to regard homosexuality as sinful or morally wrong, but also, outside of very particular circumstances, actually to increase the penalties for contravening the law.

At its Second Reading in the Commons, the Bill passed by 164 votes to 107 and, just as its progress seemed assured, a General Election was called and Parliament dissolved. When Parliament sat again, the Government announced that there would not be a ballot for Private Members' Bills in the first session, and therefore there was no possibility of homosexual law reform, a decision which prompted the Earl of Arran to reintroduce his Sexual Offences Bill into the House of Lords to keep up the pressure. Just as he did this, the Government had a change of heart and decided that there would after all be a

Private Members' ballot. Arran announced that he would prefer a Bill of this nature to be introduced in the Commons, but that he would keep his Bill going in the Lords until an MP could be found to sponsor an equivalent measure in the other House. Arran's Bill again went through the Lords without too much trouble but, by this time, a sponsor had been found, and Leo Abse introduced his Sexual Offences Bill in the Commons in July 1966, although its Second Reading was delayed until 19 December. By this time, all the arguments had been well rehearsed in both Houses. As has been shown, all the reformers consistently stressed the need to remember that, whilst the liberalizing tendencies of the proposals were making all the headlines, a set of controls was also included which was an essential part of the package. The dominant message that was being provided for the public was that the law reform being proposed was essentially 'permissive' in character. The restrictions that were also part of the reform, however, were by and large ignored by the media. Abse, in his speech during the Second Reading, spelled out to the House what these controls involved. Firstly, he pointed out that the Wolfenden Committee had recognized in its Report that, for the preservation of discipline and for the protection of those of subordinate rank, the services might wish to retain Section 6 of the Army Act which provides for the punishment of those guilty of 'disgraceful conduct of an indecent or unnatural kind'. Under the Bill introduced by Abse, these controls were not only maintained but extended, so that, in addition to the Army Act, section 66, it would be possible to take proceedings under section 64, with reference to 'officers who behave in a scandalous manner'; or under section 69 of the Air Force Act, with reference to Air Force discipline.

Secondly in accordance with the Wolfenden recommendations Clause 2 of the Bill set a penalty of five years imprisonment for the offence of buggery committed by a man over 21 with a consenting youth over 16. The maximum penalty for gross indecency committed by a man over 21 with someone aged under 21 would be increased from two to five years, as would be the penalty for the offence of attempting to procure or procuring a man under 21 to commit an act of gross indecency. The penalty for an act of buggery against a boy was life imprisonment. There was no doubt in Abse's mind who these controls were designed to protect:

I believe that those provisions make it abundantly clear that the penalties that will be visited upon those who attempt to corrupt youth will be stern and relentless. No-one except those who are wilfully blind to the nature of our proceedings can possibly spell out of the Bill any condonation whatever of homosexual conduct which can affect young people in their formative years.[54]

There are distinct parallels here between the statements made by those such as Leo Abse who were in favour of homosexual law reform, and the position adopted by those who opposed 'permissive' reform of all kinds. For both groups, the key subjects were 'youth'. It was the young who needed to be protected, and this realisation could be, and was, used both to justify limited reform and to resist it. The reformist position was reiterated in debate by Dr David Owen:

Let us deal with the suggestion that it would be psychologically damaging to the country to show that the House condones homosexuality. If that feeling comes out from the debate it will be the direct result of misreporting, because no hon Member whatever viewpoint he or she put forward, has condoned homosexual behaviour. The Bill lays down very clearly that under certain circumstances the House is increasing the penalties, that it is trying to stamp out corruption of youth and minors, which is possibly the most important element in the Bill.[55]

What the proposed Bill actually did, in fact, was to give the representatives of the law far greater scope for intervention in the conduct of homosexuals than in the case of other sexual activities. For as Giles Playfair rightly pointed out, when children under 16 are thought to be the victim of indecent assault, they would not, as could homosexuals under these proposals, be also treated as the culprits.

For:

Wolfenden's idea of an age of consent, if that is what it can accurately be called, is not only to deter the old from corrupting the young, but to deter the young from allowing themselves to be corrupted and, furthermore, from misbehaving with each other.[56]

After around twelve years of what had been almost continuous debate, the recommendations of the Wolfenden Committee were about to reach their legislative conclusion. Lord Arran, who had been instrumental in the success of Abse's Bill by his efforts in the Lords, was given the final word in that House. As one might expect, given the two-sided nature of the debate and the legislation that grew out of it, his closing speech was not the singularly 'permissive' one some might have expected:

I ask those who have, as it were, been in bondage, and for whom the prison doors are now opening to show their thanks by comporting themselves quietly and with dignity. This is no occasion for jubilation, certainly not celebration.

Any form of ostentatious behaviour, any form of public flaunting, would be utterly disgraceful and make the sponsors of the Bill, regret what they have done.

Homosexuals must remember, while there may be nothing bad in being a homosexual, there is certainly nothing good.[57]

The Bill went on to receive its Third Reading in the Commons, and received the Royal Assent on 27 July 1967.

Having studied in a fair amount of detail the passage of homosexual law reform through the Houses of Parliament and the legislative end result that this produced, it is now important to consider briefly the ways in which the Sexual Offences Act, 1967, has worked in practice.

Writing about the passage of the Bill through Parliament, Nigel Warner suggests [58] that the net result of the fact that Abse's Bill merely amended earlier legislation prohibiting homosexual behaviour, rather than repealing it, is that such behaviour remains unlawful, except for the circumstances included in the new Act, and he quotes Norman St John Stevas' recognition of this fact:

This Bill would create no recognised status for homosexuality. It would remain contrary to public policy. Homosexual relations would give rise to neither rights nor duties. [59]

It is this 'position' that homosexuals find themselves in in modern Britain that requires further consideration. As has already been suggested, and will be discussed in detail in Chapter 5, the Sexual Offences Act was put under the microscope during the International Times case in the early 1970's.

International Times was one of several 'underground' magazines which found themselves in court in this period. Kneller Ltd, the publishers of the magazine, had offended sensibilities by printing on an inside page, under a column headed 'Males', a series of advertisements in which the object was to enable homosexuals to meet each other in order to engage in acts which may no longer have contravened the law. The publishers were convicted on charges of 'conspiring to corrupt public morals' and 'conspiring to outrage public decency'. They appealed on

several grounds, but particularly that 'an agreement by two or more persons to insert advertisements in a magazine for the purpose of homosexual acts taking place between consenting adult males in private did not constitute an offence'. The Court of Appeal dismissed the appeals, but granted leave to appeal to the House of Lords on the grounds that points of law of general public importance were involved. In rejecting that appeal, Lord Reid stated:

There is a material difference between merely exempting certain conduct from criminal penalties and making it lawful in the full sense. Prostitution and gaming afford examples of this difference. So we must examine the provisions of the Sexual Offences Act 1967 to see just how far it altered the law. It enacts, subject to limitation, that a homosexual act in private shall not be an offence, but it goes no further than that ... I find nothing in the Act to indicate that Parliament thought or intended to lay down that indulgence in these practices is not corrupting.[60]

Lord Reid summarised the situation quite succinctly. In employing essentially utilitarian criteria, the Wolfenden Committee gave rise to legislation which decriminalised certain forms of homosexual conduct. Neither the Committee nor the sponsors of the subsequent legislation suggested that this should imply greater tolerance of, or a lessening of the stigma attached to, homosexuality. Although both of these may have been indirect or possibly unintended consequences of the legislative change, homosexuality was still open to interpretation in law as immoral and corrupting.

The Sexual Offences Act of 1967 was also limited in its geographical scope, for it was not until 1980 and the passage of the Criminal Justice Bill of that year, that the law was altered in Scotland in this regard. Indeed, an attempt at reform had been tried in 1977 and

failed. It was not until the European Court of Human Rights ruled in 1981 that the law in Northern Ireland was in breach of its convention that the process of reform started there, bringing change that was fifteen years behind England and Wales, and twenty five years after the publication of the Wolfenden Report.

Homosexuals, it is asserted, are still discriminated against in many areas, such as over the custody of children, in employment, in education, by the police, and in the media.[61] Despite the fact that the Criminal Law Revision Committee and the Policy Advisory Committee have recently considered the question of homosexuality, there appears to be little possibility of change in the conditions of lawful homosexual conduct. The position in the armed forces has been reiterated in Parliament. The Police Federation has made it clear that any proposals to reduce the age of consent would be vigorously resisted. Much of the concern expressed prior to the passing of the 1967 Act centred around the supposed vulnerability of children, and this has made the possibility of a lowering of the age of consent a remote one. Linked to this have been a series of vigorous campaigns against paedophile organisations, including the use of the conspiracy laws.

Finally in this survey of the law in practice, it is important to consider the policing of offences. Between 1967 and 1977, the recorded incidence of the offence of indecency between males approximately doubled, and the number prosecuted, trebled.[62] Although the number of recorded offences in that decade was not as high as it had been in the 1950's it is nevertheless an important trend. It is possible that this increase may have been, on the one

hand, indicative of a greater frequency of homosexual activity 'in public' and, hence, of a degree of 'permissiveness'. On the other hand, it may have been indicative of the increased regulation that went along with this. Walmsley points out that most of the increase involved the conviction of persons aged over 21 whose partners in the offence were also aged 21 or over (the offence generally occurring, or at least being detected, in public conveniences). It might therefore be argued that whilst 'private' homosexual conduct may have been decriminalised, the 'public' margins came to be increasingly policed.

How does one explain this increase? Walmsley looks at several possibilities. Firstly, the increased incidence could be explained in terms of increased homosexual activity, but that would not explain the similarly increased prosecution 'rate'. Secondly, one must consider policing procedures and, in some respects at least, the police seemed readier to prosecute in the decade 1967-77 than they were before 1967. However, the explanation of the change is still missing. Walmsley argues that the change is largely due to the Act itself, firstly in the simple sense that the passing of the 1967 Act brought to an end a trial period of uncertainty for the police by making quite clear that, although in the future homosexual acts in private between consenting adults were to be legal, such acts in 'public' as defined by the Act were not. This provided the police with a firm indication of where their duty lay.

More importantly, perhaps, Walmsley argues that the 1967 Act, because it introduced summary trial for the offence of indecency between males, made it easier for the police to bring prosecutions, for when there are no minors involved, the Director of Public Prosecution's

consent is unnecessary. This makes the processing of such cases, where the magistrates court is involved, a particularly quick affair, indeed, less trouble for all those involved, including possibly the offenders.

The important point for present purposes, however, is that, in this and other ways, the Sexual Offences Act is not a piece of legislation which can simply be dismissed as 'permissive'. As can be seen from the debates in Parliament from 1957 onwards, the reformist position was one which encompassed 'sin', which, it was argued, ought to be outside the realm of the criminal law. The incorporation of both these approaches into one coherent set of proposals was accomplished by Wolfenden through its distinction between 'public' and 'private' behaviour. This distinction was paralleled by an accompanying dichotomisation of sexual 'deviancy' into 'crime' and 'sin'. In this way, after the passing of the 1967 Act which followed the Wolfenden proposals, homosexual behaviour in private between consenting adults was removed from the sphere of the 'public', and therefore from the jurisdiction of the criminal law, to that of the 'private' realm, and became therefore subject simply to moral sanctions.

Those who advocated such a reform argued consistently that, although this move from public to private might be interpreted as a permissive move, it ought not to be for two reasons. Firstly, homosexual conduct, although no longer subjected to criminal penalties, except when it occurred in clearly defined public circumstances, would continue to be viewed as morally reprehensible; and secondly, the move did not imply a relaxation of control over homosexual behaviour or was not intended by its main supporters to imply such a relaxation of

control. What was hoped would occur was a shifting of responsibilities from 'external' control to 'self-control'. This was the essence of Lord Arran's final speech in the Lords debate on the Sexual Offences Bill, when he pleaded for homosexuals to:

comport themselves quietly and with dignity ...
Any form of ostentatious behaviour, any form of
public flaunting would be utterly disgraceful ...
[63]

This was explicitly recognised by the Wolfenden Committee:

Unless a deliberate attempt is to be made by society, acting through the agency of the law, to equate the sphere of crime with that of sin, there must remain a realm a sphere of private morality and immorality which is, in brief and crude terms, not the law's business. To say this is not to condone or encourage private immorality. On the contrary, to emphasise the personal and private nature of moral or immoral conduct is to emphasise the personal and private responsibility of the individual for his own actions, and this is a responsibility which a mature agent can properly be expected to carry for himself without the threat of punishment from the law.[64]

The central argument in this chapter has been that the debates in parliament, and the legislation which they preceeded, had a 'dual' nature or character. On the one hand, as far as the criminal law was concerned, they removed one set of controls entirely, whilst on the other hand, a new and sometimes increased set of controls was introduced to deal with those forms of homosexual conduct which were still considered to be 'public' and criminal. The second line of argument has been that this 'double taxonomy' took the form that it did partly as a result of a generalised concern over the perceived vulnerability of the young. As such, much of the debate over homosexuality was intimately bound up with the wider argument that has already been identified over the role and significance of the modern 'nuclear' or 'bourgeois' family. It was the defence of this social

unit that set many of the boundaries to the debates and limited the eventual legislative reform. The view that this was a central organising feature of the Wolfenden Report is reinforced by the Committee's approach, in its proposals on prostitution, to what it saw to be 'legitimate' avenues for female sexuality.

As has been suggested, it was the phrase, 'in private', that was the critical one in the change to the law recommended by the Wolfenden Committee, and it is the distinction between public and private that also effectively separates the two major camps in all the morality debates in this period. The Wolfenden Committee, in distinguishing between public and private behaviour, also drew a distinction between 'crime' and 'sin', and concluded that "as a general proposition it will be universally accepted that the law is not concerned with private morals or ethical sanctions"[67], and further, "it is not the duty of the law to concern itself with immorality as such...it should confine itself to those activities which offend against public order and decency and expose the ordinary citizen to what is offensive or injurious" [68]. In this way, the Committee was able, quite consistently, to propose what, on the one hand appeared to be a relaxation of the law in the area of homosexuality, whilst on the other hand it recommended stronger sanctions in the area of prostitution. What appeared to be a more liberal approach toward homosexual relations could be adopted because of the essentially 'private' and 'invisible' nature of the behaviour, whereas a seemingly more punitive line was adopted in relation to soliciting because of its 'public' and 'visible' character. An examination of the debate in jurisprudence between Lord Devlin and H.L.A. Hart will make the importance of the distinction between 'public' and 'private' somewhat

clearer.

Law and Morals

In 1958 Lord Patrick Devlin, a practising Judge, was invited to deliver the British Academy's second Maccabean Lecture in Jurisprudence. The lecture he gave and the responses it provoked form perhaps the most widely read debate in jurisprudence in Britain in the period since the Second World War. His lecture took as its starting point the distinction drawn by the Wolfenden Committee between public and private behaviour, and what it thus considered to be the proper role of the criminal law in these areas. The questions provoked by the Wolfenden approach were not new ones (John Stuart Mill and James Fitzjames Stephens had both discussed such issues [65]) but they were particularly topical at this point, for questions of law and morality were at the forefront of public consciousness at this time because of, for example, the Wildeblood/Pitt-Rivers case discussed above. The positions outlined by Lord Devlin in the lecture referred to above, and the reply by his major critic H.L.A. Hart, in his book Law, Liberty and Morality [66] can be used as models of the relationship between the criminal law and contemporary moral rules or mores.

As has already been suggested Lord Devlin's lecture was in part a response to, or was delivered in the light of, the report of the Wolfenden Committee whose most newsworthy recommendation was that

homosexual relations between consenting adults in private should no longer be a criminal offence. Devlin suggests that, at first, he read the Report's formulation of the functions of the criminal law with 'complete approval'. However, on reflection and after further study, he was persuaded that he was, in fact, wrong. His lecture was an outline of his reasons for believing that he was wrong. He opened by stating the final position that he reached:

I admit that I begin with a feeling that a complete separation of crime from sin would not be good for the moral law and might be disastrous for the criminal. [69]

Is there a jurisprudential justification that can be advanced for such a feeling, he asks, and if so how should the relationship between the criminal law and the moral law be stated? In approaching these questions, he first argues that the criminal law has always been concerned with morals, or moral principles, and that these moral principles are, in this country, inextricably tied to religion - "the moral standards generally accepted in western civilisation being those belonging to Christianity" [70]. He uses the attitude of the criminal law towards consent as an example of what he believes to be the necessary connection between criminal and moral law. Under the criminal law, he argues, a victim cannot, except in a limited number of quite specific circumstances, consent to the commission of an offence against themselves. So, for example, the consent of the victim is no defence to a charge of murder or, in the case of an assault, "that the victim thought his or her punishment well deserved and submitted to it" [71]. This illustrates that the law does not exist simply for the protection of individuals, for if it did one would be able to refuse its help if one did not want it. There is a parallel here between Devlin's argument and that used by Durkheim in

The Division of Labour in Society, and this will be discussed in more detail below. The law, Devlin argues, exists in order in some way to protect society:

There is only one explanation of what has hitherto been accepted as the basis of the criminal law and that is that there are certain standards of behaviour or moral principles which society requires to be observed, and the breach of them is an offence not merely against the person who is injured but against society as a whole. [72]

There are therefore, Devlin suggests, many matters of private morality which are brought within the ambit of the criminal law, for if everything that was not designed to preserve order and decency or to protect citizens were removed from the criminal law, several crimes would cease to be just that, eg. euthanasia, suicide, attempted suicide, abortion, incest between brother and sister etc.

Having set out his stall, Lord Devlin goes on to ask himself three questions, the answers to which, he suggests, will provide the evidence to back up his earlier assertion. His questions are:

- (i) Has society the right to pass judgement at all on matters of morals? Ought there, in other words, to be a public morality, or are morals always a matter for private judgement?
- (ii) If society has the right to pass judgement, has it also the right to use the weapon of the law to enforce it?
- (iii) If so, ought it to use that weapon in all cases or only in some; and if only in some, on what principle should it distinguish?

Devlin answers question one positively in two ways. Firstly, he points to the recommendations contained in the Wolfenden Report and argues that if society were not able to pronounce homosexuality morally wrong, then there would be no basis for a law which aims to

protect youth from 'corruption', or for punishing men who live off the earnings of a homosexual prostitute. Secondly, he suggests, an a priori argument may also be advanced:

What makes a society of any sort is a community of ideas, not only political ideas, but ideas about the way its members should behave and govern their lives; these latter ideas are its' morals.[73]

If then, as Devlin contends, all societies have a moral structure, on what basis should society use the weapon of the law to enforce its moral rules? The answer to the first question determines how the second should be answered, he argues, for if a recognised morality is crucial to the continued existence of society (and this is clearly what he is arguing), then just as it would use the law to safeguard any other essential part of its structure, so "society has a prima facie right to legislate against immorality as such"[74].

Finally, and in answer to the third question, Devlin is critical of the apparent necessity, according to Wolfenden, for special circumstances to exist in order to justify the intervention of the law. For Wolfenden, these special circumstances were defined as the "provision of sufficient safeguards against exploitation and corruption of others who are especially vulnerable because they are young, weak in body or mind, inexperienced or in a state of special physical, official or economic dependence" [75]. Devlin's argument is that 'exploitation' and 'corruption' are such nebulous terms that almost any field of morality could be defined in a way to allow at least the theoretical intervention of the law. It is therefore not possible to set a theoretical limit to society's power to use law to enforce moral rules, ie. it is not possible to define an area of morality into which the criminal law may not under any circumstances

intervene. Then, in perhaps the most crucial passage in his lecture, Devlin argues:

Society is entitled by means of its laws to protect itself from dangers, whether from within or without. Here again I think that the political parallel is legitimate. The law of treason is directed against aiding the King's enemies and against sedition from within. The justification for this is that established Government is necessary for the existence of society and therefore its safety against violent overthrow must be secured. But an established morality is as necessary as good Government to the welfare of society. Societies disintegrate from within more frequently than they are broken up by external pressures. There is disintegration when no common morality is observed, and history shows that the loosening of moral bonds is often the first stage of disintegration, so that society is justified in taking the same steps to preserve its moral code as it does to preserve its Government and other essential institutions.[76]
(my emphasis)

The suppression of vice is therefore, Lord Devlin argues, just as important as the suppression of subversive activities, and just as it is impossible to point to an area of morality which should not be subject to the law, so there is no area of morality which can be described as 'private'. This brings us to his third and final question, which is should the law be used in all or some cases, and if only the latter, on what basis does one make the decision about where and when to intervene? Before answering his final interrogatory, Devlin asks a further question. How are we to discover society's moral rules? How are those concerned with the law to ascertain society's moral judgements? In answer, he uses the idea of the 'right-minded man', the 'reasonable man' or 'the man on the Clapham omnibus':

For my purpose I should like to call him the man in the jury box, for the moral judgement of society must be something about which any twelve men or women drawn at random might after discussion be expected to be unanimous. [77]

This type of definition (ie. one that implicitly assumes that there are general positions which average or ordinary people occupy and agree upon) is similar to that utilised by many of the moral entrepreneurial groups covered in chapter two in their attempts at redefining, for example, obscenity. The assumption - which is also contained in Devlin's quasi-functionalist explanation of the role and ubiquity of a moral structure for any given society, that there is a basic consensus surrounding questions of morality - is something that was then, and is still now, widely held by those in particular who want to repeal or reform what they perceive to have been the 'permissive' legislative changes of the 1960s.

Society has the right, according to Devlin, to protect itself from immoral acts, and these acts are immoral if, by definition, every 'right-minded' person could be assumed to consider them so. In direct criticism of Wolfenden, he argues that one cannot make a simple distinction between public and private morality. The courts have to try to strike a balance between the two. What, then, must the legislature consider when making judgements about the legal enforcement of morals? Firstly, Devlin, adopting a quasi-functionalist tone, suggests that there must be toleration of the maximum individual freedom that is consistent with the integrity of society:

The principle appears to me to be peculiarly appropriate to all questions of morals. Nothing should be punished by the law that does not lie beyond the limits of tolerance. It is not nearly enough to say that a majority dislike a practice; there must be a real feeling of reprobation... Not everything is to be tolerated. No society can do without intolerance, indignation and disgust. [78]

The second working principle is that the law should be slow to act, as the limits of tolerance shift over time. In this way the law will not be altered at the slightest change in the limits of tolerance. For, Devlin argues, it is important that, if the law is to be altered, then the impression ought not to be given that moral judgement is being weakened, and he gives as an example of this problem the contemporary question of the law in relation to homosexuality. In this area, he suggests, a change in the law is extremely difficult for it would give the impression of a weakening of moral judgement, and as will be shown in chapter seven he was in some ways correct, for this was one of the major contentions of those who opposed such a change in the law:

This then is how I believe my third interrogatory should be answered - not by the formulation of hard and fast rules, but by a judgement in each case taking into account the sort of factors I have been mentioning. The line that divides the criminal law from the moral is not determinable by the application of any clear-cut principle. [79]

Devlin completes his lecture by returning to a question he had briefly considered at the beginning, and one which will be central in this thesis, that of the relationship between the Church and the moral order. Devlin felt that the relationship was a fairly straightforward and uncomplicated one: there was, he believed, little difference between Christian morals and "those which every right-minded member of society is expected to hold". Although, with study, one could no doubt detect gaps, nevertheless, "for the purpose of the limited entry which the law makes into the field of morals, there is no practical difference". And importantly he concluded, and this will resurface in the final chapter:

It seems to me therefore that the free-thinker and the non-Christian can accept, without offence to his convictions, the fact that Christian morals are the basis of the criminal law and that he can

recognize, also without taking offence, that without the support of the Churches the moral order, which has its origin in and takes its strength from, Christian beliefs, would collapse. [80]

This again, of course, has direct parallels with the general position adopted by groups such as the NVALA and the NFoL, and outlined in chapter two.

Having considered Devlin's argument, the next step is to look at that of his major critic, H.L.A.Hart. Law, Liberty and Morality, like Devlin's work before it, was inspired by the debates fostered by the publication of the Wolfenden Report. The central question addressed by Hart is: "is the fact that certain conduct is by common standards immoral sufficient to justify making that conduct punishable by law? Is it morally permissible to enforce morality as such?" [81]

Essentially, Hart follows John Stuart Mill in answering 'no', and suggests, as Mill did, that power can only be used over someone against their will in order to prevent harm to others. On the other hand, he points out that Devlin had in fact answered the question in the affirmative, and had justified this response by suggesting that, just as society can take steps to preserve itself against acts of treason, then so it may protect itself from attacks on established morality, for this too can threaten society's existence. As has been noted, the debate between Hart and Devlin was in part stimulated by the publication of the Wolfenden Report, and Hart begins by noting the striking similarity between J.S.Mill's argument outlined above and the position adopted by the Wolfenden Committee in s.13 of their Report:

[The] function of [the criminal law], as we see it, is to preserve public order and decency, to protect the citizen from what is offensive and injurious and to provide sufficient safeguards against exploitation or corruption of others,

particularly those who are specially vulnerable because they are young, weak in body or mind or inexperienced...[82]

Hart does concede that there can be found numerous examples of rules within the criminal law whose existence can only be explained as procedures for the enforcement of morality, for example, laws outlawing various forms of homosexuality, sodomy within marriage, as well as the then contemporary example (covered in more detail in chapter four) of the Ladies Directory trial in which the defendant, Shaw, was charged with 'conspiracy to corrupt public morals'.

Although he wishes to cast doubt on the assertion that the sole reason for the existence of some of these rules is to enforce morality, Hart also argues that it is fallacious to assume that, simply because such rules do exist, they therefore should or must exist - he does not, however, accuse Devlin of committing such a fallacy.

As suggested above, one of the central planks in Lord Devlin's argument that the law does not simply exist to protect the individual, but also to protect society, was the fact that in all but a few cases the victim may not consent to the commission of an offence against themselves. This is challenged by Hart who suggests that, far from simply being an example of the law enforcing a moral principle - for example the sanctity of human life - it may on the other hand:

perfectly well be explained as a piece of paternalism, designed to protect individuals against themselves. [83]

This, as should by now be clear, is a crucial distinction in this argument, for it underpins (along with the public/private distinction utilised by Wolfenden) many of the conflicts and disagreements over morality and the 'proper' role of the criminal law during this

post-war period. The adoption by Hart of a position which accepts the possible paternalistic role of the criminal law requires a "certain modification of the laissez-faire principles propounded by John Stuart Mill". In so doing, Hart argues, it is not necessary to abandon the position that resists the use of the criminal law to enforce morality. One merely has to allow that harming others may itself be resisted by invoking the sanction of the criminal law. This is the basis of the distinction between 'paternalism' and what Hart calls 'legal moralism', for:

It is too often assumed that if a law is not designed to protect one man from another its only rationale can be that it is designed to punish moral wickedness, or in Lord Devlin's words 'to enforce a moral principle'. Thus it is often argued that statutes punishing cruelty to animals can only be explained in that way. But it is certainly intelligible, both as an account of the original motives inspiring such legislation and as the specification of an aim widely held to be worth pursuing, to say that the law is here concerned with the suffering, albeit only of animals, rather than with the immorality of torturing them. [84]

Hart then moves on to consider Devlin's assertion that attacks upon, or threats to, the established morality of a society, are also attacks upon, and threaten the continued existence of, that society. He questions the validity of such a statement and argues that, in Devlin's formulation, it was intended to be a statement of empirical fact, or more likely an a priori assumption. Devlin, he suggests, provides no evidence with which to support the statement, and further no reputable historian has argued that deviation from sexual morality could be seen, like an act of treason, as threatening society's existence. There are to be found, he continues, two theses - one 'moderate', one 'extreme' - in Devlin's lecture. The moderate one holds that morality is the cement of society, and that therefore

society may use the law to preserve its morality, just as it may protect anything else essential to its existence. In the extreme thesis, the enforcement of morality is not viewed as a step taken to preserve society; it is, rather, regarded as something of value in itself, irrespective of whether anyone is likely to be harmed by the transgression of the rule.

Hart accuses Devlin of moving from "the acceptable proposition that some shared morality is essential to the existence of any society, to the unacceptable proposition that a society is identical with its morality, as that is at any given moment of its history, so that a change in its morality is tantamount to the destruction of a society"[85]. Devlin has, however, been defended against such a charge by several commentators, and one of these, Basil Mitchell, argues that it would be fairer to suggest that Devlin's position is that there are no types of immorality which are not in some way capable of threatening society, and which could therefore be considered to be 'outside' the scope of the law:

So the argument would appear to be this. We do not know just how much cohesion is necessary for a society to exist, but we know that some cohesion is necessary. Some degree of shared morality is essential to this minimum of cohesion, and any weakening of moral belief may reduce it below this minimum; hence we cannot bind ourselves not to use the law to safeguard existing moral beliefs, no matter how peripheral they may appear to be.[86]

Nonetheless, Hart is highly critical of Devlin's identification of society with its shared morality and he further accuses Devlin of conceiving of morality as a 'seamless web', so that those who deviate from one part of it are almost bound to deviate from the whole. Although there is little or no evidence to support the contention that

those who deviate from shared sexual morality are likely to be 'deviant' in other ways as well, it was argued in chapter two that it is precisely this quality that Mrs Whitehouse felt she had detected in young ' revolutionaries' such as Richard Neville. The importance of this part of the debate is that it illuminates one crucially important difference between, on this occasion, Devlin and Hart. That is the disagreement over whether or not it is possible for there to be areas of behaviour which, whilst they might be considered to be 'immoral', could also be considered to be 'private'. Clearly, Devlin does not believe this to be possible, whereas, Hart insists that it must be. The major difference between the two positions should by now be clear.

Morality and Social Solidarity

Before moving on to the other case studies certain parallels may be noted between the arguments of Devlin and Hart and some elements of sociological theory. As was suggested above, Hart in his critique of Devlin describes one of the elements of the latter's approach as involving a 'disintegration thesis' [87]. In Devlin's thesis, morality is a form of social glue, the cement which binds society together. The enforcement of morality is justified in order to protect against the disintegration of society. Thus Devlin argues:

...society means a community of ideas; without shared ideas on politics, morals and ethics no society can exist. Each one of us has ideas about what is good and what is evil; they cannot be kept private from the society in which we live. If men and women try to create a society in which there is no fundamental agreement about good and evil they will fail; if, having based it on common agreement, the agreement

goes, the society will disintegrate. For society is not something that is kept together physically; it is held by the invisible bonds of common thought. If the bonds were far too relaxed the members would drift apart. [88]

For Devlin, the law is used to protect morality just as it is used to protect anything essential to society's continued existence. A similar view of the role of morality is to be found both in Parsons' account of the functioning of the social system and Durkheim's outline of mechanical solidarity.

Parsons argued that institutionalised role-expectations developed as a result of relatively stable patterns of interaction within a social system. Membership of a 'collectivity' involved the sharing of common value patterns which define such role-expectations and create solidarity amongst those who share them. Crucially, however, he argues that "without the attachment to the constitutive common values the collectivity tends to dissolve" [89]. Perhaps the clearest parallel, though, is between Devlin's conception of morality and that discussed by Durkheim in relation to mechanical solidarity. In contrast to organic solidarity, mechanical solidarity is based upon similarity rather than difference. It is generally characteristic of simpler societies where there is a shared set of common standards of behaviour or a 'conscience collective', a single moral system in which infractions bring swift and strong punishment. The primary function of punishment under mechanical solidarity is to protect and reaffirm the 'conscience collective'. Both Devlin and Durkheim are describing societies in which there is a strong unitary moral system which is protected by the law. This enforcement of morals is necessary, not because of the quality or purity of the moral rules, but because of the function of the moral system or conscience collective as that

which binds society together. Infractions need not be harmful to the individual in order to bring punishment, merely to run counter to the shared morality. In both cases, Hart argues, the authors present a 'disintegration thesis', wherein the shared morality is to be defended in order to prevent the destruction or disintegration of society.

There are also elements in the debate which parallel or resemble Durkheim's discussion of both organic as well as mechanical solidarity. The parallels between 'mechanical solidarity' and Lord Devlin's position should by now be clear. For Durkheim, under 'organic solidarity' the conscience collective weakens and is replaced by a number of 'occupational moralities'. This form of solidarity is associated with increased individualism, it is a "system of differentiated and special functions united in definite relationships"[90]. Solidarity derives from functional interdependence in the specialised division of labour. The moral consensus, argued by Devlin to be necessary for the continuance of society per se, and suggested by Durkheim to be characteristic of 'mechanical solidarity', is assumed not to exist under conditions of organic solidarity. That is to say, moral pluralism appears to be closer to the position envisaged by Durkheim as existing under organic solidarity, that is, in societies with a highly developed division of labour.

A second parallel relates to the significance of religion. For Durkheim, mechanical solidarity tends to be characteristic of societies in which there is a unitary religious system which underpins the common beliefs making up the conscience collective. The transition to organic solidarity involves the eclipse of this

religious morality by a secular one. The parallel here is clear, for Devlin argues that society's moral rules are religiously based, whereas in the Hart critique modern moralities are essentially secular.

Finally it should be noted that the general position adopted by Mary Whitehouse and the NVALA (outlined in chapter two), as well as those of some the conservative and liberal historians discussed in chapter one, flow from the idea that the legal situation in modern British society approximates to that outlined by Hart, and that they campaign for changes that more readily resemble the position outlined by Devlin. Indeed they further suggest that the historical changes recently witnessed have involved a move from the latter to the former. The moral entrepreneurs deduce from this that moral certainty has been replaced by uncertainty and confusion, and that, just as Devlin's theory would imply (and perhaps Parsons'), we are heading for disintegration or chaos. Interestingly, and in contrast, Durkheim's contention in The Division of Labour in Society is that, despite the declining significance of traditional moral values, one form of solidarity and stability will be replaced by another, and that disintegration is far from inevitable.

The following three chapters look in some detail at the legislative changes that took place in the areas of obscenity and abortion in the late 1950s and 1960s. Two basic questions are addressed. Firstly, as with this chapter, can a general direction behind this change be identified, and if it can, to what extent can it be characterised as 'permissive' in terms of the definitions outlined in chapters one and two? In addition, by looking at the debates that surrounded these

changes, to what extent can the intentions behind the legislation as well as the legislation itself be said to approximate to either of the major positions outlined in this chapter?

[1] Wildeblood, P. (1957) Against the Law Penguin.

[2] Hyde, H.M. (1970) The Other Love Heinemann. and Weeks, J. (1977) Coming Out: Homosexual Politics from the Nineteenth Century to the Present Quartet.

[3] Hyde (1970) op.cit. p.213

[4] ibid. p.214

[5] HC Debs Vol 251 Col 1298; quoted in Hyde (1970)

[6] Wolfenden, J. (1976) Turning Points Bodley Head

[7] Church Information Board 1952.

[8] New Statesman and Nation April 10, 1954. quoted in Hyde (1970) op.cit

[9] Wolfenden (1976) op.cit. p.130

[10] Smart, C. (1981) Law and the Control of Women's Sexuality. in Hutter and Williams [eds] op.cit.

[11] Report of the Committee on Homosexual Offences and Prostitution. Cmnd 247 para.1

[12] ibid, para.229

[13] Wolfenden (1976) op.cit. p.141-2

[14] (R.A. Butler) Hansard. HC debs 598. 1271.

[15] Sion, A.A. (1977) Prostitution and the Law Faber and Faber.

[16] Smith v. Hughes [1960] 2 All E.R. 859

[17] Sion (1977) op.cit.

[18] R v. Webb [1964] 1 Q.B. 357

- [19] The Street Offences Bill Criminal Law Review (1959) p.205
- [20] Mr Elwyn Jones Hansard. HC debs 598 1358-9
- [21] HMSO (1974)
- [22] Working Party. para.269 quoted in, Blanchard, J. (1982) Prostitution and the Social Control of Female Sexuality. Unpublished MA Thesis. University of Leicester.
- [23] Ghettos of Freedom, in NDC [eds] (1980) op.cit.
- [24] Hutter and Williams [eds] (1981) op.cit.
- [25] in Hutter and Williams [eds] (1981) op.cit.
- [26] Cmnd 247. para.355
- [27] ibid. para.124
- [28] Church Information Board (1956) pp.40-1
- [29] Cmnd.247 para.67
- [30] ibid. para.71
- [31] ibid.
- [32] ibid. para.97
- [33] ibid.
- [34] Hopkins, H (1963) A Social History of the Forties and Fifties in Britain Martin Secker and Warburg.
- [35] Hyde (1970) op.cit pp.235-6. The signatories included: Lord Attlee, the Bishops of Birmingham and Exeter, Professors A.J. Ayer, Isaiah Berlin and Julian Huxley, Sir Robert Boothby M.P., J.B. Priestley, Bertrand Russell and Barbara Wootton.

- [36] Hansard. HC debs 596 365.
- [37] Hansard HC debs 596 369
- [38] The Times 27 November 1958
- [39] The Times 26 November 1958
- [40] Hansard HC debs 596 437
- [41] Hansard HC debs 625 1456-8
- [42] Hansard HC debs 625 1501
- [43] Hansard HC debs 655
- [44] quoted in Weeks, J (1977) op.cit. p.14
- [45] Howes, K (1983) The Media. in, Galloway, B [ed] Prejudice and Pride Routledge and Kegan Paul
- [46] Hansard HL debs 266 166
- [47] Hansard HL debs 266 113 (Lord Francis Williams)
- [48] Hansard HL debs 266 136
- [49] Hansard HL debs 266 660
- [50] The Times 7 March 1958
- [51] The Times 11 May 1965
- [52] Hansard HL debs 269 714-5
- [53] Hansard HC debs 724 845
- [54] Hansard HC debs 738 1077

[55] Hansard HL debs 738 1108-9

[56] Sunday Telegraph 14 August 1966

[57] Daily Telegraph 22 July 1967

[58] Parliament and the Law. in, Galloway (1983) op.cit.

[59] Hansard HC debs 19 December 1966 1120

[60] Knulier v DPP [1973] AC 436 at p.457. quoted in Galloway (1983) op.cit. p87

[61] Numerous well documented examples of discrimination in all these areas can be found in Galloway (1983) op.cit.

[62] The information for this section was largely based on an article by Roy Walmsley, 'Indecency between Males and the Sexual Offences Act 1967' Criminal Law Review 1978.

[63] Daily Telegraph 22 July 1967

[64] Cmnd 247 op.cit para.61

[65] quoted in Devlin (1959) op.cit. p.3

[66] *ibid.*

[67] Mill, J.S. (1859) On Liberty London. and, Stephen, J.F. (1873). Liberty, Equality, Fraternity London.

[68] Law, Liberty and Morality (1963) Oxford University Press.

[69] *ibid.* p.4

[70] *ibid.*

[71] *ibid.* p.6

[72] *ibid.* pp.6-7

- [73] *ibid.* p.9
- [74] *ibid.* p.11
- [75] Cmnd 247 *op.cit* para 13
- [76] Devlin (1959) *op.cit.* p.13
- [77] *ibid.* p.15
- [78] *ibid.* p.17
- [79] *ibid.* p.21
- [80] *ibid.* p.23
- [81] Hart (1963) *op.cit* p.4
- [82] Cmnd 247 *op.cit*, quoted in Hart (1963) *op.cit* p.14
- [83] *ibid.* p.31
- [84] *ibid.* p.34
- [85] quoted in Mitchell, B. (1967) Law, Morality and Religion in a Secular Society Oxford University Press.
- [86] *ibid.* p.22
- [87] Hart, H.L.A. (1965) Social Solidarity and the Enforcement of Morality. University of Chicago Law Review vol.35
- [88] Devlin (1959) *op.cit.* p.10
- [89] Parsons, T. (1951) The Social System Routledge and Kegan Paul
- [90] Durkheim, E. (1964) The Division of Labour in Society p.129

Chapter Four. Obscenity and the Law: The Permissive Years?

The all-permissive, the 'swinging society': under its Big-Top, the whole garish circus of the new freedom, freedom to revel, through all kinds of mass-media, in violence, in pornography, in sado-masochism. The walls of the police storerooms are almost bulging outwards with the pressure of tons and tons of dirty books - the ones still within the scope of the law. But there are plenty outside its scope, so we do not seem to be worrying about that just yet. [1]

Both this and the following chapter document the changes that took place in the construction and implementation of the laws of obscenity in Britain during the period which is now colloquially referred to as the 'permissive age'. The term 'permissiveness' is, as has been shown, generally taken to refer to a relaxation in standards of behaviour, or morals, and for most commentators it is taken by implication to involve a lowering in the quality of life. With reference to questions of obscenity and censorship, a change in a 'permissive' direction implies less censorship and, therefore, more obscenity. Mrs Mary Whitehouse exemplifies this view:

Whatever may have been the intention of the Home Secretary of the time, Roy Jenkins (sic), it is now a legal fact that his Obscene Publications Acts of 1959 and 1964 opened the floodgates to obscenity.[2]

Although the Home Secretary at the time of the passage of the 1959 Act was actually R.A. Butler, Mrs Whitehouse's point is nevertheless clear. The essence of her idea is that legal changes have been in one direction only, ie a permissive direction. This very argument has been put forward by the sociologist Christie Davies in his book, Permissive Britain [3], in which he argues (with little or no evidence to back it up) that there has been a shift towards less censorship on 4 levels. Firstly, the law has been altered in a permissive

direction; secondly, the law is now applied in a more permissive manner; thirdly, people are less willing to take legal action against literature; and that finally, as a result of the first shift, pre-censorship by authors, publishers etc has ceased. The following two chapters will examine these propositions. The fourth of Davies' contentions is difficult to refute, in that any evidence either way is difficult to come by, and that any that is found is likely to be anecdotal and therefore unsuitable for a study of this nature. His third argument, that people are less willing to resort to the law is again difficult to contradict. However, even a cursory glance at some of the events that took place during this period (for instance, the continuous 'harrassment' of the underground press during the early 1970's) would seem to suggest that his case is at the very least overstated. It is primarily his first 2 points that these chapters will address, although at this juncture it must be pointed out that his arguments are not (quite) as simplistic as has at first been suggested. He does, in fact, argue that there were exceptions to the decrease in censorship, and cites the Children and Young Persons (Harmful Publications) Act, 1955, and the Race Relations Act, 1965 in this connection, and in a later paper [4], he goes on to argue that some new controls were imposed, despite the overall trend towards permissiveness, which was, as he sees it, an unintended consequence of legislative change.

Whilst it will not be denied here that there have been changes in the period that could come under the label, 'permissive', this may only be accepted in so far as they are part of a wider system of changes which go to make up the complex historical transformation, and which are about to be considered.

The State of Affairs Before 1959

It is confidently asserted by many commentators on the post-war period, that the Obscene Publications Act, 1959 heralded a new era in British attitudes to censorship, and in particular, towards obscenity. The first question that must be asked, is what were the reasons for the introduction of such legislation? Who was behind its successful passage through parliament and who and what was it designed to protect? This, of course, leads on to the main question being asked in this part of the thesis; namely that, if the new legislation did indeed signify a new era and set of mores, can it be adequately described as 'permissive'?

Most accounts of the development of legislation to deal with obscenity generally begin with the case of Sir Charles Sedley [5]. In 1663, after a night's revelry, he blasphemed in public (in Covent Garden) having stripped naked and urinated in the street. This action eventually gave birth to the charges of obscenity and conspiracy to corrupt public morals. In years to come, prosecutions for pornography were fairly common, but it was not until 1857 under the direction of the Lord Chief Justice, Lord Campbell, that Obscene Publications legislation was enacted. Under this Act, magistrates were empowered to order the destruction of 'suspicious' books. Because this legislation had been designed simply to give powers of destruction, and not the power to implement criminal proceedings, it contained no definition of obscenity. However, it was only 11 years before one was created, and incredibly it has changed very little in the 100 years or so since. In a case in 1868 [6], the then Lord Chief Justice, Sir

Alexander Cockburn, made the following comment:

I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall. [7](my emphasis)

The new definition armed the Victorians with a weapon powerful enough to suppress any publication to which they took offence, including a previously uncontentious pamphlet on birth control entitled, The Fruits of Philosophy, and published in the 1870s by James Bradlaugh and Annie Besant,[8] the novels of Emile Zola [9], and Havelock Ellis' acclaimed study of homosexuality, Sexual Inversion [10]. It is, however, the twentieth century prosecutions for obscenity that are best remembered, and the authors they involved were often just as distinguished. In 1915, Lawrence's, The Rainbow, was not even defended by its publishers, McOwen and Co, because of the pressure that was placed upon them. Eventually, it was ordered to be destroyed. Probably the best remembered case of the period, however, was Radclyffe Hall's, The Well of Lonliness, which was also successfully prosecuted. In the intervening years, many books received the attention of the censors. Indeed, even the second volume of the Kinsey Report, published in 1948, came close to a destruction order, and the 1950s saw several events that were eventually to lead to a change in the obscenity laws in 1959.

In 1953, the International Criminal Police Commission held a meeting in Oslo on the subject of 'obscene and licentious publications', which concluded that the increase in the number of sex offences since the war could have links with the reading of pornography, and the British police, together with the then Home Secretary, Sir David Maxwell-Fyfe

and the Director of Public Prosecutions, Sir Theobald Mathew, responded with an 'anti-vice' drive that was directed not only at pornography but also at homosexuality and prostitution (cf. chapter 3). With respect to 'obscenity', the drive was directed mainly at 'cheap pornographic novels'. In most of the prosecutions, the booksellers made very little fuss. However, in one case in 1954 [11] the shopkeeper produced a number of books that had been published by major companies and, in defence of his own stock, questioned their right to free circulation. The Judge ruled that this type of comparison was not permissible, and that English law was, in this instance, the same as that laid down in a case in Scotland a year previously [12].

.. the character of the offending books or pictures should be ascertained by the only method that such a fact can be ascertained, vizi, by reading the books or looking at the pictures. The book or picture itself provides the best evidence of its own indecency or obscenity, or of the absence of such qualities... If the books produced by the prosecution are indecent or obscene, their quality in that respect cannot be made any better by examining other books, or listening to the opinions of other people with regard to these other books.[13]

Despite this ruling, and the fact that it was upheld by the Court of Appeal, the Lord Chief Justice suggested that the matter should be investigated, and the DPP duly complied. This led to 5 prosecutions for obscenity in 1954 and brought into the dock, not some seedy back-street publishers, but some of Britain's biggest and most reputable publishing houses. The first of these cases to be contested [14] involved Martin Secker and Warburg Ltd (as well as the Camelot Press Ltd and Frederick John Warburg) for publishing Stanley Kauffman's novel, The Philanderer. The trial took place in late June/early July and was held at the Central Criminal Court. During the case, it was decided that the defence could not call evidence in

which The Philanderer was compared to other books, and would not have been able to have recourse to lawyers, critics, authors etc to testify to the merits of the book [15]. Mr Mervyn Griffith-Jones, appearing for the prosecution, had, it seems, already made up his mind. Referring to the book, he said:

If that hasn't got a tendency to deprave and corrupt people whose minds are open to such immoral influences, what on earth has? ... Members of the jury, if you searched every beastly little back-street bookshop in the world you wouldn't find more typical pornography... It will be a sorry day if you should find that this book and others of similar type are fit to be published at large... [16]

The case was tried by Mr Justice Stable, who showed his sympathy towards the publisher, Mr Frederick Warburg, by allowing him to sit with his solicitor in the well of the court, rather than remain in the dock. His summing-up in the case received great praise at the time, and it is worth repeating much of it here, as it stands in contrast to many of the statements made by Judges and magistrates on obscenity at that time and since:

Remember the charge is a charge that the tendency of the book is to corrupt and deprave. The charge is not that the tendency of the book is either to shock or to disgust. That is not a criminal offence. Then you say: "Well, corrupt or deprave whom?" and again the test: those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall. What exactly does that mean? Are we to take our literary standards as being the level of something that is suitable for a 14 year-old girl? Or do we go even further back than that, and are we to be reduced to the sort of books that one reads as a child in the nursery? The answer to that is; of course not. A mass of literature, great literature from many angles is wholly unsuitable for reading by the adolescent, but that does no mean that the publisher is guilty of a criminal offence for making those works available to the general public.

...The book that you have to consider is, as you know, in the form of a novel, and I venture to suggest for your consideration the question: what are the functions of the novels when people write a story of some past age. I am talking about the contemporay novelist. By 'the

contemporary novelist' I mean the novelist who writes about his contemporaries, who holds up a mirror to the society of his own day, and the value of the novel is not merely to entertain...; it stands as a record or a picture of the society when it was written. Those of us who enjoy the great Victorian novelists get such understanding as we have of that great age from chronicles, such as Thackeray, Dickens, Trollope and many others... The only real guidance we get about how people thought and behaved over the ages is in their contemporary literature.

It is equally important that we should have an understanding of how life is lived and how the human mind is working in those parts of the world which, although not separated from us in point of time, are separated from us in point of space. At a time like today, when ideas and creeds and processes of thought seem to some extent, to be in the melting pot this is more than ever necessary ... This is an American novel written by an American, published originally in New York and purporting to depict the lives of people living today in New York, to portray their speech and their attitude in general towards this particular aspect of life. If we are going to read novels about how things go on in New York it would not be much assistance would it, if contrary to the fact, we were led to suppose that in New York no unmarried woman of teenage children has disabused her mind of the idea that babies are brought by storks or are sometimes found in cabbage plots or under gooseberry bushes?

You may think that this is a very crude work; but that it is not, perhaps, altogether an exaggerated picture of the approach that is being made in America towards this great problem of sex. You may think that if this does reflect the approach on that side of the Atlantic towards this great question, it is just as well that we should know it and that we must not close our eyes or our minds to the truth because it might conceivably corrupt or deprave any somewhat puerile young mind. [17]

Mr Justice Stable's summing-up received favourable 'reviews' from almost all quarters. The comment in The Times was fairly typical:

Mr Stable and a jury of 9 men and 3 women are to be congratulated on having handled wisely a most difficult and controversial subject. [18]

Not altogether surprisingly, the defendants were found not guilty, and in an article in the New Statesman [19] a couple of months later, Mr Frederick Warburg suggested that the determining factor had, in fact, been Mr Justice Stable's 'summing-up'. The importance of this part of the proceedings was reinforced in the next prosecution for obscenity;

the trial of Hutchinson for publishing Vivian Connell's, September in Quinze, which, although it took place only three months later, bore no relation at all to the Secker and Warburg prosecution. The defence used the summing-up from the previous trial as part of their argument, yet reports of the trial suggest that the summing-up by the Recorder, Sir Gerald Dodson, was a point for point contradiction of the views put forward by Mr Justice Stable. He said, for example:

A book which would not influence the mind of an Archbishop might influence the minds of a callow youth or a girl just budding into womanhood. Sex is a thing, members of the jury which you may think has to be protected and even sanctified, as indeed it is by the marriage service, and not dragged in the mud... I should have thought any reader, however inexperienced would have been repelled by a book of this sort, which is repugnant to every decent emotion which ever concerned man or woman. [20]

It was not altogether a shock for Hutchinson, after this, that they were found guilty and consequently fined £500. Passing sentence, the Recorder said:

It is a very comforting thought that juries from time to time take a very solid stand against this sort of thing and realise how important it is for the youth of this country to be protected and that the fountain of our national blood should not be polluted at its source. [21]

Of the 5 publishers to be prosecuted at this time, the only ones who pleaded guilty were Werner Laurie Ltd in respect of Margot Bland's novel, Julia. The trial took place at Clerkenwell police court. The prosecutions of Secker and Warburg and Hutchinson have already been considered, which leaves those of Heinemann and Arthur Barker Ltd. The Heinemann prosecution was the only one in which a jury were unable to come to a decision [22]. The book in question was entitled, The Image and the Search. Written by Walter Baxter, it described the

amorous adventures of a nymphomaniac. It had received very varied responses from critics since its publication in 1953, although seemingly it was only the Sunday Express who felt strongly enough about it to demand its withdrawal [23]. The first trial began at the Old Bailey in October 1954, and by the end of the second trial in late November, the jury still could not agree on a verdict. Mr Griffith-Jones appearing for the prosecution, announced that the DPP did not intend to proceed with the case, and the defendants were discharged. At roughly the same time as these trials were taking place, Arthur Barker Ltd were being prosecuted for publishing Charles McGraw's, The Man in Control. An uneventful trial ended with a verdict of 'not guilty', bringing to an end what had been an eventful year as far as allegedly 'obscene' publications were concerned. However, as has been suggested, the machinations in the 5 cases had far wider implications for the general question of censorship than would have been suspected at the time. The trials led to a vociferous public debate much of which was conducted through the letter columns of The Times. Two of these 'debates' were sparked off by literary notables [24], and the arguments they engendered were carried over into many respected periodicals [25], featured in radio and television programmes, and culminated in the setting up of a committee of the Society of Authors, initially under the Chairmanship of Sir Alan Herbert, to investigate the workings of the obscenity laws. At the same time, there was also what can be considered to be a minor 'moral panic' over the importation of horror comics, and it is to these issues that we must now turn.

Public Reaction to the events of 1954

As has been noted, the prosecution of several major publishers in 1954 led to quite a considerable debate over the relationship between literature and the law, and contributed indirectly, 5 years later, to new Obscene Publications legislation. First reaction came in the form of a prolonged correspondence in The Times, started by Graham Greene [26]. In his letter, he condemned the prosecutions and warned of the dangers of attacking writers' freedoms. A second correspondence began on the 28 October 1954 and was entitled 'Freedom of the Pen' [27]. The first letter expressed grave concern over the prosecutions for alleged obscene libels, and it went on:

It would be disastrous to English Literature if authors had to write under the shadow of the Old Bailey if they failed to produce works suitable for the teenager, and if publishers were forced to reject books which, however serious in intent and however lit by genius contained passages which might be blue-pencilled by a police sergeant or a common informer.

It was signed by 7 eminent literary figures [28] and referred explicitly to the value of the summing-up provided earlier in the year by Mr Justice Stable. The debate occupied much space in the press at the time. Indeed, the scale of the coverage is a good indication of the widespread interest that was aroused [29]. Possibly the most significant reaction to the activities of 1954 was the formation in November of that year of a Committee of The Society of Authors, which, as has been said, was organized to investigate the existing state of the law on obscenity and to make recommendations as to how it might be reformed [30].

The results of the Committee's deliberations were made known in early February 1955, and their report included a Bill drafted by Norman St John Stevas which contained an extended definition of obscenity, covering "publications that unduly exploit horror, cruelty or violence whether pictorially or otherwise." [31]. They brought in as a central question, the 'intent' of the accused in publishing the article and also wished to introduce the opportunity for the courts to assess the literary, artistic or other merits of the work, as well as to allow evidence to be called concerning the type of audience the publication was most likely to be directed at. It would, under the Bill, also be declared that obscene libel should not be punishable under common law [32].

The proposals, it may be said, received very wide support from the press, favourable leading articles appearing in The Times; the Sunday Times; and The Economist amongst others [33]. The reason that the definition of obscenity had been extended to include matters exploiting horror, cruelty or violence was in response to a growing 'moral panic' concerning the importation from America of 'childrens' magazines, affectionately known as 'horror comics', which, among other things, were described as no more than purveyors of 'sadism' and blamed for the rise in juvenile delinquency [34]. Such was the concern in Parliament that legislation was introduced almost immediately to deal with the matter, although, as Christie Davies points out [35], it was sometimes difficult to see exactly what was being objected to:

If one can sum up what we are trying to destroy it is the glorification of violence, the educating of children in the detail of every conceivable crime, the playing on sadism, the morbid stimulation of sex, the cultivation of race hatred, the cultivation of contempt

for work, the family and authority, the cultivation of the idea of the superman and a sort of incipient fascism. [36]

Given the problems that had been encountered in administering the law in prosecutions for obscenity in 1954, the Society of Authors felt that this was an opportunity to reform the laws of obscenity as a whole. The Government, however, persisted with the narrower legislation, arguing that its very narrowness would make it more effective. Roy Jenkins made his feelings clear in the debate over the Bill's second reading:

I think it is a thoroughly bad Bill and will do more harm than good... I think it is a great pity that when a Bill of this kind has been introduced, the opportunity has not been taken to deal with the much wider problem of the law relating to obscenity in literature generally. [37]

Michael Foot, speaking in the same debate, described the atmosphere in the country as one of suppression, and compared the DPP's attitude to that of a former Home Secretary, Joynson-Hicks, in the 1920s. Nigel Nicolson, a publisher and MP, also voiced concern, but from a different angle:

I have an obvious interest in this debate. I do not want to be imprisoned, to have my premises invaded or my property confiscated, and I can only avoid those penalties, if I know more precisely than this Bill tells me what I may publish and what I may not. [38]

In an attempt to force the issue, Roy Jenkins introduced under the ten-minute rule a draft Bill for the wider reform of the law, and it was given an unopposed first reading, but there its life ended. The committee stage of the Children and Young Persons (Harmful Publications) Bill, began 10 days later, and although many amendments were moved, the Bill emerged virtually unscathed after 5 days [39]. The terms of the Bill applied to:

...any book, magazine or any other like work which consists wholly or mainly of stories told in pictures (with or without the addition of written matter), being stories portraying:-

- (a) the commission of crimes; or
- (b) acts of violence or cruelty; or
- (c) incidents of a horrible or repulsive nature;

in such a way that the work as a whole would tend to corrupt a child or young person into whose hands it might fall.[40]

There are certain parallels that may be drawn between the campaign which gave rise to this piece of legislation and other moral campaigns. As was suggested in chapter 2, the most useful concept for understanding the work of moral entrepreneurs is a slightly revised version of Wallis' concept of 'cultural defence'. According to Martin Barker [41] the British horror comics campaign originally surfaced as part of a general anti-American backlash by the Communist Party, but was later appropriated and narrowed by a number of other interest groups. The comics became an outlet or scapegoat for a more general threat to what were seen as traditional British values. Barker quotes one of the campaigners thus:

We wanted to get back to some sort of English tranquility. It was a very romantic notion, of countryside, Merrie England, Elgar's music... And anything that was American as material and brash and vulgar, and that included their comics and motorcars. [42]

Thus, just as it was suggested in chapter 2 that the NVALA campaigns of the 1960s and 1970s were underpinned by a desire to recover a lost 'golden age', so the earlier horror comics campaign appears to have tapped similar feelings. It is possible that part of what was involved here were public reactions to the power-shift between Britain and the United States that was occurring in conjunction with Britain's

loss of Empire and America's emergent status as a 'super-power'.

At the centre of both the horror comics campaign and the NVALA concerns, though, was 'the child'. This idealised child is innocent and uncorrupted, but vulnerable to attack by any number of modern phenomena which place their innocence at risk. Although, in this campaign, the focus was horror comics, both its literature and rhetoric are not dissimilar to those surrounding campaigns against a range of books, plays and films in the last twenty five years, as well as to two specific campaigns against child pornography in the late 1970s and 'video-nasties' in the early 1980s.

What, in essence, is at stake for the moral reformers is a particular conception of the family and, by implication at least, also a particular conception of 'the child', as well as of the roles of men and women - and especially that of woman as 'mother'. In this conception, the family is neither single-parent (or 'broken' as such families are sometimes negatively described), nor lesbian or gay, but nuclear and firmly heterosexual. It is the symbolic defence of a society based on such an institutional arrangement that is the basis of many of the moral campaigns under discussion.

Finally, it is worth considering the Children and Young Persons (Harmful Publications) Act, 1955 as a piece of legislation in relation to the debates outlined in chapter three. The Act is in many respects utilitarian in character. Thus the preamble reads:

An Act to prevent the dissemination of certain pictorial publications harmful to children and young persons. (my emphasis)

Generally, the Bill's sponsors in Parliament did not seek to justify the censorship of horror comics in terms of some intrinsic quality that they possessed eg. that they were perhaps 'evil' or 'sinful', but in terms of the harm that they might do. Some even argued in terms of possible increases in juvenile delinquency that the spread of comics might result in. There was, however, nothing permissive about the legislation. Its single aim was the censorship of a certain genre of pictorial publication that had hitherto been freely published. It also resurrected the 'deprave and corrupt' definition of obscenity that reformers such as the Society of Authors had been campaigning to replace.

The passing of this Act heralded the end of the 'panic' over horror comics and there has never, in fact, been a prosecution under the Act. Was it, then, entirely successful, or was it as The Times labelled it at the time, 'the Wrong Measure'? [43]. Given that the comics did not disappear overnight, it would seem that the latter was closer to the mark.

The Society of Authors continued to press for reforms of the law of obscenity and, later on in 1955, Roy Jenkins reintroduced the Bill under the Ballot System. He was, however, too far down in the Ballot to make any impact, and the Bill again failed, only to reappear in the next session under the wing of Viscount Lambton, who had been similarly successful in the Ballot. The Government's attitude to the Bill was that, as a piece of legislation, it would be unworkable, and so, under pressure, it referred it to a Select Committee [44]. The Committee took evidence from The Society of Authors, the Public Morality Council, the British Federation of Master Printers and 2

authors, T S Eliot and E M Forster, as well as from the usual official channels (Home Secretary, DPP, Customs and Excise, Chief Police Officers). In fact, so much evidence, and therefore time, was taken, that the Committee failed to complete its enquiries by the end of the session. In the next session, the work of the Committee continued and they reported early in 1958.

In his evidence to the Committee, the Home Secretary outlined the official position:

It is the accepted function of government to suppress pornography.[45]

and indeed, this position was to play a significant part in the formulation of the report. The recommendations were divided into 2 parts, the first designed to bring greater certainty to the law of obscene publications, and the second to strengthen the powers for the suppression of pornography. In fact, from the beginning, the Committee had had impressed upon them the existence of a 'considerable and lucrative' pornography trade in Britain, and they resolved that the control of this should be one of their main objectives.

In their recommendations, the Committee made it clear that provision should be made for the defence of literary or artistic merit, and that the explanation of the law contained in R v Secker should be used to define the class of persons liable to be depraved and corrupted. The recommendations also gave the relevant authorities increased powers to search, seize and, if necessary, destroy potentially obscene material, with the proviso that any proceeding being initiated should have the prior consent of the DPP. In defining the test of obscenity as

'whether the matter tends to deprave and corrupt,' the Committee were explicitly rejecting the Society of Authors' suggested extension to refer to matters 'unduly exploiting horror, cruelty or violence.'

As has already been observed, the Report of the Select Committee was based upon two lines of attack: firstly, it was intended to make the law on obscene publications clearer and more exact, and secondly, to clamp down on the hard-core pornography trade. This came out clearly in the minutes of evidence in an 'exchange' between Roy Jenkins and senior police officers [46]. Mr Jenkins pointed out the problems arising from the prosecution of what he called 'borderline-cases', - ie cases where an article's supposed obscenity was in some doubt - whilst the hard-core pornography trade, whose obscene nature was in no doubt, continued unabated. He therefore asked:

Supposing that it were possible to get more effective means of proceeding against the really filthy stuff, would it be a matter of comparative indifference to the police what happened to the borderline stuff? - Complete indifference - Even if the position in getting prosecutions was made rather more difficult? - Completely.
[47]

This view, namely that one could distinguish between pornography and literature and apply different rules to each, pervades the whole of the Report. What must be noted, therefore, is that it would be quite inappropriate to describe the measures as either 'permissive' or 'restrictive'. The Report clearly embodied two wholly different attitudes to the written word, printed picture or photograph. On the one hand, it was argued, and there was much support for the argument at the time, that 'good' or 'worthwhile' literature was being submerged under a wave of moral indignation, whilst on the other hand, purveyors of hard-core pornography, which was unjustifiably obscene,

were able to continue their trade without fear of retribution. Although these two views obviously had widespread support - for instance, Roy Jenkins, the champion of the author's cause at the time, was quite adamantly in favour of the suppression of pornography - and were later to become embodied in one piece of legislation, the 1959 Obscene Publications Act, they cannot be placed under a simplistic concept like 'permissiveness'.

That an intention to regulate as well as to licence permission was the subject of the recommendations may be seen in the debate that took place in Parliament on the 16th December 1958. Mr Peter Rawlinson had the following to say:

There is overshadowing this debate the knowledge and appreciation of the vast quantities of pornographic matter, which has been referred to already by my Right Hon Friend, which are displayed and sold and which are rightly the subject of continuous police action. Anyone who has been concerned with cases involving these books of sheer pornography would realise the great duty that rests upon the law to ensure that this filth is stamped out as quickly and efficiently as possible. [48]

Viscount Lambton, a member of the Select Committee and a supporter of the push to reform the law relating to obscene publications, summed up the debate succinctly:

I think that the real cause of this trouble and of this wave of morality is that the publication of a vast amount of genuinely obscene literature goes on throughout the length and breadth of the country, and is in no way abated. In other words, while genuine literature suffers, obscenity itself comes to very little harm. [49]

The Bill received fairly strong opposition from the government, and the whole process of trying to reform the obscenity laws was referred to by Sir Alan Herbert as being like a game of snakes and ladders

[50]. Having been to Select Committee, the Bill was due to go into Standing Committee. However, during the following weeks when the Bill's name was called, Conservative back-benchers exercised their right to stop its progress by crying 'Object!'. Sir Alan Herbert, by then with almost 5 years as Chairman of the Society of Authors' Committee on the obscenity laws under his belt, responded by announcing in a fit of pique that, if the government were not careful, he would stand as an independent candidate at the forthcoming by-election at East Harrow. Seemingly, however, the threat was enough:

But I was 68, I did not really for my own sake want to go back to the Commons, and I had no desire to damage the Conservatives. So, privately, I let them know that if the obstruction to the Bill was ended I would withdraw from the by-election... It worked ... When Parliament met again after the Christmas recess no Hon. Member cried 'Object!' and the Bill at last received a Second Reading 'on the nod', without a word. [51]

There was still some wrangling to be done over amendments, but at last, some changes were to be made. The Obscene Publications Act became law on August 29, 1959.

In discussing the unfolding of the obscene publications debate, it has been suggested that there were dual tendencies in public feeling towards literature and the law at this time. Before discussing the new machinery itself, this previous view may be reinforced with a further thought from Sir Alan Herbert, who is here discussing the passage of the Bill through Parliament after its second reading:

Thereafter the Law Officers of the Crown more or less took the Bill over - for the worse we thought. They were not so much interested as we were in protecting the genuine 'respectable author': they were hotfoot after the 'straight' pornographer (the Soho style) and we were not highly excited about that.

So it was an uneasy collaboration... The Bill - a Bill - became law in the summer of 1959. The sad thing was that after all this effort we were not wildly keen about it. [52]

One must be careful not to underestimate the strength of the anti-pornography lobby in the formulation of the final Act. There is a tendency for the new aspects of the law (those designed to protect genuine literature) to be emphasised simply because they were an innovation, yet, as Sir Alan Herbert points out, the new law was by no means ideal as far as those involved in the Society of Authors' Committee were concerned. Indeed, they felt they had conceded rather a lot.

The Obscene Publications Act, 1959

The events leading up to the passing of the new legislation have been discussed. Now, by looking at the finished article, just what types of concessions 'Roy Jenkins et al' had to make to those whose primary aim was the restriction of the pornography trade can be assessed. The preamble to the Act encapsulates its dual purpose:

An Act to amend the law relating to the publication of obscene matter; to provide for the protection of literature, and to strengthen the law concerning pornography.

As has already been pointed out, the law set out to replace, among other things, the common law offence of publishing an obscene libel. However, as will become clear below (*Shaw v DPP*, *R v Anderson* etc), this did not mean that as far as the censorship of literature was concerned, common law was no longer of significance.

The new legislation included a definition of obscenity that was primarily based upon Chief Justice Cockburn's ruling in the *Hicklin* case [53]. Section 1 - (1) contains the full statutory definition:

For the purposes of this Act an article shall be deemed to be obscene if its effect or (where the article comprises two or more distinct items) effect of any one of its items is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

The definition introduced the idea of 'a target audience' [54] whereby the circumstances under which the material was seized would have to be considered, eg both the location of a shop or cinema and the potential custom would have to be taken into account. As far as 'Jenkins et al'

were concerned, the value of this point is, as was pointed out by Justice Stable, that of not making our literary standards conform to "the level of something that is suitable for the decently brought up young female aged 14" [55].

What the Act did not spell out was how many people out of the complete audience of a particular article had to be 'depraved and corrupted' as a result of this contact. How many must be subject to ill effects before the article may be declared obscene? A possible answer to this question will emerge when the prosecution of Calder and Boyars in 1967/8 is considered.

The definition of obscenity included in the Act also makes it necessary to consider articles as a whole, to guard against the extraction of the more 'purple' passages out of context, ie a book could not be judged to be obscene just because certain sections of it were obscene. Lastly, contained within section one is a definition of what is considered to be the act of publication. The Solicitor-General had, during the Report stage in the Commons, tried to widen the definition by adding the words 'gives' and 'lends' to the already existing phrase; 'distributes, circulates, sells, lets on hire', as well as extending the Bill to cover films and records. This was, however, rejected by the Commons, only to be resurrected in the Lords. There, it was guided through by Lord Birkett, and the 'gives and lends' clause was accepted, as was the inclusion of films and records, although cinemas, radio and television were specifically excluded. The act of publishing an article therefore became the act of a person who:

(a) distributes, circulates, sells, lets on hire, gives or lends it, or who offers it for sale or for letting on hire; or (b) in the case of an article containing or embodying matter to be looked at or a record, shows, plays or projects it.

The actual possession of an obscene article is not an offence under the Act, even though the act of publication does not require any proof of commercial gain by the publisher.

The main push for reform of the law had been by people such as Roy Jenkins and the Society of Authors whose wish it was to protect 'worthwhile' literature from being branded as pornography. The way they felt this could be achieved was by admitting evidence from experts as to the merits of particular articles. However, rather than including this in section 1 with the definition of obscenity, it was included as a completely separate section of the Act, section 4, which reads as follows:

4. - (1) A person shall not be convicted of an offence against section 2 of this Act, and an order for forfeiture shall not be made under the foregoing section, if it is proved that publication of the article in question is justified as being for the public good on the ground that it is in the interests of science, literature, art or learning, or of other objects of general concern.

As will become clear in due course, the fact that this defence was not open to those prosecuted under section 3 was to be a source of controversy. This, then, was what Jenkins et al had been battling for. Yet not even this was gained without giving up certain other provisions that they felt were necessary. During the report stage, in order to succeed with the 'defence of public good', they had to relinquish the provision which would have required the DPP to be responsible for all cases brought under the Act. [56] Norman St John

Stevas emphasised what he saw as the importance of the DPP's involvement:

Uniformity in administering the law is ensured by making all proceedings subject to the consent of the DPP. At present the police are bound to consult the director before they bring criminal proceedings but they are not obliged to listen to his advice. Furthermore, there is no obligation to even consult him when the 1857 procedure is used. Private persons are free to bring prosecutions and in the past this power has been abused... The Bill [57] ensures that such abuses shall not occur in the future. [58]

This, then, was the 1959 Obscene Publications Act, not perhaps what some had envisaged, but rather a product of 5 years' sparring between groups with almost diametrically opposed interests. Mrs Whitehouse, however, was in no doubt as to the purpose of the Act:

Roy Jenkins' legislation (sic), the Obscene Publications Acts of 1959 (+1964), set out - it really did:- to punish anyone who publishes an obscene article whether for gain or not. [59]

Indeed, many proposals put forward by the Select Committee for strengthening the powers of the police were accepted. Evidence of sale was not necessary. The power to search premises, vehicles, books, records to do with the business was permitted, and the power to order seizure and destruction was retained. This led A P Herbert to comment that, even though the five-year fight he had been engaged in had not been in vain and even though the Act contained many improvements, it was still fundamentally at fault [60]. The question now to be considered is how did the new legislation work in practice?

Lady Chatterley's Lover

...the trial of Lady Chatterley's Lover - the event which more than any other had outwardly heralded the approach of the sexually permissive society. [61]

Of all the books that have been prosecuted for obscenity or similar offences in Britain, the one that has gained the most notoriety is D H Lawrence's, Lady Chatterley's Lover. Without doubt, one of the main reasons for this is that it was the first work prosecuted under the new legislation, ie it was the first work that could have been published, even if it had been found to be obscene, if it could have been shown that its publication was for the public good under section 4 of the 1959 Act. Mrs Whitehouse has described this clause as having both "breached the dyke" and "opened the floodgates to obscenity" [62].

Lady Chatterley's Lover itself had a fairly notorious history. It was first published from Florence in 1928, but was confiscated by both the American and British customs very quickly. Pirated editions were rife and expurgated editions poor. The occasional copies that were brought before the courts were always found to be obscene. Even an expurgated version was brought to trial in 1953.

The introduction of the new Act encouraged Penguin Books to attempt to publish the book in its unexpurgated form. They informed the police and the DPP of their intention, and postponed general publication until after the issue had been settled. On August 19, 1960, a summons was applied for on behalf of the DPP under the 1959 Act [63]. The

company (for it was only Penguin Books that were to be prosecuted not its individual directors as well, as is often the case) elected for trial by jury. The decision to prosecute was by no means unanimously accepted as a wise one. The Guardian felt that:

... there should be no great difficulty in showing that an important work by a major English novelist is a work of literature which ought to be published in the public interest. [64]

The Daily Telegraph, under the heading 'A Strange Choice', was more concerned with the effects of the prosecution:

Many people who have never heard of it, and who would never have dreamed of reading it, will learn of its possibilities and will be attracted to it for the worst possible reasons. That they will be disappointed and probably disgusted if they pursue their researches so far as to actually read the book is beside the point. Surely the police would be better employed in what a previous Commissioner described as their main task in this field: "dealing with the very large quantity of absolutely filthy pictorial and written publications which no sane person could defend as having any artistic or literary merit, whatsoever". However repugnant, Lady Chatterley's Lover does not fall into this class. [65]

The News Chronicle summed up what seemed to be the general air:

Let Lady Chatterley lie among the other paperbacks as a minor work of pornography. [66]

Roy Jenkins, the sponsor of the 1959 Act, was also less than happy about the decision to prosecute. He suggested that discussions had taken place in which it had been decided that new legislation should be introduced that gave the police stronger powers to deal with the real pornography trade, whilst giving security to works of literary merit. That this was understood, he says, was indicated in the conversation previously quoted between the Metropolitan Police Commissioner and himself. [67]

The trial began on October 20, 1960, at the Central Criminal Court before Mr Justice Byrne. Penguin Books were charged under Section 2 of the Obscene Publications Act, 1959, with publishing an obscene article, to which they pleaded 'not guilty'. Appearing for the prosecution were Mr's Griffith-Jones and Morton, and for the defence Gerald Gardiner Q.C and Mr's Hutchinson and Du Cann.

Mr Griffith-Jones opened for the prosecution. His main lines of argument were that there were 12 or 13 explicit descriptions of sexual intercourse in the book which varied only in their time and location, and that the emphasis was always on pleasure:

The curtain is never drawn. One follows them not only into the bedroom, but into the bed, and one remains with them there... the only variations, in effect between all 13 occasions are the time and locus in quo, the place where it happened... The emphasis is always on the pleasure, the satisfaction and the sensuality of the episode. [68]

Sex, he suggested, was dragged in at every conceivable opportunity. Moreover, the plot was not much more than padding between these episodes. His final bone of contention was the frequency of four-letter words and 'bawdy conversation' to be found in the text:

Even a description of the girl's father, a Royal Academician, has to introduce a description of his legs and loins; and members of the jury... not only that type of background, but words, no doubt they will be said to be good old Anglo-Saxon four-letter words, and no doubt they are - appear again and again... The word 'fuck' or 'fucking' occurs no less than 30 times, 'cunt' 14 times, 'balls' 13 times; - 'shit' and 'arse' 6 times apiece - ... 'cock' 4 times, 'piss' 3 times and so on. Members of the jury it is against that background... that you have to view those passages. [69]

After this, Mr Gardiner made his opening speech for the defence. He explained the law, saying that the book must be seen as a whole, and

for it to be declared obscene, its overall tendency must be to deprave and corrupt those who are likely to read it. Central to the defence case was the assertion that Lawrence was a strong supporter of marriage. It is interesting that, at what is supposed to have been the dawn of the 'permissive age', this sort of justification should have been used. Speaking to the jury, Gardiner said:

You will observe that he (Lawrence) is clearly a very strong supporter of marriage - I mean except in those cases where marriage is obviously perfectly hopeless and for which the law allows divorce. It is quite plain, in my submission, from the whole of this book that the author is pointing out that promiscuity yields no satisfaction to anyone and that the only right relationship is one between two people in love which is intended to be a permanent one. [70]

As has been argued above, many of the debates surrounding permissiveness were centrally focussed on the family. Perceived moral decline was seen as hitting at this, the supposed heart, of British society. Thus the prosecution case (and much of the response by the defence) was built around notions of infidelity, adultery and the sanctity of marriage. Bernard Levin even goes as far as to argue that, after a particularly torrid time cross-examining one of the defence witnesses, Mr Griffith-Jones actually gave up attempting to show that the book was obscene, and the trial ceased

..to be a trial of Penguin Books for publishing an obscene work, or even of D.H. Lawrence for writing one. It became instead a case against Constance Chatterley for adultery, and the jury was invited to condemn her for it. [71]

Mr Griffith-Jones attacked the book on these terms, and effectively 'set the agenda' for the trial. That he was able to do so tells us much about the period in which the trial took place.

The defence case rested largely on Section 4 of the 1959 Act, and in all, they called 35 witnesses, although this was apparently only half the number that were available. Those who were called included: the Bishop of Woolwich; Richard Hoggart; E M Forster; Roy Jenkins MP; Raymond Williams; Norman St John-Stevas; and C Day Lewis.[72] The questions asked of the witnesses by the defence were along the following lines:

to Mr Richard Hoggart:

In your view is there anything more in this book than, at the end, two people finding a state of satisfactory sexual relationship? [73]

to Mr Raymond Williams:

What do you say about Lady Chatterley's Lover so far as its literary merits are concerned? [74]

to Mr Cecil Day Lewis:

Does the fact that the heroine of a book or novel is an adultress mean that the author is extolling adultery? [75]

The object of the defence seemed to be to show the standing of Lawrence as an author and his intentions in writing the novel. The prosecution called into question these intentions, suggesting instead that promiscuity and adultery were put on a pedestal by the author. Mr Griffith-Jones' line of questioning was as follows:

to Mr Graham Hough:

Do you think that this book accurately depicts our society, or part of our society in 1928? [76]

Again to Mr Hough, having found what he felt was a misquotation by the author:

Do you not think that in a work of high literary merit, if he is going to quote from the 24th Psalm, he might take the trouble to to look it up? [77]

to Jean Bennett:

Do you really think that the average reader is going to see anything in this book about marriage other than the picture of the wife going and having adulterous sexual intercourse, first with a guest in the house, and then with her husband's keeper? [78]

By no means all the witnesses were cross-examined by the prosecution. Nor did the latter produce any witnesses of their own. There was some discussion in the media over the role of counsel, particularly over the part that personal prejudice might play in the final outcome.

Bernard Levin wrote the following criticism of Mervyn Griffith-Jones:

He felt deeply moved, not by the lawyer's indignation assumed for the sake of his brief, but by a perfectly genuine revulsion from what he regarded as an obscene book with no redeeming qualities. This feeling of his - and it is clear that the Judge, with equal sincerity, shared it - stemmed not from wilfulness, but from an inability to see in the book what others of all levels of education could see. [79]

As was to happen in later trials, the Judge in this case made some derisory comments about the role of experts:

As we all know, in these days the world seems to be full of experts. There is not a subject you can think of where there is not to be found an expert who will be able, or says he will be able to deal with the situation; but our criminal law in this country is based upon the view that a jury takes of the facts, and not upon the view that experts may have [80]

The rest of Mr Justice Byrne's summing up was concerned with points of law. There were, he said, two limbs of the case to be considered which could not be considered at once. Firstly, they had to consider whether or not the prosecution had shown that the book was - beyond all reasonable doubt - obscene, and that if this was not the case, then there should be an immediate acquittal. If it was considered to be obscene, then they must go on to consider the second limb of the case, in which they must keep the following question in their minds:

"have the defendants established the probability that the merits of the book as a novel are so high, that they outbalance the obscenity, so that its publication is for the public good?"[81], the burden of proof being with the defendants.

Thus after 5 days, it now being 2 November, the jury finally retired. They returned 3 hours later with a verdict of 'not guilty'. Mr Gerald Gardiner applied to the Judge on behalf of Penguin Books for costs, but was turned down.

Five legal rulings were made during the trial. Firstly, it was not open to the defence to call evidence to the effect that all an author's works, including the book at issue, were on sale in all other civilized countries. Secondly, the words 'other merits' in section 4(2) of the 1959 Act included ethical merits. Thirdly, it was not open to the defence to prove no intention to deprave and corrupt. Fourthly, the literary merits or demerits of an author's other books could be introduced, but that this comparison should not extend to the degree of obscenity of other books that had not been prosecuted, and lastly, publication for the public good was a question for the jury and not to be answered by expert witnesses.[82]

Although the trial was over, the debate was not. Press response was generally one of polite approval, although The Times seemed less sure that the verdict was the correct one:

Now that this novel can go into the hands of ..every man, woman, adolescent and child with a jury's blessing, is it possible to be sure it will have no harmful effect on morals? ... Yesterday's verdict is a challenge to society

to resist the changes in its manners and conduct that may flow from it. It should not be taken as an invitation to succumb. [83]

The fact that the Bishop of Woolwich had given evidence in the trial to the effect that the book stressed 'the real value and integrity of personal relations' also caused a stir. The Archbishop of Canterbury said the Bishop was:

mistaken to think that he could take part in this trial without becoming a stumbling-block and a cause of offence to many Christians. [84]

In a sermon at Manchester Cathedral, Canon Ronald Preston defended the Bishop of Woolwich saying:

Had I given evidence it would have been very much along the lines of the Bishop's... It was unfortunate that the case was ever brought. It would seem obvious that the terms of the Act of 1959 were intended to allow publication of such a book [85]

This was still not the end. Many libraries and bookshops decided not to stock or sell the book, [86] and two newspapers, The Guardian and The Observer, were both censured by the Press Council for printing a four-letter word that had been used in the trial. The overall effect was one of huge publicity for the book, enabling Penguin to gross over 4 million copies.

Not content with the verdict, Mr Ray Mawby, Conservative MP for Totnes, put down an amendment to the Queen's Speech regretting that the legislative programme contained no proposal to repeal the 1959 Act, "which has had such dire consequences" [87] and sought to introduce a Private Members Bill. The verdict was also hotly disputed

in the House of Lords, with Lord Teviot and the Earl of Craven criticizing, and Lord Hailsham defending.

The old adage, 'you can't please everyone all of the time', certainly applies to the verdict in this case. Responses to it, as has been shown, ranged from the cautiously critical Times editorial and the overtly hostile, Ray Mawby MP, to those like A P Herbert who felt that the verdict was a fine illustration of the intentions of the legislation, the protection of literature. There are those, however, like Roy Jenkins, who do not fit into either of these categories, in that he felt that the whole prosecution should never have arisen and was breaking an agreement between himself and the Commissioner of Police on the workings of the Act.[88] Mrs Whitehouse on the other hand felt that the result had established "a major bridgehead for pornographers".[89] No doubt one of the people who would have fallen within Mrs Whitehouse's definition of a 'pornographer' was Frederick Shaw who was on trial at roughly the same time as 'Lady Chatterley'. The result of his case is a good illustration of the complexity of the changes that were taking place.

The Ladies Directory

In 1960, a 28 page booklet was published, most of which contained advertisements for prostitutes, including their addresses and telephone numbers as well as an indication of the types of services they provided. The publisher, Frederick Shaw, openly admitted that the purpose of the booklet was to assist prostitutes to go about their trade since they were no longer permitted to solicit in the street as a result of the Street Offences Act, 1959. The idea of a prostitutes' 'Who's Who', was in no sense a new one. The Ladies Directory was described by Geoffrey Robertson as:

a pallid imitation of the Exact description of the most celebrated Ladies of Pleasure', published in the Eighteenth century. [90]

Nor were these types of advertisement unforeseen. In fact, the Wolfenden Report had argued that prostitutes would ply their trade by advertising in newsagents' windows and the like, and that this was an acceptable price to pay for removing the problem from the streets.[91] Nor had Shaw attempted to hide the purpose of his magazine. He had, in the previous October, taken a copy of it to Scotland Yard and to the Director of Public Prosecutions, asking if it was alright for him to publish. He was told that they were unable to advise him.[92]

In August 1960, he was committed for trial at the Central Criminal Court, charged with:

- (1) conspiracy to corrupt public morals, in that he conspired with the advertisers and other persons by means of the Ladies' Directory, and the advertisements, to debauch and corrupt the morals of youth, and other subjects of the Queen;

- (2) living on the earnings of prostitution, contrary to Section 30 of the Sexual Offences Act, 1956, and;
- (3) publishing an obscene article contrary to Section 2 of the Obscene Publications Act, 1959.

During the trial, prostitutes said that they had paid from 2 to 25 guineas for advertisements and that the latter were an exceptionally good way of bringing clients in.[93] In defence, Mr Anthony Babington said that Shaw "took a chance. He believed he was keeping inside the law, albeit very narrowly." He also said that Shaw had decided to discontinue the directory, had sacked his staff, and broken up the photographic blocks.[94]

The jury were out for 90 minutes, but eventually found Shaw guilty on all 3 counts. Judge Maxwell Turner said to Shaw that:

To indulge in perversions of the type advertised in your directory is a serious matter which of necessity has grave public consequences. It may be, I know not, that you did not realise how grave. But it is clear these directories encouraged both prostitutes and the practices advertised. You were clearly enriching yourself at the expense of public morals [95]

Shaw was sent to prison for 9 months, but he appealed on the grounds that there was no such offence in common law as the conspiracy that was alleged and that the conspiracy charge was barred by section 2(4) of the Obscene Publications Act, 1959. He also argued that he had not received any of the prostitutes' earnings, simply the profits from the sales of the magazine. [96] Although no reasons were given for its decision, the Court dismissed the Appeal, but leave to appeal to the House of Lords was granted on the counts of conspiracy and living on the earnings of prostitution, though not on publishing an obscene article.[97] Again in the Lords it was argued that new offences relating to public morals could not be created by the Courts. In the

House of Lords, Viscount Simonds stood firm:

I entertain no doubt that there remains in the courts a residual power to enforce the supreme and fundamental purpose of the law, to conserve not only the safety and order, but also the moral welfare of the state, and that it is their duty to guard it against attacks which may be the more insidious because they are novel and unprepared for... It matters little what label is given to the offending act... To one of your Lordships it may appear an affront to public decency, to another it will seem a corruption of public morals. Yet others may deem it a public mischief. I now assert that there is a residual power, where no statute has yet intervened to supersede the common law, to superintend those offences which are prejudicial to the public welfare (my emphasis)[98]

This is a particularly important judgement and one that is worth commenting upon at length. Within this excerpt from the House of Lords judgement there are a number of phrases, eg 'conserve...safety and order, but also the moral welfare of the state', 'superintend those offences which are prejudicial to the public welfare', which appear to reflect the role of the law as set out by Lord Devlin. There is in this judgement and, perhaps more importantly in the charges brought in the case, no mention of specific harms to individuals, but rather a general threat to the nation's morals. The reason that the courts must have this residual power to enforce morals, it was argued, is so that there will remain a method of dealing with all the "ways in which the wickedness of men may disrupt society" [99] The implications of this are not a great deal removed from what Hart described as Devlin's 'disintegration thesis'.

From a legal point of view, the judgement was contentious. One of the Judges, Lord Reid, dissented, and in doing so commented:

Where Parliament fears to tread, it is not for the courts to rush in. [100]

The major problem with the law of conspiracy is that it is uncertain. That is, one cannot be certain that one is breaking such a law until one is found guilty of having done so. This was certainly the case for Shaw who had attempted to get some advice on the legality of his operation, failed, and was later convicted. When conspiracy law reform was considered by the Law Commission in the early 1970s, it was recommended that all conspiracies to commit acts that were unlawful or immoral, but not criminal, should be abolished. Conspiracy to corrupt public morals is a particularly tricky area for it is based on the assumption that there exists a basic moral consensus in society, just as is Devlin's view of the role of the criminal law in relation to morals. Robertson goes on to suggest:

...this assumed moral consensus is further assumed by the conspiracy law to be so vulnerable that a single publication is capable of jeopardising it. It is not illegal to take advantage of a prostitute's services, but to facilitate this, to help short-cut the sordid and sometimes dangerous process of tramping Soho by publishing a prostitute's telephone number, is a serious crime.[101]

As far as the question of the implementation of the law is concerned, particularly in the light of the supposedly 'permissive' social and moral context in which this took place, one is forced to ask why the newly passed Obscene Publications Act 1959 was not used? O'Higgins suggests that:

...the answer is probably that it (was) done in order to deprive the accused of the defence to which they would, under the Obscene Publications Act, (have been) entitled. [102]

This was not the only occasion on which the charge 'conspiracy to corrupt public morals' was used, and this general argument is one that will be returned to below.

What then was the public response to the verdict in the Shaw case? The debate that ensued in the media and elsewhere did not centre around the question of Shaw's conviction, but rather on the nature of the case itself. The Economist suggested:

The decision in the House of Lords in the case of the Ladies' Directory, has disturbing implications. No sympathy need be wasted on the convicted Mr Shaw - either on the pseudo-liberal argument that this enterprising scoundrel provided a dubious public service... or on the irrelevant historical ground that there is a long if unrespectable tradition behind this publication. [103]

Rather the concern was with the novel interpretation of the law that had been used in the case and with how it would affect serious authors:

An essential principle of English criminal law is that crimes should be closely and narrowly defined. A conspiracy to corrupt public morals is so loosely phrased that it virtually gives the Judges 'carte blanche' to punish whatever at a particular time happens to arouse their moral indignation.[104]

If the criminal law is to be just, it is necessary that it be known and certain. Their Lordships have exposed a vast field in which it will be obscure and arbitrary.[105]

The decision provoked widespread and often angry criticism.[106]

The criticisms of the law aroused by the Shaw case were compounded by the way in which the next case of importance was brought. Both, in fact, became talking points in the debates over the 1964 Act and the ways in which prosecuting authorities and members of the public were able to utilize certain sections of the law to their advantage. The next major obscenity trial was the prosecution of John Cleland's Fanny Hill.

Fanny Hill

Although the book is commonly known as Fanny Hill, its full title is Memoirs of a Woman of Pleasure. It was first published in 1749 (although it has been suggested that there were earlier editions) [107]. The author was John Cleland, who wrote the book whilst in debtor's prison. He used this as an excuse for his work when summoned to appear before the Privy Council, it being, he said:

the necessity of my present low abject position, that
of a writer for bread.[108]

and he sold the copyright to a London bookseller for 20 guineas. Hyde suggests that many attempts were made to suppress the book during its long history, and yet it was 215 years before legal proceedings took place. Late in 1963, the police seized copies of the book in London and Manchester, and on 7 November successfully applied 'for process' on the instructions of the Director of Public Prosecutions at Bow Street magistrates' court.[109] This was effectively an injunction against the book pending the outcome of legal proceedings.

Consequently, a summons was served on Mr Ralph Gold, a director of G Gold and Sons, in respect of 171 copies of a paperback edition of the book published by Mayflower Books Ltd at 3s 6d, and seized by the police in November 1963 from The Magic Shop, Tottenham Court Road. The summons issued under Section 3 of the Obscene Publications Act, 1959, called on the booksellers "to show cause why the articles or any of them should not be forfeited".

The publishers attempted to persuade the Director of Public Prosecutions to proceed against them, under Section 2 of the 1959 Act, as publishers rather than as retailers, which would thus allow them a trial by jury, rather than before a single magistrate. This was refused on the grounds that:

... your clients have acted throughout with a proper sense of responsibility, and took immediate steps on being informed that search warrants were issued to stop any sales to the public, that it was decided that the prosecution would be oppressive in the circumstances. [110]

In discussing the importance of this prosecution for a 'history' of obscenity, greater attention will be paid to the debates surrounding the course of events rather than to the events themselves. Given this, it is only necessary to provide a sketch of the trial. Proceedings were opened on January 24, 1964. Although they only lasted four days, they did not close until February 10.

Mr Mervyn Griffith-Jones, Senior Treasury Council, appeared for the Director of Public Prosecutions. As has begun to emerge already, he appeared in many of the obscenity trials of the period, as well as the trial of Stephen Ward after the Profumo Affair. He was Eton and Cambridge educated, and was to become a Judge later in his career. He was described by the journalist, Ludovic Kennedy, as

...a good-looking man in a chiselled square sort of way. Square is a word that suits him. He is so ultra orthodox that some aspects of modern life seem to have escaped him altogether [111]

Mr Robin Simpson appeared for G Gold and Sons Ltd, and Mr Richard Du Cann and Mr Jeremy Hutchinson for Mayflower Books Ltd. The prosecution called seven witnesses to testify as to the literary and

other merits of the book.[109] In order to try and undermine this evidence, the prosecution seized quite legitimately upon the ambiguity of the word 'publication' in the Obscene Publications Act 1959, eg did it mean publication in a limited sense as defined in Section 1 (those who are likely to read, see or hear it) or rather, publication to the world at large? In the narrower sense, Mr Quennell was forced to admit that the bookshop from which the books had been seized "would not be the haunt of people interested in literature." [113] In summing-up for the defence, Mr Jeremy Hutchinson QC broached the problem of bias that he felt was bound to be part of a hearing in which the presiding Magistrate was the same person who had inspected the material and issued the summons in the first place:

Inevitably, you must have come into this court, being a human being, with some view about the book, before you had heard what the evidence would be. That must have made your position much more difficult ... it is no disrespect to you that we asked for a trial by jury. I am sure that personal tastes which you have to try to dismiss from your mind are bound to creep in with the greatest care that you exercise. I am sure that you would have welcomed in trying this matter the views of other people, other minds, and perhaps persons of the other sex, to assist you to come to a just conclusion. [114]

In the event, after a four-day hearing it took the Magistrate, Sir Robert Blundell, only two minutes to decide on his verdict. He said:

The onus is on the defendants to establish their case on the balance of probabilities. I have come to my decision on what I have heard in the witness box and on such exhibits as I have seen. Mr Hutchinson has said that I must have regard to a true sense of realities. Doing the best that I can in the circumstances I have no hesitation in saying that the order should be made. [115]

The publishers decided against an appeal on the grounds that it would be open to the same objections as before.

Rather than the verdict being subject to specific criticism, it was the procedure by which it was reached that came under fire. The decision to prosecute under Section 3 rather than under Section 2 was widely criticised on the grounds that it denied the defendant the right to a trial by jury. It was felt that in a case involving a decision on the balance between 'obscenity' and 'public good' "the unanimous view of twelve ordinary citizens is to be preferred to the decision of a single judge or magistrate".[116] Furthermore, forfeiture under Section 3 is also inconclusive in that it only applies to such copies of a book as are actually seized.

Perhaps the most influential critic of the proceedings was Roy Jenkins who had been a principal driving force behind the 1959 Obscene Publications Act, and who now suggested that a simple decision by the Director of Public Prosecutions or the Attorney General (to prosecute under Section 2) would have allowed for a continuous trial in suitable surroundings. However, the result was:

.. an unsatisfactory trial, in an inappropriate court, with an inconclusive verdict. [117]

The only way to resolve this problem in the future was, he said, for the Attorney-General to announce that, whenever the defence of literary merit was to be raised, he would allow a trial by Judge and jury. In fact, during a debate on the Obscene Publications Bill 1964, Roy Jenkins moved an amendment encapsulating this very idea. An assurance to this end,

If the prosecuting authority has evidence of a deliberate breach of the law, or of a breach of the law and a determination to persist in that breach, it will ordinarily proceed by way of prosecution rather than forfeiture. [118]

was given by the Solicitor-General, Sir Peter Rawlinson, on behalf of the Attorney-General, and the amendment was promptly withdrawn. Robertson suggests that both sides of the House understood the assurance to mean that the right to a trial by jury was ensured,[119] and confidence was expressed "that any Government of the day will honour it."[120] However, it would seem that the assurance has in later years not been honoured.[121] Mr Jenkins was himself criticised in the press for failing to foresee the obvious. R A Cline writing in The Spectator, suggested that it was not an 'abuse of power' that was being witnessed, simply the workings of poor legislation;

If a statute gives a choice to a prosecution, the prosecution has a duty to choose the procedure most likely to succeed. [122]

The Sunday Times pointed out that the Director of Public Prosecutions could have ignored the Obscene Publications Act altogether by invoking the common law offence of conspiracy to corrupt public morals as had been used in the 'Shaw' case.[123] Although this option was not taken up, it would seem that the preference for Section 3 of the 1959 Act, involved the same type of strategy as recourse to the common law.[124]

There were those who defended the prosecution, though, and defended it vigorously. Peregrine Worsthorne argued that the Fanny Hill prosecution (and other similar cases) was important because the Church was a declining moral force in modern Britain which therefore placed greater responsibility for the nation's moral welfare on the State:

That is why such cases as the Fanny Hill prosecution are so important, too important perhaps to be left to juries who may be unduly influenced by the dazzlingly superficial comments of the literary mandarins. For it is the decisions taken in cases such as this that now reflect society's attitude to sex, much more effectively, than do the rulings of Convocation or the precepts of the

pulpit. [125]

He backs up this argument with two further comments on then contemporary morality:

I cannot see how authorisation of the cheap circulation of such a book could fail to mark a profoundly different attitude to sex than has hitherto been regarded as compatible with the kind of society which Western civilization has evolved. [126]

and:

.. it would surely be odd for a society pledged to monogamous marriage to allow any citizen with a few shillings in his pocket to buy Fanny Hill. [127]

Worsthorne's argument here is similar to the now famous statement made by Griffith-Jones in the Lady Chatterley's Lover case where he asked the jury if it was the sort of book they would like their wives or servants to read. The implication of Worsthorne's statement is that those who might afford hardback copies of the book would be less likely to be depraved and corrupted by reading it than the ordinary citizen.

The Obscene Publications Act, 1964

Although the new legislation had only been in force for just over four years, some of the legal decisions that had been made in that time had given rise to concern over the workings of the 1959 Act. The strains between the varied positions and views that eventually became embodied in that legislation were, seemingly, a root cause of the practical problems involved in enforcing the law in this area. Indeed, in introducing the debate over the 1964 Bill, the Under-Secretary of State for the Home Office suggested that this was one of the main reasons that the Government was introducing new provisions:

Deriving as it did from a series of compromises and in a number of cases from the introduction of amendments drafted with different, even conflicting purposes in the minds of the hon. Members who put them forward it is not surprising that the Act has shown some imperfections in practice.[128]

There were, however, considerable disagreements during the debate over just what these imperfections were. Sir Cyril Black seemed to think that the Act was, firstly, not strong enough to deal with the widespread evil of pornography, and secondly, that the defence of public good was also having deleterious effects by letting pornography pass as serious literature:

I hope that in Committee there will be an opportunity for a full consideration of Section 4 of the 1959 Act. I hope that the Section will either be repealed, or, if a case can be made out for it not being repealed 'in toto', that it will, at any rate, be amended to remove some of the evil that it has done.[129]

Mr Niall MacDermot, in his speech, suggested in fact that the problem with the Act was to all intents and purposes the other way around.

The responsible book trade has been very distressed recently by the nature of the proceedings in the case of Fanny Hill. I do not think that anyone contemplated when the 1959 Act was going through the House, that a test case for a work with serious literary pretensions would arise by way of forfeiture proceedings. [130]

Many MP's noted that they had been completely unaware that obscene publications were giving rise to any concern at all in Parliament until the Government introduced the Bill.

Looking at the Bill itself, there can be no doubt as to the intentions of the legislation. It was not to further the protection afforded to 'serious literature' but, rather, to increase powers to suppress 'pornography'. The preamble to the Act makes this quite clear:

An Act to strengthen the law for preventing the publication for gain of obscene matter and the publication of things intended for the production of obscene matter.

What, then, were the defects in the old legislation which, it was felt by supporters of the new Act, were being repaired? The problem had arisen out of three separate legal decisions. The first loophole appeared in the case of Mella V. Monahan, [131] in which a court decided that the display of priced articles in a shop was not an offer for sale, and therefore did not constitute 'publication' under the terms of the 1959 Act. The second 'problematic' decision occurred in the case of R v Clayton and Halsey. The Court of Criminal Appeal held that publication of an obscene article under Section 2 of the 1959 Act had not taken place where the act of publication (the sale) had been to two police officers who, because of their 'experience and

maturity', were not susceptible to the 'corrupting qualities' of the article. The judgement ran as follows:

The Court cannot accept the contention that a photograph may be inherently so obscene that even an experienced or scientific viewer must be susceptible to some corruption from its influence. The degree of inherent obscenity is, of course very relevant, but it must be related to the susceptibility of the viewer.[132]

The final problem arose in the case of R v Straker in which the Court decided that photographic negatives could not be forfeited under Section 3 of the 1959 Act as they themselves were not intended for publication for gain, even though prints could be immediately made from them which were. As a consequence, the law was changed to apply to:

Anything which is intended to be used, either alone or as one of a set, for the reproduction or manufacture therefrom of articles containing or embodying matter to be read, looked at or listened to, as if it were an article containing or embodying their matter so far as that matter is to be derived from it or from the set.
[133]

Thus, in the middle of the period that is usually referred to as the 'permissive age', a Bill backed by the government of the day was passed which was designed to strengthen, not relax, the law with regard to the censorship of written or pictorial material. The Bill became law without any due fuss or publicity, and it would seem from a reading of the debates that the question of obscenity was not at the forefront of the public imagination at the time:

Anyone would gather from the introduction of the Bill that pornography was really a vastly important subject and that it was a major social evil. We have only to look around us for a moment to see that it is not. There are a great many other things which are far more important. One obvious thing is the gang warfare

between Mods and Rockers at seaside resorts. It would surely be far better for the Mods and Rockers, and for the community at large if instead of breaking up Clacton and places like that, they all stay at home and read a little light pornography.[134]

In the intervening period, there had been two minor but still newsworthy trials, one in Sheffield and one in Blackburn. The trial in Sheffield was of Alexander Trocchi's, Cain's Book, published by John Calder. The book was seized along with a considerable number of others in a police raid on a bookshop. After a short trial, the book was declared obscene under section 3 of the 1959 Act and all copies in the area were confiscated and destroyed. The verdict is of no great significance, but, as John Sutherland argues:

It marked a new phase of obscenity-hunting in which the primary target would not be the work's text (for instance its incidence of four-letter words) but the lifestyle it advocated, or that was associated with its author or even its readership. If it was risking obscenity to be a junkie and a beat (the lifestyle associated with Cain's Book), it was soon going to be similarly risky to be a hippy.[135]

The second trial centred around a pamphlet called The Golden Convulvulus and described as an 'anthology of eroticism'. Two hundred copies were run off by the publisher of a small time poetry magazine, Poetmeat, called David Cunliffe. The pamphlet was intercepted by the GPO, and charges were brought under the Post Office Act, 1953 and the Obscene Publications Acts. Proceedings were held in Blackburn and, after a four day trial, the jury returned a verdict of not guilty of obscenity, but guilty of sending an indecent article through the post. Cunliffe was fined £50. Referring to the Golden Convulvulus trial, Ray Gosling asked

Yet in this case the DPP took charge and prosecuted. Why? Was he worried about the growth of little magazines? Did he think this case, miles from London, away from the literary limelight would give him a chance to prove

a point; make a legal precedent?[136]

Writing in 1982, John Sutherland suggests that the answer to all these questions is, 'yes'. Just as with the Cain's Book case, it was not the verdict but other aspects of the case that he argues are historically most important. If the attack on Cain's Book was the beginning of specific attacks on lifestyle, then that on Golden Convulvulus was the first action against the 'underground' and the lifestyle associated with it.

As has been noted, most prosecutions for 'obscenity' come about after a police raid on a bookshop. The next major prosecution, however, that of Last Exit to Brooklyn, took a rather different path. Calder and Boyars published the book on January 24 1966, and, as is usual, issued pre-publication copies, one of which was sent to the Director of Public Prosecutions whose reply to Calder and Boyars was described in the Appeal Court as 'inconclusive', and, in which he said:

If you find - as I am afraid you will - that this is a most unhelpful letter, it is not because I wish to be unhelpful but because I get no help from the Acts.
[137]

This is a prime example of the problem that publishers had complained of, ie that before the 1959 and 1964 Acts they were given little or no guidance by the law over what they might or might not publish.

Sir Charles Taylor, Conservative MP for Eastbourne, was, however, more direct. He brought the publication of the book to the notice of Parliament. He described the book as "filthy and disgusting":

It is too frightful for words and, for that reason, I will not quote from it tonight, for I would not wish

to embarrass the people in the galleries, or anyone else.
[138]

After this, Sir Elwyn Jones, the Attorney General, referred the book to the Director of Public Prosecutions, who advised against instituting proceedings. Not to be put off, however, a fellow Conservative MP, Sir Cyril Black, member for Wimbledon, inquired about the possibility of private proceedings against the book. He received a positive response and, on Thursday 28 July, he applied at Bow Street Magistrate's Court for a summons under the Obscene Publications Act for seizure of Last Exit To Brooklyn. On the 4 August, Sir Robert Blundell issued a search warrant for seizure of the book from any shop in the Bow Street area. The police, however, were unable to find a copy and Sir Cyril turned his attention to the area in which the publishers' offices were situated. He successfully applied for a search warrant from Great Marlborough Magistrates Court and copies of the book were promptly seized. On the 12 September, Marion Boyars was served with a summons to appear at that Court on the 27 October 'to show cause why the said articles or any of them seized should not be forfeited by virtue of the Obscene Publications Act of 1959, Section 3'.

There were, at the hearing, expert witnesses for the defence,[139] and unprecedentedly, for the prosecution.[140] The choice of and, stands taken by, some of the witnesses seemed to confuse many people who attended the hearing, for two of the prosecution witnesses in the Last Exit case had been defence witnesses in the Fanny Hill case, and two defence witnesses for Last Exit testified that they felt Fanny Hill was pornographic.[141] On 10 December, Mr Leo Gradwell, the Magistrate, ordered the forfeiture and destruction of the book.

However, because the case had been brought under Section 3 of the Obscene Publications Act, the decision was only binding in the district in which the Court was situated. The publishers, therefore, informed the DPP that they were going to continue to publish the book, and the Director then reversed his original decision not to prosecute and decided to institute criminal proceedings (Section 2), entitling the defendants to a trial by jury and a defence under Section 4.

The case began at the Old Bailey on 13 November 1967. By this time, the costs of defending the book were mounting up, which forced Marion Boyars and John Calder to appeal for public help, leading indirectly to the formation of the 'Defence of Literature and the Arts Society' out of the Free Art Legal Fund. Its aim was simply the defence of Last Exit but it continued to exist long after that particular case and supported many similar causes.

The jury were sent out on the first afternoon to read the book. John Calder, writing in the New Statesman[142], estimated that a good reader might get through the book in four hours, but that the average serious reader would need six or seven. When the judge called the jury back two hours later to ask how long they would need, some claimed to have already finished, whilst one commented 'you'd need an interpreter to read this'. [143] The publisher was a little worried that the book would not receive a fair hearing, and wrote to The Times on the subject:

In the new climate in which publisher and writers now find themselves, where highly complex literary concepts will be argued out in criminal courts, it is essential that the framers of the Obscene Publications Act should bring in a new provision that enables juries to be selected from those who have at least A-levels in their

education and who can show to the satisfaction of the court that they are capable of reading and understanding the book they have to judge. [144]

Section 1 of the 1959 Obscene Publications Act makes it necessary for articles (where they are not made up of two or more distinct items) to be considered as a whole. When instructing the jury on this point, the Judge said they ought to

read the book and read it as nearly as possible all the way through. I know we all do a bit of skipping and scamping, and some of us are better at it than others. [145]

The defence counsel took objection to the idea of 'skipping and scamping' whereupon the Judge recalled the jury and reinstructed them over this point of law.

The next thing that needed to be sorted out was which witnesses would testify first: defence or prosecution. The Judge ruled that the last word should be with the 'Crown':

Normally the Crown cannot know in advance upon which of the many grounds referred to in Section 4 the defendant intends to rely. If it were always for the crown to begin on this issue, there would be many cases in which ordinary caution would require a great deal of time and money to be spent in adducing evidence to meet a case which it turns out the defendants never intended to make. [146]

There were thirty defence witnesses, [147] and six prosecution witnesses [148]. All reports of the proceedings stress the courteous manner in which they were conducted. The trial came to an end on the 23 November with a verdict of 'guilty'.

Despite all the added costs, Calder and Boyars decided to appeal. They based their case on eleven points of law, and as it was to turn out, two of them were enough to ensure success. Firstly, the defence case in the original trial had been based on the argument that the horrific and frightening scenes that were portrayed in the book would, rather than encourage or incite people to commit those acts, have precisely the opposite effect, ie one of aversion. The Judge's failure to put this defence to the jury, as well as the lack of guidance in his summing-up over the defence contained in Section 4 of the 1959 Act, were the reasons that the verdict was overturned.

As has already been mentioned, one of the most contentious aspects of the case was the confusing way in which it was brought, and such were the problems caused that the Government decided to put to an end the public's right to bring prosecution in this way. They did so via Section 25 of the Criminal Justice Act 1967 which states:

A Justice of the Peace shall not issue a warrant under Section 3(1) of the Obscene Publications Act 1959 (search for and seizure of obscene articles) except on an information laid by or on behalf of the Director of Public Prosecutions or by a constable.

Last Exit was, then, in the end, able to circulate freely. So was this another victory for permissiveness? If so, it was only, as Mary Whitehouse points out, a victory by default:

... the Court of Appeal did not find, as has been so often suggested, that Last Exit was not obscene, neither did it find as defence witnesses had claimed that its publication was 'for the public good'. It decided, in fact that the Old Bailey Judge, Judge Rodgers, who had heard the case, had not properly directed the jury, and so the appeal was upheld. This was the last word, legally, on a squalidly

obscene, non-literary book'. [149]

The Arts Council Joins The Debate

It has been shown how the obscene publications legislation worked in practice, as well as the controversy it aroused all along. After the Last Exit case, pressure for reform of the law restarted, coming from a somewhat unexpected source. In June 1968, Lord Goodman, the then Chairman of the Arts Council of Great Britain, convened a conference whose task was to consider the 1959 and 1964 Acts. Twenty two organizations and well over one hundred individuals were invited, of whom ninety, representing between them twenty one organizations, finally attended. The conference resolved:

... that a Working Party be set up to investigate the working of the Obscene Publications Acts of 1959 and 1964, and other relevant Acts, with special reference to literature, drama and the visual arts, and to consider such changes including the repeal of any such Acts as in their opinion shall be expedient and to report back to this Conference with such recommendations as they deem necessary. [150]

The Working Party was chaired by John Montgomery and, in all, consisted of nineteen members. [151] Because the whole venture had come about through pressure from the National Council for Civil Liberties, it is not surprising that the Working Party had a fairly 'liberal' hue. Indeed, two of the members (John Calder and Frederick Warburg) had previously been on the receiving end of prosecutions for obscenity, one, John Mortimer QC, was to act as defence counsel in several cases, and others had acted as witnesses for the defence to testify as to the merits of certain publications against which obscenity charges had been brought. When the Working Party first met, they divided into two committees and arranged for various individuals and organizations to submit evidence. However, in doing so, it would seem they failed, in the eyes of some, to invite a sufficiently broad

range of groups to represent public opinion and thus caused others to stay away. Mrs Whitehouse suggested that, although she had at first accepted the invitation to attend, she later changed her mind when she received details of the conference and of those who would be attending and realised that it was, in her words, likely to be 'loaded':

It was interesting to see that the BBC was invited, but not the ITA; the National Council for Civil Liberties but not the police; the Albany Trust but not the BMA, who I understand were not invited to give evidence either. There was no representation of women's organizations, the Church - though the Rev David Shepherd gave evidence to the Working Party - of magistrates, and very little of the teaching profession. [152]

On closer inspection of the witnesses who were invited to give evidence, it seems unfair to suggest, as she was to claim, that their presence was simply to be used to 'bolster up the case the Working Party was clearly bent on presenting' [153], although she was undoubtedly correct to point out some of the omissions which were bound to have their effect on the final outcome.

The Report based itself upon a critique of the obscenity laws as they stood, pointing out the vagaries of the legislation and the lack of uniformity in its implementation. It pointed out that the existing laws constituted a threat to the freedoms of the private individual, and yet failed to provide any serious benefit for the public. They suggested that the problems encountered with the law stemmed from the inherent subjectivity of a concept like obscenity, and that, because of this, any plans to formulate a definition were doomed from the start. The Report therefore recommended that the Obscene Publications Acts of both 1959 and 1964 should be repealed on a trial basis for not less than five years, and not even then unless Parliament should

decide otherwise. It also recommended that the Theatres Acts, 1968, should be brought into line with these recommendations. The Report went on:

It (the Working Party) also recommends that certain other relevant Acts should be amended or repealed. Many of these have been or could be used as a basis for indirect censorship and contain words such as 'indecent' and 'profane' which are no more capable of definition than 'obscene' but which may be used to circumvent any need to establish harmful consequences. [154]

We recognise, however, that it is reasonable to protect individuals who may be affronted by offensive displays or behaviour in public places. There are various Acts dealing with this, for which we would substitute a single section so that there should be no overlapping.

We would not seek to interfere with the existing arrangements under which the British Board of Film Censors classifies films into various categories. Television is not in practice affected by the Obscenity Acts, and we are content that the BBC and ITA should be left to conduct their programmes on their own responsibility. With such regard as they see fit to pay to ascertainable public opinion. [155]

To this end, the Working Party set out a draft Bill in the appendices to the Report. As can be seen, the Society of Authors adopted (in contrast to the Longford group and the Society of Conservative Lawyers, both of which will be covered in chapter five) an essentially utilitarian approach to the role of law. The standard test of obscenity and any alternatives that the Committee thought possible were rejected on two basic grounds, both of which distinguish this approach from one which might be followed by those influenced by Lord Devlin. On the one hand, it was argued that the Obscene Publications Act 1959 "was unable to overcome the hard basic fact that no two people can be counted upon to agree what is or what is not obscene" [156]. They decisively rejected, therefore, any notion of a commonly held set of moral values or an implied moral consensus. On the other hand, the committee argued that:

It is not for the state to prohibit private citizens from choosing what they may or may not enjoy in literature or art unless there were incontrovertible evidence that the result would be injurious to society. There is no such evidence.[157]

This argument is derived from the earlier point. For if it is not to be argued that there is a commonly accepted set of moral rules in society, then it is not possible for society to be equated with its morality. Thus an article which is potentially offensive to some cannot be argued to be injurious to all. Obscenity becomes something which is merely in the eye of the beholder, and thus all that is necessary is legal protection against enforced encounters with such obscene articles. The Report stated:

We recognize, however, that it is reasonable to protect individuals who may be affronted by offensive displays or behaviour in public places. There are various Acts dealing with this and we would substitute a single section so that there should be no overlapping.[158]

By the time it was published, the nineteen sixties were drawing to a close and, for some, the implementation of the Working Party's Report would have been the final straw in what they considered to be the decade of 'permissiveness'. Responses to the Report were on the whole, unfavourable. Mrs Whitehouse, in response to letters to The Times [159] and the Guardian [160] from John Calder, Benn Levy and Jean Straker pointing out what they considered to be the importance of the Report, publicly condemned its findings as biased. Of the national newspapers, only the Guardian saw its way to favour parts of the Report, in suggesting as Marx had done, "that true censorship ... is criticism" [161]. The others were of almost one accord, the Daily Telegraph saying:

One of the really astounding things about the small group of essentially metropolitan people who have set

themselves up to be our guides in matters of taste in art, is their parochialism. The Report of the Arts Council demonstrated that the party should have worked - and thought - rather harder. [162]

Two days later, the Daily Telegraph, using an argument more generally associated with Pamela Hansford Johnson, reinforced its previous position by suggesting:

The Moors murderers read de Sade. They also committed the Moors murders. No link between these two facts, Mr Mortimer may cry: the Moors murderers were like that anyway and would have done what they did, even if their favourite reading had been Silas Marner or The Pilgrim's Progress. How can Mr Mortimer and his like be so sure? And what crimes will be on their consciences if they are wrong?[163]

The Times also came down on this side, feeling that public opinion was not ready for such a change:

There will probably never be a truly satisfactory law on obscenity. Its application will always depend to some extent upon subjective judgement, and therefore upon prevailing fashions of thought. The British public still value their own sexual privacy, and do not want it to be invaded by pornographers or exhibitionists. Madison Avenue sex is odious enough as it is, without allowing the commercial vendor of exhibitions unlimited freedom.[164]

This notion of 'its not a very good law, but its the best we've got', was reiterated in The People (despite the fact that in the very same article, [165] they referred to Mrs Whitehouse as an "interfering, intolerant busybody") in a way only such newspapers can:

The law in this case may be a bit of an ass.
But the animal serves a good purpose. [166]

The Report also had a rather rough ride during its debate in Parliament. From the Conservative side of the House, criticism came first and foremost from Sir Gerald Nabarro, a staunch supporter of 'traditional values' and an anti-pornography campaigner who described

the Report as 'revolting' [167] and went on:

It is a further slide in the disgusting mire of permissiveness, squalor and pornographic filth of recent years. [168]

Not only did he argue in the House against the Report, but he also campaigned in the country and managed to get a motion rejecting the proposals onto the books in the Commons.[169] However, if he expected much opposition in Parliament, particularly from the Government, then he had seemingly misjudged the situation. Roy Jenkins (who, given his involvement in the development of the original supposedly liberal obscenity laws, might have been expected to be favourable to the Arts Council's proposals) had left the Home Office to be replaced by James Callaghan, who, as the Sunday Times reported,[170] "had no intention of becoming known as the Pornographer Royal". In his speech in the Commons during the debate over the proposals, Mr Callaghan used the same line of argument as the one used by The Times:

I shall study the Working Party report with care but my present view is that although there may be defects in the existing law, I shall need a great deal of convincing that repeal of the obscenity laws would be preferable, and I can see no prospect of the time being made available for this purpose.[171]

There can be no doubt that, whatever changes had taken place during the previous decade, the response to the proposals of the Arts Council Working Party on the obscenity law was a thorough victory for those concerned with maintaining the status quo. It was, moreover, to a certain extent the prelude to what Mary Whitehouse has referred to as a 'backlash'[172].

This brings to a conclusion the discussion of the 1960's. What has been suggested here is that the changes in the law and practice relating to obscenity in that decade were not uniformly in one direction, ie simply permissive. Indeed, the changes embodied in the main pieces of legislation of the period, the Obscene Publications Acts of 1959 and 1964, had dual tendencies, or what Hall refers to as a 'double taxonomy', on the one hand liberalising controls over literature, whilst at the same time extending the powers to control the pornography trade. Although, as has been shown, the most famous obscenity trial of them all ended in a victory for the 'libertarians', it would be quite wrong to see this as a turning point in the implementation of obscenity laws. That is the case because the written word was by no means safe as the Ladies Directory and Fanny Hill found to their cost. The early years of the 1970s saw a concerted attack upon the underground press and, as Sutherland argues, the lifestyle (including perceived moral values, or lack of them) that went with it. It is to that decade and the mounting backlash that was generated that attention will be turned in Chapter 5.

[1] Johnson, P. Hansford. (1967) op.cit. p.17

[2] Whitehouse, M. (1977) op.cit. pp.180-1

[3] (1978) op.cit.

[4] How our Rulers Argue about Censorship, in Dhavan and Davies (eds) Censorship and Obscenity, Martin Robertson, 1978.

[5] R. vs Sedley (1663) 1. Sid. 168.

[6] R. v Hicklin (1868) L. R. 3 Q. B. 360, 27 LJMC. 89, 18 L. T. 395.

[7] (1868) L. R. 3 Q. B. 360, at. p 371.

[8] The Fruits of Philosophy

[9] Robertson, G. (1979) Obscenity Wiedenfeld and Nicolson. quotes Mr. Asquith, the future P.M., and then an eager junior prosecuting counsel, as saying that he had spent 'the best part of a fortnight in the long vacation, with scissors and a pot of paste at hand, in a diligent quest for the most objectionable passages in M.Zola's voluminous works'

[10] Havelock Ellis Sexual Inversion Random House. New York. 1936.

[11] R v Reiter (2954) 2 Q. B. 16.

[12] Galletry v Laird 1953 S. C. (J) 16; 1953 J. L. T. 67.v

[13] 1953 S. C. (J) 16, at pp. 26-7, quoted in Robertson, G. (1979) p. 68.

[14] Werner Laurie Ltd had been prosecuted 2 months previously for publishing Julia by Margot Bland, and had pleaded guilty.

[15] New Statesman, 10 July 1954.

[16] Robertson, G. (1979) op.cit.

[17] R v Secker and Warburg (1954) 2 All E. R. 683; (1954) 1 WLR 1138, at pp. 1139-1142.

[18] The Times 3 July 1954.

[19] 6 November 1954.

[20] Guardian. 18 September 1954; quoted in Street, H Freedom, The Individual and the Law, Penguin 1982 p. 122; St John-Stevas, N. Obscenity and the Law, Martin Secker and Warburg. 1956 p. 116; and Robertson, G. (1979) op. cit. p. 42.

[21] *ibid.*

[22] The Times 19 and 21 May 1954

[23] Leader 7 March 1954, quoted in St John Stevas (1956) op. cit. p. 117.

[24] "Literature and the Law" - Graham Greene; "Freedom of the Pen" - Bertrand Russell, J. B. Priestley et al.

[25] eg. New Statesman, Spectator, T.L.S etc

[26] "Literature and the Law", 5 June 1954, and continued almost every day until the 19 June 1954.

[27] see The Times, 28 October to 5 November 1954.

[28] Bertrand Russell; Harold Nicolson; Compton Mackenzie; J. B. Priestley; H. E. Bates; Somerset Maugham and Philip Gibbs.

[29] A useful list of major articles written at the time is provided by St. John Stevas, N. (1956) op. cit. p. 120.

[30] The first president of the committee was Sir Alan Herbert, the second Sir Gerald Barry. The other members were: Walter Allen; H. E. Bates; David Carver; Prof Guy Chapman; W. B. Clowes; W. A. R. Collins; Joseph Compton; Rupert Hart-Davis; C. R. Hewitt, R. Jenkins M.P; Denys Kilham Roberts; A. D. Peters; V. S. Pritchett; John Dudney; Sir Herbert Read; N. St John Stevas; W. E. Williams.

[31] The Times 3 Feb 1955.

[32] A copy of the draft Bill is contained in appendix II of St John Stevas, N.(1956) op. cit. and Crim L. R. (1955) 218.

[33] Stevas, St J. (1956) op.cit.

[34] see article by Kingsley Martin in the New Statesman 25 Sept 1985. and general discussion in Pearson, G (1984) Hooligan: A History of Respectable Fears Macmillan

[35] In Dhavan and Davies (eds) (1978) op. cit.

[36] Dr Horace King speaking on horror comics. Hansard 539 col. 915, in Davies, C. (1978) op. cit. p.29.

[37] Hansard 537 col. 1089-90.

[38] Hansard 537 col. 1122

[39] Hansard. House of Commons Official Report. 538 Nos 60-63.

[40] The Children and Young Persons (Harmful Publications) Act 1955.

[41] Barker, M (1984) A Haunt of Fears: The Strange History of the British Horror Comics Campaign Pluto.

[42] *ibid.* p.182

[43] 24 March 1955.

[44] The Committee's membership included: Sir Peter Agnew, Mr Ede; Mr Hugh Fraser; Sir Lancelot Joynson-Hicks; Mr Roy Jenkins; Mr Elwyn Jones; Viscount Lambton; Mr Nigel Nicolson; Sir Leslie Plummer; Mr Robinson; Mr Simon; Sir Spencer Summers; Mr Turton; Mr Younger.

[45] Minutes of Evidence taken before the Select Committee on The Obscene Publications Bill in session 1956-7 (HC 123).

[46] Sir John Nott-Bower KCV0 Commissioner of Police of the Metropolis; Mr T MacD Barker CBE Solicitor to the Metropolitan Police Force; and Inspector D McLeod.

[47] Minutes of evidence, p. 89 and The Spectator 26.8.60.

[48] Hansard 597 col. 1021.

[49] Hansard 597 col. 1030.

[50] The Times 3 December 1958.

[51] Sir Alan Herbert, C. H. APH; His Life and Times. Heinemann. London. 1970. pp. 213-4. For a brief account by APH, see Daily Telegraph 27.7.59.

[52] Sir Alan Herbert C. H. (1970) op. cit. p. 214.

[53] R v Hicklin (1868) LR 3 QB 360; 27 LJMC 89; 18 LT 395.

[54] Robertson, G. (1977) op. cit. p. 54

[55] R v Martin Secker and Warburg (1954); WLR 1138.

[56] Solicitor's Journal November 20, 1959.

[57] The Obscene Publications Bill, 1955.

[58] The Author, Spring 1955 p. 56.

[59] Mary Whitehouse (1977). op. cit. p. 172.

[60] Herbert, A.P. (1970). op. cit. p. 238.

[61] Booker, C (1970) op.cit. p.195

[62] Whitehouse, M. (1977). op. cit. p. 181.

[63] The Times 20.8.60.

[64] 17 August 1960

[65] 18 August 1960

[66] 8 August 1960

[67] see above, p.165

[68] C.H. Rolph (1961) The Trial of Lady Chatterley Penguin Books p.19

[69] *ibid.* p.20

[70] *ibid.* p.29

[71] Levin, B. (1970) *op.cit.* p.287

[72] A full list is included in Rolph (1961) *op.cit.*

[73] Rolph (1961) *op. cit.* p. 96.

[74] *ibid* p. 133.

[75] *ibid* p. 15

[76] *ibid* p. 49.

[77] *ibid* p. 53.

[78] *ibid* p. 64.

[79] Bernard Levin.(1970) *op.cit.* Pan Books 1970 p. 287, quoted in Robertson.
G. (1979) *op. cit.* p. 133.

[80] Rolph, C. (1961) *op. cit.* p. 226.

[81] *ibid* p. 233.

[82] R vs Penguin Books (1961) Crim. L. R. 177.

[83] The Times 3 November 1960.

[84] News of the World 6 November 1960

[85] The Times 5 November 1960

[86] The Times 4 November 1960 and 3 February 1961

[87] The Times 9 November 1960.

[88] The Spectator. 26 August 1961

[89] Whitehouse, M. (1977) op. cit. p. 182.

[90] Robertson G. (1979) op. cit. p. 213.

[91] Home Office (1959) Cmnd. 247 op.cit. para 102

[92] The Times 8 August 1960.

[93] (1962) A. C. 221.

[94] The Daily Telegraph 22 September 1960.

[95] *ibid.*

[96] The Times 14 December 1960.

[97] The Times 15 and 22 December 1960.

[98] Robertson, G. (1974) Whose Conspiracy? NCCL. p. 18.

[99] Shaw v DPP 1961 2 All E R 446 at p.452, quoted in Robertson, G (1974) op.cit. p.18

[100] *ibid*

[101] Robertson G (1974) op.cit. p.22

[102] O'Higgins, P (1972) Censorship in Britain Nelson, quoted in, Spicer, R. (1981) Conspiracy Lawrence and Wishart. p.85

[103] 13 May 1961.

[104] *ibid.*

[105] Sunday Times 7 May 1961.

- [106] A list of interesting articles is provided by Robertson, G. (1974) op.cit.
- [107] see Hyde, H. Montgomery. (1964) A History of Pornography Heinemann, London. p. 97.
- [108] Robertson, G (1979) op.cit. p.25
- [109] The Times, 8 November 1963.
- [110] Hyde, H. (1964) op. cit. p. 209.
- [111] Kennedy, L (1964) The Trial of Stephen Ward Victor Gollanz p.23
- [112] Mr Peter Quennell (author and reviewer); H Montgomery Hyde (author, barrister and MP); Karl Miller (literary editor of New Statesman); Marghanita Laski (novelist, critic); Professor Iain Watt (Professor of English); Dr Anthony Storr (psychiatrist); Robert Pitman (literary critic Sunday Express.)
- [113] Hyde,H. (1964) op. cit. p. 216
- [114] ibid. pp. 229-30, quoted also in Robertson G, (1979). op. cit. p. 97.
- [115] Daily Mail 11 February 1964.
- [116] The Guardian 11 February 1964
- [117] Roy Jenkins in The Observer 16 February 1964
- [118] Hansard 7 July 1964. Col 302.
- [119] Robertson, G. (1979) op. cit. p. 106
- [120] Hansard. 7 July 1964 col 358. (Mr Rees-Davis).
- [121] Hewitt, P The Abuse of Power (1982) p.100 Martin Robertson. Oxford, and Robertson, G. (1979). op. cit.
- [122] The Spectator 21 February 1964

[123] Sunday Times 15 December 1963.

[124] See above. p185. O'Higgins points out what he sees as the reason for the use of the common law conspiracy charge, and it is difficult to see how one could deny that this argument fits the "Fanny Hill" case.

[125] Sunday Telegraph 16 February 1964.

[126] *ibid.*

[127] *ibid.*

[128] C.M. Woodhouse Hansard vol.695 col.1143

[129] Hansard Vol 695. Cols 1164-65.

[130] Hansard Vol 695. Cols 1159.

[131] (1961) *Crim.L.R.* 175.

[132] (1963) 1. *QB.* 163; (1962) 3 *All ER* 500, quoted in Robertson, G. (1979) *op. cit.* p57

[133] (1965) *Crim L R* 239.

[134] Hansard. Vol 695 Col 1192.

[135] Sutherland, J (1982) Offensive Literature Junction Books p.46

[136] Gosling, R (1965) *The Trial* New Society 30 December p.21

[137] *R v Calder and Boyars* (1969) 1 *QB* 151 at p 165

[138] Hansard. Commons 29.6.66, 730, 1751. Also quoted in Tribe, D. (1973) Questions of Censorship. George Allen and Unwin. p 104 and The Queen 4.1.67 p.26.

[139] Marion Boyars; Dr Lindsay Neustatter; Edward Lucie-Smith; Dr Lionel Tiger; Bryan Magee; Robert Burgess; Peter Fryer; John Calder.

[140] H Montgomery Hyde; Robert Pitman; Sir Basil Blackwell; Dr Ernest Clayton; Robert Maxwell MP; Professor George Catlin; Fielden Hughes; David Holloway.

[141] Peter Fryer in the New Statesman 16 December 1966.

[142] 1 December 1967.

[143] Foreword in Last Exit to Brooklyn. Calder and Boyars. 1966. p 13.

[144] The Times 2 December 1967.

[145] Quoted in Robertson G. (1979) op. cit. p 61.

[146] R v Calder and Boyars (1969) IQB 151 at p 156.

[147] Professor Frank Kermode; Eric Moltram; A Alvarez; Professor Barbara Hardy; John Calder; Professor Dan Muller; Dr Michael Schofield; Professor Ronald Atkinson; Quentin Crewe; Marion Boyars; Jocelyn Baines; Jeffrey Simmonds; Kenneth Allsop; Anthony Storey; Martin Goff; Edward Lucie-Smith; Eric Blan; Philip French; Lyman Andrews; Professor Bernard Williams; Owen Wymark; Dr David Downes; Judith Diepe; Alan Burns; John Arden; Dr David Galloway; Professor Gorham Davis; Stuart Hood; Robert Baldick; Rev Kenneth Leach.

[148] Professor George Catlin; David Holloway; Sir Basil Blackwell; H Montgomery Hyde; Dr Dennis Leigh; Rev David Sheppard.

[149] Whitehouse, M. (1977) op. cit. p 182.

[150] The Obscenity Laws Andre Deutsch Ltd (1969) p 11.

[151] The Committee members were: Chairman: John Montgomerie. Members: Professor Frank Kermode, John Mortimer Q.C., R.G. Davis-Poynter, T.A. Joy, John Calder, Kathleen Nott, Dorothy Morland, Benn Levy, T.E. Callander, J.E. Morpurgo, Clifford Simmons, Tony Smythe, R.H. Code-Holland, F.J. Warburg, C.R. Hewitt (C.H. Rolph), Howard Loxton, Ronald Harwood, William Gaskill.

[152] The Times 1 August 1969.

[153] Tribe, R. (1973) op. cit. p 121.

[154] They cite the Vagrancy Acts of 1824 and 1838.

[155] The Obscenity Laws (1969) op. cit. p37.

[156] quoted in NCCL (1972) Against Censorship p.37

[157] The Obscenity Laws (1969) op.cit.

[158] *ibid.* p.39

[159] 21 July 1969.

[160] 19 July 1969.

[161] Guardian 16 July 1969.

[162] 16 July 1969.

[163] 18 July 1969.

[164] The Times 16 July 1969.

[165] The People "Freedom for Filth" 20 July 1969

[166] *ibid.*

[167] Daily Mirror 21 July 1969.

[168] *ibid.*

[169] Hansard 787. 24 July 1969. The motion was backed by sixty other MP's.

[170] "MP's press to kill obscenity laws" Sunday Times 6 July 1969.

[171] Hansard 787, 2109.

[172] Books and Bookmen Oct 1971, pt 1 pp 32-3.

Chapter Five. Obscenity and the Law: Backlash?

If Mrs Whitehouse is to be believed, the 1970s marked the return of controls to stem the tide of permissiveness that had allegedly gushed forward without check during the sixties. This chapter examines the usage of the obscenity laws, and the debates over censorship, in the early years of the 1970s in order to test that claim. The next few sections overlap with each other in that Lord Longford's report on pornography and the debates that surrounded its publication coincided roughly with a series of trials at which the underground press was the focus.

Enter Lord Longford

Frank Longford, an Irish Peer and Oxford Don, was at various times in his political career (a socialist) Under-Secretary of State for War, Minister for Germany and Austria, Minister of Civil Aviation, First Lord of the Admiralty and Leader of the House of Lords. He became a Roman Catholic in 1940, helped to found the New Bridge Organisation which helps to rehabilitate ex-convicts, and was Chairman of Sidgwick and Jackson, the publishing company.

Despite this list of achievements, his public 'notoriety' began around 1970 when he went to see the play 'Oh Calcutta!' Before that, he says in the third volume of his autobiography, The Grain of Wheat, [1] he

gave debates on obscenity a wide berth. He was so shocked by Oh Calcutta!, however, that he left half-way through and, in April 1971, initiated a debate on pornography in the House of Lords. The issue of pornography, which was to dominate the next few years of his life, has for the public at large pushed his other interests and accomplishments into the background, so much so that, at one time, he became known as 'Lord Porn'.

He is a man who is much admired for his honesty and for sticking to his principles. His maxim is: 'hate the sin, but love the sinner', and he has for many (along with Mrs Whitehouse) been the leader of the fight against 'permissiveness', against what was seen as a relaxation in the standards of sexual morality. In a newspaper interview in 1972, he explained his point of view. Replying to the question 'did he think that by comparison with other historical periods, we live in a permissive society today?', he answered.

When people talk about the permissive society, they are usually talking about sex. But if you take a slightly wider view of the permissive society, which is that it does include a more humane attitude to people who go wrong, well, then I would favour it ...But if you just mean a society that is more indulgent in matters of sex, then I am entirely against it.[2]

Why, then, was he entirely against it?

I start from a Christian point of view, which is that sex outside marriage is wrong ... on the whole public opinion today is still opposed to people who break the ordinary Christian laws of sex.[3]

Longford's general position starts from a point similar to that taken up by the NVALA, the NFoL and others. He favours monogamous heterosexual relationships, placing great emphasis on the importance

of marriage. All other forms of sexual relationship - male homosexuality and lesbianism, and sex outside marriage - are seen as sinful. He effectively makes clear what it is that informs his moral position ie. 'Christian laws of sex'. This, he implies, is a set of rules which may be applied to all sexual conduct, irrespective of its context. By defining what is legitimate in this way, Lord Longford became engaged in what Watney has referred to as the 'ideological rearguard in defence of the family' [4], that was linked in chapter two to the campaigns of other moral entrepreneurial groups. Thus, armed with this view of sex and having been shocked by a play, almost overnight he became the 'Anti-Pornographer Royal' [5]. Responses to his 'crusade' have been varied, and they will be studied in the following section. For now, a few examples of the type of debate that he has engendered will suffice. In May 1971, Peter Jenkins wrote of Longford:

As a politician he is prepared to force his own moral convictions upon the rest of us. He is not now concerned simply with checking the excesses of pornographic exploitation, but with setting in motion, if he can, the sexual counter-revolution ... [he] intends to appoint himself to inquire into our morals and has called for a moral crusade in tones which have an ominous ring. An army of bigots and prudes and censors and punishers and killjoys stands ready ... by bringing sex into politics in this way Lord Longford is adding to the pressures on Government to restrict the enjoyment of personal freedoms by whatever means authority can devise.[6]

Not surprisingly, Peter Jenkins received a fairly heavy response, many in support of Lord Longford:

Surely it is misleading to assert that Lord Longford is "seeking to force his own moral convictions upon the rest of us". In fact he has no power to do so, but he is certainly as entitled to advocate measures he thinks would minimise the extension of pornography, as those who seek to justify and extend this. Democratic

freedom is comprehensive.[7]

and:

Lord Longford and every other politician has every right to force his moral convictions on us if he considers it important enough to do so.[8]

Next to the activities of Longford himself. As has been noted above, he initiated a debate on pornography in the House of Lords on 21 April 1971. Within a month, he had not only decided to form a private commission to enquire into the problem, but had even assembled over forty-five people keen to help. Those invited by Longford to join were a mixed crew, varying from the Archbishop of York to the entertainer and female impersonator, Danny La Rue (the latter didn't accept). Of those who made the final line-up, half may be found in the 1972 edition of Who's Who, and this excludes those such as the pop star, Cliff Richard, and the disc-jockey, Jimmy Saville. The Commission included six Lords, two Knights, one Baroness, one Archbishop, three Bishops, three professors, two QC's and one Canon! Other well-knowns included Kingsley Amis and David Holbrook, the novelists, Malcolm Muggeridge, the broadcaster and Peregrine Worsthorne, the journalist. The commission's terms of reference were "To see what means of tackling the problem of pornography would command general support". From the beginning, Longford received criticism for inviting people who would be sympathetic to his views on the subject rather than a cross-section representing all the different positions. In presumably seeking to pre-empt these types of criticism, in the introduction to the Report, Lord Longford inadvertently fuelled the fire:

We were anxious to provide, and have in fact provided, maximum freedom of discussion. The only commitment involved would appear to be a recognition that pornography does indeed represent a problem and one which is worth

looking into seriously ... It would not be true to assume that all those who took part in our Inquiry agreed with my House of Lords propositions that pornography was a manifest evil, though anyone who thought I was completely on the wrong tack would hardly have agreed to serve under my chairmanship.
(my emphasis)[9]

Although not receiving the status of a charity, the inquiry was to be run entirely on money received in the form of donations. This was expected to cause some problems, but these were ironed out with a substantial grant from the Dulverton Trust, believed to be in the region of £5,000. This trust was established by Gilbert Wills, the first Lord Dulverton and Chairman of the Imperial Tobacco Group in the late nineteen forties. The second Lord Dulverton described the Longford inquiry as "a very desirable initiative on the part of a senior and admired citizen in a matter in which he has generated concern with great bravery".[10] Interestingly enough, the munificent benefactor was himself a member of the Committee.

Having organised a private commission to investigate 'the problem of pornography', and having received considerable sponsorship for the 'crusade', Lord Longford had to get cracking on the investigation proper. The debate surrounding pornography (then and now) revolved around the question of whether one can demonstrate a link, or a correlation, between the level of indulgence in, or consumption of, pornography, and the number of criminal offences committed that are sexually related. Methodologically, this is always going to be very tricky, if not nigh impossible, and was therefore bound to be a bone of contention. As was his usual way, Longford met it head on with the suggestion of a visit to what was regarded at the time as the 'classic example': Denmark:

It was obvious from the first that some of us would have to visit Denmark. The Arts Council Working Party and other libertarians had made such play with the alleged decline of sex offences in Denmark since the obscenity law was liberalised. There was only one way to counter the propaganda - to go and see for ourselves. Through the good offices of the Danish Embassy in London a series of discussions were arranged with among others government officials, leaders of the police, and the sociologist, Professor Kutchinsky, whose researchers were being widely quoted by the libertarian school. Visits were also arranged to pornographic films and (with some difficulty - the Danish Government did not want to be involved) to so-called live-shows.[11]

Not everyone felt it was such a good idea. Gyles Brandreth, one of the team, described it as a 'travelling circus', and Dennis Hackett called it: 'Lord Longford's asinine tour, with his well-motivated voyeurs'.[12]

Longford took five others with him, firstly, the above mentioned Gyles Brandreth, ex-president of the Oxford Union, who was to be the main person to take advantage of the 'freedom of discussion' which Longford had maintained he was so much in favour of. In the course of the visit, Brandreth's open disagreements with Longford were distorted and exaggerated by the British press, ever eager for some 'scandal', indirectly leading the two to part company after about a month:

On the face of it, his (Brandreth's) appointment to our committee, and still more to our little Denmark party, was to prove disastrous. In due course he wrote an article about the visit in Nova basing himself on his confidential knowledge in defiance of all known conventions and guying us pretty thoroughly. This led to his membership of the committee being terminated. The committee who by implication in his article were referred to as old bores could hardly be expected to retain him in their midst.[13]

Secondly, there was Dr Christine Saville, a psychiatrist and ex-chief medical officer in a prison. Next there was Peregrine Worsthorpe, deputy editor of the Sunday Telegraph, and Joan Bourne who acted as

secretary. Lastly, there was a twenty-one year old postgraduate social-psychologist, called Sue Pegden, who was also at the centre of a media-alleged split with Longford. Interestingly, of the five he took with him, only two were actually named as being members of the commission.[14]

The trip to Denmark received massive publicity. What was it that was causing such a stir? As has been mentioned, much time was spent talking with officials, political, legal and academic, but it was the Longford party's tour of the nightspots that made the news. In their evenings in Denmark, they split up into groups and perused bookshops, film shows and 'live' shows. Lord Longford, much to the amusement of the press and to the chagrin of the proprietor(s), was to walk out of two shows. He describes both scenes in the following manner:

There are occasions in life when there are no hesitations about actions at the time and none afterwards. This was such a one. I was moving out of the room before anyone quite knew I was going. A small plump man, some form of manager no doubt, expostulated with restraining hands misunderstanding my grievance. "But you haven't seen any intercourse yet - I assure you its coming". he moaned plaintively. I was too upset to show him a reasonable civility.[15]

and secondly

Now the lady was on my neighbour's lap, caressing him indescribably, amidst mounting response from the audience. The cameras were all too obviously getting ready for her next move. But my next move was still more obvious to me. At the moment as seen through the eyes of one of the many newspapers that depicted the scene, I was sitting there like a stage professor in a house of ill-fame. The next my seat was empty.[16]

He gave three reasons for leaving the 'live' shows, although previously he had managed to sit all through 'blue films'. Firstly, because (although, he admits, so, too, were the films) 'they were

utterly horrible, pornographic and unfit to be allowed in any well conducted city'. Secondly, because the required audience participation was unforeseen by himself, and lastly, a feeling of 'self-preservation' was added to deep abhorrence - that in some sense, he felt in some personal 'danger'.

All these reasons may, of course, be genuine, but Gyles Brandreth, had a different interpretation of the situation. He believed that Longford used the situation very carefully, and that it was his intention that everyone should believe that he left because he couldn't stomach the scenes he was being forced to view:

I, on the other hand, think that the gartered Earl is a bit sharper than that. At the show he was attending, naked ladies mingled with the tiny audience, offering to sit in their laps and play with their persons. Lord Longford allowed a whip to be foisted on him. Imagine what might have happened had a young lady landed in his lap! Click, flash and hey presto, around the world in eighty seconds go stunning photographs of the sixty-five year old English Milord with a Danish dolly in the raw giving him a friendly fumble. Gerald Scarfe did powerful things with that whip sequence. Think what he might have been able to do had Lord Porn had hotter stuff to handle.[17]

Was Lord Longford's experience of Denmark typical of the group as a whole? He was the only one to walk out of any of the shows, or in fact to get in any way excited or shocked by them. Brandreth was quoted as saying that the shows were "quite tantalizing in anticipation, but ... pathetically boring". Miss Pegden, in full agreement, said it was "frankly very boring and completely unerotic".[18] Yet in the same article, Lord Longford's response was that: "every instinct in me says that it ought not to be allowed".

This brief review of the trip to Denmark sets the scene for a fuller discussion of the Report itself and its implications. As has already been suggested, the responses to the trip by those who went were mixed as to its value and, indeed, public response was broadly similar. Much of the national press was sceptical about the trip, and much of the published criticism came from the pen of Gyles Brandreth. The much-maligned excursion received support in the pages of the Sunday Times from the literary critic and campaigner against pornography, David Holbrook, who, writing of Longford at the time, said:

I still think he's an excellent fellow. It was right to go and see the pornography in Denmark, and to advertise it by a shocked reaction. To my mind, that kind of stuff is madness, total madness. We've got to realise that, even if it means we display a mad reaction to it. I mean - it is necessary for us to stop being urbane and calm about pornography. We've got to vomit in response - then we can begin improving the situation.[19]

Holbrook here seems to be displaying the emotions that Devlin suggested would be the necessary basis for using the criminal law to enforce morals - ie. intolerance, indignation and disgust. The honorable Lord also found support from the British Medical Journal[20] and from the editor of the Daily Telegraph [21]

The Longford Report

With regard to the Report itself, the main questions that were asked by critics at the time were: to what extent could the membership of the committee be seen as in some way representing the diverse bands of

public opinion and, secondly, to what extent could it be considered to be scientific in its approach and, therefore, valid?

As far as the vast majority of media commentators were concerned, it was obvious from the start in which direction Longford's views pointed. What remained to be seen was whether the committee under his chairmanship were in agreement.

The Report was published on 21 September, 1972, and dominated the media for a good time afterwards. To say that it caused a fair amount of debate, is to put it at its mildest. It was published as a paperback by Coronet Books, and was on sale to the general public for sixty pence. The word 'pornography' was printed in large red letters on the front, and underneath in much smaller grey letters was printed, 'The Longford Report'. It is about five hundred pages long and is divided into four sections: firstly; Pornography Today (an outline of the situation by the committee); secondly, contributions from individual members; thirdly, Reports and Sub-Committees (there were eight of these); and finally, conclusions and recommendations.

The main suggestion of the Report was that the Obscene Publications Act, 1959, should be amended in several areas, including the definition of 'obscenity'. The Report also includes a draft of a proposed new Bill. It recommends, firstly, that an article or the performance of a play would be obscene 'if its effect taken as a whole, is to outrage contemporary standards of decency or humanity accepted by the public at large'. Secondly, that the existing defence of obscenity in terms of being in the 'public good' should cease.

Thirdly, that the Act should be extended to cover cinema and television broadcasting; and fourthly, that the penalties for publishing obscene material should be increased. The maximum fine on summary conviction should be raised from £100 to £500, and that a conviction should be punishable by an unlimited fine or up to three years imprisonment, or both. The Bill would also make it illegal to display in a street or other public place 'any written, pictorial or other material which was held to be indecent'. [22]

The parallel between the proposed new definition of obscenity, 'to outrage contemporary standards of decency or humanity accepted by the public at large', and the essence of Lord Devlin's theorisation of the relationship between law and morality should be immediately apparent. In common with Devlin, and with the proposals of the Society of Conservative Lawyers considered below, this definition assumes a moral consensus. Indecency or obscenity is seen as an absolute, not as something which is likely to be variably defined. It would be something, it is argued in the Report, that a jury would be able to establish objectively, as they would be randomly chosen members of a society which had agreed upon moral standards. The implications of using such a definition in a society in which the assumed moral consensus does not exist were brought out by Dworkin:

...that means that an obscenity trial will be a lottery, all over bar the shouting once the jury is picked. Prosecution and defence will be desperate to have the jurymen chosen who give conventional signs, at least, of the right morality: it will be a case of trial by sensible shoes and short hair, or mini-skirts and tie-dyed jeans. [23]

The abolition of the 'defence of public good' is also consistent with a 'seamless web' conception of morality. Thus anything which

sufficiently outrages contemporary standards is, by implication, a threat to society's well-being, and thus not to be protected because it may have some redeeming social, artistic or cultural value. That is to say, the defence of public good allows for the obscene qualities of an article to be mitigated by other qualities that it may possess.

The Longford Report not only recommended a narrowing of the law in these ways, but also two additional offences. The first would punish the public display of 'indecent material', though it did not define what was meant by 'indecent'. It also recommended that a new offence should be created to 'punish those who, for purposes of gain, induce others to take part in any obscene or indecent performance to be shown to the public, or as models for any photographs or films of a similar kind produced for a like purpose' [24]. Taken on their own, these two recommendations are closer to Hart's than Devlin's formulation (although the concept of indecency would probably be rather wide), but in conjunction with the other recommendations, they formed part of an attempt to extend rather than narrow the ambit of the law.

Following the main proposals and recommendations, were the reports of the various sub-committees which also figured very largely in the ensuing debates. The broadcasting sub-committee, chaired by Malcolm Muggeridge, caused the biggest uproar and there is, in fact, a rejoinder by Frank Gillard, a former Director of Sound Broadcasting at the BBC, immediately after the chapter. Many television programmes and cinema films came in for severe criticism from Muggeridge et al.[25] First of all, the IBA:

It seems fair to say that the programmes shown are, for the most part, vulgar rather than vicious,

smutty rather than specifically pornographic, infantile rather than pernicious. It would be difficult to think of any form of human entertainment more intrinsically fatuous and demeaning than give-away programmes like 'Double Your Money', an ostensibly 'religious' programme like 'Stars on Sunday' or that weary old biographical number, 'This is your Life'. [26]

and the BBC:

It is ironical now to recall that the strongest argument used against the introduction of commercial television was that it would sully and vulgarise a screen that the BBC had maintained in purity and at a high cultural level since its inception... Today the most ardent champion of the BBC and opponent of commercial television would ... hesitate to take up this position in the light of programmes like 'Steptoe and Son' and 'Up Pompeii' which, whatever merits they may have, are full of smut, vulgarity and double meaning rapturously received by the studio audience. [27]

These two quotations, although they are more specific in their attack than the rest of chapter, probably adequately reflect the broadcasting sub-committee's consistently castigating tones. The breadth of Muggeridge's attack on television gives some clue to the real nature of what was being attacked. In the first paragraph of the sub-committee's report, we are told what the 'problem' is:

...and it would seem to be abundantly clear that, in abandoning what is today fashionably described as 'traditional morality', our society...is set upon a Gadarene course towards self-destruction. [28]

The question Muggeridge sought an answer to is that of the extent to which broadcasting has contributed to this moral decline? The sub-committee attacked the 'give-away' programmes, advertising and consumerism, the secular nature of most broadcast material, nudity and so on. They explicitly criticised 'modern' values and argued that if the BBC had maintained its earlier Reithian values broadcast material

would be considerably more acceptable. The essence of the problem for the Committee was what they perceived to be a lack of attachment in modern society to traditional Christian morals, and, as an example of this lack of attachment, the policies of those with authority in the BBC:

The truth is that, apart from the Christian ethic, our way of life has no moral basis whatsoever, and since, at any rate among the great majority of communicators, Christianity is no longer acceptable, they are in practice operating in a moral vacuum. [29]

This broad attack on modern culture and on what, conceptualized sociologically, was perceived as a state of anomie, pervades the whole report.

The sub-committee reporting on cinema and the theatre singled out 'The Devils', 'Straw Dogs' and 'A Clockwork Orange' as three films which provoked a considerable amount of disquiet amongst the cinema-going public. Their main recommendations were that performers should receive protection against the possibilities of exploitation, and that the British Board of Film Censors should no longer be responsible solely to the industry. This would be changed with the appointment of the President and Secretary by the Home Secretary, and with the inclusion of representatives from industry and the local authorities, as well as 'suitable' members of the public. As for the theatre, 'Hair', 'Oh Calcutta!' and 'The Dirtiest Show in Town' were cited as deliberately challenging accepted standards, and the recommendations concerning performers in films were also to apply to the stage.

The next section of the Report deals with books, magazines and newspapers. The section on books largely covers the proposed revisions to the Obscene Publications Act. The section on magazines goes into great deal about the types of magazines, the size of circulation etc. One brand they identify are the "small format, largely textual presentation ... based on 'scientific' exposure of sexual problems, mostly in the shape of correspondence columns".[30] Referring to the leading publication of this genre, Forum, they say:

However sincerely conceived as a beneficial service to those with problems or inadequate sexual knowledge (it) cannot avoid appealing also - we would suggest, largely - to those whose interest is salacious, prurient or fantasist.[31]

Two other magazines modelled Forum were produced by Goldstar Publications, namely In Depth and New Direction. Goldstar will be discussed in the discussion of the debate which followed the publication of the Report. The rest of this section in the Report covers all types of magazines from the well-known: Mayfair; Men Only; Penthouse, to the not so well-known: Heat, Relate, Intro and Open. The Report even mentions Cosmopolitan, of which they say, it

Believes that women like to see 'this kind of woman who is being idealised for men' and it is one of the new magazine's aims to show the sophisticated 25-35 year old 'how to get, keep, and if necessary get rid of her man'. That this involves keeping up the sex-war, by offering nudes and instructions on seduction techniques, might be considered a strange response to the sexploitation of the magazine market.[32]

As far as newspapers were concerned, the sub-committee recommended 'that the Press Council should explicitly reveal itself much more conscious than hitherto of its responsibilities in regard to pornography'.[33]

The advertising sub-committee recommended that 'the public should be more widely informed of the code of advertising practice and encouraged to draw to the attention of the Advertising Standards Authority any advertising material that is felt to be offensive or indecent'. [34] It was also recommended that any unsolicited pornographic material received through the post by members of the public should be immediately brought to the notice of the Director of Public Prosecutions or the police. Finally, the authors of this section recommended that tougher legislation should be introduced to curb the activities of the underground press such as OZ, Rubber Duck, IT and Rolling Stone. (Events in the following two years suggest that the existing legislation was tough enough for combatting the underground press). According to the sub-committee, these types of magazine displayed advertisements for sexual apparatus or 'treatments' designed to prolong the act of intercourse and the sensation of orgasm; advertisements for homosexual and lesbian clubs and holidays. Its attitude towards these advertisements was that they should be controlled, and that this would need new, tougher legislation, although they felt some fringe publications such as Penthouse might well respond to the threat of sanctions from the advertising industry. [35]

The last sub-committee was concerned with the subject of sex education. The committee criticized two articles, one a book, one a film. The first, the film called 'Growing Up' by Dr Martin Cole from Aston University, was described by the sub-committee as 'disturbing'. The second, the book entitled The Little Red Schoolbook was intended to produce in children, it was suggested 'a mentality which can only be stigmatised as corrupt'. [36] The sub-committee made three main

recommendations. Firstly, 'that no local authority will have the right to arrange programmes of sex-education without full consultation with parents in the area concerned'. Secondly, 'that any parent who objects to a sex-education programme shall have the statutory right to withdraw his or her children from such a programme', and lastly that 'it shall be made illegal to show children in school or elsewhere in private any material which may not be shown in a more public place'.[37]

These, then, are the main arguments, views and recommendations included in the Longford 'Report on Pornography'. It is probably not unfair to say that the end result was much as was expected, the vast majority of the committee coming down fairly and squarely behind Lord Longford.[38]

Responses to the Report

Although Longford had received much publicity during the twelve months or so in which the report was being prepared, particularly when he and other members of his team had visited Denmark, it certainly did not decline after publication. Nor did the heat of argument cool. In surveying the debate, it is very seldom possible to provide both arguments for and against each particular point. On the whole, the media contained only replies to and denials of allegations and arguments made in the Report, very little being said in defence of the central proposals. In fact, on the Sunday after publication, J. W.

M. Thompson wrote in the Sunday Times:

So far, hardly a single word has been heard in favour of the central recommendation of the Longford Report on Pornography.[39]

This was very much the case, although Mary Whitehouse in her capacity as Honorary General Secretary of the National Viewers' and Listeners' Association, said that four-fifths of the population probably supported the committee's recommendations, and the Nationwide Festival of Light also welcomed the Reports' attempt to tackle 'this social evil in depth'.[40] Professor Norman Anderson, Vice-Chairman of the Committee, defended its proposals, saying that "the present law defining obscenity is hopeless".[41] In stating this, he was obviously aware of the Home Secretary's reply to the Arts Council just two years previously, in which he suggested that, although the law was flawed, it was hard to see how it could be replaced.

One of the first groups to reply to the Report were the Defence of Literature and the Arts Society. They claimed that the proposals were "a threat to freedom of speech and expressions of non-conformist opinion",[42] and that if they were implemented in their present form, there was the possibility of controversial work of real artistic and literary merit being judged to be obscene by a jury that didn't have the benefit of guidance from experts. Mrs Marion Boyars, secretary of the society, stressed this point:

You may have a judge who is not particularly well read in literature and the arts, although he may know his law very well, and a jury from backgrounds not familiar with literature.[43]

Also in disagreement with the proposed abolition of the 'defence of the public good', was Mr Michael Havers QC (later to be

Attorney-General), although he suggested that he was in favour of the new definition of obscenity. Joining in the debate, the National Secular Society said:

The whole idea of obscenity is tied up with an unhealthy belief in sin which most ordinary people in this country have now rejected along with other superstitions of the past centuries.[44]

Implementation of the recommendations would, the National Secular Society authors felt, give rise to a large black market, breeding blackmail and fear. The National Council for Civil Liberties called the Report:

Obscene to suggest the suppression of ideas by law, absurd to attack sex education, and wise to proclaim the basic irrelevance of pornography.[45]

Gyles Brandeth, already a thorn in Longford's side, entered into the arena again, saying that the Report was neither a valid scientific document nor an independent assessment of pornography:

The Report may be valid as a document expressing opinions. An investigation might be valid, but not a crusade like this to chart the declining moral standards of the nation. The atmosphere of the whole thing is a fight against sin. I would not be surprised if they felt that Chick's Own was pornographic.[46]

Those who were directly attacked in the Report were the next ones to join the debate. Hughie Greene whose programme, 'Double Your Money', was criticized as 'fatuous and demeaning', said he believed Lord Longford was a 'sick man':

He has made himself look like a dirty old man. The definition of pornography does not cover quiz shows, but it seems Lord Longford is determined to find filth in everything.[47]

There is a certain truth in this, of course. Not that Longford was

determined to find filth in everything. It is rather that, setting out with his world-view (all sex outside marriage is immoral), it was almost inevitable that he would discover things that he, and others of like mind such as Malcolm Muggeridge, disapproved of, everywhere they looked.

Also under fire was the programme, 'This is Your Life', which was defended by the Controller of Light Entertainment for Thames Television as:

.. a marvellous programme, a classic television formula, and I would defend it with my dying breath.[48]

The IBA pointed out to the Longford Committee that safeguards already existed through the Television Act, the authority itself, and an internal complaints review board. Similarly, the BBC told them that the Board of Governors acted as 'trustees for the nation' and that they, too, had 'adequate machinery for complaints already'[49] Frank Gillard, former director of Sound Broadcasting at the BBC and a member of the Longford Committee, had this to say:

This leads on to the question so often put by Lord Longford himself, and by others - "Why does the BBC not take a moral stand?" I find the question difficult to understand unless it means "why does the BBC not take the precise moral stand that I prescribe?" For the fact is that in basic terms the BBC firmly exercises its moral responsibilities ... In matters of public morality generally, the BBC cannot avoid reflecting the attitudes of the day. It has no mandate, explicit or implicit, to create standards, and in the last resort no power to make people other than they are.[50]

As was mentioned earlier, also attacked in the Report, was the film, 'A Clockwork Orange', which was indirectly referred to as 'bestial'. A spokesman for Warner Brothers who released the film said that they

had arranged for a special screening for Lord Longford and that afterwards, he had written a personal note to Stanley Kubrick, the director, saying that he did not think that it was pornographic.[51] These are really the last groups that can be included in this section of replies, although there was a brief note in one paper from the Editor of Cosmopolitan who objected to her magazine being referred to as 'soft-core pornography'. [52]

The next group of critics to be referred to make what can be considered as more 'methodological' criticisms of the Longford Report. Jeffrey Simmons, Managing Director of W H Allen and Co Ltd, the publishers, described his experiences with Longford as follows:

My evidence to the Longford Committee .. consisted of a genial discussion with Lord Longford himself, assisted by the organising secretary of the inquiry who took shorthand notes and asked a few questions while Lord Longford was on the telephone. I never saw one of the remaining fifty or so members of the committee, and the final report of what I said, although accurate as far as it goes is highly selective, as is the Report as a whole. Indeed not only is the evidence selective, but huge chunks of it are provided by the Committee members themselves.[53]

Two other men who corroborate this experience of a 'Longford interview' are Bernard Hardingham and David Sullivan who, in 1972, were running a sex book mail order business. Hardingham said:

We could have told him a lot but it seemed he didn't want to know. He didn't approach the interview like an investigator. His approach seemed like one of idle curiosity.[54]

Sullivan agreed:

He didn't really want to see us. When we did see him the interview lasted only fifteen minutes. We thought we would be questioned by a panel, but only Lord Longford was there.[55]

The Report was criticized for a similar lack of professionalism by Derek Hill, the film critic and founder of the New Cinema Club. In the report, he was quoted as having said that he:

was forced to offset losses on an audience of perhaps 50-150 people by also putting on 'sexploitation' films which would attract perhaps 5,000, and he told us, most of the national critics.[56]

Mr Hill suggests that he felt uneasy when was giving information to Longford. Indeed:

What worried me a good deal during my interview with him was that he didn't appear to be listening to anything I said.[57]

In the next programme at the New Cinema Club, there was an apology from Longford, accepting that the club didn't select sexploitation films to offset losses, and that Hill never said they did, despite being quoted to the contrary. Hill's comment on one of the films he was showing at that time, 'La Fee Sanguinaire' by Roland Lethem, was that "it would presumably make us liable to up to three years' imprisonment if the Longford draft Bill were ever taken seriously".[58]

As has already been suggested, Longford's general moral position was that sexual relations should be confined to marriage and that homosexuality was to be condemned by definition. It is not altogether surprising, therefore, that the Report also attracted criticism from the Gay Liberation Front for maligning 'homosexuals in a way that has not happened since the early debates on the Wolfenden Report'. The Longford Report consistently refers to homosexuality as a 'perversion', they suggested, and as something intrinsically pornographic. This, critics argued, is reinforced by the fact that:

.. this wholly private statement of personal prejudice should be received with massive publicity and the respect due to a Royal Commission.[59]

The section of the Report dealing with sex education was also not exempt from criticism. The National Union of Teachers, with 300,000 members, described it as 'misinformed, misleading and unscientific'. They expressed surprise that sex education in schools should be scrutinized in a publication about pornography:

The suggestion that certain books and films such as The Little Red Schoolbook and the film 'Growing Up' both of which were largely rejected by the schools, are in fact part of the normal school curriculum destroys any credibility that the report might otherwise have had.[60]

The NUT also opposed the Report's contention that "the wrong sort of sex education can hardly fail to increase the appetite for pornography in childhood and later".

This all but draws to a close the summary of the post-publication debate. It is worth concluding, though, with the remarks made by the editors or/and leader writers of three of four newspapers that also dealt with the methods used in the inquiry. The Sunday Times editorial on the weekend after publication referred to the Report as:

an effort to shift Britain from permissiveness to control of what the public may read, visit and see. It is a valid exercise in propaganda, but not a scholarly enquiry based on evidence.[61]

Similarly, in The Times we were told:

These qualities in the Report make it good campaigning stuff. They do not make it an adequate preliminary to legislation. For that it is too much lacking in thoroughness, coherence and detachment.[62]

The following two quotations are repeated at length so as to give the

full flavour of the arguments being put forward. The Economist was forced to agree with The Times and the Sunday Times:

There is no doubt of Lord Longford's sincerity when he says he has been leading an inquiry into pornography and not leading a campaign against it. But his report rests heavily upon assertion and is short on evidence. The research by his sub-committees lacks either the method or the depth to commend itself as a serious independent study.[63]

The most damning criticisms were contained in The Observer and came from the pen of Bernard Levin:

This vast brantub, the contents of which are a thousand parts chaff to one part wheat, is not only useless, it has effectively ruined the market for a serious study, by some such means as an academic team or a Royal Commission ... The Book has many faults, but two are crucial; one is methodological, the other, conceptual. The first is the almost total absence of intellectual rigour in the way Lord Longford and his colleagues went about their work ... (The second is that) pornography and obscenity are confused again, until the reader's head swims with the effort to look two ways at once ... And the whole ragamadoglio ends in a fine flourish of crazy illogic, with a draft Obscene Publications Bill that would abolish the defence of 'public good' thus at last making clear in so many words what has been visible between the lines throughout, that Lord Longford and his group are simply concerned to ban what they find disgusting, even if what they find disgusting does more good than harm.[64]

The following two quotations illustrate how widely the two main groups of opinion (those for and those against) differed. There were few in the media, however, who were on Cyril Connolly's side:

The Longford Report as one would expect from that good and gifted man, is perfectly respect-worthy; it is reasonable, well-documented, cool, unbiased and in no sense an inquisition. It is packed with opinion and suggestions and includes a brilliant polemic on the BBC by Malcolm Muggeridge.[65]

and from Benn Levy:

Finally, if there is any doubt about the shamelessly tendentious quality of this propagandist document masquerading as the report of a dispassionate committee of inquiry, I beg you

to read ... the Malcolm Muggeridge contribution ...
 Nothing dispassionate or fairminded about him,
 nor even a pretence of it. He is ... master of
 every drab trick in the trade.[66]

The third and final set of recommendations aimed at amending the almost universally unpopular obscenity laws came from the Society of Conservative Lawyers. A small committee of members, chaired by Sir Michael Havers, was appointed in May 1971 to consider the statutory definition of obscenity. Their recommendations (the report was sent to the Home Secretary in December of the same year) were a mixture of approaches. On the one hand, they proposed an offence of 'public indecency', and by implication accepted that there were private areas that were not the law's business. 'Public' was to be defined as 'any place to which the public has access or where they have the opportunity of seeing the material on display' [67]. However, the new offence would involve no reference to harm and defined material as indecent 'if it is grossly offensive to the public at large', a most Devlin-like definition. This approach was reinforced by their re-definition of obscenity as something which 'grossly affronts contemporary community standards of decency, and the dominant theme of the material taken as a whole appeals to a lewd or filthy interest in sex or is repellent'. The 'public good' defence introduced by the Obscene Publications Act, 1959, was to be retained. The Society's proposals received little support, and were even criticised by The Economist for their lack of reference to harm. Referring to the new definition, it argued that:

It is not lewdness or indecency that makes
 criminal hardcore obscenity but its potential
 use as self-stimulation towards sexual and
 violent crime. [68]

The committee's new definition, although based on a test of indecency

rather than obscenity and thus potentially widening the scope of the law, also included, probably through oversight, a potential new limitation. By picking on the dominant theme of a 'prurient interest in sex' as a method of distinguishing material that is obscene, the Committee effectively defined out material which encouraged drugtaking. Thus Cain's Book [69] would have been unlikely to have been successfully prosecuted under the new terms. It was in this way narrower than the 'depraves and corrupts' formula.

The Underground Press

If the Longford Report represents those with the more extreme views towards the control of pornography, then the underground press of the early 1970's provides evidence of those who held diametrically opposed views. This period was to see the public expression and conflict of these views, and, indeed, the filtering of this conflict into what has in later years been described as the overt use of censorship for political purposes.

It is now worth moving on to consider the vociferous arguments that surrounded the publication of the underground magazines in the early 1970's. The importance, particularly of underground magazines like OZ IT, etc, lies not simply in the fact that they were considered obscene enough to be prosecuted, but rather that the whole debate signifies a clash between two bitterly opposed groups: those wishing to preserve the status quo (or like Longford to reverse it, to take us back by

means of what one might call a kind of 'retrogressive progress' to the 1950's or earlier), and those who wished to change it. Those belonging in the latter group wished to change the way people organized their lives by removing from society what they believed to be its most apparent injustices. In this light, then, sexuality, sexual behaviour and relations often became a major bone of contention between the two groups, one of which was hankering after the morals of a bygone age, the other attacking what they conceived of as the inequality, hypocrisy and prudery of the age. OZ is central in this debate for, as has already been suggested in chapter 2, its editors undoubtedly considered sexuality to be a powerful tool (although only one of many) to be used in bringing about the revolutionary change in social relations that was their principal goal. The Longford Report describes Richard Neville's (one of the editors of OZ) views as follows:

.. in his view, sex was one of the revolutionary weapons with which he hoped to change society; promiscuity provided the dangers of VD and the need for contraception were pointed out, was one beneficial way of breaking up the family structure that had led to women becoming appendages and children the property of parents. For him, sexual repression and political repression were part of the same tradition, and therefore, the post-pubertal child, should regard any voluntary sexual relationship as freedom and therefore therapeutic.[70]

The Longford Report, then, embodies what can be seen as the 'other side of the coin' to the above view. They refer to Neville's philosophy as 'a contradiction in terms in that promiscuous behaviour is by definition indiscriminate and irresponsible'. Their particular concern was Neville's attack on 'traditional' moral standards, and they made explicit their focus by describing his attack on the family, and suggesting that 'one of the more dangerous features of the campaign is to legalise pornography. [71]

International Times

The trial of International Times began the period during which the 'underground' press was in and out of court, a situation which constituted what Mary Whitehouse described as a 'moral backlash'. A case such as this had been anticipated by Lord Simonds in the Shaw case in the early 1960s. He said:

Let it be supposed that at some future, perhaps early, date homosexual practices between adult consenting males are no longer a crime. Would it not be an offence if even without obscenity such practices were publicly advocated and encouraged by pamphlet and advertisement? Or must we wait until Parliament finds time to deal with such conduct? I say, my Lords, that if the common law is powerless in such an event, then we should no longer do her reverence. But I say that her hand is still powerful and that it is for Her Majesty's judges to play the part which Lord Mansfield pointed out to them. [72]

On trial in the International Times (IT) case, were three of its directors; Peter Stansill, David Hall and Graham Keen. They were charged with 'conspiring to corrupt public morals and to outrage public decency'. This was seemingly contrary to the assurance given by Sir Peter Rawlinson, the Solicitor-General, that these types of charges would not be used in order to circumvent obscene publications legislation. Whatever the status of any undertaking given, the use of the conspiracy charges once again was clear evidence of a desire on the part of the legal establishment to attack the underground press with vigour.

At the focus of legal attention on the magazine were a set of advertisements described as a 'gentleman's directory' (an obvious parallel with Shaw's directory in 1960). The column in which the advertisements were contained was entitled, 'Males', and carried the warning that:

... it is illegal for minors to place ads in this classification, or for advertisers to seek to contact minors. (Under 21).[73]

The advertisements were of the type that may now be found in 'contact' magazines, and it was shown by the prosecution that they had been answered by homosexuals. Robertson gives several examples of the type of advertisement to be found:

Alert young designer, 30, seeks warm, friendly pretty boy under 23, who needs regular sex, reliable and beautiful surroundings. If the cap fits and you need a friend, write.

Good-looking boy, 28, desperately wants pretty younger boyfriend. All photos, letters answered.

Male (32) seeks younger male for genuine friend. Versatile/passive phase.

Looks immaterial, but must be virile, quiet disposition. I have own house, would suit working boy, of boyish nature, for weekends or share house together.

Young gay male desperately needs to earn £40 as soon as possible. Will do anything legal. Genuine replies only please.

Pretty dolly boy wanted for sex and travel by boy, 21. Ample bread.[74]

According to Peter Stansill, the editor at the time, the intention of the magazine had been to provide a public service for a minority of individuals who had been continually discriminated against, harrassed and victimised. He said that the staff of IT believed that, as a newspaper with a special conscience, they could make a positive and practical contribution to the welfare of homosexuals.[75] On November

10, 1970, at the Central Criminal Court under Judge Sutcliffe, the company, Knuller (Publishing, Printing and Promotions) Ltd and the 3 men were convicted on the first count, conspiracy to corrupt public morals, and conspiracy to outrage public decency. Knuller Ltd were ordered to pay a fine of £1,000 on count one, and £500 on count two, and to pay up to £500 costs. The 3 men were sentenced to concurrent terms of 18 and 12 months, suspended for 2 years, and ordered to pay up to £200 costs each.

They decided to appeal against what they felt was a harsh decision, firstly, on the grounds that an agreement by 2 or more people to insert advertisements in a magazine for the purpose of committing acts that were no longer an offence between consenting adults over 21 would not amount to a conspiracy to corrupt. The Court of Appeal dismissed the appeals, but admitted that important points of law were at stake, and gave leave to appeal to the House of Lords. The Lords decided that conspiracy to corrupt public morals could be committed whether the advertised actions were legal or not, as long as the jury were to decide that their encouragement struck at the nation's moral fibre. Therefore, the appeal on count one was dismissed, although on count 2 it was allowed, as the Law Lords agreed that a serious misdirection had taken place. The 3 men, then, were effectively convicted of conspiring to induce people to commit acts that were quite legal. Presumably it was still felt by some that overt homosexuality was a threat to the nation's moral fibre. This was not the last time that conspiracy charges were to be used in the 1970's. Indeed, at this point in time, Roy Jenkins et al must have wondered why they had bothered at all in 1959 to try to reform the law.

The Mouth and Oral Sex

Not long after the International Times case, came the prosecution of Paul Abelman's 'study of human orality', The Mouth and Oral Sex, published by Running Man Press. Sutherland describes the publication as a 'manual with instruction, history and various diverting material relating to the hitherto hole-in-the-corner business of fellatio and cunnilingus' [76]. Christopher Kypreos, on behalf of Running Man, bought a mailing list of half a million names and, according to figures mentioned later in court, sent out one hundred thousand postal circulars by way of advertisement. The police obtained a copy of the list which, it seems, contained the names of several schoolchildren. Children were to figure centrally in a number of trials at this time (eg OZ, The Little Red Schoolbook) and, as was shown in chapter two, have been an ever present concern of moral reformers such as Mary Whitehouse and the NVALA. Several thousand copies of the book were ordered, but complaints were received by both the police and MP's and, after due consideration, the Director of Public Prosecutions decided to prosecute. In early 1970 a Magistrate decided there was a prima facie case to answer before a jury, and lines were once again set for battle. The trial began in March 1971 at the Old Bailey before Judge Alan King-Hamilton. Kypreos was charged with possessing an obscene article for publication for gain, and sending obscene articles through the post. Although the Defence of Literature and the Arts Society offered support, the publishers had great difficulty in finding witnesses ready to testify to the books' literary or other merits. In the event, 'The Mouth' was defended by the novelist Margaret Drabble, as well as by a sociologist, a social worker, and a doctor. They testified to the effect that the 'allegedly corrupt

behaviour' described in the book had, by this time, received wide acceptance from the community at large, and that, rather than being likely to deprave and corrupt, it was actually more likely to enlighten its readers.

This defence was used to contradict the prosecution's argument that the book was encouraging deviant activities by failing to criticize or condemn them. This seemed not to convince Judge Alan King-Hamilton who protested:

Why is it important to read about it now? We have managed to get on for a couple of thousand years without it.[77]

The Judge also suggested at one point in the trial that lessons might be learnt from studying the decline of the Roman Empire. He argued that contemporary decadence as illustrated by 'the increasing number of illegitimate births, abortions, cases of venereal disease and increasing homosexuality' were the contemporary equivalents of the causes of that historical downfall. The eight day hearing, however, ended with the book being found not to be obscene. However, Kypreos' circulars were found by a ten to two majority to be indecent under the Post Office Act, 1933, and the publishers were fined £250 with £150 costs.[78]

The Trial of OZ.

The most well-known of all the underground magazines was next to be prosecuted. OZ magazine had its origins in Australia (it was originally called Oztralia), the home of its founder, Richard Neville. It had a contentious history there, and its life in Britain from 1967 onwards was to be similarly eventful. Its beginnings in this country were dominated by competition with Private Eye, the more established satirical periodical in Britain. David Tribe has described its publishing history thus

OZ had a colourful, if at first unspectacular career ... Apart from its 'Beautiful Breast Competition' ... No 3 provoked concern with its photomontage of camped-up beefcake. No 5 was banned by the Australian customs ... No 20 on the Hell's Angels led to a police visit to the printer, who pulped 6,000 copies. As a Homosexual Oz, No 23 was certain to attract attention, not least from the police, who removed all copies still with the publishers and formally warned the editors at Scotland Yard ... Acid Oz No 27 moved explicitness into the dangerous world of drugs, but No 28 brought the real nemesis.[79]

As Tribe suggests, it was OZ 28 that incurred the wrath of the authorities, and it was not long before the editors found themselves in court.

The trial began in the afternoon of 23 June, 1971. It lasted 26 days (although sentence wasn't passed until the 4 August) and became the longest obscenity trial in British legal history. The accused were Richard Neville (29), James Anderson (33), and Felix Dennis (24). Richard Neville chose to defend himself, Anderson and Dennis were represented by Mr John Mortimer QC, and Mr Keith McHale defended 'Oz Publications Ink Ltd'. Mr Brian Learly appeared for the prosecution

and the Judge was Michael Argyle QC. The defendants were each charged that:

- (1) they had 'conspired with certain other young persons to produce a magazine' that would 'corrupt the morals of young children and other young persons' and had intended to arouse and implant in the minds of these young people lustful and perverted desires;
- (2) that between May 1, 1970 and June 8, 1970 they had published an obscene article, Oz No 28 known as the 'Schoolkids Issue';
- (3) that between the same dates they had sent a postal packet containing a number of indecent or obscene articles, in Oz No 28;
- (4) that on June 8, 1970 they had possessed obscene articles, 252 copies of Oz No 28 for publication for gain;
- (5) and that on June 11, they had possessed 220 copies of Oz No 28, also for publication for gain.[80]

All 3 pleaded 'not guilty' to all 5 charges. What, then, did the magazine which caused so much outrage consist of? As it was described by Tony Palmer (cf. Chapter 2), OZ 28, or the 'Schoolkids issue', was 48 pages long, made up largely of cartoons, readers letters and articles concerning school, sex, drugs and discipline. It began with an editorial which described what 'Schoolkids issue' meant:

OZ has been put together with the help and inspiration of about 20 people, all 18 and under, mostly still at school who came from various parts of London and England (sic) in answer to our appeals for injections of youthful vigour in our ageing veins. [81]

It also contained profiles of some of those who answered the appeal for help:

**Charles Shaar Murray, 18
Reading.**

He's a Jewish Pantheist. Doesn't turn on because he has weak lungs. Says he is a clumsy lover. 'I have all the sex appeal of a mouldy sock'. Believes in the brotherhood of man and the dawning of the

age of Aquarius. Starts a journalism course in the autumn.

Viv Kylastron, 16, Aries Smoked at 9, first tripped at 11. Owes this to the Roundhouse and Bradford. An anarchist, trying to dissolve it and replace it with a living school. Came to OZ to meet Richard Neville and the others, also interested in the workings of OZ. Interested in mysticism.

In the interests of brevity, the proceedings of the trial will not, in this context, be discussed in great detail, but when important opinions were expressed, circumstances explained, or legal rulings made, they will be noted. This trial began with Neville's opening speech in his own defence. He explained his position thus:

Firstly, ladies and gentleman of the jury, you may be wondering why one of us is defending himself. This is because I have no wish to hide behind the gowns and wigs of the legal profession. I believe I should try to talk to you direct, and tell you myself how and why we all publish OZ magazine and what we hope to achieve.[83]

He went on to explain why No 28 had been called 'The Schoolkids Issue'. Already there had been, a 'Homosexual Oz', edited by homosexuals for the usual Oz readers, a 'Women's Liberation Oz', edited by Germaine Greer, and similarly, there had been a 'Flying Saucer Oz';

So we advertised in issue 26 for any schoolchildren between the ages of 14-18 to come and edit OZ. We offered them freedom from editorial interference, and we kept our promise. There was no coercion of any kind and our assistance and advice was confined almost to technical matters ... 'Schoolkids Issue' it says on the cover which means of course, the issue edited by schoolchildren, not aimed by others at them[84]

This, however, proved to be a major source of confusion. OZ 28 was continually presented during the trial as being aimed at the young and

innocent. As has been noted before, the defendant is entitled to an acquittal if it can be shown that the publication is for the public good, ie in the interests of 'science, literature, art or learning, or of other objects of general concern'. Once this defence is raised, according to Robertson [85], the merits may be canvassed by experts for either side, although the onus is on the accused to establish the defence on the balance of probabilities.[86]

Neville's first 'character' witness was George Melly, the author, critic and jazz musician. Being interviewed by Neville, he described what he considered to be the main-characteristics of the underground and 'pop-culture', the contributions that these were able to make to society as a whole and, in particular, the qualities of OZ magazine. In reply to the prosecution's question, 'what brings you here today?', he replied:

My belief that something which I think is valuable is up for judgement, and I felt it necessary to stand up and be counted. [87]

After Melly, came Anthony Smith, a current-affairs editor for the BBC. He answered similar questions as to Neville's character and the significance of the underground press. The trial was by now moving into its third week, and the defence began to call expert evidence on the use of drugs and the effect of sex on the minds of schoolchildren. The first expert called was a Miss Caroline Coon, a founder member of the organisation, 'Release', which provided relief work and welfare services for the young. It had apparently been set up in the first instance as an organisation to help those who had been arrested for drug offences but, according to Miss Coon, had rapidly expanded to cover all sorts of problems. She said of OZ's attitude to drugs, that

it:

had actually prevented the problem from getting worse, simply by refusing to moralise or dogmatise about the various forms of drug addiction. [88]

The other side of this coin of course, would be to see OZ's presentation as lacking in firm moral principles and guidelines. The question of sex came to the fore again, though, with the next witness, Dr Lionel Haward, a psychologist, who said of OZ 28:

It has a number of beneficial features which I would like to see incorporated in many school magazines. I found many of the drawings rather disturbing, because as a psychologist, I could see what was going on in the minds of the people who drew them, but I think the text matter is basically good.[89]

Several of the drawings in the magazine played a prominent part in many of the exchanges in court. One in particular depicted Rupert Bear having sexual intercourse with an old woman, described as 'gypsy granny'. Commenting on the cartoon, Haward said that he felt its message was a critique of the lack of dissemination of sexual education. He was also asked to comment on the front cover of the magazine which depicted the lesbian poses of a number of black women. This, he felt, would only have a small impact on children, although it might induce them to look and see what was inside. I think it would have a greater impact on an adult who, knowing more about lesbianism, might see more in it. [90]

Next in the box was Michael Schofield, a social psychologist. His opinion of the magazine's possible impact on children was that it could possibly 'surprise and shock' but certainly not harm. When questioned about the 'Rupert Cartoon', he suggested that:

It would have absolutely no effect on young people at all. It is intended to be humorous.[91]

Following Mr Schofield came Dr Josephine Klein, a lecturer in social psychology at Birmingham University and later Director of Goldsmiths College London. Mr Leary's questions to her centred around blue films, lesbianism and pornography. She denied that the magazine would 'arouse and implant in the minds of children, lustful and perverted desires'.[92] Of a similar opinion was Mr Michael Segal, a former probation officer and head of children's programmes for Rediffusion, who felt that the suggestion that one of the cartoons 'might tip the immature flagellant into an orgy of caning' was absurd.

Moving on to the sex advertising in OZ (advertising, as has been shown, played an important part in two previous trials), this was given some thought by Edward de Bono, a lecturer at Cambridge University, who concluded that the sexual content was extremely unglamorous -

quite the reverse of the normal use of sex in advertising. Even The Times... had carried a full page nude in an advertisement recently, whereas similar things in OZ were totally unsexy.[93]

Professor Hans Eysenck, next to take the stand, also rejected the idea that lesbianism might be induced in young girls who looked at the cover of the magazine, although when asked if he felt it was pornographic, he suggested that that was marginally the case.

The line of questioning by the prosecution took the form of questions about particular sections of the magazine, perhaps one of the cartoons, or one of the advertisements, rather than seeking the opinions of witnesses of the publication as a whole, which is what the Obscene Publications Act requires the jury to take into consideration. This was to play a part in the appeal proceedings later in the year.

The final part of the defence rested on section 4 of the 1959 Act, and to this end, four 'experts' were called upon. Firstly, John Peel the BBC radio disc jockey spoke about the level of musical criticism in the magazine. According to Palmer's account of the trial, the Judge and Mr Leary both seemed more interested in the fact that Mr Peel had once confessed to his listeners that he had contracted VD, than they were in his comments on the merits of OZ. Marty Feldman, the comedian, who was next in the stand also failed to impress, despite suggesting that there was more obscenity in the Bible than in OZ. He also voiced his concern that the Judge was not interested in his testimony by referring to him as 'a boring old fart'. [94] Felix Topolski testified as to the artistic merits of OZ and was inevitably questioned about the contentious 'Rupert' cartoon. The cartoon, he argued, brought together unexpected elements, and was thereby an act of creation. Last of the 'experts' was Mervyn Jones, former assistant editor of the New Statesman, who testified to OZ's literary merits. The only parts of his testimony that directly concerned 'sexual' matters, were his defence of the use of the words 'bollocks' and 'cunt', and his agreement with Mr Leary that the magazine lacked tenderness, although he qualified this by saying that there were many expressions of love which were probably more important. Having brought the defence to a close, all that was left was the closing

speech by Mr Leary, who made clear what he felt the problems with modern society were:

Morality is essential to the well-being and healthy life of a community such as ours, and it is for you (the jury) to set the standard, by which we shall continue to live in this country ... Ask yourselves, members of the jury, what alternatives are before you, dropping out of society, expecting the State to provide for you, and by that I mean, by you and me, and those of the us who do not mind work.[95]
(my emphasis)

Two elements of Mr Leary's summing-up are highlighted here. Firstly, his insistence on the importance of firm, unified and, above all, unitary moral standards. That is to say, the jury were asked by him to set the standard. Secondly, he moved on to a brief outline of what he took to be the sort of standards that might be suitable. This included such traditional criteria as hard work and discipline, which he compared with the general desire to 'drop-out' advocated, he implies, by the defendants amongst others. Much of Justice Argyle's summing-up concentrated on what he considered to be the main points made by the witnesses (particularly the 'experts') in the trial. He reminded the jury that the case was not a trial by experts, but a trial by jury. Referring to the evidence given by Michael Segal, the former probation officer and freelance film producer, he said:

I thought he was a jolly good witness. He wasn't prepared to whitewash all of OZ like some of the other so called experts and I can't say fairer than that.[96]

On the other hand he felt that the evidence given by Mr Dworkin, a Professor of Jurisprudence at Oxford, was not as reliable:

It is interesting to me that such a man could have walked into this court, and without having heard any of the evidence, tell us that the entire prosecution was a corruption. So you can attach what weight to his evidence as you wish. [97]

Jonathan Dimbleby, the broadcaster, discussing Justice Argyle's 'summing up', had the following to say:

The Judge's summing-up was stunning. Suddenly the defence witnesses became 'so-called defence experts', some of whom members of the jury, you may think reached the position where they either had to admit they were all wrong or tell a lie: If OZ was a window on the hippy world - 'well, windows sometimes need cleaning don't they?' As he finished with a witness, he would toss his copy of OZ disdainfully down on the table, and with it, one felt, the case for defence. It was a distressing and perhaps crucial exercise. For after constant 'exposure to' (a favourite expression of the prosecutor's) 'fucking in the street' 'masturbation' 'deviation' 'lesbianism' 'corruption' and 'cannabis', this middle-aged group of British householders - the jury - was asked quite simply to 'set a standard'. What an invitation.[98]

After the Judge's summing-up, it was the jury's turn. They retired at 12.45 pm on July 28 and, after roughly two and a half hours returned asking for instruction on the definition of obscenity. The Judge replied that obscenity was something 'not appropriate to be seen, repulsive, filthy, indecent, loathsome or lewd, or any one of those things'. The jury returned finally at 4.49 pm, having considered their verdicts for almost four hours. All three defendants were found Not Guilty on the charge of conspiracy, but guilty on all other counts. They were remanded in custody pending full prison, medical, psychiatric and social reports. During this time they were also required to have their shoulder-length hair cut to 'standard prison length'.

What was the public reaction to the verdict? Mrs Whitehouse suggests in a book written in 1977 that the press were on the side of the defendants all the way through. A thorough reading of reports at the time, however, suggests otherwise, although the following two were far

harsher than was the norm. The Daily Telegraph commented:

So, Mr Neville and his two colleagues have been found guilty of publishing a dirty magazine ... Judge Argyle remanded the three in custody saying that he wanted 'social, medical and mental' reports about them, before pronouncing sentence. That, in our view, just about puts the matter in the right perspective. These people, and others like them, may not be potty in a technical sense, but their state of mind almost certainly requires expert examination.[99]

On a similar line, the London Evening News wrote:

It was appropriate you may think that the Judge in the OZ case sent the defendants for medical examination. There must surely be something wrong with the minds of men who not only produce such a magazine like that for children, but enlist the help of children in producing it.[100]

It is worth noting once again that the magazine was presented as being for children. On the 5 August, Neville, Anderson and Dennis reappeared in court for sentencing. The Guardian, reporting on the precedents for sentencing in this type of case, examined the court reports for the twelve previous years. They showed that fines imposed ranged from £50 to £2000, and that the longest prison sentence was two years but subsequently successfully appealed against. As has been shown, the directors of International Times were given suspended sentences of eighteen months. According to the Guardian, all the prison sentences that had been given had been suspended or quashed on Appeal.[101]

Passing sentence, Judge Argyle said that, as all three accused were over twenty one, 'probation would be inappropriate' and, as they were comparatively poor, so would a fine, which left him with no choice but a custodial sentence, although it could be suspended. Citing an earlier statement made by Felix Dennis in which he had said that he

would certainly continue his activities, he sent them all to gaol, Dennis for nine months, Anderson for twelve, and Neville for fifteen, as well as recommending the latter for deportation. Oz Publications Ink Ltd was fined a total of £1000 and ordered to pay one quarter of the prosecution costs not exceeding £1200.[102] If the verdict went off relatively quietly, apart from the demonstrations that had been going on outside the Old Bailey all through the trial, the passing of the sentences certainly did not.

The very same afternoon, thirteen Labour MPs put down a motion in the House deploring the severity of the sentences. Three of these were former Ministers: Mr Wedgwood-Benn, Mr Stonehouse and Mr Taverne, who said that they considered that the English system of justice had been discredited by this treatment of first offenders of good character and integrity. The motion said that the sentences would be regarded by many 'as an act of revenge by the Establishment against dissenting voices'.[103] Two other Labour MPs, Mr Stanley Clinton-Davis and Mr Bruce Douglas-Mann, said:

We were outraged by the severity of these sentences which are totally inappropriate in our judgement to the offences for which these defendants were arrested.[104]

The outcry over the forcible cutting of the trio's hair gave rise to a statement from the Home Secretary, Mr Reginald Maudling, in which he said he proposed to amend that particular rule at the first opportunity.[105] The National Council for Civil Liberties described the sentences as "an official declaration of war by an establishment that sought to destroy everything it feared or did not understand".[106] The Young Liberals said the sentences were 'savage' and the outcome of a 'sordid and snivelling little political

trial'. [107] Mary Whitehouse was, however, standing firm, and her statement in reaction to the sentences had a somewhat xenophobic ring to it:

I think it is a very good thing that the line has been drawn and drawn effectively. The sentences were about right. It was absolutely essential for them to be long enough to make them effective. The line had to be drawn because children were at risk and the people of this country will not take that kind of thing. The country suffers a lot from people who come into it. [108]

A group of people who had also come from the same place as Neville, all being notable Australian journalists, wrote to The Times to protest about both aspects of the sentence:

We would like to join the protest against the severity of the prison sentences passed on Richard Neville and his colleagues ... To banish him to Botany Bay adds to the weight of imprisonment the further punishment of ruining his career in London ... To Australians the whole sad business brings to mind the absurd literary morals trials, together with rigid censorship that have always marred Australian intellectual life. [109]

About sixty members of the London branch of the National Association of Probation Officers passed a resolution saying that it was alarmed at the prosecution and the severe sentences. [110] The reaction of the newspapers was broadly similar, with most stressing their shock, although some did voice their agreement. This voice was to be found in the Sunday Telegraph, for example:

Obscenity for political purposes ... employs deliberately disgusting or shocking language and pictures to degrade and so damage the social order. This is what the editors of OZ... can be accused of practising. Last weeks' sentences were presumably intended as a decisive declaration that this type of verbal violence is no more acceptable than the more familiar physical kind. Again there is little doubt that the large majority supports a declaration to this effect, and that it cannot be depicted as an attack upon radical unorthodox ideas as such. [111]

It has already been argued that the main focus of the prosecutions of the underground was, in fact, the lifestyle, culture and morals of those associated with it. Brian Leary made this explicit when he talked of Richard Neville's advocacy of 'dope, rock'n'roll and fucking in the streets'. Mrs Whitehouse, Lord Longford, the prosecution in this case and the Sunday Telegraph editorial quoted above all make much of the underground's suggestion (most usually put forward by Neville yet again) suggestion that obscenity was a prime weapon in the battle for social and cultural revolution. To the extent that the prosecutions of OZ, International Times, The Little Red Schoolbook and later, Nasty Tales and Libertine, were aimed at stemming or reversing the process of cultural attack, the perceived challenge to the 'moral order' that they were alleged to contain, they were political in character. The use of the conspiracy charges in order to circumvent the Obscene Publications Acts reinforces this view.

Not all newspapers took the view held by the Sunday Telegraph.

The Observer commented:

Whatever view is taken of the law that makes the publication of obscenity a crime, it is, surely unacceptable to send those found guilty of it to prison - all the more so when the men concerned are first offenders ... it is not necessary to be young, or to go along with the heady talk about the 'revenge of the establishment' or 'the persecution of OZ to deplore the severity of the sentences that Judge Argyle thought fit to pass last week.[112]

Similarly the Sunday Times commented:

It is not necessary, however, to endorse Mr Neville's view of society to find the sentences passed on him and his colleagues quite unjustifiable.[113]

Bernard Levin, writing in The Times two days later, was in agreement:

The OZ trial was a national disgrace. It served notice on the young that we will listen to them, but not hear; look at them, but not see; let them ask but

not answer.[114]

The sentences were even criticized in the New Law Journal which described them as:

... Indefensibly severe ... bearing little recognizable relevance to the objectives of sentencing nowadays generally accepted as valid.[115]

On August 9, the three were released from Wormwood Scrubs on bail, pending appeal which eventually began on November 3. John Mortimer appearing for Neville, Anderson and Dennis, had three main points to make about the course of the trial. Firstly, he alleged that Judge Argyle had misdirected the jury as to the definition of obscenity; secondly, that the Judge had not given sufficient weight to the evidence given by experts on the likelihood of a tendency to deprave and corrupt, and the possibility that the effect of some of the articles would be one of aversion; and thirdly, he criticized the Judge's denigration of some of the expert witnesses.[116]

The Appeal was heard by the Lord Chief Justice, Lord Widgery, as well as by Mr Justice Bridge and Mr Justice James. In a significant legal judgement they upheld the Appeal against all the charges except under the Post Office Act 1953. The implication is that an article may be found to be not guilty under the Obscene Publications Act 1959, ie not obscene, yet guilty, ie indecent, under the Post Office Act. The six month prison sentence under this Act was upheld, but suspended for two years, and the recommendation for Neville's deportation was cancelled. Explaining the judgement, Lord Widgery said that the trial judge had seriously misdirected the jury on the definition of obscenity in the 1959 Act, and that, for the future there must be no widening of the formula to introduce colloquial notions of obscenity or concepts

imported from the less serious indecency offences.[117]

The Lord Chief Justice also argued that Mr. Justice Argyle had also failed to put across fully the defence argument that articles on sex and drugs in the magazine could deter people rather than encourage them. 'These two matters put together form a very substantial and serious misdirection'.[118] The Court of Appeal were also in agreement that 'the Judge was biased against experts as a group and was inclined to make little of their evidence whenever he got the chance to do so'.[119] Although the convictions were thus quashed, Lord Widgery had a warning for those who in the future might be convicted under the Obscene Publications Act:

We would therefore like to make it quite clear in general terms that any idea that an offence of obscenity does not merit a prison sentence should be eradicated. There will be many cases in future in which a prison sentence is appropriate if the court imposing the sentence thinks fit, and any general impression to the contrary should not be retained.[120]

The ruling was criticized by Mary Whitehouse, who called it a 'disaster':

I do not have anything personal against the three men but I think it is an unmitigated disaster for the children of our country. If they cannot be protected by the law from this kind of material then the law should be tightened up. The first thing I am going to do is get on to the Attorney General [121]

In line with these sentiments the appeal decision stirred Mrs Whitehouse into action. She instituted what became known as the 'Nationwide Petition for Public Decency' which eventually amassed well over a million signatures and was presented by her and the Bishop of Leicester to the Prime Minister.

The Little Red Schoolbook

At almost the same time that Neville, Anderson and Dennis were being prosecuted at the Old Bailey, the less salubrious surroundings of Lambeth Magistrates' Court housed a similar affair. Richard Handyside, the sole proprietor of 'Stage One' publishers, was being prosecuted under the Obscene Publications Act for the production of a book, aimed at children and containing advice on school, sex, drugs, teachers etc. It was entitled The Little Red Schoolbook [122] and was two hundred and eight pages long.

In order to provide an idea of the type of book it was, the following are some examples of the type of advice contained under its varying headings.

On homework:

Homework shouldn't be just a routine duty, set because it says so in the timetable. It should give you a chance to work on things on your own, and develop the ideas discussed in class. It's important for you to learn to think things out for yourself and to express them clearly. [123]

On teachers:

If you're dissatisfied with a certain teacher and he (sic) refuses to talk to you, organize a boycott of his lessons. Try organizing your own lessons on the subject he teaches badly. [124]

On sex:

When a boy puts his stiff prick into a girl's vagina and moves it around it is called intercourse, or making love, or sleeping together (even if they don't sleep at all). The usual word for intercourse is fucking. [125]

and:

The only way to avoid unforeseen consequences in sexual

relationships is for both people to be honest with one another about the what they are looking for. Someone seeking security rarely finds it with someone who only wants sexual satisfaction. Someone who feels under pressure to have a sexual relationship may not find sexual satisfaction.[126]

On drugs:

If you haven't started smoking (tobacco) don't. Some of your friends or other people at school may smoke themselves and encourage you or dare you to try it. Saying no is sensible, not cowardly.[127]

If the book was to be shown to be capable of depraving or corrupting, then fairly strong arguments against its contents would have to be advanced in court, and it is to these that we must now turn.

Mrs Whitehouse was again instrumental in these proceedings, bringing the book to the attention of the Director of Public Prosecutions. Despite the wide-spread view at the time that it was Mrs Whitehouse who had initiated the prosecution, Detective Chief Inspector Clifford Turvey said that the Obscene Publications Department, of which he was chief, had been looking at the book before Mrs Whitehouse's campaign against its appearance in Britain. On the witness stand, he justified prosecution by describing the book as 'hard-core pornography'.[128] As in the OZ trial, John Mortimer appeared for the defence. His first request was that the book should be judged 'as a whole', rather than by selected items. He stressed that a two hundred page book which discussed various issues, should not be judged by a twenty page section on sex. This, however, was rejected. The court accepted the prosecution argument that the book had an itemized table of contents and that readers would tend to select chapters which interested them rather than read the book all the way through.

Outlining the case for the prosecution, Mr Michael Corkery said that the book ignored the importance of self-control and that it passed over the bad-effects of promiscuity. Indeed, he argued, it was also very close to an incitement to commit offences in breach of the Sexual Offences Act, as it was a book basically aimed at the over-elevens and only, in part, did it warn that sexual intercourse was unlawful for people under 16.

Although many of the prosecution witnesses were called to back up these ideas, other criticisms of the book were made, two of which deserve special attention since they might well have had a substantial influence on the case. Even if they did not do so, they are typical of the kinds of ignorance that tend to pervade obscenity trials.

Firstly, Dame Mary Green, Headmistress of Kidbrook Comprehensive School in Greenwich, said that she felt that there was a need for informed sexual instruction but not the way it was given in the book. As an example of this, she cited the words 'orgasm' and 'masturbation', and said that she thought these might have an unpleasant effect on children under sixteen.

Next was Dr Ernest Claxton, a former secretary to the BMA's committee on venereal disease and young people (and coincidentally a member of the NVALA). His objection was to the section on masturbation:

It is harmful to masturbate. An occasional act cannot cause any harm, but masturbation is like a drug and many children become addicted. The result is a degeneration in their physique and their character. It gives a sense of unreality and division from his family because it is a secret thing, and this begins to cause the generation

gap.[129]

In the event, Richard Handyside was found guilty and fined £50 with £110 costs. Reactions to the decision varied greatly, but the divisions were again clearly recognizable. Handyside's statement was:

I'm truly amazed by the decision, but not really surprised.[130]

The Daily Telegraph were also unsurprised:

It can hardly be a cause of surprise that the publisher of the English version of The Little Red Schoolbook should yesterday have been found guilty in a magistrates' court under the law relating to obscene literature ... What does give cause for wonder is that the publisher of a book of this kind should escape with a fine of £50 and costs of £110. His consequential financial losses may be great but where writing is both potentially corrupting and explicitly addressed to children, the case for exemplary punishment is strong.[131]

In reply to the Magistrate's decision, a statement was issued by the National Council for Civil Liberties and the Defence of Literature and the Arts Society, in which they said:

If a publication as harmless and informative as the LRSB can be seized, tried and banned in this brutal way, no publisher of unorthodox opinion can feel free from censorship. The judgement is an attack on freedom of expression and a victory for those who seek to impose their bigoted views on the rest of the community.[132]

In criticism of this statement and other people who rallied to the defence of the book, Ronald Butt said that he could not imagine how one parent in a thousand could really consider the book suitable reading for children, adding that what the book's advocates were really trying to establish was that there was no such thing as 'childhood'. [133]

The book was also criticised in the Guardian for aiming at 'juniors' when it was more relevant for 'seniors', and for failing to discuss the importance of respect. However, it went on:

Neither of these defects makes the book obscene. In our view its condemnation was not justified. Nor is it as revolutionary as some critics have suggested, even though it advocates a healthy scepticism towards authority.[134]

The notion of the revolutionary quality of the book was given support by Mary Whitehouse. Tracey and Morrison, in their book on Mrs Whitehouse, describe the situation as follows:

Though the case was to revolve around the book's sexual content, in fact Whitehouse's objections went beyond this, to the whole tone of the book. The sexual passages were only one part of the problem, as she saw it, and the fact that she tried to have it banned under the OPA was actually a strategy to have the whole book banned by concentrating on its weakest point. The wider issues were in fact raised in a letter to the Guardian by Ross McWhirter, in which he argued: 'The real issue, in my submission, is that the book is not only obscene but also seditious'.[135]

Indeed, as was shown in chapter 2, Mrs Whitehouse backs up this idea in her book, Whatever Happened to Sex?, with a general argument that owes much to Reich and Marcuse:

It is part of our thesis that sexual and political revolution go hand in hand and that indeed the first is prerequisite of the second. That The Little Red Schoolbook was a revolutionary primer there can be no question.[136]

Although many others joined in the debate, it should by now be fairly clear how the debate was divided. On the one hand, the defendant, Mr Handyside, was backed by the underground press, the NCCL, the Defence of Literature and the Arts Society (DLAS), and particularly Richard Neville through his column in The Spectator, as well as various

assorted 'humanists' and 'radicals';[137] against him on the other hand were what was often referred to as the 'establishment'; the enforcers of law and order, the censors, or would-be censors, and the more conservative sections of the national press. All were waiting to see the outcome of the Appeal.

The Appeal took place in late October and lasted for five days. Justice Gerald Himes QC, Chairman of the London Sessions Appeal Committee, took an hour and a half to reach his decision to reject the appeal against the conviction. The reason given was that the publisher had failed to show that the publication was for the public good, and Handyside was ordered to pay costs of over £1000.[138] Geoff Robertson described the Appeal as follows:

The court seemed as much concerned by the book's political bias as by its sexual content. The judge deplored the suggestion that children might organize demonstrations or strikes, and condemned the book as 'inimical to good teacher/child relationships' .. Subversive not only to the authority but to the influence of the trust between children and teachers ... the influence of parents, the church, youth organisations and other adults with whom they come into casual contact will be very seriously affected in the face of a very considerable portion of the children who read this book.[139]

Despite this setback, Richard Handyside published a revised version of the Little Red Schoolbook later in the year. Twelve lines in the offending twenty three pages section on sex had been rewritten, and one other paragraph, condemned as 'obscene', was covered by a supposedly non-removable sticker. A copy was examined by the Director of Public Prosecutions but no action was taken.

The case did not stop here. It was eventually taken to the European Commission of Human Rights, where Handyside claimed that the conviction violated his freedom of thought and expression as defined in the European Convention on Human Rights. The Commission, however, ruled against him. One point made by Judge Mosler (no action had been taken against the sale of the Little Red Schoolbook in other parts of Great Britain, except in Glasgow and Edinburgh where it had been acquitted) went:

In this case it is difficult to understand why a measure that was not thought necessary outside England and Wales was deemed to be so in London, [140]

Nasty Tales

For those who know a little more about the background of the opposition to and critics of The Little Red Schoolbook, OZ etc, it is clear enough. Pressure on the underground continued when a comic entitled Nasty Tales found its way into court. At the date mentioned in the charge, June 1971, the publishers of Nasty Tales were also the owners of IT. The trial actually started on January 15, 1973, at the Old Bailey. Charged were Bloom Publications, Mick Farren, Edward Barker, Paul Lewis and Joy Farren. They were charged with having had in their possession obscene articles for publication for gain, namely 275 copies of a magazine entitled, Nasty Tales No.1. As in the OZ trial, the defendants used their right to object to jurors (as did the prosecution), the reason being, as the Judge was to point out:

Most juries merely have to decide who's right and who's wrong, while this jury had to reflect its own moral standards. [141]

Each defendant has the right to challenge up to seven jurors, and in this case they used it to the full, rejecting twenty three in all. The Judge, commenting on the fact that the pool of reserve jurors had been emptied, discharged the ten who had been sworn in and ordered the case to be restarted the following day. This time twenty two were rejected, making a total of forty nine 'unsuitable in all'. By this time, the jury was all male.

The prosecution case concentrated on three of the pages in the magazine which contain cartoons about sex and drugs. Of apparently particular note was a full-page drawing by Robert Crumb entitled 'Great Continental Fuck-In and Orgy Riot'. Michael Coombe, prosecuting, suggested that the magazine promoted sex, drugs and violence (a remarkably similar argument to that made by Brian Leary in the OZ case, that OZ 28 promoted 'dope, rock 'n' roll and fucking in the streets').

For the defence, expert witnesses appeared in the form of George Perry, a co-author of the Penguin History of Comics, and Germaine Greer, authoress and University lecturer. What they suggested was that, by ridiculing what they considered to be society's obsession with sex and drugs, the comic might make the truth about them clearer.

In this trial, as in other obscenity cases, the Judge's summing-up caused some debate. He told the jury that they would have to ask themselves whether there was anything in the magazine that could be said to be good for anyone except the publishers:

You may have been surprised that anyone could say

that anything in the magazine was of literary or artistic merit, but the world is full of surprises ... how could it be for the public good for hippies to go and live in communes? [142]... You may think that it would have been more for the public good if Nasty Tales was designed to make the hippies come to terms with us and understand what is wrong with them.[143]

This final statement, according to the Sunday Times, brought a gasp from the mainly young people in the audience. Nevertheless, the jury came down on the side of the defendants, with a 10-2 verdict for acquittal. The judge's summing-up in the Nasty Tales case is perhaps the clearest illustration of the attack on 'lifestyle' that underpinned all the prosecutions of the underground press. Although quite clearly, it was never suggested that being a hippy or living in a commune (itself anti-nuclear family) could be considered to be criminal offences, such lifestyles were nevertheless at the root of the 'establishments' indignation. Writers and publishers such as Neville, Dennis, Anderson, Stansill, Farren and others were being accused by the authorities of being subversive. As the judge said, 'it would have been more for the public good if...(they had)...come to terms with us and understand what is wrong with them'. The Nasty Tales trial effectively brings the period under discussion to an end.

Conclusion

It was suggested in chapter three that the debate in jurisprudence in the early 1960s provides a useful method of analysing changes in the law in areas such as obscenity, particularly with regard to the

question of the enforcement of morals. Part of the reason for its usefulness is that it was itself triggered by proposed legislative change in another area; homosexuality. Crudely put, Devlin and Hart represented two fundamentally opposed positions, one which defended the state's right to intervene in questions of morals, the other which thought that such a right should be restricted to cases in which individuals required protection from harm. The Wolfenden Report - which is generally seen as being the embodiment of the philosophy which underlay most of the legislative changes in the 1960s - was based on an approach which was closer to that of Hart than Devlin. Chapters four and five have considered the laws relating to obscenity in some detail and have attempted to relate these changes, and the ways in which the law was implemented in the period, to such jurisprudential distinctions. The analysis was also undertaken in order to assess various general claims about obscenity and permissiveness made by Christie Davies amongst others which were outlined at the beginning of chapter four. His two most important contentions were, firstly, that the law was altered in a permissive direction, and that secondly, the new laws were implemented in a more permissive manner. It should be clear from the previous discussion that these claims are not entirely accurate.

The period under discussion began with the prosecution of major British publishers under the archaic nineteenth century censorship laws. The response to these partially successful prosecutions was, indirectly, the introduction of new legislation: the Obscene Publications Act, 1959. This involved a compromise between alternative approaches to obscenity. Roy Jenkins et al were only able to get part of what they wished to see by way of protection for

literature in return for far stricter controls over what was called 'pornography', but which included written as well as pictorial literature. Although the new law of 1959 was the product of an essentially utilitarian initiative, it was constrained by the desires of what Devlin might have called a 'legal-moralist' establishment for increased controls over pornography. Thus the 'deprave and corrupt' definition taken from the Hicklin judgement of 1868 was embodied in the new law, and it was generally used in a most un-utilitarian manner. In the Chatterley trial, Mr Justice Byrne used the OED definition, 'to make morally bad, to pervert, to debase or corrupt morally', and refused to allow the defence counsel's argument that the reader's character needed to have changed, thus impelling the reader to commit acts that he would not otherwise have done. Similarly, and echoing Devlin, Lord Simon in the International Times case suggested that the charge of 'corrupting public morals' suggested conduct that would be damaging to the social fabric. The first case under the new legislation was a victory for the so-called liberals, but was qualified almost immediately by the imprisonment of Federick Shaw for 'conspiring to corrupt public morals'. This use of the common-law as a method by which the terms of the Obscene Publications Act could be circumvented hardly lends support to the idea that the law was being implemented in a 'permissive' manner.

The trial of Fanny Hill which was being prosecuted for the first time after 215 years of free publication continued this trend. Not only this, but the intentions of the law were again by-passed to the extent that the case was brought under section 3 rather than section 2 of the 1959 Act, thus denying the defendants a trial by jury. Again, a conviction was secured. The whole affair caused an uproar

culminating, finally, in the passing of new legislation, not to extend the protections afforded to literature, but rather simply to tighten up the controls over what might and what might not be published.

The next major trial, that of Last Exit To Brooklyn, came about through pressure from two Conservative MPs, despite the fact that the Director of Public Prosecutions had read the book and had refused to take any action. After a long drawn-out process, the book was finally condemned as obscene, only to escape in the Appeal Courts on two points of law. A victory finally for the supporters of 'permissiveness' - 'only by default' suggested Mrs Whitehouse.

These were the major relevant events of the 1960s, and it is indeed hard to see how these might be described as 'opening the floodgates to obscenity'. This would seem to be the same conclusion that the National Council for Civil Liberties and the Arts Council came to, as, such was their concern, they got together to form a working party to investigate the operation of the obscenity laws. The report they produced included the recommendation that the censorship laws should be scrapped. Barry Cox, in his book on civil liberties [144], suggests that this was a triumph for the 'liberals', as even he notes that opinion was soon to change. Cox, however, misrepresents the situation. It was not that public opinion was about to change, yet an important sector of public opinion was already against such proposals. The report received very little support from the public, and Parliament, when not apathetic, was hostile.

If the 1960s are usually seen as embodying the 'permissive' age, then the early 1970s are generally characterised as a time when censorship returned to stem the tide of the sixties. Sutherland argues that 'decensorship' was far advanced by the late 1960s and that works generally agreed to have literary merit were no longer prosecuted. Whilst this was generally true, it must be remembered that this was only what a very respectable pressure group (the Society of Authors) had been trying to achieve in the mid to late-1950s, and it was a very fragile achievement anyway, as cases such as Gay News (cf. chapter two) were later to illustrate. The Arts Council Report was swiftly followed by the Longford Report on pornography which, although it commanded the type of respect that a man like Longford would have expected, received no more support than did the Arts Council. The report produced by the Society of Conservative Lawyers also sank without trace.

Thus begins the 'harrassment of the underground' or whatever term one might care to use. The first in the dock was Ableman's Mouth, which escaped, although his publicist Kypreos fell foul of the Post Office Act. International Times followed, and they were prosecuted (thanks to the verdict in the Shaw case) of conspiring to corrupt public morals and outrage public decency. The fact that the acts they were supposedly conspiring to incite people to commit were not, themselves, offences, made little difference to the final outcome, and they were found guilty. Conspiracy charges were used again in the OZ trial, but were thrown out, although the trio were found to be in breach of the Obscene Publications Act, a verdict which was only reversed on appeal. The Little Red Schoolbook was also condemned, although a revised version with twelve lines having been censored, was reissued within

months, and was not prosecuted. The final case was that of Nasty Tales, which, unlike the others, managed to escape, and effectively brought to a close the battle between the underground press and the 'establishment'. Neither side had won, for as Sutherland points out, all that really happened was that the issue ceased to be historically relevant.

In conclusion, it may be argued that there were significant events in the 1960s that may more easily be described by the phrase 'a movement towards regulation' rather than as a 'movement towards permission'. In fact, events corresponding to both these types may be identified as occurring simultaneously in the period. As we have seen, Hall refers to this as a 'double taxonomy'. [145] The 'movement toward regulation' provides the other side of the coin to the one that caught the public's imagination at the time, and now infuses sociological description of the period (cf. chapter one). What then of the early 1970s? A backlash? Although there has probably never been a more concerted attack upon any part of English Literature, the permissive gains that had been made in the previous decade, ensured that the attack would not be completely successful, and, in the light of the above argument, the 'repressive movement' identifiable in the 1970s can only be understood insofar as it arose out of similar but less concentrated strategies in the 1960s.

Arguments such as, for example, that employed by Christie Davies may be forcefully rejected as simplistic and unidimensional. He fails to perceive the complexity of the social processes at work, and in so doing, gives precedence to one part of the overall process. It is both untrue to say that the law was simply altered in a 'permissive'

direction, or was only or mainly, implemented in a 'permissive' manner during the period 1960-75. To the extent that changes such as these may be identified, they are accompanied by changes that seem to show the law moving in precisely the opposite direction. What were involved, in other words, were shifts in the balance between permission and regulation.

- [1] Collins, 1974
- [2] Evening News 31 July 1972 p 10
- [3] ibid
- [4] Watney, S. (1987) op.cit.
- [5] Observer 17.9.72
- [6] Guardian 3 May 1971
- [7] Guardian 7 May 1971
- [8] Guardian 4 May 1971.
- [9] Pornography: The Longford Report. Coronet (1972) p.12
- [10] Sunday Times 16 August 1971.
- [11] Sunday Times 27 January 1974.
- [12] Spectator 4 September 1971.
- [13] January 1972 and Sunday Times 27 January 1974
- [14] Worsthorne and Saville.
- [15] Sunday Times 27 January 1974.
- [16] ibid
- [17] Spectator 4 September 1971.
- [18] The Times 25 August 1971.
- [19] Sunday Times 29 August 1971.

- [20] September 1972.
- [21] 27 and 30 August 1971.
- [22] The Longford Report op cit pp 383-5.
- [23] Dworkin, R. quoted in NCCL (1972) Against Censorship pp.33-4
- [24] The Longford Report (1972) op.cit. p.428
- [25] S Binney; D Delderfield; J Murray Brown; Cliff Richard; Jimmy Savile.
- [26] The Longford Report op cit p 218-9.
- [27] ibid p 221
- [28] ibid. p.214
- [29] ibid. p.218
- [30] ibid p 308.
- [31] ibid p 309.
- [32] ibid pp 313-4
- [33] ibid p 332
- [34] ibid p 343
- [35] ibid p 339.
- [36] ibid p 348.
- [37] ibid p 357
- [38] There were reservations from David Goodburn, Kingsley Amis and Elizabeth Jane Howard.

- [39] Sunday Times 24 September 1972
- [40] Daily Telegraph 21 September 1972
- [41] The Times 21 September 1972
- [42] Daily Telegraph 21 September 1972
- [43] *ibid*
- [44] The Times 21 September 1972.
- [45] Daily Telegraph 21 September 1972.
- [46] The Times 21 September 1972.
- [47] Daily Telegraph 21 September 1972.
- [48] *ibid.*
- [49] *ibid.*
- [50] The Longford Report (1972) *op cit* p.262.
- [51] Daily Telegraph 21 September 1972
- [52] Daily Telegraph 25 September 1972
- [53] The Times 22 September 1972
- [54] Daily Telegraph 21 September 1972
- [55] *ibid.*
- [56] The Longford Report (1972) *op.cit.*
- [57] The Times 23 September 1972.

- [58] The Times 26 October 1972
- [59] Guardian 26 September 1972
- [60] Daily Telegraph 13 October 1972
- [61] Sunday Times 24 September 1972
- [62] The Times 21 September 1972
- [63] The Economist 23 September 1972
- [64] Observer 24 September 1972
- [65] Sunday Times 24 September 1972
- [66] Evening News 20 September 1972
- [67] Society of Conservative Lawyers (1971) Pollution of the Mind.
- [68] The Economist 18 December 1971.
- [69] John Calder (Publications) Ltd. v. Powell [1965] 1 Q.B. 509
- [70] The Longford Report op.cit. p.313
- [71] *ibid.* p.177
- [72] Shaw v DPP [1962] A.C. 220 quoted in NCCL (1972) op.cit. p.17
- [73] Robertson, G. (1979) op cit p 216.
- [74] *ibid*
- [75] quoted in the Guardian, 11 November 1970
- [76] Sutherland (1982) op.cit. p108

- [77] quoted in Robertson (1979) op.cit. p.108
- [78] The Times 16 March 1971
- [79] Tribe, D (1979) op cit p 136.
- [80] Quoted in Palmer, T. (1971) The Trials of OZ. Blond and Briggs pp 25-6.
- [81] OZ No.28 'Schoolkids Issue' p.5
- [82] ibid.
- [83] ibid. p.32
- [84] ibid, p 35.
- [85] Robertson, G. (1979) op cit p 126.
- [86] R v Calder and Boyars [1969] I Q B 151.
- [87] Palmer, T (1971) op cit p 96.
- [88] ibid, p 119.
- [89] The Times. 3 July 1971.
- [90] The Times. 3 July 1971
- [91] The Times. 6 July 1971.
- [92] The Times. 8 July 1971.
- [93] Palmer, T (1971) op cit pp 142-3
- [94] Daily Telegraph. 20 July 1981; The Times. 23 July 1971
- [95] The Times. 21 July 1971

[96] Palmer, T (1971) op cit p 252; Guardian. 28 July 1971

[97] ibid. p 257.

[98] Quoted in Michael, R. (1972) The ABZ of Pornography Panther pp 117-18 and Robertson, G. (1979) op cit p 133

[99] Daily Telegraph leader 29 July 1971, quoted in Palmer (1971) op.cit p.262.

[100] Quoted by Palmer (1971) op.cit p 263.

[101] Guardian 6 August 1971.

[102] Daily Telegraph 6 August 1971.

[103] ibid.

[104] The Times 6 August 1971.

[105] Evening Standard 5 August 1971.

[106] The Times 6 July 1971.

[107] ibid.

[108] The Times 6 July 1971.

[109] The Times 7.8.71 from: Bruce Page, Tony Delano, John Pilger, Phillip Knightley, Derek Porter, Murray Sayle and Clive James.

[110] The Times 7 August 1971.

[111] Sunday Telegraph 8 August 1971.

[112] Observer 8 August 1971.

[113] Sunday Times 8 August 1971.

[114] The Times 10 August 1971.

- [115] The Guardian 13 August 1971.
- [116] The Times 4 November 1971.
- [117] R v Anderson [1971] 3 All ER at p 1160 quoted by Robertson, G. (1979) op cit p 49.
- [118] Daily Telegraph 6 November 1971.
- [119] R v Anderson [1971] 3 All ER 1152 at p 1161.
- [120] [1971] 3 WLR 939 at p 950; Robertson, G (1979) op cit p 135.
- [121] Daily Telegraph 6 November 1971.
- [122] Soren Hansen and Jepser Jensen. (1971) translated from Danish by Bert Thornberry. Stage one. 1971.
- [123] ibid p 29.
- [124] ibid p 52.
- [125] ibid p 95.
- [126] ibid.
- [127] ibid p 127
- [128] The Times 30 June 1971.
- [129] The Times and Daily Telegraph 30 June 1971.
- [130] The Times 2 July 1971.
- [131] Daily Telegraph 2 July 1971.
- [132] The Times 4 July 1971.
- [133] ibid.

[134] The Guardian 12 July 1971.

[135] Tracey and Morrison (1979) op.cit.

[136] Whitehouse (1977) op cit p 235.

[137] Freethinker 10 July 1971

[138] Evening Standard 29 October 1971

[139] Appeal of Richard Handyside. Inner London Crown Court 29.10.71 and Robertson G (1979) op cit pp 292-3.

[140] Separate opinion of Judge Mosler. European Court of Human Rights. Handyside Case 7.12.76. quoted in Robertson (1979) op cit p 93.

[141] Sunday Times 28 January 1973.

[142] Guardian 25 January 1973

[143] Sunday Times 28 January 1973

[144] Cox, B (1975) Civil Liberties in Britain Harmondsworth. Penguin.

[145] in NDC (eds) (1980) op.cit.

Chapter Six: 'A Woman's Right to Choose'? Abortion and the law in Post-War Britain

The 1967 Abortion Act is generally viewed as a 'permissive' piece of legislation which is part of the 'liberal' jigsaw that also includes reforms in such areas as homosexuality and obscenity. The purpose of this chapter, as in previous chapters, is to examine the changes in the law; the reasons or the dynamics behind such changes, and the extent to which the label 'permissive' can be considered to be a useful tool in understanding them. Although this thesis is primarily concerned with legislative changes that took place during the 1950s and after, it is necessary to move further back than that in order to get a clear picture of the situation as regards abortion before the 1967 Act.

Before Steel : Abortion in Britain before 1967

For opponents of abortion law reform, the 1967 Act is, like the case of pornography and the 1959 Obscene Publications Act, considered to be 'the opening of the floodgates'. We are presented by them with a picture of a once relatively abortion-free Britain in which the operation was only necessary when there was grave physical danger to the life of the mother. As Professor Hugh McLaren might have put it, there was nobody "murdering little babies".[1] On the basis of press cuttings collected by the Abortion Law Reform Association (ALRA) in the late 1930s, Madeleine Simms is able to provide fairly strong evidence to suggest that, far from an abortion-free country, illegal

back street operations, carried out in, for the most part, dangerously unhygienic conditions were numerous:

The press cuttings ... suggest that criminal abortion was widespread in London and the major provincial cities, and that criminal abortionists, medical and lay, if they had a reasonable reputation, had large catchment areas in the country districts around the cities and in neighbouring smaller towns less well served in this respect. Some very notable abortionists like Dr Powell of Tooting, evidently attracted clients from all over the country.[2]

One will never be able to discover the actual number of abortions that were carried out each year in the earlier parts of this century but, whatever it was, it was sufficiently large and dangerous to prompt the formation of a pressure group, the ALRA in 1936, whose aim was to campaign for liberal law reforms and more public information. What, then, was the situation legally at this point?

The first major piece of legislation dealing with abortion in this country was the Offences Against the Person Act which was passed in 1861. Section 58 of the Act made it a felony for anyone, including the woman herself, unlawfully to procure an abortion. The offence was punishable with life imprisonment. Section 59 of the Act made it a misdemeanour to supply any instrument, poison or 'noxious thing' for an abortion. This was punishable with imprisonment for three years.[3] During the later stages of the nineteenth century, it was slowly accepted that the operation was necessary if the mother's life was at stake, and the techniques of abortion were both explained and illustrated in medical textbooks.

Although this was the case, public knowledge and access were extremely limited, and there were several prosecutions of people who dared to publish and disseminate contraceptive techniques, among them, Annie Besant in 1887. The fact that abortions were performed 'legally' in certain cases at this time, was largely the result of a loophole in the 1861 Act created by the continued use in it of the word, 'unlawfully', implying, as it did, that there could, theoretically at least, be 'lawful' cases. The strides that were made at this time in various medical techniques made the operation safer, reinforcing this situation in which abortions were carried out to save life. The introduction of the 1929 Infant Life Preservation Act protected this practice, and also introduced the notion of 'viability' - the stage at which the foetus could be expected to live independently of its mother. The point was put at twenty eight weeks. Up until this point, then, the only situation in which a doctor could perform an abortion and stay within the law, was in order to save the life of the mother.

During the 1930s, women's organisations, the newly formed ALRA and others placed a great deal of pressure on the government to set up an inquiry into the state of affairs regarding abortion. This the government did in May, 1937, under the chairmanship of Mr Norman Mirkett, as he was then. Its terms of reference were to 'enquire into the prevalence of abortion, and the law relating thereto, and to consider what steps might be taken to secure the reduction of maternal mortality and morbidity arising from this cause'.^[4] The Committee took two years to report, and it recommended that the law should be changed in order to make it more certain, so that medical practitioners should know under what circumstances they were acting

legally. As regards the prevalence of abortion, the Committee estimated that well over 100,000 abortions were carried out annually, of which at least 40% were 'illegal'.

The Birkett Committee recommended that the law be should amended to make it clear, despite the fact that, during the two years it sat, there came before the courts a very important case that was to have a profound effect on the practice of abortion in the following thirty years. In 1938, a young girl aged fourteen was forced into their barracks by a group of Guardsmen who assaulted and raped her, as a result of which she became pregnant. Her Roman Catholic doctor refused to terminate her pregnancy, and she was eventually referred through the ALRA to a Consultant Obstetrician at St Mary's Hospital, where he performed the operation, though not before some careful study:

After getting the consent of her parents, I admitted her on June 6th 1938. I kept her in bed in the ward for eight days to be sure of the type of girl I was dealing with; many of the prostitute type or those of low intelligence are completely undisturbed by pregnancy, except that for the first of these groups it is an obvious nuisance, but nothing more.[5]

He decided to try to establish the legality of the operation he was to perform and informed the police of his intentions. He was charged and eventually tried at the Old Bailey. The trial was national news for several days, and his eventual acquittal was greeted with approval by most of the national press. The summing up by Mr Justice Macnaghton led to a considerable liberalisation of the abortion laws:

The defendant is charged with an offence against s.58 of the Offences Against the Person Act, 1861
.... my direction to you in law is this - that the burden rests on the Crown to satisfy you beyond reasonable doubt that the defendant did not procure

the miscarriage of the girl in good faith for the purpose only of preserving life.... What then is the meaning to be given to the words "for the purpose of preserving the life of the mother".... As I have said, I think those words ought to be construed in a reasonable sense, and, if the doctor is of the opinion, on reasonable grounds and with adequate knowledge, that the probable consequence of the continuance of the pregnancy will be to make the woman a physical or mental wreck, the jury are quite entitled to take the view that the doctor who, under those circumstances and in that honest belief operates, is operating for the purpose of preserving the life of the mother.[6]

As can be seen, Justice Macnaghton extended the definition to cover not only 'physical' but also 'mental' health, thereby widening the conditions under which doctors could legally perform abortions. Despite this new protection, similar cases were brought against doctors in the 1940s and 1950s. In 1948, two practitioners, Dr Mary Ferguson, a psychiatrist, and Dr Elizabeth Bergmann, a surgeon, were charged under the 1861 Act at the Old Bailey. The judge in his summing up, endorsed the findings in the Bourne case, and the jury duly acquitted. Nevertheless, two highly respected members of the medical profession found themselves in court for four days, and faced prison if convicted.[7]

Ten years later, two doctors found themselves in the Central Criminal Court. One, a Dr Stungo, was charged with being an accessory before the fact to using an instrument to procure a miscarriage; the other, a Dr Newton, was charged with manslaughter. The case arose when a pregnant woman was admitted to hospital in a very agitated condition. Having been referred by Dr Stungo to Dr Newton, she was given an inter-uterine injection of utus paste, sent back to her hotel, where she later died. The judge's summing up in the case followed that laid down in the Bourne case, and Dr Stungo was found not guilty. However,

Dr Newton was found guilty of manslaughter by unlawfully using an instrument to procure a miscarriage and sentenced to consecutive terms of three and two years imprisonment respectively. Thus although the law had seemingly been clarified by the Bourne case and Mr Justice Macnaghton's summing up had been subsequently reinforced in several cases, doctors were still unsure of their legal position and this undoubtedly led to inconsistency in treatment.

Five years before the Newton case, the first attempt was made in Parliament to alter this situation, and it was the start of at least twenty-five years of almost continuous parliamentary debate on the subject of abortion. In 1953, Joseph Reeves secured a place, albeit a fairly low one, in the Private Members' ballot and agreed to introduce an Abortion Bill. It was an extremely limited measure, designed simply to clarify the situation regarding therapeutic abortions, and Reeves, when he introduced it, was immediately on the defensive:

Because of certain pronouncements that have been made in the press as well as upon platforms, I must make it clear from the outset that it is not the object of the promoters of this Bill to extend the practice of abortion. On the contrary, it is to confine it to cases where, in the view of the competent medical practitioner, it is in the interest of the mother's health and for the prevention of injury to her body.[9]

Unfortunately for Reeve, his Private Member's Bill was the third of the day, and some filibustering by Roman Catholic MPs on the first two, left him with little time, and his measure was easily talked out.

The next measure to be discussed in Parliament was introduced in the House of Lords, by Lord Amulree, a Liberal peer and doctor. It was short lived, however, as his intention was to introduce a Bill similar to that proposed by Joseph Reeve, but he found that this was not to the satisfaction of the ALRA and in particular, their secretary, Alice Jenkins, who wished to see the inclusion of a 'social' clause (ie introducing grounds for abortion that would take into account 'social' as well as medical factors). Following this disagreement Lord Amulree decided not to proceed with his Bill.

Pressure for change was still mounting. In 1955, the Magistrates' Association passed a resolution in favour of change. Three years later, Glanville Williams' influential book

The Sanctity of Life and the Criminal Law, urged a more liberal approach to abortion, as did Roy Jenkins in, The Labour Case [10].

The most glaring defect in the contemporary situation, it was held, was the inequality that existed. Abortion on 'social' grounds was denied to most women, particularly the working classes, whereas it was fairly common knowledge that private abortions by specialists in Harley Street and similar areas could be relatively easily obtained by those with enough money to pay. This situation was well documented by Alice Jenkins in her book, Law for the Rich, published in 1961, in which she quotes from Glanville Williams:

No one wants the publicity of a jury trial and even an unsuccessful prosecution may be professionally ruinous.... Whilst the ordinary practitioner is frequently reluctant to involve himself in an abortion, some practitioners make a profitable speciality of it, giving abortion to allcomers on pretence of therapy, protecting themselves by working in teams, and charging fees commensurate with the risk they consider themselves to run. Hence the law of therapeutic abortion tends to be one for the rich and another

for the poor.[11]

The policing of the law at this time was highly selective. During the Second World War there was a fourfold increase in the number of crimes of procuring abortion known to the police and the 1940s and 1950s saw the continued reporting of criminal abortions [12]. Brookes suggests that along with this, after the war, there was an increase in police surveillance of the activities of the so-called 'professional abortionists'. However, few of these professionals were prosecuted. Dickens shows that only 5% of the women, and 17% of the men convicted could be classed as 'professionals' [13]. There had emerged during the course of the century an unresolved conflict between law and practice, and Brookes quotes one police official's explanation:

there are so many abortions procured every day, and the law on the subject is so sticky, that we could not hope to clean up the situation. [14]

Although, as was suggested above, there is little accurate evidence that would enable us to judge the number of abortions taking place in this period, most authors agree that the numbers were high. Nevertheless, the numbers of prosecutions were low, and the law was widely regarded as being obsolete. It is possible, however, that far from being a spur to reform of the law, its widespread disregard may have had the opposite effect. In this vein, Smith has argued that the general ease of access to safe abortion that was enjoyed by the middle classes may have actually slowed down the impetus for reform [15].

At around the time Alice Jenkins' book was published, a second Private Member's Bill concerning abortion began its life in the House of Commons. In introducing his Bill, Kenneth Robinson was at pains to stress that anyone who believed that his measure was designed to

provide facilities to avoid bringing unwanted children into the world under any circumstances was mistaken. He argued that it was his intention to reinforce what already existed in case law, and to thereby alleviate the situation in which back street abortionists were allowed to flourish and in which the law could be bypassed to help the rich. The bill was destined for failure. The Home Secretary had said, in answer to a question in the Commons in the previous session, that such a measure was unnecessary as the case law was strong enough. This position was reiterated by the Under-Secretary of State during the debate on the Second Reading, a debate which ended with the Bill once again being talked out by Catholic MPs.

The Roman Catholic Church, which sees deliberate abortion as a deadly sin - indeed in a speech in the 1950s, the then Pope declared abortion to be wrong even to save the life of the mother - has fought long and hard against legislative change in this country. As has already been seen, the first two attempts at reform after the second world war were both scuppered by Catholic MPs talking them out. Catholics in Parliament continued to fight up to and after the 1967 Abortion Act, but, in the 1960s one major factor was to minimise the effect Catholic opinion had outside Parliament.

The thalidomide 'epidemic' which began in 1961 was the turning point in the fortunes of the ALRA, and perhaps the major factor in the declining influence of the Catholic Church in the abortion debates in Britain. The birth of a large number of deformed children, usually having ill-developed limbs, generally the arms and shoulders, was first noticed in Australia, followed by Germany and Britain. The only factor that was common to these cases was the drug, a sedative,

thalidomide. Although the pro-abortion pressure group did not take advantage of the tragedy at the time, the thalidomide saga had an immense effect on public opinion and the press, and there can be little doubt that it was the single most important factor in modifying public opinion. There were a large number of well publicised cases in the media which had the effect of moving public opinion in favour of therapeutic abortion. Brookes has described the situation at the time:

Distillers withdrew the drug on the 3 December 1961. In May 1962 the Ministry of Health sent a memorandum to Medical Officers of Health stating that 'every possible effort should be taken' to prevent the birth of deformed babies. Doctors were advised to identify from their records any patient for whom thalidomide had been prescribed. The meaning of an unwanted pregnancy, long understood by women, was dramatically brought home by doctors who had prescribed with such devastating effects. Many may have felt, as the BMJ suggested, that they had 'failed to keep their contract' if the mother and baby were anything but normal. The Ministry of Health did not even attempt to estimate the numbers of abortions performed to prevent the birth of deformed children. [16]

Over the following two years, this position was reinforced by the large number of congenitally abnormal babies that were born during the rubella epidemics of that time. There was no getting away from abortion as an issue.

In 1962, questions were put down about abortion in both the Commons and the Lords, and both received standard replies about the grounds being injury to the physical or mental health of the mother. Lady Summerskill, who had put the question in the House of Lords, was taken to task by the Daily Telegraph:

Lady Summerskill who presumably subscribes to the Hippocratic Oath, seriously proposes in Parliament that abortion be legalised... merely

because the pregnant woman has taken the so-called tranquillizing drug, thalidomide, and it is by consequence possible that her child may be born grievously deformed.... It does not justify Lady Summerskill's revolting conclusion.[17]

Nevertheless, it was 1965 before another Bill was before Parliament, this one introduced by Mrs Renee Short under the Ten Minute Rule. Again, the measure was designed to embody in the law only what was by now accepted as general practice:

When it was necessary for preserving the health or life of the woman; where there was a serious risk of a defective child being born, and when the pregnancy resulted from a sexual offence.[18]

Again, however, the Bill was easily stopped. This time, during its Second Reading, cries of 'Object!' by William Wells QC were enough to kill it. Unperturbed, Mrs Short and William Hamilton put down 'Motion 303' calling on the Government to make time in the forthcoming session for reform of the Abortion Law. As Hindell and Simms point out, the importance of the Motion was to give pro-abortionists outside Parliament some indication of how much support they had inside the house. During the four weeks or so it was on the order paper, it received 144 signatures.

The following session saw the introduction of a Private Member's Bill by Simon Wingfield Digby, who said in the Commons that he regarded "this as one of the last steps in the emancipation of women".[19]. His 'Medical Termination of Pregnancy Bill' did not include either a 'social' clause, or rape, as grounds for abortion. The Second Reading of the Bill lasted about an hour, and was easily talked out by two Catholic brothers from Merseyside, Peter and Simon Mahon.

Before the introduction of this Bill into Parliament, two important events had taken place, both of which had significant effects on the abortion 'debate'. The first was the intervention of the Church of England. The Church Assembly's Board for Social Responsibility published a report entitled, Abortion: An Ethical Discussion, in 1965, in which it was argued that abortion could be justified where 'it could be reasonably established that there was a threat to the mother's life or well-being'. The important part of the Report as far as pro-abortionists were concerned was that health and well-being were 'seen as integrally connected with the life and well-being of the family'. Effectively, then, the Church Assembly was in favour of the inclusion of a 'social' clause in future attempts to reform the law, and it was such a clause that first saw the light of day in a Bill introduced in the House of Lords in late 1965 by Lord Silkin. This was the first of two Bills introduced by Lord Silkin, and to a great extent it was much the same as the earlier Bills presented by Short, Reeves and Robinson. The similarity is largely explained by the fact that all three were drafted by Glanville Williams. The major difference was the inclusion in the Bill of Clause 1(c) which proposed that abortion should be lawful, on the ground that:

the health of the patient or the social conditions in which she is living (including the social conditions of her existing children) make her unsuitable to assume the legal and moral responsibility for caring for a child or another child...[20]

In discussing this clause, Lord Silkin said that he felt that it was less likely to receive the sympathy that certain of the other proposals had commanded. The major critic of the Bill as a whole, and of Clause (C) in particular, was Viscount Dilhorne who fiercely contested the arguments of the reformers, and to a certain extent was

successful. On the division to give the Bill a Second Reading, the Lords divided 67 to 8 in favour, the first victory for an Abortion Bill in Parliament. In Committee, however, the Bill, and especially its most contentious aspect, Clause (C), was amended. Largely in response to Dilhorne's criticisms, the Bill was totally redrafted, dropping Clause (C) altogether. The new clause which read as follows:

(abortion should be lawful on the grounds that)
the pregnant woman is or will be physically or
mentally inadequate to be the mother of a child
or of another child, as the case may be...[21]

simply became an 'inadequacy' clause, centred entirely on the mother and taking no account of the social conditions in which she lived. Although the 'social' clause had been rewritten in order to placate some of the opponents of the Bill, it was still defeated at the Report Stage. The Bill, nevertheless, received an unopposed Third Reading and was due to move on to the Commons when a General Election intervened. At the beginning of the next session, Silkin, seeing little chance of the matter being taken up in the Commons, decided to reintroduce his Bill, in exactly the same form, in the Lords. Again, the 'inadequacy' clause was narrowed in scope in committee. At this point, a group that was to play an important role in future discussions of abortion law reform, the Royal College of Obstetricians and Gynaecologists (RCOG), published their report on the subject.[22]

They argued in the Report that any radical alterations in the law should wait until there had been time to set up an interdepartmental committee to collect official figures concerning abortion both from this country and abroad, and subject them to impartial study.[23] The publication of the Report did cause Silkin to amend his Bill in one important respect, however - and this was the first point at which the

terms of the debate started to be set by the medical profession. More particularly, he took account of their wish that one of the doctors in charge of the operation should be a consultant gynaecologist, as opposed to the registrar with a gynaecological appointment that had been specified in the First Bill. Silkin's Bill was to go no further, as in the following month the ALRA were able to persuade one of the MPs who had drawn a high position in the Private Members' ballot to take on board Abortion Law reform as his cause.

Before moving on to consider the 1966 Abortion Bill, a brief summary of the situation as it existed at that point is necessary. From the 1930s onwards, the question of women's access to abortion was a fairly constant theme outside Parliament, and reform of the law in this area can rarely have been out of the minds of MPs from the early 1950s onwards. As the years passed, it had become progressively clearer that abortion was a common operation and that, in many cases, it was considered to be quite legal. It also became clear that for those with money, abortion was not a difficult operation to obtain, even if one's reasons were outside what was generally considered to be 'legitimate'. Also clear was the fact that certain sections of the medical profession were not only willing to perform the operation under these circumstances, but were willing to become rich on it as well. By this time, a growing number of women were becoming more vociferous in claiming what they regarded as their their rights. The largely female dominated ALRA, began to find its voice again in the early 1960s after some reorganisation and a change of leadership, spurred by the thalidomide tragedy in 1961/3 and the rubella epidemics of that same period. The renewed efforts of the ALRA and their supporters in Parliament, together with the impact of thalidomide,

seemed to transform public opinion (the opinion polls at the time showed that anything up to 75/80% of the public were in favour of reform), and the constant chipping away inside and outside Westminster brought the Church, and perhaps in this area more importantly, the medical profession into the arena. This is the backcloth upon which David Steel entered the fray in May 1966.

The Abortion Act 1967

David Steel was placed third in the Private Members' ballot and was therefore in a good position to get a fairly lengthy hearing for whichever Bill he decided to sponsor. His first inclination was to go for something that would clearly benefit his constituents, such as a Border Development Bill, but he was told by the Scottish Office that they could not spare any time to help him and that the Government anyway was against such a measure. Of a more national nature, two avenues of legislation were presented to him: homosexuality and abortion. He was strongly recommended by the Earl of Arran to take on board the Sexual Offences Bill which Lord Arran had just successfully piloted through the Lords. However, Steel found that that his constituents were strongly against him introducing such a Bill, and after consultation with the ALRA he therefore chose abortion.

Having decided upon which area of legislation he was going to push for, Steel's next task was to decide what form this legislation should take. The most obvious course of action was to take Silkin's Bill as it stood, but he decided against that and changed it so that rape was reinserted as a separate ground. Silkin's 'consultancy' clause was also dropped.

The Second Reading of the Bill was on 22 July 1966, and was to be the first full scale debate on abortion in the House of Commons. The Bill as presented to Parliament read as follows:

1. Subject to the provisions of this section, a person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner if that practitioner and another registered medical practitioner are of the opinion, formed in good faith:
 - (a) that the continuance of the pregnancy would involve the serious risk to the life or of grave injury to the health, whether physical or mental, of the pregnant woman whether before, at or after the birth of the child; or
 - (b) that there is a substantial risk if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped; or
 - (c) that the pregnant woman's capacity as a mother will be severely overstrained by the care of a child or of another child as the case may be; or
 - (d) that the pregnant woman is a defective or became pregnant while under the age of sixteen or became pregnant as a result of rape.

In his opening speech, Steel said that he was unhappy with some of the wording of the Bill, and that he would be happy to accept amendments to it. His greatest concern was with section 1(c), but his interpretation of what might happen if the clause was changed, showed, as will become clear, great insight into the future of 'his Bill'.

One could say that it would be better to drop subsection (1,c) altogether and leave the continued operation of the law based solely on the definition of physical or mental health, which any doctor may choose to make. But to do this is to leave too great an uncertainty still in the law. It would leave open far too much the interpretation of the law by medical practitioners and would place too great a responsibility on them.[24] (my emphasis)

As it was to turn out, this was almost precisely what happened to the original Bill.

In the previous attempts that had been made to change the law, only two had included a 'social' clause, i.e. had attempted to extend the range of reasons under which an abortion could be legal, and in both those cases (Silkin's two Bills) the clause had been considerably tightened. Steel addressed himself to this problem of 'where to draw the line', and was quite clear what he felt should be allowed and what should not:

We want to stamp out the back street abortions, but it is not the intention of the Promoters of the Bill to leave a wide open door for abortion on request.[25]

The first line of criticism came from William Wells QC who argued that the Bill contained no safeguards against the destruction of potentially healthy babies, undermined respect for the sanctity of human life, and, perhaps most interestingly, he suggested that it threatened the independence of the medical profession. The position of the medical profession was one of the central themes of the debate, and opinion ranged from that expressed by Williams Wells to that of Dr John Dunwoody, who argued that quite the opposite was true and that the Bill would give greater independence of action to the doctors. What was not contested was the degree of importance given to the opinions of the medical profession, and the reports published by the RCOG and the BMA were constantly cited as reference points. Where the two reports were in agreement was that subsection (1,c) was not the sort of proposal that should be supported. What they wanted was to enforce the position that already existed in Case Law and to stipulate more stringently the qualifications needed in order to perform the operation, i.e. to secure a greater degree of control over the implementation, as well as the shape, of the law.

Surprisingly, given the general outcry about 'permissiveness' that was becoming common at this time, there was relatively little discussion along the 'declining morals' line in the debate, although Jill Knight MP for Birmingham, Edgbaston, did make the link between the morals of the young and abortion:

For goodness sake let us bring up our daughters with love and care enough not to get pregnant and not let them degenerate into free-for-alls with the sleazy comfort of knowing 'she can always go and have it out.' [26]

Roy Jenkins, the then Home Secretary, defended the Bill, describing the current situation as "uncertain, harsh, archaic and in need of urgent reform". Obviously he was not alone in that opinion, for the Bill received an overwhelming majority of two hundred and twenty-three votes to twenty-nine when the house divided.

After the Bill had received its Second Reading, it was time for the involved parties to decide exactly how best they would be able to achieve their aims. It is at this point that it is easiest to judge who were the most influential groups in determining the final outcome. As has already been seen, David Steel had announced during the debate on the Second Reading that he felt some amendments might be needed, and it was particularly during the Committee Stage that the Bill was now about to enter that those involved could make their voices heard. Hindell and Simms, [27] claim that the 'liberalisation' of the abortion laws in Britain came about largely as a result of the activities of the Abortion Law Reform Association. Whilst one cannot deny the influence of this pressure group on the debates at the time - they were, for instance, vital in organising and disseminating information about abortion and the intentions of the proposed legislation - to

accord to them the position of 'moral entrepreneurs' is to ignore the role of a much more significant lobby in this debate, the medical profession. Using Gusfield's notion of 'status politics', Victoria Greenwood [28] has outlined a persuasive argument that suggests that the involvement of the medical profession in the Abortion Law debate came about as a result of a perception on their part of a threat to their interests and autonomy. This becomes clear if one looks at the Committee stage of the Bill where the influence of groups like the BMA and the RCOG played a significant part in shaping the Bill:

Officially these organisations were not opposed to reform, but merely opposed to particular sections of Steel's Bill. In the event the influence exerted by both organisations on Parliament and on the Government served to jeopardise the very life of the Bill, and almost wrote into it a clause which might have made it worthless, namely the consultant clause.[29]

In November 1966, the BMA and the RCOG published a joint report in which they sought to stress the dangerousness and difficulty of abortion as an operation. They did this by stressing that terminations should only be carried out under the supervision of a consultant or a doctor approved by the Minister of Health. They argued that it should be stipulated that 'at least' two medical opinions should be required, and that abortions should only be permitted in registered nursing homes approved for that purpose by the Minister of Health. [30] The Report also objected to clauses 1(c) and (d) on the grounds that they might well lead to an excessive demand for termination on social grounds and that this would be unacceptable to the medical profession. The BMA and the RCOG were not only trying to build in clauses that they wished to see included, but were, as a consequence, attempting to place greater control over the operation of the proposed legislation in their own hands.

Strong pressure was put on Steel, not only by the medical profession, but also by the ALRA who urged him to retain the 'social' clause. In late December, however, he tabled an amendment which withdrew clauses 1(c) and (d), and widened 1(a) to make an abortion permissible if the continuance of a pregnancy involved risk to a woman's 'wellbeing' as well as to her physical and mental health. The clause also allowed a doctor to take into account 'the patient's total environment, actual or reasonably foreseeable'. The medical profession won the day, then. Some of the press described the amended Bill as 'watered down' and, as Hindell and Simms reported, "many of the leading reformers regarded Steel's action as a betrayal." [31] Nevertheless, Hindell and Simms do later point out that:

In view of the tremendous effort which was later needed to get even the amended or watered down version through Parliament, it is very difficult to fault Steel's political judgement. At the time, however, many of the reformers were extremely critical of it. [32]

In his foreword to their book, Steel explains the reasoning behind the change:

In their desire to have retained a clear and separate 'social clause', I believe the authors underestimate the importance of the growing school of medical thought (of which Sir Dugald Baird is surely a founder member) that social condition cannot be and ought not to be separated from medical considerations. [33]

What Steel is explaining here is that, during the course of the passage of the Bill, he was slowly persuaded by people like Sir Dugald Baird and Malcolm Millar that the so-called 'social' considerations that might be taken into account could only be fully understood by those qualified to decide upon the 'technical' aspects of each case, i.e. the medical profession itself. If one were to move towards a situation approaching 'abortion on demand' then, it would be the

pregnant woman who made the decision as to whether an operation was necessary or not. By incorporating a watered down version of clause 1(c) within clause 1 (a), the medical profession were able to maintain a position in which they were effectively the sole arbiters and decision-makers.

That this was the case can be seen from Hindell and Simms's description of the Committee's discussion over the possible removal of clause 1 (d) from the Bill:

For the benefit of those who supported the original clause Steel stated that the medical profession has assured him that doctors would in any case take these conditions into account.... David Steel, the medical profession and the Government were propounding the view that the law must not be made too clear lest the public read it and begin to demand their rights. Much better to leave it vague and fuzzy so that doctors would have total discretion in the matter of abortion and so that patients would be unable to argue.[34]

Despite the continued tailoring of the details of the Bill to suit the wishes of the BMA and the RCOG, both organisations still objected to, or at least had two major criticisms of, the Bill. At the end of the Committee Stage, the first clause read that an abortion would be legal when two doctors thought that 'the continuance of the pregnancy would involve risk to the life of or injury to the physical or mental health of the pregnant woman or the future well being of herself and or the child or her other children'. The Ministry of Health objected to the phrase, 'future well being', which, after consultation, Steel was forced to withdraw as time was already getting short. The BMA and the RCOG also wished a 'consultant' clause to be reintroduced, but not only were Steel and the ALRA against such an amendment (a similar one had been defeated in Committee), but so was the Home Office.

The Report Stage did not begin until July 1967, and, in his opening speech in the debate, Steel was quick to point out the changes of a restrictive nature that had been made:

Finally, I submit that it is necessary in a Bill of this kind, to introduce certain safeguards, and that we have done. For the first time there is a legal requirement of a second opinion; no one doctor can act on his own. Secondly, there is the requirement for notification of the operation to the chief medical officer of health. Thirdly, and importantly, the Committee inserted a further safeguard which was not present when the House gave its approval to the Bill on Second Reading in that there is now in the Bill ... a provision for control over the place where the operation may be carried out. These are three essential and new safeguards which do not exist in the present law. [35]

The Report Stage took three days and was a long hard battle for the reformers and their opponents. Quintin Hogg, MP for St Marylebone, was highly critical of parts of the Bill. In particular, he was afraid that, as it stood, it would do nothing to alleviate the problem of 'rackets' developing, i.e. it would not stop there being one set of rules for those who could pay, and another for those who could not:

To my mind, the principal effect of the Bill ... will be to take out of the jurisdiction of the courts and put on the conscience of any two medical practitioners conscientiously applying the criteria prescribed by the Bill ... the question of whether or not an act of termination is or is not a criminal offence.[36]

After a long debate, the House gave the Bill its Third Reading and it went on to the House of Lords, where Lord Dilhorne again organised the opponents and succeeded in getting a consultancy clause reintroduced at the committee stage, although, much to the relief of the Bill's sponsors, this was defeated at the Report Stage. The Lords also removed, and then reinstated, the phrase 'any existing children of the family' in their considerations over the 'social' aspects of the

legislation. In the long term, the most important change came late in the day. Lord Dilhorne had continually pressed for the inclusion in the Bill of a definition of the element of risk that would justify a termination. The Lord Chief Justice came up with a solution which was accepted almost without debate by both sides and inserted. Under the new definition, abortion was legal when the 'continuance of pregnancy would involve risk to the life of the pregnant woman ... greater than if the pregnancy were terminated'.

Few seemed to realise the importance of this amendment at the time, but the critics were effectively confounding their own aims for, if abortions were as safe as the pro-abortionists claimed (and through technical advances they were becoming safer all the time), then, statistically, abortion could be safer than normal childbirth, where there is always a small degree of risk for the pregnant woman. The logic of this is that, in almost all cases, abortion would therefore be legally justifiable. [37] This has two consequences of course. Firstly, it provides the basis for a situation in which doctors could effectively supply 'abortion on demand', something which they, in particular, but also both reformers and opponents alike, had always seen as undesirable. Secondly, it provided almost complete legal protection for doctors and, at the very least, ensured that the availability of abortion would be governed by medical ethics rather than legal principles.

Why, then, was the passage of the Bill successful? A number of authors [38] have pointed to the importance of the number of new young MPs in parliament and effective pressure group politics. This, and the lack of an effective opposition, have been singled out by other

authors [39] as crucial factors in the success of Steel's Bill. Equally important, perhaps, was the thalidomide tragedy, which was undoubtedly a turning point as far as public opinion was concerned. The Abortion Act was ostensibly a response to increased calls, in particular from groups like the ALRA, but also from women in general, for fair and equal treatment under the law. As we have seen, the 'one law for the rich, another for the poor' theme may have been the focal point of criticism of the situation as it was then, but the final outcome of the debate had far more to do with the strength of the medical lobby than it did with that of the women's movement. The medical profession sought through this question to reassert its monopolistic power of diagnosis against a perceived, yet undoubtedly real, threat from the increasingly powerful section of women in British society who wanted to play a greater part in deciding whether or not they wished to give birth. That the medical profession won this battle is, in retrospect, hardly surprising, as even reformers like the ALRA never considered, nor wanted, 'abortion on demand'. If the question of 'a woman's right to choose' was never really aired - it was because, at that point, it was never a serious consideration. The major question was how to enact a piece of legislation that would allow abortion for the minority without creating a situation in which women could ask for termination as by right. Seen in this light, the closing speech made by Christopher Price MP was somewhat ironic:

When I have mixed with people both inside and outside the House who want the Bill, it has often occurred to me that this is not about abortion at all- it is part of the process of emancipation of women which has been going on gradually over a very long period. The public opinion behind the Bill is millions of women up and down the country who are saying "We will no longer tolerate this system whereby men lay down as though by right, the moral laws, particularly those relating to sexual behaviour about how women should behave." [40]

As has already been argued, there can be little doubt that the pressure for change came partially as a consequence of 'women's emancipation' or rather, from their increasing relative power potential in Britain, just as there can be little doubt that, in the form it finally took, the Bill continued to place in the hands of men the power to determine whether or not women should be allowed to terminate their pregnancies.

The first two questions that were set out earlier in this chapter have been considered; that is firstly, what types of changes were encapsulated in the 1967 Abortion Act, and secondly, what was the dynamic force or forces behind these changes? The third and final question that must be considered is, to what extent can these changes be adequately described as 'permissive'? In order to do this we must consider the public and Parliamentary responses to the Act, as well as examine the way in which the Act worked in practice.

After Steel : The 'Backlash'

The Abortion Act came into force on 27 April, 1968, and was subjected to an almost immediate attack. Its opponents were out to destroy it before there was a chance to see how it worked in practice. In July 1969, Norman St John Stevas introduced an amending Bill under the Ten Minute Rule which would have required one of the two doctors who recommended an abortion to have been a consultant in the NHS or a doctor of equivalent status. This attempt to restrict abortion by limiting the number of doctors that can authorise the operation had little chance of success, but the rationale of the opponents was that the longer time went by without a debate on the issue, then the more difficult it would be to get the law amended. As we shall see this was a consistent tactic. Just as the pro-abortionists kept plugging away in Parliament from the early 1950s to the passing of the Steel Bill, so the opponents of the 1967 Act have kept the issue alive in the Commons ever since.

After the successful passage of the Bill, the ALRA went into something of a decline. Most authors are agreed that this was the result of a general feeling within the organisation that the battle had been won and that it was time to move on to other issues. In particular, this meant the Birth Control Campaign to which the ALRA pledged much of its reserves in 1970. The reason for this was explained in the Association's 1969-70 Annual Report:

The executive committee believes that the abortion problem will assume a proper perspective in the eyes of many members of the public only when it is seen

as part of an overall campaign to avoid unwanted pregnancies. This suggests that the best course for ALRA, both from the point of view of reducing the need for abortion and of defending, and perhaps later extending, the Abortion Act, lies in a campaign for better facilities in the whole field. [41]

With the passing of the Act and the decline of the ALRA, the opposition started to grow. Not only did abortion become visible for the first time, but the numbers of reported abortions rose steadily. Francome suggests that the anti-abortion movement was also prompted into action by the fact that Britain was the first major European country to relax its abortion laws, and this prompted fears that Britain, and London in particular, was becoming the abortion capital of the world.

Not long after the defeat of St John Stevas' Bill, a Conservative MP, Bryant Godman Irvine, introduced another amending Bill which also included a 'consultant' clause. Again, he was unsuccessful, his Bill being easily talked out. [42] This was followed by a Bill by John Hunt which would have prohibited the charging of fees for referring or recommending women to doctors or clinics for treatment. Whilst his Bill failed even to reach a Second Reading, a more successful attempt was made by Michael Grylls, who introduced an Abortion (Amendment) Bill in May 1974 along the same lines as Hunt's. It successfully completed its Second Reading before a General Election intervened and the Bill fell. When the new Parliament sat, Michael Grylls obtained permission to reintroduce his measure, and it got to the Committee Stage, whereupon supporters of attempts to change the law withdrew their support, walking out and leaving the Committee without a quorum. Their reason was that they felt Grylls' Bill did not go far enough. They wanted a more thorough reform of the 1967 Act! The three years

in between the attempts by Hunt and Grylls to change the law seem, in retrospect, to have saved the 1967 Act. After the defeat of the Medical Services (Referral) Bill in 1971, the then Secretary of State for Social Services, Sir Keith Joseph, appointed a committee 'to review the operation of the Abortion Act, 1967'. He stressed at the time that the enquiry was only concerned with the working of the Act and not the principles that underlay it. The Committee could not engage in moral or ethical debates, but simply suggest ways in which the law could be operated more efficiently. It is an established convention of Parliamentary procedure that no attempt will be made to change the law whilst such a committee is sitting, and the three years that the Lane Committee took to produce its Final Report undoubtedly saw the 1967 Act through what may well have been its 'stickiest' period. During those three years, the abortion rate levelled off, and it is generally suggested that both the medical profession and the general public adjusted to and accepted legal abortion[43]. After the three years' consideration, the Committee unanimously supported the 1967 Act and its major provisions, arguing that any abuses that did exist were a product of maladministration rather than ineffective legislation. The Report generally came down in favour of the Abortion Act:

We have no doubt that the gains facilitated by the Act have much outweighed any disadvantages for which it has been criticised. The problems which we have identified in its working, and they are admittedly considerable, are problems for which solutions should be sought by administrative and professional action, and by better education of the public. They are not, we believe, indications that the grounds set out in the Act should be amended in a restrictive way. To do so...would be to increase the sum of human suffering and ill health, and probably drive more women to seek the squalid and dangerous help of the back street abortionist. [44]

The one legislative change that they did recommend was the reduction

of the upper time limit for abortion contained in the Infant Life (Preservation) Act 1929. The Committee also recommended the introduction of controls over commercial abortion bureaux, recommendations which were implemented almost immediately.

Despite the fact that the Lane Report supported the Abortion Act so wholeheartedly and that it received generally favourable comment upon publication, it seemed to have very little effect after 1974. It was not long before the anti-abortionists were back trying to amend the law in ways not suggested by Lane. The first Bill after that of Michael Grylls was introduced by James White, a Labour MP for Glasgow. Although White's Bill was ostensibly not 'anti-abortion' in that it concentrated on the 'abuses' of the system such as 'touting' rackets, it nevertheless went far further than this in that it attacked the 'social' aspect of the Act by inserting words like 'grave' and 'serious' into the clauses dealing with the woman's physical and mental health. [45] It would have restricted the decision-making process to two doctors who were not in practice together, and required that one had been registered for five years or over. In this way, it would not only have restricted women's access to termination, but would have also interfered with 'medical freedom', that elusive property that had caused so much debate over the 1967 Act. The Bill received a very large majority on Second Reading, and went to Select Committee. This large majority and a small but perceptible swing in public opinion at the time is generally explained by the effectiveness of the anti-abortion campaign which, if not organised around, was in no small part fired by, the publication in 1974 of a book with the emotive but descriptive title, Babies For Burning [46]. The book was based on a series of articles originally written for and published in

the News of the World by two journalists, Michael Litchfield and Susan Kentish. They set out to investigate the workings of the 'private abortion industry' - not the NHS - and to attempt to prove the effective existence of abortion on demand. They did this by posing as a couple seeking pregnancy advice. In the book, they claim that, on numerous occasions, Kentish was informed that her tests were positive and that she was pregnant, when in fact she was not and never had been. They further claim that she was told that abortions were easily arranged without her being examined by two doctors as required by the Act. Perhaps the most shocking claim in the book, and the source of its title, was that the authors had encountered one gynaecologist who had agreed to sell Litchfield aborted fetuses for soap manufacture. Asked how he would arrange this, the gynaecologist replied

I would not have to know officially what was going on... the fetuses, as far as I'm aware are prepared for the incinerator, then they just disappear. I don't know what happens to them. They just vanish. You have to make all the arrangements for a van or lorry or something to come to the rear entrance. Times and so forth would have to be arranged later... You see, I get some very big babies. It's such a shame to toss them in the incinerator, when they could be put to so much better use. We do a lot of late terminations. We specialise in them. I do ones that other people won't touch. I do them at seven months without hesitation. The law says that twenty eight weeks is the legal limit, but it is impossible to determine at what stage a termination was performed after the baby is burned, so it does not matter when one does it, really. If the mother is prepared to take the risk, then I'm game.

Now many of the babies that I get are fully formed and are living for quite a time before they are disposed of. One morning, I had four of them lined up crying their heads off. I hadn't the time to kill them there and then because we were so busy. I was loathe to drop them in the incinerator because there was so much animal fat that could have been used commercially. [47]

Many of the doctors, including this one, also had Nazi sympathies, the authors claimed. The same gynaecologist was quoted as having said the following:

Hitler may have been the enemy of this country, but not everything about his policies was bad. He had some very progressive ideas and philosophies. Selective life has always appealed to certain elements of the medical world. I've always been drawn to the possibility of selective breeding and selective elimination. But that's another matter... Many, many gynaecologists doing terminations in London and elsewhere think the same way as I do. But you have to be a man of science and not of emotion, to see through the fog of sentimentality. Human life is just a matter that can be controlled, conditioned and defused like any machine. [48]

Many of the book's claims are extreme and unproven. Others have been discredited. Potts, Diggory and Peel point out that "even a second-trimester foetus has no subcutaneous fat to act as a raw material for soap" [49], and the authors were also successfully prosecuted for libel by, amongst others, the British Pregnancy Advisory Service. Substantiated or not, the claims in the book were readily used by anti-abortionists and, in such an already emotive area, it is hardly surprising that some of the mud stuck. Other factors existed to help the Bill on its way. As was suggested above, after the 1967 Act, the ALRA, seeing it as a major success, ran into a period of steady decline, whereas the anti-abortionists, reeling from defeat, grew in number and got themselves better organised. The Society for the Protection of the Unborn Child (SPUC) formed in 1967 to try to prevent the passing of the Steel Bill, was joined in 1970 by LIFE, an organisation which saw itself as an alternative to voluntary pregnancy advisory services. Although the ALRA was in decline, opposition to attempted amendments to the 1967 Act was vigorous, and demonstrations against the White Bill led to the formation of the National Abortion Campaign (NAC). Working with groups like the ALRA and the Labour Abortion Rights Campaign, the NAC was an essentially grassroots organisation building on local feminist activity and trades union support. As Lowenduski suggests, [50] the trades union base in local branches to some extent enabled the defenders of the '67 Act to

counter the organisational base that the opposition groups had in the parishes. Despite the opposition's degree of organisation, the White Bill was not successful, as parliamentary time ran out. However, the size of its majority at Second Reading gave encouragement to its supporters and they began a renewed assault in the forthcoming months on the 1967 Act.

In 1977, William Benyon, Conservative MP for Buckingham, introduced a Private Member's Bill, largely based on the report of the Select Committee that had been reconvened after the fall of the White Bill. Although it would not perhaps have had such far reaching effects on the 1967 Act as White's Bill, the changes it would have wrought were fairly comprehensive. Again, the working would have altered to change the grounds for eligibility for abortion. One of the two doctors would have had to have been registered for at least five years, and the upper time-limit for abortions would have been lowered. The Benyon Bill was the most successful up to that point, completing its Committee Stage and only falling when the Government refused to allow it extra time to complete the Report Stage.

Soon after, Sir Bernard Braine introduced a Bill under the Ten Minute Rule along similar lines to Benyon's but, as with St John Stevas' Bill seven years earlier, it was a largely tactical move and had little chance of progressing.

The result of the General Election of 1979, returning the Conservative Party to power, gave the anti-abortionists the chance they were looking for. Towards the end of the life of the Labour Government,

during the voting on the Benyon and Braine Bills, the House had looked as if it was fairly closely divided. The changing balance of power in Parliament, including the retirement or defeat of several of the most distinguished pro-abortionists, must have filled the opponents of the 1967 Act with confidence. John Corrie won the Private Members ballot in the first new session, and decided fairly quickly that it was the Abortion Law that he would direct his intentions at.

In the intervening years between this and the passing of the original Act, the battle lines had been somewhat redrawn. As has already been pointed out, Parliament certainly looked in 1979 as if it would be more favourable to a Bill like the one Corrie wanted to introduce. New and better organised pressure groups were in operation, particularly on the anti-abortion side, and the medical profession, especially the BMA, had certainly come to terms with legal abortion. The change in the views of the major medical organisations became visible at first with the BMA's evidence to the Lane Committee in which it accepted both the existence of and the need for abortions on 'social' grounds. At about the same time, the RCOG also started to oppose any alterations to the 1967 Act, and both organisations were against the provisions contained in the Corrie Bill.

Interestingly, the parliamentary conditions at the time were similar to those at the time Steel's Bill was before parliament. As Francome points out, there was a government with a substantial majority, the party in power was likely to be in favour of the proposed change, there were people in influential positions who favoured the Bill, and there was a long session available in which to secure discussion of the proposed legislation.

The main elements in the Bill were a reduced time-limit of twenty weeks for abortion, a tightening of the argument in the 1967 Act that allows termination if the risk were less than the continuance of the pregnancy: the so-called 'statistical' argument. This was to be replaced by the phrase 'where there was a substantial risk of serious injury to the physical or mental health of the pregnant woman'. Along with a 'conscience' clause and new rules for the licensing of clinics or bureaux, this was a very comprehensive measure that would have placed considerable restrictions on the provision of abortion. The Bill was a particularly popular one in Parliament, and it received its Second Reading by 242 votes to 98, the largest majority at this stage of the passage of a Bill, or of any amendment, relating to abortion. After its Committee Stage, the Bill went on to the Report Stage where it received a very long hearing in the Commons, four Fridays in all, an exceptional amount of time. Yet, despite this, it still failed.

Perhaps the most important and influential attack on the Bill came just a week before the Report Stage was due to start. In a letter to The Lancet on 1 February 1980, seventy leading doctors, surgeons and professors of obstetrics and gynaecology launched what Marsh and Chambers describe as a 'devastating' attack on the Bill:

... which they regarded as "a most swingeing attack (on the 1967 Act) which would, according to one of its supporters, cut abortions by two-thirds and destroy the charities". It would they went on, result in a return to the 'scourge' of septic abortion, which had been greatly reduced by the 1967 Act. The signatories included Sir George Godber, former chief medical officer at the DHSS, Sir Richard Doll, Professor of Medicine at Oxford University, Dame Josephine Barnes, president of the BMA and the presidents of all but one of the Royal Colleges of Medicine. [52]

There can be little doubt that this, along with the general attitude

of the medical profession towards the Bill, was one of the major reasons for its defeat. Lovenduski has argued that the Corrie Bill failed for two basic reasons: the attitude of the medical profession and Corrie's general unwillingness to compromise in order to get his Bill through. She suggests that it was generally agreed at the time that a reduction of the upper limit to 24 weeks rather than 20 would have got the measure through parliament.

Almost before the dust had settled, David Alton, the Roman Catholic Liberal MP for Liverpool, Edge Hill, introduced a Bill under the Ten Minute Rule for the sole purpose of reducing the time-limit to twenty four weeks, but it received little support as the anti-abortion pressure groups were still hoping for something more comprehensive. More recently, Alton has again attempted to amend the law, this time proposing to reduce the time-limit to eighteen weeks.

Summary

At the heart of the abortion issue was women's responsibility for reproductive functions: bearing and caring for children, maintaining the family and thereby ensuring reproduction in its widest sense. [53]

What, then, does this review of the politics of abortion tell us about 'permissive' Britain? Were the ethics and morality of abortion law reform, or can they ever be, described as an area where attitudes and behaviour moved in a 'permissive' direction during the 1960s?

From the discussion of the Abortion Act, it is immediately clear that it was the product of many years campaigning by pro-abortion and women's groups. Indeed, one has to go back to at least the 1930s to discover the roots of the changes of the 1960s. To the extent that this is true, and that the train of legislative change was started in the early 1950s, it would be a mistake to see the 1960s as somehow self-contained; to think of them as a 'permissive' age somehow separate from other ages.

That the backlash against the Act started as soon as it was on the statute book must also make one question the efficacy of using such undimensional terms to describe complex social processes. Indeed, 'backlash' is undoubtedly also the wrong type of word to use, in that it, too, tends to convey a rather unidimensional picture. Whilst it is true to say that there was heightened criticism after the passing of the 1967 Act, it would be wrong, as the above discussion shows, to underplay the opposition to the Bill that existed in the 1960s. Perhaps the situation is better described by saying that the balance of power in the ideological battle over abortion swung in favour of the anti-abortionists after 1967, partially because the reformers undoubtedly felt by that time that they had won the 'war'.

What about the Act itself? As has been suggested, the entry of the medical profession into the arena tightened up many of the clauses in Steel's Bill, yet much of this was undone by the clause that was inserted at the last moment by the Lord Chief Justice which gave the Act a much more 'liberal' sheen than it had had before. To this extent then, the Act certainly had 'permissive' elements, but is this the whole picture? The most 'permissive' aspect of the Bill was

included almost by accident. Indeed, had it formed part of the original Bill, and had its full implications therefore been digested and understood, it seems very unlikely that it would have survived the journey. For whom, then, was the Act permissive? Women? It certainly opened the doors to many women who would have previously been denied abortions, or who at the very least would have been forced to the 'back street operator'. This 'permissiveness' was, however, a tightly restricted and regulated freedom. The medical profession saw to that. As has been argued above, the BMA and the RCOG in particular, were able through their powerful lobbying position to persuade those who were framing the Bill to structure it in such a way that control over the decision-making process, even with the wider 'social' conditions that might have to be taken into consideration, would continue to lie in the hands of the medical profession. Ironically, as Madeleine Simms [54] points out, the BMA and others originally objected to a change in the law as they felt it would infringe medical freedom. There can be no doubt that David Steel felt the full pressure of the medical lobby:

At times the medical hierarchy came near to demanding that Parliament accept their word as final. [55]

Not only did the medical profession shape the 1967 Act but, because control of the decision-making process continued to lie in their hands, the implementation of the Act has also been controlled by them. Thus the 'abuses', inequalities and discrepancies in the working of the abortion laws that were noted, not only by the critics but also by the Lane Committee, and which are described as 'administrative' problems, can, if they are not a product of bad law, only be the responsibility of the administrators, who are in this case the GPs and gynaecologists who control the provision of abortion in Britain. The

regional variations in abortion provision which still affect women in this country [56] are one illustration of these 'administrative' problems. They are also an effective reminder of the limits of 'permissiveness', limits that were written into the 1967 Act under pressure from the medical profession and which that profession still applies. Brookes has summed up the situation thus:

The 1967 reform of the law does not recognise a woman's right to abortion which Stella Browne had so forcefully claimed in the 1930s. The law does not take into account the woman's expressed desire for an abortion, but rather the effect of a pregnancy on her physical or mental health, or that of her children. [57]

One final interesting change that ought to be noted here is that one of the major reasons that the anti-abortionists have not, as yet, been successful in repealing or amending the 1967 Act, is the 'change of heart' that the medical profession had vis a vis the abortion laws in the early 1970s. It could be argued, of course, and Hindell and Simms among others do argue, that this change is due to doctors and gynaecologists becoming aware of the necessity and justice of the new Act. Whilst one would not want to deny this possibility, it might also be argued - and this would follow from the evidence presented in this chapter - that part of the change may be due to a dawning realisation on the part of the medical profession that attempts to amend the 1967 Act along lines they previously would have been in full agreement with, such as the insertion of a 'consultant' or 'five year registration' clause, would actually have the affect of diminishing or at the very least interfering with, their 'administrative' control of the Abortion Act. The 1967 Act, while it may have certain features with which they were not in full agreement, had at least been put into operation in a way in which there was no threat to the professional

status and power of the doctor or the gynaecologist. Through the terms of the 1967 Act the medical profession secured considerable power and responsibility in the area of abortion. David Steel, as was shown above, recognised this possibility. In the early debates in the House of Commons prior to the removal of the 'social clause', he commented on what he considered to be the likely effect of such a change:

But to do this (remove the clause) is to leave too great an uncertainty still in the law. It would leave open far too much the interpretation of the law by medical practitioners and would place too great a responsibility on them. [58]

It should by now be clear that the 1967 Abortion Act contained a 'double taxonomy' of permission and regulation similar to that contained in the 1959 Obscene Publications Act and the Sexual Offences Act, 1967. Although abortion on demand was neither sought nor achieved, legal access to abortion within the NHS was opened up to a considerable degree. The extent to which the anti-abortion movement grew after the passage of the Act is a testament to the latter's liberal qualities. However, its limitations are also clear. As with other areas of legislative change in the period, much of the debate over abortion centred around the question of individual freedom and the limits of state intervention.

It has been argued in this chapter that part of the pressure towards reform resulted from the number of women who were able to secure abortions prior to the passing of the Act, despite its status as a crime. This general availability to those who could pay was reinforced by selective policing of the offence and the general sympathy of juries to abortionists. Indeed, certainly in the early

part of the century, abortion was viewed as one of many methods of birth control, and there was not the distinction now made between methods used before and after conception. Brookes has suggested that:

Resort to abortion was the most significant female-initiated method of fertility control contributing to the fall in the birth rate from the 1870s to the 1930s. [59]

The development of the welfare state, the growing commercialisation of birth control and the development of new technologies such as the pill, heightened awareness of the possibilities of fertility control through prevention. Whilst social historians have made much of the 'liberating' effects of developments such as oral contraception, there has been less discussion of the effect of this 'liberation' on the changing nature of abortion. Whereas abortion was previously a 'vital female-centred form of fertility control' [60] which allowed (some) women to take decisions for themselves about family limitation, and thus provided them with a limited degree of authority, during the course of this century abortion has become a 'medical event, closely monitored by the state'. [61]

The availability of abortion, though extended, has been subjected to a reordered modality of control. No longer is abortion a back-up contraceptive method for those respectably married women who most frequently resorted to it [62] but has become an operation underpinned by notions of health care, with the decision-making process now tightly controlled by the medical profession. Access to abortion has become less a question of finance, and more a question of convincing medical practitioners of need. The 1967 Abortion Act was essentially a piece of paternalistic legislation. Few rights or powers were given to women, and the whole question of abortion was medicalised. It is

the medical profession which now operates as the gatekeeping agency which sets the boundaries or limits of the normal, moral and permissible in this area.

[1] Professor McLaren's response to the passing of the 1967 Act was to say: "There'll be nobody murdering little babies in Birmingham". The Listener-7.2.80.

[2] Simms, M. (1978) Forty Years Back - Abortion in the Press In, Abortion: Ten Years On. Birth Control Trust. and (1981) Abortion: The Myth of the Golden Age, In, Hutter and Williams (ed) Controlling Women: The Normal and the Deviant.

[3] Hindell, K. and Simms M. (1971) Abortion Law Reformed. Peter Owen Limited. p.13.

[4] *ibid.* p.73.

[5] quoted in Potts, M., Diggory, P. and Peel, J. (1977) Abortion. Cambridge University Press

[6] R v Bourne [1939] 1 K B 687.

[7] Alice Jenkins. (1961) Law for the Rich. Victor Gollanz p.67

[8] R v Newton and Stungo [1958] Crim L R 469.

[9] Joseph Reeve. Hansard [507] 1874

[10] Richards, P.G. (1972) Parliament and Conscience. George Allen and Unwin

[11] Jenkins (1961) *op.cit* p.76

[12] Brookes, B (1988) Abortion in England, 1900-67 Croom Helm

[13] *ibid.*

[14] *ibid.* p.144

[15] Smith, L.J.F. (1980) The Abortion Controversy, 1936-77. Unpublished Ph.D Thesis. University of Edinburgh.

[16] Brookes (1988) *op.cit.* p.152

[17] Quoted in, Hindell and Simms. (1971) *op.cit* p.110.

- [18] R Short. Hansard (714) 254.
- [19] Hansard. (725) 837
- [20] Hansard (270) 1168.
- [21] Hansard (272) 284
- [22] RCOG Report on Legalised Abortion. British Medical Journal 2.4.66.
- [23] British Medical Journal. op.cit. p.852.
- [24] Hansard 732 1074.
- [25] Hansard 732 1075
- [26] Hansard 732 1103.
- [27] Hindell and Simms (1971) op.cit.
- [28] The Theft of the Body : The Sociology of the Abortion Law. Unpublished MA Thesis. University of Sheffield.
- [29] Hindell and Simms (1971) op.cit p.167.
- [30] ibid p.170
- [31] ibid p.177.
- [32] ibid p.178.
- [33] ibid p.7
- [34] ibid p 185.
- [35] Hansard 747 464.
- [36] Hansard 747 469-70.

- [37] Hoggett, J.C. The Abortion Act 1967. Criminal Law Review 1968.
- [38] Marsh, D and Chambers, J (1981) Abortion Politics Junction Books 1981.
- [39] Lovenduski, J and Outshoorn, J (1986) The New Politics of Abortion Sage;
and Francome, C (1984) Abortion Freedom George Allen and Unwin
- [40] Hansard 750 1372, and quoted in part in, Hindell and Simms (1971) op.cit.
pp201-1.
- [41] Francome (1984) op.cit p.159
- [42] Daily Telegraph 14.2.70
- [43] Potts, M., Diggory, P. and Peel, J. (1977) op.cit. p.313
- [44] Francome (1984) op.cit p. 164
- [45] Potts, Diggory and Peel. (1977) *ibid* p.324.
- [46] Serpentine Press. 1974
- [47] *ibid.* p.148
- [48] *ibid.* p.149
- [49] Potts, Diggory and Peel (1977) op.cit p.325
- [50] Parliament, pressure groups, networks and the women's movement: the politics of abortion law reform in Britain (1967-83), in, Lovenduski and Outshoorn [eds] (1986)
- [51] (1984) op.cit
- [52] Marsh and Chambers (1981) op.cit P.141.
- [53] Brookes (1988) op.cit
- [54] Abortion Law and Medical Freedom. British Journal of Criminology (14) 1974

[55] Hindell and Simms (1971) op.cit p.8.

[56] see eg Potts, Diggory and Peel (1977) op.cit Ch. 9 or Greenwood, V and Young, J (1976) Abortion in Demand Pluto Press

[57] Brookes (1988) op.cit p.156

[58] Hansard HC debs 732 1074.

[59] Brookes (1988) op.cit p.163

[60] ibid p.163

[61] ibid.

[62] ibid.

Chapter Seven: Conclusion. Morality, the Law and Contemporary Social Change.

Indeed the entire Wolfenden strategy may be read as a complex discourse on the subject of sexual vulnerability, anxiously protecting those held to be at special risk from potential 'corruption'. Thus a normative yet somehow ever-threatened heterosexuality is inscribed at the heart of the institution of law. [1]

At the core of this thesis is an examination of legislative change in four areas : obscenity, abortion, homosexuality and prostitution. The law was altered in all four areas during the period in recent British history which has become known colloquially as the 'permissive age'. Not only has the law been reformed, but it has been argued by many commentators (cf. chapters one and two) that it was reformed in a specific, ie. permissive or liberal, direction. The validity of this basic argument has been assessed using as terms of reference the debate in jurisprudence between Lord Devlin and HLA Hart. The basic conclusion is that in all four areas the use of a term such as 'permissive' or indeed 'liberal' in relation to the changes identified, is at best overly-simplistic, at worst misleading. Nevertheless, it would be fair to say that legal reform in these areas was characterised, partially at least, by a distinctive principle. This principle was based on a distinction between public and private behaviour and has become known as the Wolfenden strategy [2]. It is also argued in this thesis that the debates surrounding legislative change in the four areas of obscenity, abortion, homosexuality and prostitution have centred around concern for what are perceived to be vulnerable groups or institutions, in particular the young, women, the

'family', and the 'Church'. This raises a question. In short, why was it that the critical areas of debate at this time focussed upon these particular, supposedly vulnerable, groups and institutions. One further problem remains. Although the term 'permissiveness' is not an entirely satisfactory one for analysing social change in the 1960s, it nevertheless continues to retain considerable ideological resonance and therefore continues to be widely used. Politicians in the 1980s can, for example, criticize the 1960s for their permissiveness without having to substantiate what they actually mean and seemingly without fear of challenge or contradiction. The aim of this concluding chapter is to consider in rather more detail the social context of the legislative changes already discussed in order to draw together an explanation for the focus of debate in the period, and the pervasiveness of the term 'permissive' which, in popular terms, has been and continues to be considered almost synonymous with the 1960s.

Functional Democratisation

The explanation that will be attempted here is built upon certain arguments put forward by Norbert Elias in his book The Civilising Process [3], and in particular those elements drawn upon by Cas Wouters (cf. chapter one). To reiterate, the essence of Elias' argument is that, since the Middle Ages in Western Europe, we have witnessed a social process which has led to the increasing refinement of etiquette, to advances in what he calls the 'threshold of repugnance', an increase in our levels of shame, and an increase in the social pressure on people to exert 'self-control'. In looking for

an explanation for this transformation, Elias focusses on the process of state-formation and the lengthening of interdependency chains, which, he argues, occur correlatively. In particular, Elias argues that, in the last 400 years, societies in Western Europe have experienced an advance in the division of labour or 'functional specialisation'. This process of 'functional specialisation' involved a lessening of the power differentials between groups in society, he argues, making it more difficult for those 'in power' to control those below them, or at least it has made it more difficult for the less powerful to be ignored. Elias refers to this process as 'functional democratisation'.

Central to this whole social transformation have been impulses towards growing specialisation or differentiation in all social activities. Corresponding to these have been impulses towards integration of the specialised activities which has often lagged behind...Because of their particular specialised functions, all groups and individuals become more and more functionally dependent on more and more others. Chains of interdependence become more differentiated and grow longer; consequently, they become more opaque and for any single group or individual more uncontrollable. [4]

Following Elias, the essence of this thesis is that the process of functional democratisation has, in the post-war period, affected specific areas of British society and that this process is manifested in a change in the balance of power between certain social groups, in particular men and women; adults and children; and the middle and the working classes.

The first task of this final chapter is to consider this process of 'functional democratisation' in some detail. This is done through an exposition of, what are argued to be, specific manifestations of this process in post-war Britain namely, the changing balances of power cited above and the interdependent process of secularisation. Before this, however, we must briefly consider some of the concepts central to such a discussion. The concept of 'power' has been used in many ways in sociology. One model views power as a 'constant sum', in which it is at least theoretically possible that some group may have no power at all. Alternatively, others have focussed on the use of power as the basis of conflict and consensus. The approach used by Elias, which is utilised here, views power or 'power-ratios' as an integral element of all human relationships. By using a phrase such as 'balance of power' or 'power-ratio', Elias points to the bi-polar or multi-polar character of power relationships, and consequently to the idea that the power of one person is only to be understood in relation to the power of others with whom this person is 'functionally interdependent'. This introduces another concept with a chequered history in sociology, that of 'function'. Elias, however, provides a straightforward example which illustrates both what he means by 'function' and 'balances of power':

From the day of his (sic) birth, a baby has power over its parents, not just the parents over the baby. At least the baby has power over them as long as they attach any kind of value to it. The parents may abandon the baby if it cries too much. They may starve it and, deliberately or not, cause it to die, if it has no function for them... In relationships between parents and infants ...power chances are distributed very unevenly. But whether the power differentials are large or small, balances of power are always present whenever there is functional interdependence between people.[5]

Using the concept in this manner, it will be argued here that the twentieth century, and particularly the period after the Second World War, has witnessed a lessening of the power inequalities between adults and youth, women and men, and the middle and the working classes. The lessening of these power inequalities has meant increased possibilities and opportunities for the less powerful in these diads, if not to control their lives, then to articulate their wishes, aims and objectives - what might be termed their 'cultural position'. And one of the major consequences of this process has been to raise the visibility of differential moral values. It has enabled, for example, modern youth to express desires and aspirations which are not necessarily in accordance with adults' values, in ways that had not been available to preceding generations. The corollary of this was that the heightened volume and visibility of 'alternative' ways of behaving and styles of living have progressively undermined long established beliefs in the existence of, and the necessity for, a single and uniform morality. Increased debate over values has made it progressively more difficult to sustain the impression of moral consensus. A further consequence of the process of functional democratisation has been the rise of moral entrepreneurial groups. The rise of groups such as the NVALA may be linked to the process of functional democratisation on two fronts. First, the process of functional democratisation can be seen to have involved a restructuring of the relationship between social classes, and, in particular, during the second half of the twentieth century, a diminution in the power inequalities between the middle and working classes. This is most likely likely to disturb those members of the lower middle class who stand at the margins of the two classes, and feel the threat from such changes most strongly. Thus, in post-war Britain, at a time of rapid social change, in an attempt to defend

their relatively powerful social position from encroachment from below, the lower middle classes in particular were attracted to forms of protest dedicated to the idea of reversing threatened changes and upholding traditional prescriptive norms and values. Thus the lower middle classes typically come to form the backbone of protest groups of a moral entrepreneurial kind. As was argued in chapter two, although Gusfield's notion of 'status threat' needs to be refined in the light of the work of authors such as Wallis, and Tracey and Morrison, it nevertheless remains a plausible explanation for the rise of such protest groups. Second, the process of functional democratisation, which opens up opportunities for debate on morals and values by means of restructuring the balances of power, simultaneously problematises the supposed existence of a uniform morality. Thus at just the time that moral entrepreneurial groups are acting to preserve a particular set of (relatively) dominant cultural values, that is preserve the status quo or return to the status quo ante, the very idea of a consensus of moral values is losing credence. In essence, a potential 'cultural threat' is added to the perceived 'status threat'.

At the heart of the theories of Gusfield and Wallis, is the idea that, in times of social upheaval certain, social groups search for avenues of certainty, reassurance and fundamental truth. In order to explain further the connections between the process of functional democratisation and concerns over 'permissiveness', this general idea may usefully be expanded. In times of relative social calm, - ignoring for present purposes the argument that a real or perceived, external, common enemy may be a unifying influence - it seems a degree of dissensus and conflict is more easily tolerated than during times of rapid or fundamental social upheaval. So, conversely, signs of

dissensus, conflict or lack of order appear more frightening, more challenging or more undermining at times of rapid and/or major change, when there is already upheaval. The two decades after the Second World War were just such a time and they were characterised by considerable concern over what appeared to be the rise of moral pluralism (through the increasing visibility of competing 'ways of behaving') and the threat that this posed to moral fundamentalism.

All these transformations were linked to the parallel process of secularisation with which they were interdependent. Post-war British society witnessed the continuing decline of the influence of organised religion. Traditional Christian ethics had formed the basis of the (perceived) extant moral consensus. However, the declining force of religion merely highlighted the developing cracks in such orthodoxy. Indeed a clear gap was evidently opening up between the 'dominant value system' and traditional Christian beliefs. The idea that there was some degree of 'fit' between the two was becoming less and less tenable. Contemporary morality appeared to be increasingly independent of religious doctrine. Perhaps this, however, is itself somewhat simplistic. For, just as one is over-generalising when using generic terms like 'culture', rather than speaking of 'cultures' or referring to a dominant culture and subordinate or local sub-cultures as is more usual these days, it must be recognised that the use of phrases such as 'morality' and 'value-system' also tend to exaggerate the degree of consensus that exists in a society at any time [6]. It must be recognised that some degree of conflict concerning the rules and norms that guide everyday conduct, and has always existed. Therefore, commentators must expect and learn to recognise, in all historical periods the existence of a number of 'contending

moralties', or to put it another way a range of values and mores that vary from group to group, class to class. Our society, our history, is characterised by a continual conflict between groups which hold different moral positions and values. The ability of any group to impose its 'morality' on any other, obviously depends on its relative power potential at a given time. The declining acceptance of traditional Christian ethics occurred alongside, and partly as a result of, the diminution of power inequalities between certain social groups and in doing so it served to heighten the visibility of their 'contending moralities'.

The process of functional democratisation and the changes associated with it can also be linked to the general direction of legislative change in the period in two ways. Firstly, the legislation considered in chapters 3-6, and the debates that were associated with it, appeared to reflect a growing (if limited) acceptance of moral pluralism. That is, in contrast to the legislation of earlier periods, it was generally influenced less by notions of firm or uniform moral rules and, in particular, was less dependent upon conventional Christian mores which had to a large degree underpinned the traditional framework of the law. For example, the post-war legislation regarding homosexuality and prostitution did not centre around questions of sinfulness or any other moral absolutes which could be used to distinguish 'right' from 'wrong'. Thus, although the practices of homosexuality and prostitution were fairly widely condemned, the legislation decriminalised homosexuality and ensured that prostitution was legal though highly circumscribed. In this way, the existence of social groups with moral values distinctly at odds with what was felt to be the 'dominant morality' were recognised, and

to a limited extent protected, by the law. With regard to abortion, the inclusion in the 1967 Act of grounds for abortion beyond strictly medical ones, entailed an acceptance of differing attitudes toward procreation, motherhood and the sanctity of life. The Obscene Publications Act of 1959, through its 'defence of the public good' clause, rejected absolute notions of propriety and was, on the contrary, based on the assumption that certain forms of obscenity could, theoretically at least, be deemed to have social worth and be of legitimate interest to certain social groups. Moral absolutes were largely absent from much of the legislation in this period and this, it might be argued, to some extent reflected the (limited) public acceptance of moral pluralism at this time.

The second way in which the process of functional democratisation might be said to have had an influence on the legislation of the period is through the increasing emphasis on self-control that it involves. Two pieces of legislation, the Street Offences Act, 1959, and the Sexual Offences Act, 1967, took their form as a result of the stance adopted by the Wolfenden Committee in the late 1950s. This 'philosophy', as it has been termed by Hall, [7] was, as is argued in chapter 3, closer to the jurisprudential position advocated by HLA Hart than that espoused by Lord Devlin. This position, derived from JS Mill's utilitarianism, restricted state intervention in matters of morality to those instances where harm to others was likely, on the basis that self-control, rather than state-control is preferable so long as the well-being of others is not put at risk. The practical corollary of such a stance is as the boundaries of what is considered to be private behaviour are extended and the areas of public behaviour are more minutely defined and subjected to increased surveillance a

change in the balance between reliance on self-control and external control also occurs. In this way, the increasing visibility of 'contending moralities' and the increasing emphasis on self-control in private formed part of the social backdrop or context of the legislative changes of the period, and appear to have influenced the nature of the legislation.

The process of functional democratisation had, if anything, a more profound effect on the debates over morality in the post-war period. As was argued above, functional democratisation was related to the rise of moral entrepreneurial groups. These groups wished to promote a morality based on moral absolutes or fundamental truths, and thus vigorously resisted those forms of legislation which sought to recognise, in however limited a fashion, the existence of moral pluralism. The search for a supposedly lost moral orthodoxy by entrepreneurial groups like the NVALA centred around two major themes: concern over the perceived, and perhaps actual, process of secularisation, and concern over the welfare of the family. For the NVALA, discussed in detail in chapter 2, concern for the welfare of the family was manifest in their ever-present worries over the vulnerability of the young. For many other groups (and on occasion the NVALA), the focus was the changing role of women, and in particular the role of 'mother'. On the other hand, the NVALAs essential raison d'être was to attempt to (re)create a society in which the Church (followed closely by the family) would be the central institution. Underneath all their arguments lay a preoccupation with the loss of a perceived, Christian, moral consensus, though their initial and continuing focus has been standards on television. Colin McCabe, talking about the parallel process of 'cultural

pluralisation', explains just such a preoccupation:

The Reithian news announcer, clothed in his dinner-jacket and articulating the precise tones of received pronunciation can serve as an image of that unified national culture and the terms of that unification. We might be forgiven for thinking that, with the advent of broadcasting we could finally see regional speech forms disappear, and Professor Higgins rule all our tongues. But the reality is that broadcasting in Britain has led to an ever greater diversity of accents and speech patterns and an even more fragmented national culture. In the fifties and sixties a nation gathered to watch its own transformation. Television, although by no means the only, or most important cause of this transformation, became its focus. [8]

These concerns were, however, not confined solely to groups such as the NVALA. As will become clear in the following sections, worries about 'the family', the role of women, in particular mothers; and the fate of modern youth; were widespread in post-war Britain.

Separate But Equal? Women and the Ideology of Permissiveness in Post-war Britain

Concern that 'the family' is in a state of crisis is not a new phenomenon. It was of grave concern to many middle-class legislators and reformers of various political hues in the nineteenth century; it was a concern during the inter-war period and in the past decade has re-emerged as a contentious political issue. It causes most concern during periods of economic recession, when there is a change in the rate of population growth, and/or times when fear of political unrest and upheaval is acute. The three, of course, often go together, and all provide an insight into why 'the family' becomes a political issue during such periods.'

(Diana Gittens: The Family in Question)

During the post-war period - particularly the late 1950s and early

1960s - as the class-based inequalities of British society appeared if not to disappear completely then at least to diminish considerably, inequalities of age seemed to gain a prominence far greater than in previous decades. The young, whilst becoming slightly better-off, slightly more vociferous in their demands for 'freedom' from parental control and slightly more visibly distinguishable in terms of style and dress, also, and by no coincidence, became the focus of many of the fears and anxieties abounding at this time. Interestingly enough, although women were also greatly affected by changes in the post-war economy, fears about their changing position did not become directly linked to 'permissiveness' until the late 1960s. Nevertheless, concern about the role and position of women was inextricably tied to concern over youth, through the role of the family. Indirectly, therefore, much of the concern over Britain's supposed moral decline, and much of the legislative activity of the 1960s, can be - and was at the time - explicitly linked to the changing position of women, and concerns with female sexuality, the family, and therefore once again the young.

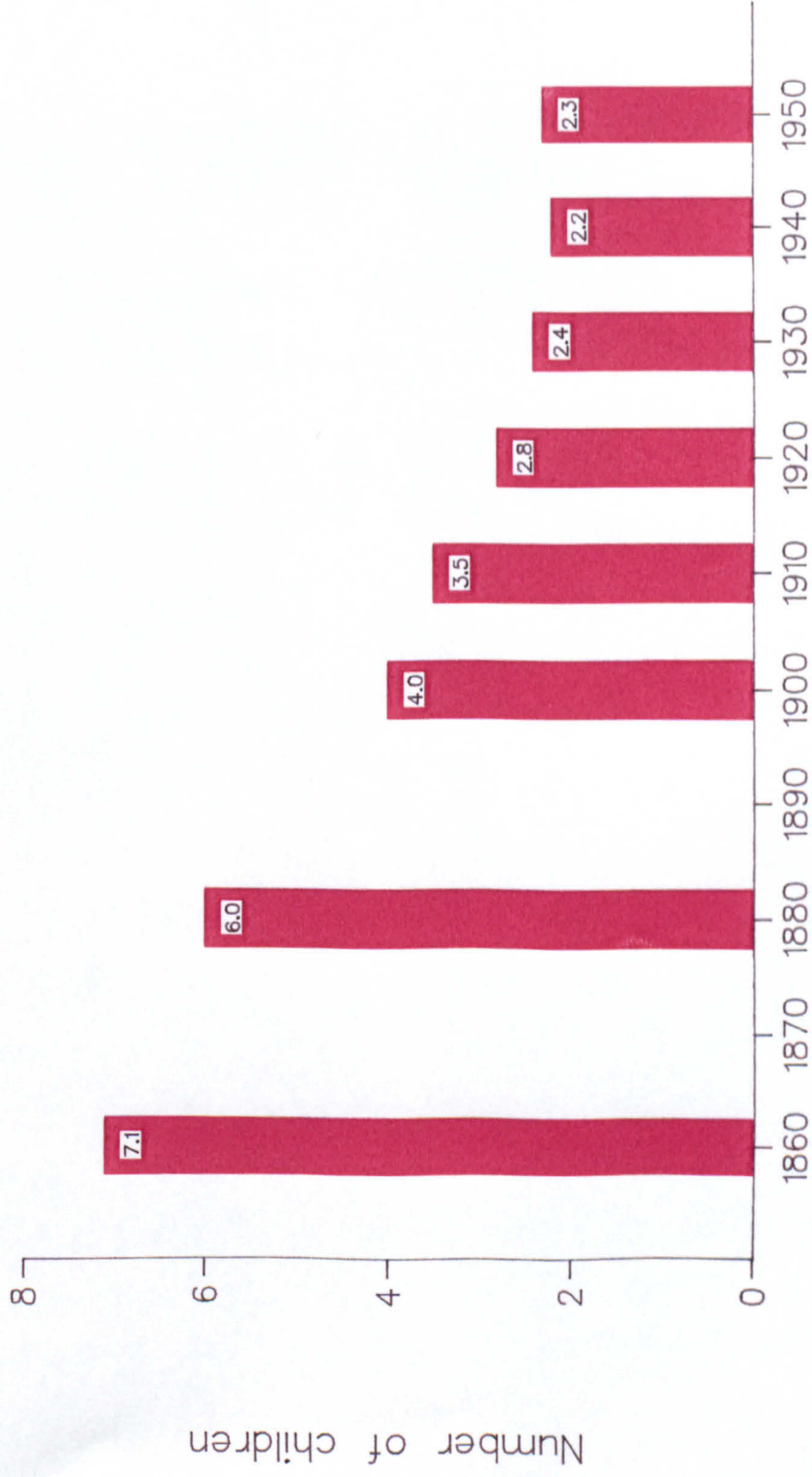
The first point to be made is that it would be a mistake to underestimate the importance of the war in focussing attention on certain issues. It had, for example, a very definite effect on ideas of motherhood. The number of absent males as a result of conscription, the rapid increase in women's employment during the war, and the problems associated with evacuation, concentrated attention on the relationship between mother and child. After the Second World War, the 1950s were identified as a period of stabilisation, and the institution upon which this stability was to be built was the family.

Since the 1930s, there had been worries about the possibility of a continuing decline in the population (cf. fig.A). The birth rate reached its low point in 1933, and concern was fuelled by the losses sustained during the war, and the nationalism fuelled by the conflict. In 1942, the Beveridge Report suggested that, 'with its present rate of reproduction the British race cannot continue' [9]. During the war, the Royal Commission on Population was set up. In 1949 it reported, on the one hand, anxiety about the effects of declining population on Western values, and, on the other, called for official recognition of, and advice on, voluntary birth control. In this way the Report reinforced fears about the decline of the family in modern Britain, and yet contributed to the legitimisation of contraception. By the late 1940s, despite a general rise in the birth rate, and a short-term 'baby boom', the fact that family size was undergoing a process of continued decline could not be concealed. These changes in family size were linked to other worries such as the rising numbers of illegitimate births and, perhaps more importantly, divorces.

Indeed, there was, a high divorce rate in the late 1940s, though much of this increase in divorce can probably be explained by hasty wartime marriages and lengthy separations. Although, later, the divorce rate started to drop (slightly and temporarily) the concern with the possible effects of divorce started to increase. A Royal Commission (Morton) on Marriage and Divorce was set up in 1951, and for a while it appears that there were hopes that the divorce laws would be liberalised. However, when it was published in 1956, the Report resisted any such temptations. It is clear from the Report what type of family was considered best for post-war Britain:

The Western World has recognised that it is in

A. Mean ultimate family size 1860-1950.
England and Wales.



Women marrying once only,
age at marriage 20-24.

Source : Social Trends 1974.

Year of marriage

the best interests of all concerned - the community, the parties to a marriage and their children - that marriage should be monogamous and that it should last for life. [10]

The Morton Commission, although it came out in favour of a 'conservative' approach to the divorce laws, was by no means unanimous in its conclusions, and an examination of the two basic positions held by members of the Commission illustrates the two poles of opinion extremely well. First, as Wilson describes it, the 'conservative' position:

I find both husbands and wives lacking in a sense of duty and responsibilities to each other and to their children. It is hard to point out to them that, if love is growing cold, duty must take its place, for it is always a new thought to them; clearly anything else will lead to social anarchy. [11]

And secondly, the 'reformist' position:

The good of the community is a first priority. The sanctity of marriage must be upheld but the law as it operates at the present time frequently brings marriage into disrepute...(Our proposals) will uphold the sanctity of marriage and will help to make people more conscious of their responsibilities as partners to a lifelong contract...Homes are broken by (many) causes and the law should be allowed to give relief where these causes are serious and lead to the breakup of marriage. Reasonable law, based upon human needs, is more likely to increase morality than to undermine it. [12]

The first point that must be made, and the one that Wilson was alluding to, was the consensus that seemed to appear between these otherwise opposing groups on the importance of marriage. Divorce, for the reformists, was not viewed as a signifier of the decline of the institution of marriage; on the contrary, divorce was a means of escape from marriages that had broken down and so enabled the parties could choose another partner and marry again. Thus easier divorce was not thought likely to greatly reduce the number of married couples and

might help to keep marriage and family life as a positive experience and force for good. Both 'conservatives' and 'reformists' were concerned that they should be seen to hold a position that viewed marriage as an important, continuing, central and stabilising institution. The affirmation of 'the family' as the central organising unit in British society was the aim of both.

The second point that ought to be noted here is the similarity between the positions held by the two opposing groups in the debate over divorce reform and the positions staked out in debates around other areas of legislative change in the 1950s and 1960s. The 'conservatives' in this case use keywords like 'duty' and 'responsibility' to outline a position which sees firm and immutable moral rules as the only barrier between us and 'social anarchy'. The liberals or 'reformists', whilst no doubt caricatured as wishing to see the destruction of the institutions the 'conservatives' feel they are trying to protect (in this case the family), not only appear to wish for quite the opposite, but only feel the need for a change in the law in order to protect certain members of society (in this case the partners to a 'dead' marriage) from 'harm'. Similarly, supporters of homosexual law reform who were vehemently in favour of strict controls to protect the young, expressed the opinion that homosexuality was sinful and that monogamous heterosexual marriage would continue to be the 'norm', whilst wishing to alter the law to protect this 'deviant' group from undue harm.

The rising divorce rate, along with the rising rate of illegitimacy, together with the fairly steady decline in family size and fears about the population, gelled to form a climate in which 'the family' was held up as the institution within which 'normal' and 'healthy' relationships could grow. This emphasis on the family had important and far-reaching implications for women in 1950s Britain, particularly with regard to that area which most clearly differentiated women in the 1950s from women in the 1930s - employment. As has already been suggested, the war provided opportunities of work for women that had not previously existed. Bouchier points out that the proportion of married women who earned a wage rose from one in seven to one in four in Britain during the war years [13]. After the war, there was considerable concern that there would not be enough jobs for the returning soldiers and, one way or another, a considerable number of women returned to the home. Smart describes this move as the 'expulsion of women from work', whereas Ruth Adam suggests that the methods used to 'persuade' them were less crude than those adopted after the First World War. Nevertheless, she documents among the methods used, the closure of war-time nurseries and the discontinuation of shifts to suit married women [14]. The Royal Commission on Population, provides an interesting indication of public values, if not Government practice at the time. It argues against any action by the Government to force women back into the home:

Such a policy not only runs against the democratic conception of individual freedom, but in Great Britain it would be a rebuking of the tide. [15]

The final sentiment was quite clearly correct for, by the early 1950s, the number of women going out to work began to increase once again. Despite the ideological pressure to stay at home, there were pressures

in precisely the opposite direction from a booming economy and full employment. Industry and domestic work were the two largest areas of employment for women in the period and, by the late 1950s, over 40% of married women were working. The consequences of this move back to work were important, for they could have provided women with a feeling of affluence in a way similar to that experienced by the young in the same period. It was the better-off working class wives who tended to go out to work, as Rowntree noted [16], and the style of consumption was very different from that of young males, in that it was much more heavily dominated by 'the family' with all its 1950s ideological overtones.

A feeling of affluence began to emerge in the mid-1950s. Whereas consumption had been held back by rationing and wage-restraint until the early 1950s and the first post-war Conservative government, from the mid-1950s on, such restraint was lifted and post-war optimism was fuelled. Along with the safety net of the recently installed 'welfare state', nationalistic high points like the Festival of Britain and the Coronation, together with a growing emphasis on commodity consumption, set the tone for the decade. Although this commodity consumption was organised essentially around the family, it was focussed primarily upon women. Indeed, the push toward consumption was effectively made possible by women, not only because they had the jobs in the industries which produced the commodities, but because it was their wages, or the increased spending power of families as a result of women's wages, which enabled them to buy 'consumer' goods. The growth of consumption was matched by the development of mass advertising extolling the qualities of the newly available commodities. Women were not only in a new role here as wife, mother and earner, but also

as Abrams put it:

Since now home has become the centre of most of his activity and most of his earnings are spent on or in the home, his wife becomes the chooser and spender and gains a new status and control - her taste forms his life.[17]

As Janice Winship has suggested, women were in this way established as 'individuals' through the individuality of their homes, not necessarily from having money of their own as wage-earners [18]. This was the way in which the conflict between the roles of housewife and wage-earner became organised in the 1950s.

The role of women and the ideological emphasis on the family were sustained in other ways during this period. One of the major factors, and one that has already been touched upon briefly, is what the authors in the Birmingham Feminist History Group have referred to as the 'compressed fertility' increasingly characteristic of this time. This process of compressed fertility came about as a result of the increasing number of marriages, the earlier age of marriage, the reduced size of the family and, crucially, the increased availability and use of contraceptives [19]. By 1955, the Family Planning Association had spread to most major cities and was respectable enough for the then Minister of Health, Iain Macleod, to pay a visit to one of the centres. By this time, the birthrate had begun to rise once more, and there was increasing concern over the idea of a world 'population explosion'. Contraception had gained a degree of respectability by this point, but this only included married women, and control over family size. Neither contraception for unmarried women nor sex for women's pleasure were considered widely acceptable. However, wider dissemination of knowledge about birth control, and a

move towards increased respectability, no matter how limited, must not be underestimated in their effect on the role of women, and in particular, on female sexuality. A point made earlier, though, must be reiterated once more. Legitimate sexual relations were viewed as taking place within 'the family'. Thus the higher divorce and illegitimacy rates, together with perceived changes in sexual behaviour were widely interpreted as being attacks upon the family. Much of the 'panic' and subsequent moral campaigning in the period must therefore be viewed as being in defence of traditional family arrangements.

Contraception, as has already been noted, was by no means a universally available until well into the 1960s, and the pill, which is widely held to be a key to understanding changing attitudes towards sexuality in the post-war period, was widely mistrusted for many years. Apart from direct availability, there is another way in which the contraceptive pill may still have been a crucial influence:

The pill has surely had a most liberating effect by overcoming inhibitions. An oral contraceptive could be discussed more easily and with less embarrassment than methods related to the vagina, penis or sexual intercourse. But once conventional barriers were breached all methods could be talked about more freely. [20]

It is possible, therefore, that the effect of the pill was, at least in the first instance, on attitudes towards, or the discourse surrounding, sexuality, rather than on sexual behaviour per se. This move was part of the process that Edward Shorter referred to as 'the eroticisation of the family' - the weakening of the link between sex and reproduction. However, as Smart argues, although there was perhaps a slightly more open acceptance of the possibilities of

women's sexuality, around this time, this was itself restricted within the boundaries of the monogamous nuclear family:

A wife was allowed, even encouraged to be sexual but her sexuality had to be functional in terms of family stability, and was consequently still constrained within very narrow limits. [21]

Changing attitudes towards sexuality - even within these narrow limits - were interpreted by some as representing a radical break with the past. The publication of the Kinsey Report, for example, caused quite a stir in 1948, and the second Report in 1953 was a bestseller. However, the findings were generally incorporated into text book and advice columns in such a way as to bolster the prevailing ideological climate. Discussing the work of Masters and Johnson, Wilson comments:

Human Sexual Response was, after all, not so far from the many books that attempted to domesticate the Kinsey findings and fit them to Western monogamous marriage. [22]

The ideological climate of the 1950s has been described in detail in this section, with particular regard paid to the position of women. Despite a decline in numbers immediately after the war, women's employment grew and women were therefore enabled to enjoy some of the fruits of 1950s affluence. At roughly the same point in time, prevailing attitudes towards sexuality were brought into question by the two pioneering Kinsey Reports, which, amongst other things, pointed to the possibility (hitherto largely denied) of women actually enjoying sex, and to a rather more widespread existence of homosexual experience than had previously been suspected. As has been suggested, although one of the results of women's changing roles was to 'problematise' the family, this did not push women into the front line of moral concern in the same way that the changing position of young

people created moral anxiety. Part of the reason for this was the belief in many quarters that 'equality' between the sexes had actually been achieved. It is clear that the economic position of some women had improved. Similarly, the legal and political position of women had improved quite considerably in the earlier half of the century. However, as Smart documents in great detail, there is a great difference between 'formal' and 'substantive' equality [23]. Formal legal equality did not guarantee actual social equality.

Nevertheless:

...legal equality did have an ideological function inasmuch as it propagated the belief that men and women were equal whilst disguising the extent to which women were (and still are) materially disadvantaged. [24]

The type of equality that women were widely believed to have achieved is described by the phrase 'equal but different'. Women were believed to have separate spheres from men - homes and families - which afforded them the opportunity to assume particular caring and service roles for which they were thought ideally suited, whilst at the same time, if necessary, entering paid employment. The emphasis upon motherhood was also linked to concerns about the young and was supported by the writings of the neo-Freudians and others. The best known of the neo-Freudians of the time was John Bowlby whose work, 'Maternal Deprivation and Mental Health', originally for the World Health Organisation, was later published as a paperback entitled Child Care and the Growth of Love, and became, along with the work of Dr. Spock, a classic of the period. Through the works of authors like Bowlby and Spock, and the use of emotive phrases in the media like 'maternal deprivation' and 'latchkey children', concern was focussed on the young in post-war society, and the centrality of the woman's

role as mother and homemaker was reinforced and reproduced. David Bouchier, commenting on such pressures, suggests that:

A monstrous weight of guilt was thus heaped on working mothers whilst those who stayed at home were assured that their child rearing task was more challenging and worthwhile than the vain pursuits of any career woman. [25]

In summary, in the 10-15 years after the Second World War in Britain, the role and position of women, was the centre of fears about population decline, the rising number of divorces and illegitimate births, increasing numbers of women taking up paid employment, and revelations provided by American researchers about so-called 'normal sexuality', but these were displaced in two directions so that attention was focussed instead largely upon the importance of the monogamous nuclear family and the problems associated with post-war youth. Fears about moral decline may have stemmed in part from the changing position occupied by women in Britain at this time, but stigmatisation was generally reserved for the far more discernibly different - and therefore worrying - young. Equality for women was in large part believed to have been achieved by the 1950s, and it was not until the cracks became more visible when the feminist movement re-emerged in the latter half of the 1960s (and in particular in the 1970s and 80s), that women once again became the focus for moral outrage and protest. Hutter and Williams, writing in the 1980s, argued:

We would suggest that in Britain and the USA we are witnessing a similar 'moral panic' over the apparently new phenomenon of women seeking to free themselves from traditional classifications. In this anti-feminist backlash, the liberation of women is linked with a cluster of social themes: the 'permissive society'; the breakdown in law and order and public morality. Abortion, pornography, sexual promiscuity, drugs and public acceptance of homosexuality are linked together. The 'blackboard

jungle' of the comprehensive school, rising crime and general 'lack of discipline' are variously blamed on women's 'failure' to continue in the voluntary caring roles and to promote a 'traditional morality' within the home. In all this, women are seen as contributing to a general lessening and removal of civilised standards. [25]

'Dope, rock'n'roll and fucking in the streets': Permissiveness and Post-war Youth.

Apart from a violent revolutionary minority many of the young are seeking answers to questions we should all be asking. But parents, and indeed all who care about the future of society, have a right to ask questions, too. Are we justified in our fears for what may be the long-term effect of this new kind of adolescent licence, not least upon the young themselves?

(Mary Whitehouse, Whatever Happened to Sex?)

It is a thoroughgoing revolt by a section of young people against the habits, manners, standards, morals, politics, taste, taboos and lifestyle of their elders. Youthful rebellion is nothing new as trend-spotting vicars are constantly reminding us. But no previous expression of adolescent frustration has been so comprehensive, so self-assured, or so cynical.

(Peter Fryer A Map of the Underground)

Young people have probably attracted more public criticism in Britain since the Second World War than almost any other social group. The very category of youth seems to attract adult censure and moral outrage.

(John Muncie, The Trouble With Kids Today)

Above all with the coming of this new age, a new spirit was unleashed - a new wind of essentially youthful hostility to every kind of established convention and traditional authority, a wind of moral freedom and rebellion.

(Christopher Booker, The Neophiliacs)

The quotations above give some idea of the tenor of opinion expressed on the subject of 'youth', 'teenagers', 'the young', 'adolescents', or whatever phrase might be used, in post-war Britain. Clearly, an understanding of youth as a category is central both to the fundamental changes that have taken place in British society since 1945, and more specifically to an understanding of the discourse that came to surround sexuality and morality in the period that has been

generally described as 'permissive'. This is perhaps the one area of debate on the subject of 'permissive Britain' where politicians, moral entrepreneurs, social commentators and sociologists find something about which they can agree. Almost all argue that the young, or 'youth', underwent a fundamental transformation after the Second World War. What is being argued here is that there occurred in the period under discussion a change in the balance of power between youth and adults, and that the forms and expressions that this change took, gave rise in certain quarters to the feeling that there was occurring a "degradation of our culture, and the collapse of standards, personal and public morality"[27].

Wouters, as outlined in chapter one, has characterised the general process of diminishing power inequalities between the generations as one of 'informalisation', where:

the relationship between parents and children has become more informal... parents tend to treat their children less as socially superiors (sic) in relation to socially inferiors (sic), and to some extent more as equal human beings. [28]

The change in the balance of power between adults and the young in this period meant that the young were becoming relatively less dependent on, and increasingly autonomous in relation to, the adult population. This is not to imply that children simply became subject to fewer and fewer controls, but, rather that the nature of the controls that they were subject to altered. In terms characteristic of Eliasian sociology, Wouters suggests that there has been a diminution in the emphasis upon explicit and formal restraints and, in parallel, an increasing emphasis on 'self-restraint'. As will become clear, not only did young people gain autonomy in the post-war

decades, they also became increasingly vocal in their demands; increasingly visible and therefore separable from the rest of 'society' in terms of their 'cultural insignia', and, because of their newly extended relative autonomy, their voices have been increasingly difficult to silence. Thus they were an obvious target for those groups concerned about what they perceived to be declining moral standards, and indeed they became a major focus of concern.

The position of youth in post-war Britain must now be considered, in terms of the 'real' social changes that gave rise to their increasing relative autonomy; what this relative autonomy constituted; and what consequences there were. In particular, evidence of the 'problems with' modern youth, which have supposedly elevated them to an all-time high in the folk-devil stakes, will be evaluated.

Such a consideration best begins with the idea of the decline in the power inequality between adults and youth in the post-war period. What indicators are there that suggest that such a change did, in fact, take place? The major and most often cited is the increasing affluence that the young experienced from the mid-1950s onward. Indeed, this has been characterised by many authors as the point at which 'youth' first gained economic independence. Colin McInnes' book, Absolute Beginners, recently transferred to the screen, is set in this world of the newly and conspicuously affluent youth:

The teenage ball had a real splendour in the days when the kids discovered that, for the first time since centuries of kingdom come, they'd money, which hitherto had always been denied to us at the best time in life to use it, namely, when you're young and strong and also before the newspapers and telly got hold of this teenage fable and prostituted it as conscripts seem to do to everything they touch. Yes, I tell you,

it had a real savage splendour in the days when we found that no-one couldn't (sic) sit on our faces any more because we'd loot to spend at last, and our world was to be our world, the one we wanted and not standing on the doorstep of somebody else's waiting for honey, perhaps.[29]

Here, encapsulated by MacInnes, is a world of affluence, optimism, excitement and expectation which, if not absolutely new, was felt at least to be quite distinct from that of earlier periods. This is not to suggest that Pearson's argument, for example, that such fears can be found at almost any point in the last few hundred years [30] is unfounded, simply that post-war youth was perceived to be quite distinct from that of the preceding generations.

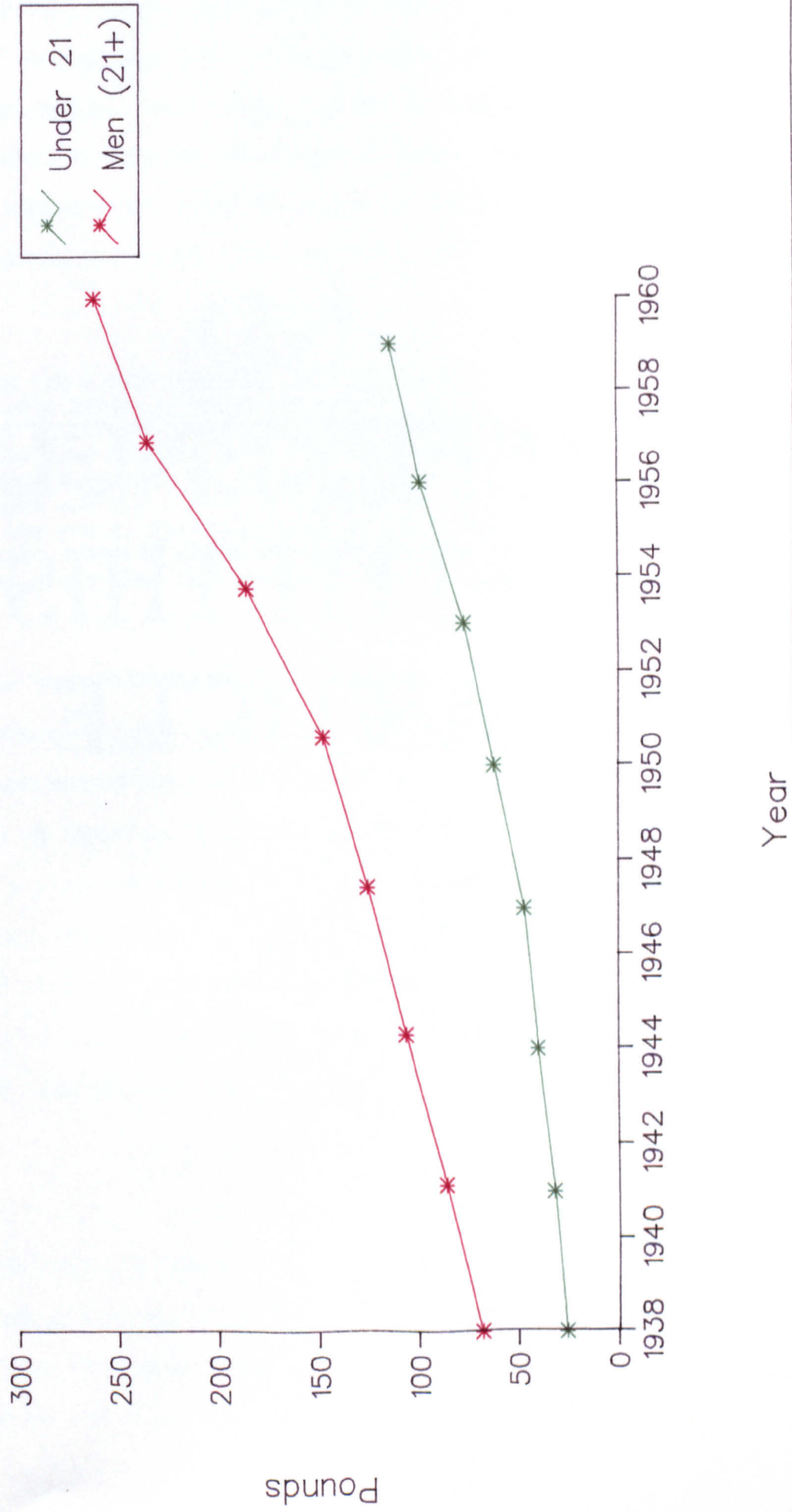
The importance of affluence was reinforced by the recent experience of the war and the austerity of the immediate post-war years. Despite post-war austerity and recurrent economic crises, it was firmly believed that Britain in the 1950s was entering a period of economic boom and high consumption that had been most usually associated with the United States. As was suggested above, more women than ever were going out to work. The crucial move away from heavy industry and toward the new technological, chemical and electrical industries was underway. J.K.Galbraith's 'affluent society' was in the making. More particularly, a relatively affluent younger generation had developed, for as Abrams pointed out:

...as compared with 1938, their 'real' earnings (ie after allowing for the fall in the value of money) have increased by 50% (which is double the rate of expansion for adults), and their real 'discretionary' spending has probably risen by 100%.[31]

Figures of average weekly earnings (cf graph 1) taken from a bi-annual survey conducted by the then Ministry of Labour, and published in the

G1 Average Weekly Earnings 1938-1959.

Source : Ministry of Labour Gazette 1938-59.



Ministry's Gazette, shows a fairly continuous rise in average earnings since the Second World War, together with a marked increase from about the mid-1950s onward. Though the level of wages shown suggests that the young in the 1950s were not especially well off by today's standards, they nevertheless provided the means by which some increased measure of independence could be achieved. Brian Masters, describing his own experiences in the 1950s and 60s, put it as follows:

I was earning £18 a week in 1962 and considered myself well-off. After paying a very high rent, I was left with £6 a week to spend and was not obliged to deny myself some luxuries. One could have a decent restaurant meal with wine for £2-3 once every couple of weeks and buy a good suit every few months for £9. For the young, spending-money of £5 a week was a sudden fortune, and since unemployment was under 2% most young people had that spending power.[32]

If the majority of the young had spent their money on 'a decent restaurant meal' or the occasional 'good suit' then, no doubt, some agonies would have been spared the 'older generation'. However, as Frith has argued, one of important qualities of the term, 'teenager', is that it describes a style of consumption [33]. Abrams in his study of the teenage consumer, points to the importance of the world of 'teenage objects', of rock'n'roll records, of scooters, stylish clothes, of a weekend of high living before going back to work to earn the next £10 to spend, conspicuously, as Frith put it, 'on leisure and pleasure' [34].

However, working class youth, in particular, experiencing this new 'affluence' were faced with a very real contradiction, between, on the one hand, the prevailing ideologies of consumption and embourgeoisement, and on the other, the day-to-day reality of routine

jobs and structural inequality [35]. Such a contradiction was, it has been suggested, at the root of the development of certain sub-cultural styles evident at the time. Of such subcultural groupings, the Mods were probably the apogee of conspicuous consumption but, as most commentators are at pains to point out, theirs was not a passive consumption. Indeed:

The style they created, therefore, constituted a parody of the consumer society in which they were situated. The Mod dealt his blows by inverting and distorting the images (of neatness, of short hair) so cherished by his employers and parents, to create a style, which while being overtly close to the straight world was nonetheless incomprehensible to it.
[36]

Mods, after their ritualised confrontations with Rockers on the beaches of Margate, Clacton, Hastings and Brighton during 1964, became the latest in a line of folk-devils, the newest and most visible incarnation of all that was supposedly wrong with modern 'affluent' youth.

As Clarke et al point out [37], after 'affluence', perhaps the other most important series of changes were those associated with mass communications, and in particular what was to become known as 'mass culture'. This was greeted by social commentators in generally negative terms, some arguing that it merely meant manipulation on a national scale and resulted in the accusation that youth culture was little more than the commercial manipulation of youthful imitation. For others, the new youth culture was seen as embodying the very worst of 'mass culture'.

Other changes associated with the distinctiveness of post-war youth were the war - the experience of evacuation during the war, the lack of firm parental supervision and the constant backdrop of violence. Finally, there were those changes in the educational sphere, the development of secondary education for all, and the expansion of higher education. Associated with these changes was the ideology of meritocracy, and for some sociologists at least, the declining emphasis upon class divisions in British society, and the emergence of other, newly significant, social groupings, for example, youth.

Perhaps as far as 1950s and 60s youth are concerned, however, the most important of these developments, were those in mass communications. There is not the space here to dwell on the debate over the pros and cons of 'mass culture', or their effects on youth, except in one very specific instance, for it is here that post-war youth are quite separate from preceding generations: they had a branch of the mass communications industry that was effectively all their own - popular music.

Although there were many ways in which the young were perceived to be in some way 'separate' from the rest of society, perhaps the clearest were in terms of style and music. The mid-1950s are always cited as the point at which distinct subcultural styles first emerged in this country, at least on a national basis [38]. This was the period of the Teddy Boy and also the moment when rock'n'roll began to get a grip of the younger elements of the nation. Elvis Presley, Little Richard, Gene Vincent and countless others offered a sense of freedom and possibility that, until then, had not been provided for the young. Rock'n'roll was both extremely physical and aggressively sexual, and

even though the adult population was spared the more colourful of Little Richard's lyrics and the sight of Elvis' hips, the hysteria that greeted the showing of Bill Haley's, 'Rock Around the Clock' guaranteed a hostile reception from the 'adult world'. Rock'n'roll was not only aggressive and explicitly sexual, it was also American, and, as such, viewed somewhat suspiciously by those on the outside of this new teenage world:

Increasingly as the 50s wore on, (the) negative consensus uniting cultural critics of all persuasions began to settle around a single term: Americanisation. References to the pernicious influence of American popular culture began to appear whenever the 'levelling down' process was discussed...By the early 1950s, the very mention of the word 'America' could sum up a cluster of negative associations. [39]

If popular music was one of the major means by which post-war youth communicated their autonomy, then it was also given expression by certain sections of the working class through the styles of dress that they adopted. Within a couple of years of its emergence, the Teddy Boy 'cult' had spread far beyond its London origins. Tony Jefferson argues that, as a style, it evolved from an initial attempt to buy status, using Edwardian upper-class dandies as a mode, to a personally modified expression of solidarity (in the face of upheaval in the post-war working class community) and masculinity [40]. Whatever the intention, the style was viewed with hostility, and 'Teddy Boy' became, for the media at least, a term of abuse. John Osborne, for example, was described as an intellectual 'Teddy Boy' by a reviewer of Look Back in Anger in 1956. The assertiveness implied by the style, and often reflected in the behaviour of the 'Teds', was also found in many other areas of British social life into which the young were breaking at this time. Writers such as the previously mentioned

Osborne, together with John Braine, Colin Wilson and Kingsley Amis, were collectively described as 'angry young men'. In the cinema, actors such as James Dean and Marlon Brando were starring in celebrations of youth and its new aggressive outlook in films such as 'Rebel Without A Cause' and 'The Wild Ones'. Teds only lasted as a force for a few years, and were followed by a series of other subcultural groupings, mods, skins, punks etc, each of which have been discussed in great detail by a host of other authors [41]. There is not the space here to devote to a full description or analysis of these styles. Nor is it necessary in this context. The important point is that the emergence of rock'n'roll, and its importation into Britain, together with the development and spread of nationwide youth cultures, helped to foster the impression that, as Geoff Pearson has put it, "young people were somehow more radically unintelligible to older people than at any previous time in history" [42]. 'Subcultural styles' were, of course, nothing new, as Pearson has documented. What perhaps was distinctive about post-war youth styles was the fact that they were no longer geographically circumscribed, but were to be found across the length and breadth of the country. As Dunning et al have argued [43] the emergence of adherents across the country to the 'Teddy Boy' style and the fact that this was reported by the mass media, lay at the heart of adult concern over post-war youth.

Concerned attention also centred around other aspects of youth.

Firstly, there was what was seen to be an unacceptable rise in the rate of juvenile delinquency. The Conservative Party conference of 1958 has been described as ringing:

with an entirely familiar pattern of complaints and accusations: 'the leniency shown in the past by the courts of this country'; 'the lack

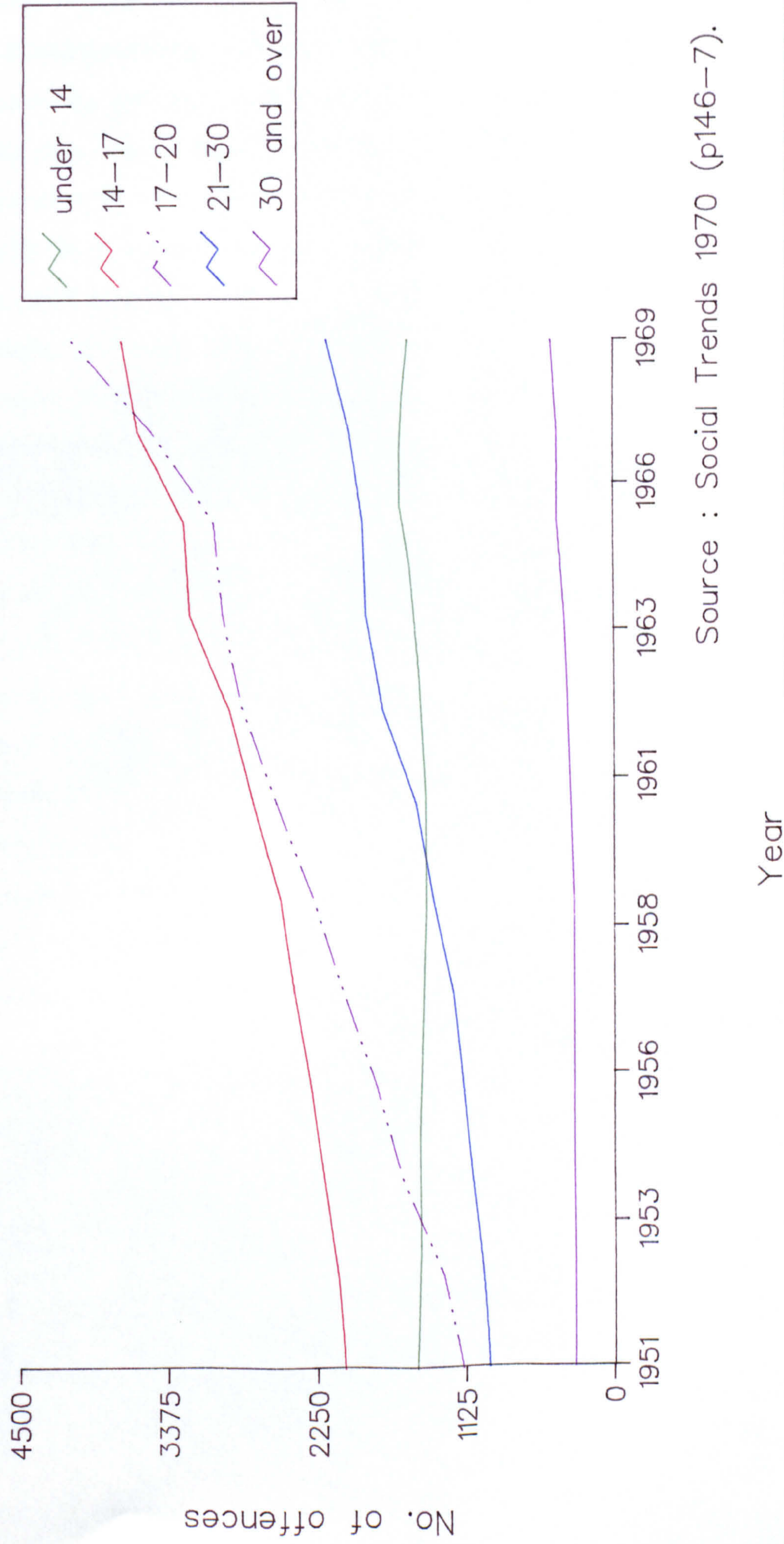
of parental control, interest and support'; the 'sex, savagery, blood and thunder' in films and television; and the 'smooth, smug and sloppy sentimentalists who contribute very largely to the wave of crime' so that young people were 'no longer frightened of the police, they sneer at them' [44]

Statistics collected by the Home Office appear to provide some support for the notion that there was a substantial rise in juvenile crime during the 1950s and 1960s (cf. graph 2). These are, of course, open to all the usual criticisms levelled at 'official statistics'. For example, it is not clear from the statistics whether the apparent rise in the number of males found guilty of indictable offences in the 1951-69 period is a reflection of an actual increase in indictable offences, of changes in police procedures, numbers of policemen, changes in reporting practices, or, indeed, a combination of some or all of these. Whatever the reality, the picture presented by official Criminal Statistics in the period helped (along with the other factors described) to foster the impression that there was something seriously wrong with at least one section, if not the whole of, contemporary youth. The rebellion of youth that was feared was, then, given some substantiation by the ever-rising levels of reported crime, and was even more vividly dramatised by the 'styles' adopted by certain sections of working class youth.

It was, however, not only working class youth that was 'rebellious' in the 1950s and 60s. The middle class were also involved in a series of political protest movements. Thus, as Frank Parkin suggested:

Nominal support for CND was for many teenagers a more or less commonly accepted feature of the youth culture; like the preference for folk music, outlandish clothes and the like, it was a way of drawing a line of demarcation between adolescent and adult values. [45]

2: Males Found Guilty of Indictable Offences by Age Group 1951-69.



Muncie, following Parkin, argues that support for movements like CND was appealing for the young precisely because of its non-adult, anti-authoritarian character, and that much of the protest associated with such issues was in many ways a protest against 'adult society'. As such, there is a direct link (through the 'New Left' movement) with the bohemian subcultures which emerged later on in the 1960s. Again, it is not necessary to go into great detail describing the 'hippie moment' of the late 1960s, as it has been well documented elsewhere [46]. It is enough simply to note that this essentially middle-class and countercultural movement became the focus of attention by the authorities who were attempting in the early 1970s to stem what they perceived to be the increasing degeneracy of the younger generation. The earlier discussion of the trials of International Times and OZ amply illustrate this point. The prison sentences that the editors of OZ received before the decision was overturned on appeal leave one in little doubt of the fear that was created in certain quarters by the activities of those involved in the 'underground press'. As is shown in chapter two, two of the major protagonists in the opposing camps of 'youth' and 'adult' society, Richard Neville and Mary Whitehouse, made much of what they saw to be the revolutionary qualities of the countercultural movement. To reiterate Mrs Whitehouse's anxiety:

... thousands of parents who had seen their children's lifestyle changed through the impact of the underground press were only too well aware of its significance. They knew Richard Neville not as some hard done by humourist, but as the author of the paperback Playpower which became the handbook of the international dropouts and bemused pot-smoking youngsters, persuaded to believe that society was rotten, life was too hard, and the odds stacked too heavily against them - the best thing to do was to drop out and bum around. The purpose of the underground press is 'not so much to dissent as to disrupt', and its' editorial policies explicitly and implicitly seek to overthrow society as we know it, and of this it makes no secret. [47]

Mary Whitehouse had made much of this type of argument over the years. The young, in her view, as is argued in chapter one, were no longer governed by a strong series of moral imperatives (traditionally provided by the Church) and as such were perceived to be descending into 'sexual anarchy'. This lack of firm leadership was exploited by a few radical and, in her terms, unscrupulous individuals (such as Neville) to bring about the destruction of the existing political system, and, eventually, to secure the domination of atheistic communism. The sexual revolution that was believed to be occurring was viewed simply as the precursor of eventual political revolution. Thus it was felt that the only method to turn back this tide was to attempt to legislate in a variety of areas in which permissiveness was believed to have got a grip: obscenity, prostitution, abortion, drugs etc, and to begin to work towards the re-emergence of the Church as a central institution in society. In a phrase, the aim was to rediscover Christianity:

The denial of man's role as child of God is not liberating as the humanists would have us believe. It puts us in bondage to the limitations of our own minds and capabilities. It seems to me to be an act not of courage and independence, but of deep fear, and that it springs not from the certainty of man's invincibility but from the need to find a justification and a power which will sustain us in the void which we know has been created by our rejection of God. [48]

Mrs Whitehouse's description of 'bondage' here and the 'void' created by the rejection of God has certain parallels with Durkheim's treatment of the notion of 'anomie'. Essentially, she seems to be arguing that those who reject Christianity - and in particular the moral rules and guidelines associated with it - face a situation which lacks regulation. This lack of regulation is not conducive to

freedom, she suggests, but rather to a life that lacks what Durkheim referred to as 'object and meaning' [49]. Thus, both Whitehouse and Durkheim, although in very different ways, have been concerned with what they perceived to be the necessary regulation of individual passions. Both were concerned with the possible breakdown of established and accepted normative frameworks. For Durkheim the focus was largely economic and conjugal, for Whitehouse, it was religious.

So far, in relation to youth, discussion has centred around the two most fundamental factors in the development of the belief that the young of the 1950s and 60s were in some way qualitatively different from those of preceding generations, particularly in their attitudes to 'authority'. Crucial in this regard were affluence or economic independence, and the development of popular music and related subcultural and countercultural styles. 'Youth', both as a category and in reality in post-war Britain, appeared to transcend class. Although, as has been argued, the sub- or countercultural styles adopted by the young in this period were distinctly class-based, nevertheless there was a wide concern over the group as a whole, and the development of notions like 'generation gap' give expression to the feeling prevalent at the time that it was the differences between age groups as opposed to classes that were the more problematic. This was given some support from sociological quarters by those who believed that traditional class divisions were being broken down by the affluence of the period.[50] To these concerns one may add the belief, held by some, that juvenile crime or delinquency was both more serious and rising at a faster rate than in previous periods. There are also a number of other changes which, although perhaps less central in the development of post-war panics over youth, are

nonetheless important.

John Gillis points to a series of demographic changes which he links to what he sees to be the 'end of adolescence' in the 1950s and 1960s [51]. First of all, he points to the century-long decline in family size. Although there appears to have been a slight increase in family size in the 1950s, the overall trend was toward a decrease, and this "seems to have percolated down to the lowest ranks of society, even though the restriction of fertility was still slightly less at the very bottom of the social order" [52]. Increasing use of contraceptive techniques seems to have been associated with the decline of family size, too much can be made of this. Gillis argues that birth control has spread to all classes, beginning at the top and spreading downward as the century has progressed. However, Geoffrey Gorer, in a survey entitled Sex and Marriage in England Today published in 1971, found that, even at that such a late stage, two fifths of all married couples in this country were not using any form of birth control. Use of the pill in the 1960s was confined to a minority of women, although a substantial number of these were young. Interestingly, as is argued in chapter one, there is little in the findings of Gorer's survey or that of Michael Schofield that leads to the impression that there had been any remarkable changes in the sexual attitudes and behaviour of the young [53]. Unfaithfulness was frowned upon, the rate of pre-marital sex did not appear to be much greater than that discovered by Alfred Kinsey fifteen or so years earlier, and marriage was certainly no less popular. There was an increase from 5-8% between 1955 and 1967 in the rate of illegitimacy, but much of this is probably explained by changing attitudes towards marriage, rather than as a reflection of changes in sexual behaviour

[54]. The rise in the figures for venereal disease also gave rise to claims that the young were engaging in 'promiscuous sex' without thought to the consequences. The increase related mostly to gonorrhoea rather than syphilis. However, much of the reported increase can be accounted for by an increased willingness to seek advice at V.D. clinics [55].

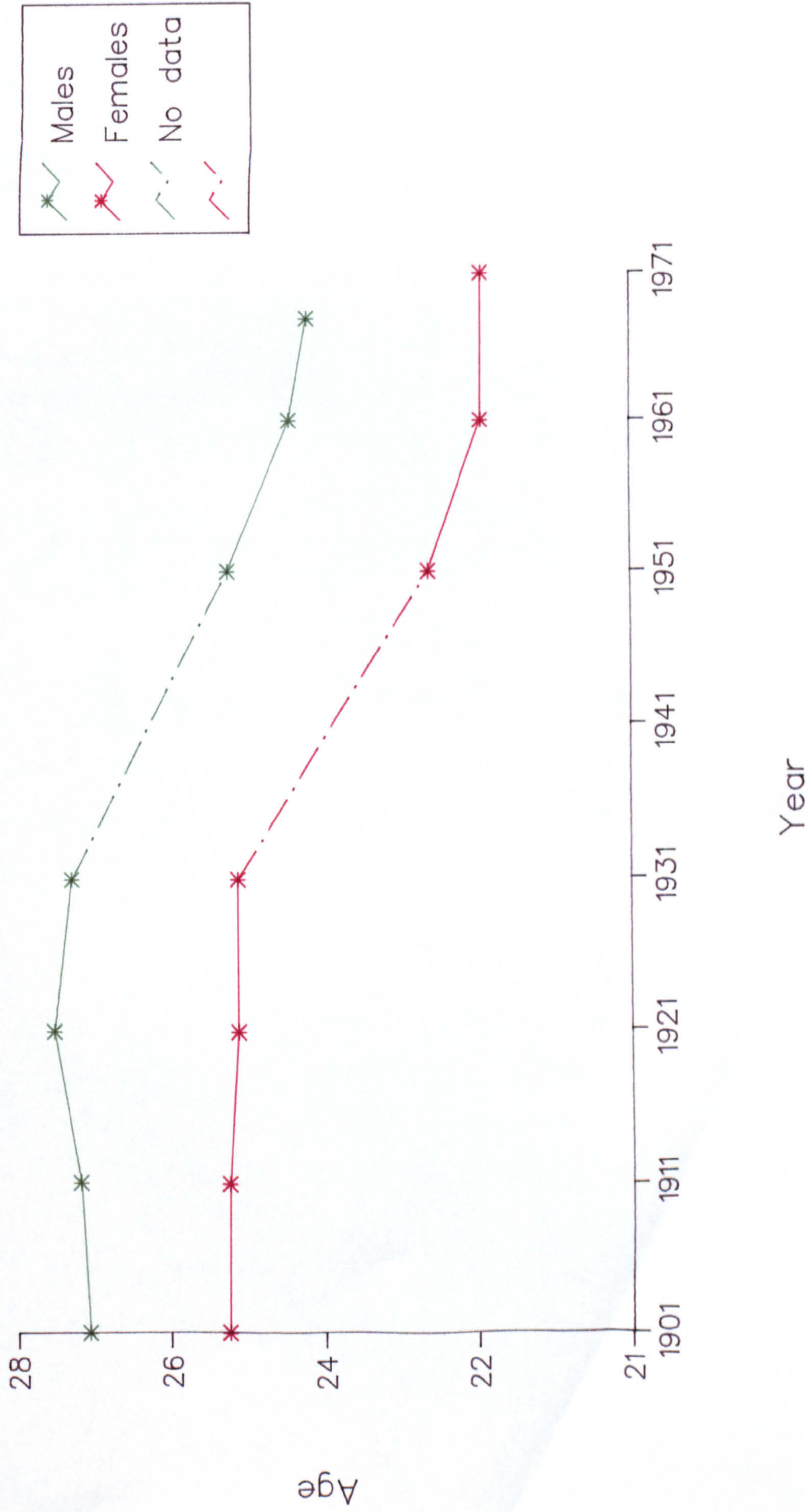
Whilst most studies of sexual behaviour appear to show that patterns of behaviour had changed far less than was suspected by some, most authors still appear to argue that a process of liberalisation had indeed occurred. How is one to account for this? It is possibly more helpful if one begins to think rather less about sexual behaviour, and perhaps even moral attitudes, and concentrates rather more on moral authority. Gillis points in the right direction when he talks about 'freedom':

One sign of the greater freedom of adolescents was the final disappearance of chaperonage: and by the 1960s there was a significant tendency for parents to place considerably greater trust in the peer group and to require less adult supervision for both their sons and daughters. [56]

This gets closer to the idea of a change in the balance of power between youth and adults that is suggested above, and implies a change in emphasis from parental-restraint to greater self-restraint. The young in the 1950s and 60s were relatively economically independent of their parents for the first time. The smaller, more privatised family was no longer dependent upon the wages of their offspring for survival; the young were ceasing to be dependent upon their families at an earlier age. Similarly, males and females continued to reach maturity at an ever earlier stage (3 years earlier in the 1960s compared with the 1860s [57]), and also married younger (cf. graph

3. Average Age at First Marriage.

Adapted from Table 13 : Social Trends 1970.



3). Gillis suggests that the trend toward earlier marriage is illustrative of the move toward autonomy, and similarly:

While the movement toward women's liberation has encouraged some to delay marriage or even abandon it entirely, its effect with respect to the status of youth has been, nevertheless to increase the autonomy of young persons from the authority and control of their parents. [58]

This trend toward greater (relative) autonomy, which may be expressed as a change in the 'power potential' of the young, resulted in the creation of a feeling of 'anxiety' in the adult population around the question of the control of young. A variety of other anxieties connected to this increased relative autonomy (however tenuously) such as those over rock'n'roll, dress and fashion, political protest, drug use and juvenile delinquency all contributed to the more general feeling that contemporary youth could either no longer be controlled, or were well on the way to anarchy. This is, of course, not the whole story. The panics around the subject of 'permissiveness' were only in part a response to the change in the strategic position of youth in post-war Britain. Youth, as has already been mentioned, also became the focus for a series of other 'displaced anxieties' concerning, in particular, the position of women in modern Britain, and therefore female sexuality. The final major transformation in British society which requires extended discussion here is the role and centrality of organised religion.

Secularisation and post-war social change

There can be little doubt that one of the most significant trends in twentieth century Britain has been the declining significance of the Church. Academics, in particular, have disagreed over precisely what the process generally known as 'secularisation' actually involves, or in which way, if any, one can chart its progress. However, there is little disagreement, either within or outside the Church, that religion plays a less central role in British society now than it did, say, one hundred years ago. Secularisation is, as has been suggested, a term over which there has been some debate. However, it will be used here, following MacIntyre, to mean:

the transition from beliefs and activities and institutions presupposing beliefs of a traditional Christian kind to beliefs and activities and institutions of an atheistic (or agnostic) kind. [59]

Having opted for an uncomplicated definition of the term, 'secularisation', and having eschewed discussion of the complexities of the sociological debate over the decline of religion in modern Britain, the argument will be taken one stage further. It has been suggested so far that one of the central processes involved in the complex of changes which were perceived as being 'permissive' was that of secularisation. It was during the 1960s, however, that this process of religious decline came to a head and many, both within the Church and outside, believed that religion was in a state of 'crisis', and that, consequently, it could only be through a process of radical change that the Church could re-establish itself, and regain the ground it had lost. Gilbert has described the situation thus:

All the Churches lost ground substantially during World War One. The decline was arrested in the 1920s when even in proportion to the still growing British population most Churches virtually held their own. But by the early 1930s indices of total membership and membership density...were again in decline. The Second World War exacerbated this trend, and the recovery which followed in the late 1940s and early 1950s was minimal even in comparison with the short-lived upturn after the First World War. Worse was to follow however. Since 1960 declining membership, attendance, Sunday School participation, baptism, confirmations and numbers of candidates offering themselves for the professional ministry have presented a consistent picture of massive crisis. [60]

The Church was perceived by many, then, as being in 'crisis'. In this increasingly secular society, it was seen as becoming less important, less influential and less relevant. Of particular concern were the new post-war generations who were growing up in a society where the Church's ability to provide firm moral leadership was seen to be in decline. As is suggested in chapter two, this process was considered by Mrs Whitehouse and the NVALA to be particularly crucial, and they viewed the Church's inability to lead from the front in matters of (sexual) morality as the firmest indication of the insidiousness of the 'new morality' evident in modern Britain. In chapter two, a passage by Paul Johnson, then of the New Statesman, which has been used by Mrs Whitehouse, was quoted as an illustration of the view held by Whitehouse and her supporters that the Church in the 1960s did not speak with one voice on the subject of morality. The subject of that particular passage was pre-marital sex, and it is indeed possible that there had once been a time when answers to questions about pre-marital sex would have been eminently predictable, and would have been based on what Johnson described in that passage as 'orthodox' or 'traditional' Christian morals. Clearly, however, by the early 1960s this was no longer the case.

The Church was no longer in a position to provide, or to lay down, firm rules which would guide everyday behaviour. What had happened was that, as British society had become increasingly secular and the Church had correspondingly undergone a relative decline in its importance and influence, so it became increasingly less able to dominate discussion of moral questions. What is being suggested here, is not that moral rules were in some way disappearing or disintegrating, as some would have us believe, but that the basis upon which the 'moral code' existed was changing. More particularly, it was, in the sense used above, becoming increasingly secular. This, however, is not the full picture. The 'crisis' that the Church was in, or was at least seen to be in, was in fact twofold. For at one and the same time, not only was the Church's grip on the 'nation's morals' being loosened, but it was also unable to present a united front on questions of ethics and morality. There was what might be termed on the one hand, an 'intrinsic' crisis where the Church itself saw its own declining influence in the moral sphere, and on the other hand, an 'extrinsic' crisis in which those outside the Church viewed as problematic its inability to agree on a method of responding to its declining fortunes. John Robinson, the Bishop of Woolwich, likened these problems the Church was facing to a 'currency crisis'. In this analogy the 'currency' is 'moral codes, doctrinal formulations, liturgical forms', and the problem for the Church was:

...in our generation people are increasingly beginning to question whether in fact they (doctrines, moral codes) mean anything or stand for anything real. [61]

Not only was the Church seen to be of declining significance, it was also unsure how to respond to its changing situation. Essentially, of

PAGE

NUMBERING

AS ORIGINAL

...the Church of England newspaper suggest[ed] that a reading of Honest to God should be accompanied by a recollection of the conspicuous failure of the Church of England as a whole to make Christianity meaningful to this generation.[64]

In 1963, the Church was, in Canon Welsby's words, 'startled into full wakefulness' by the publication of John Robinson's unexpected bestseller. The circumstances of its launch are by now well-known, but briefly what had happened was that, on the eve of publication, the Bishop was invited by the Observer to write an article for the following Sunday's paper. It appeared under the headline (not Robinson's original) 'Our Image of God Must Go'. John Robinson had (cf. chapter four) two years previously made a reputation for himself by appearing as a witness for the defence in the trial of Penguin Books for publishing Lady Chatterley's Lover, and it is clear in hindsight that his book and the publicity surrounding it was not only timely but also hit a nerve in the nation's consciousness.

The book brought forth a flood of invitations, letters, reviews and the like, and not surprisingly some were rather more fulsome in their praise than others. Perhaps the best known comment was published in the Church Times:

...it is not every day that a Bishop goes on public record as apparently denying every Christian doctrine of the Church in which he holds office.[65]

Not all reviewers were as critical as this. Indeed, Bishop Robinson received much support. He was, however, firmly in one of the two camps which were almost diametrically opposed over the message the Church should be giving 1960s Britain. The book itself is a piece of

fairly radical theology whose antecedents can be traced to such philosophers as Tillich and Bonhoeffer. His major argument, baldly put, is that the images, particularly of God, that the Church was using at that time were out of date or simply irrelevant in modern society. Perhaps more interestingly for these purposes, he argued in Honest to God that nothing of itself could be labelled as wrong. This type of statement became the essence of the school of thought known as 'situational ethics' and which, described more fully, suggested that:

Our moral decisions must be guided by the actual relationships between the persons concerned at a particular time in a particular situation, and compassion for persons overrides all law. The only intrinsic evil is lack of love. [66]

This statement is, as will by now be clear, much closer to the type of argument that HLA Hart used in his critique of Devlin, than the position Devlin adopted. That is, the position adopted in 'situational ethics' adheres much more closely to the views, for example, of the Wolfenden Committee on the relationship between law and morality in advocating that some judgement of 'harm' should be used to determine whether or not the criminal law should be used to intervene in the behaviour of adults, as opposed to the position adopted by Lord Devlin, Mary Whitehouse and others whereby the decision was to be based on a set of firm traditional (essentially Christian) moral principles that outline those forms of behaviour that are condemned and those that are not.

It has been the argument here that what was actually being witnessed in the 1960s was a gradual movement away from the type of position articulated by Devlin and Whitehouse, and towards that expressed by, in this instance, the Bishop of Woolwich. For Mrs Whitehouse and the

NVALA, the publication of Honest to God, although it was only one - albeit significant - event, was a key moment in the emergence of what she (and John Robinson) described as the 'new morality'. This 'new morality' involved for Mrs Whitehouse the gradual loosening of the Church's hold on mores and values, and implicitly here at least a decline in 'authority'. She was and is by no means alone, of course, in this belief, for numerous commentators on the period (cf. in particular the 'conservative' historians covered in chapter one) have also assumed that the declining influence of the Church on questions of morality that they witnessed at this time, meant that moral guidelines were being eroded, and that, because the authority of the Church was being questioned, all authority was disappearing.

Christopher Booker, for example, commenting on Honest To God said:

In no way was the disintegration of authority more subtly and profoundly reflected, however, than in a book published in March which was to sell more than three quarters of a million copies and which finally brought to a head all the doubts and insecurities which had recently been afflicting many leading members of the Church of England. [67]

It would appear that these 'doubts and insecurities' were not confined to the Church of England, for Honest To God was not the only piece of religious literature that caused a stir in 1963. Also in that year a group from the Friends Home Service Committee published a pamphlet entitled,

Towards A Quaker View of Sex: An Essay By A Group Of Friends, which was mainly devoted to a consideration of homosexuality and the Church's response to it. Although, viewed from the 1980s, it does not appear to be a particularly radical document, one must remember that it was published roughly four years before Parliament passed the Sexual Offences Act, 1967, and it is also clear that it was closer to

the stance on morality adopted by Wolfenden than it was to a more 'traditional' religious position:

...we do not regard the standards of judgement relevant here as being different from those that apply to other sexual problems. Surely it is the nature and quality of a relationship that matters: one must not judge it by its outward appearance but by its inner worth. Homosexual affection can be as selfless as heterosexual affection and therefore we cannot see that it is in some way morally worse. [68]

Both Honest To God, and in a smaller way Towards A Quaker View Of Sex, as far as the argument here is concerned, were crucial 'signifying events' in the early 1960s. The Church found itself occupying an ever increasingly minor role in questions of morality, and had two polar, basic positions that it could adopt in response to this 'crisis'. Robinson used the analogy of a 'currency crisis' to explain these conflicting strategies, the first involving a stress on the value of the old currency, the second a search for a new currency before the old one is finally declared bankrupt. Honest To God and A Quaker View both fit into the latter category in that they were both attempts to bring theology into line with what were perceived to be the exigencies of the modern, more secular society.

These two publications are also significant in another respect. For Mrs Whitehouse, among others, they represented both the point at which the new replaced the old morality, and served as the vehicles for change. They represented, and for her were part of, all the ills that she identified in modern Britain:

1963 was by any standards, an extraordinary year, a climactic year, the year of the Profumo scandal, Honest To God, kitchen sink plays

late night satire; the year in which Dr Peter Henderson, Principal Medical Officer of the Ministry of Education announced that "it was not unchaste" to have pre-marital sex; Dr Alex Comfort defined (on television) a chivalrous boy "as one who takes contraceptives with him when he goes to meet his girlfriend", and the BBC gave the 'full treatment' to the exponents of the New Morality and censored, by exclusion, the 'protagonists of established morality'. [69]

In this way, via traditional teachings on the one hand, and on the other publications such as Honest To God, A Quaker View, and the Church of England's recommendations on divorce reform, Putting Asunder, the Church was seen, by some at least, as being inconsistent in the moral debates of the day, and in so doing, as being unable to present a uniform moral stance. Critics such as Mary Whitehouse viewed this lack of uniformity as a supreme indication of the effects of 'permissiveness' - the fact that even the Church was no longer sure where it stood on moral issues.

Part of the strength of religious doctrine in the past, and the centrality of the Church as an institution, has been its ability to establish an essentially 'hegemonic' position in the moral order - it has been almost universally accepted that 'morality', and in particular sexual morality, is religiously based. The declining importance of religious doctrine in the moral field, ie. the erosion of this apparent theological hegemony, has resulted in the increasing visibility of what I have referred to as the 'contending moralities'. MacIntyre, discussing the process of secularisation, makes a similar point:

English society today is at best morally pluralistic in a way that makes the notion of authoritative moral utterance inapplicable;

at worst it is a society in which the lack of a shared moral vocabulary makes the use of explicit moral assertion positively pernicious. [70]

To conclude this discussion of the process of 'secularisation' as a crucial process in our attempt to make sense of the notion of permissiveness, the major points made above must be briefly reiterated. What has been argued is that the Church has been declining in importance and influence throughout the twentieth century, a process that accelerated after the Second World War. Its declining influence was perceived by those inside and outside the Church as a point of 'crisis'. Those inside the Church responded to this 'crisis' in two general ways; firstly, by what may be described as 'theological traditionalism' whereby an attempt was made to reassert conventional theological principles; and secondly, through what Dr Robinson himself described as 'theological radicalism', whereby an attempt was made to find a new religious currency more in tune with modern British society.

The Church's declining influence, and the contrasting responses to this decline by its members, was viewed by moral entrepreneurs such as Mary Whitehouse and the NVALA as being prime evidence of, and a vehicle for, the establishment of the 'new morality', as heralding the 'permissive age' where 'anything goes'. What has been argued here, however, is that the erosion of the Church's hegemony was connected with the increasing visibility of 'contending moralities', associated in particular with the decreasing power inequalities between men and women, adults and youth and the middle and the working class. It became increasingly obvious that British society ought to be described as 'morally pluralistic'. This pluralism was interpreted by some as

indicating a lack of moral rules and regulations, when in reality, there were a variety of moral codes which were in competition (including traditional religious values), yet for a time at least, one moral code could not be identified as dominant. One further piece needs to be added to this jigsaw, however. Although it was difficult during this period to identify a dominant moral code, the preceding case studies which focussed more closely on legislative reform nevertheless attempted to discover the possible existence of what might be referred to as an underlying philosophy. Stuart Hall, amongst others, has argued that what is generally referred to as the 'Wolfenden strategy' underpinned the major legislative transformations of the period. Most authors would now agree with Hall that:

There was an underlying philosophy within Wolfenden which gave the Report and its proposals an underlying unity - a philosophy. This involved a new principle for articulating the field of moral ideology. Wolfenden identified and separated more sharply two areas of legal and moral practice - those of sin and crime, of immorality and illegality. In creating a firmer opposition between these two domains, Wolfenden clearly staked out a new relation between the two modes of moral regulation - the modalities of legal compulsion and of self-regulation. This set of distinctions constituted a new, if temporary, 'moral economy'. It marked a shift, however small and imperceptible at first, in what Foucault (1978) has called the micro-physics of power.

[71]

The characteristics of this philosophy were studied in some detail in chapter three, and the way in which this philosophy underpinned both the Street Offences Act of 1959 and the Sexual Offences Act of 1967 was brought out. This chapter - and the thesis - concludes with a discussion of the Wolfenden philosophy and its relationship with the legislative changes in the other areas that have been considered, abortion and obscenity, as well as its relationship to the general

process of 'functional democratisation', identified here as the principal basis of the dominant structural changes that have occurred in post-war British society.

A Double Taxonomy?

In a brief review of what he calls the 'legislation of consent', Hall asks similar questions, in particular whether or not a dominant tendency can be identified in the direction of the 'legislation of consent'? What he identifies is a strategy which consisted in practice of what he refers to as a 'double taxonomy'. There are distinct parallels between the elements in this double taxonomy and the restructuring of the balance between external and self-control outlined by Elias and Wouters and referred to below. Hall describes the double taxonomy thus:

In each domain there is an increased regulation by the state, a greater intervention in the field of moral conduct - sometimes making more refined distinctions, and often taking a more punitive and repressive form than previously existing mechanisms of regulation and control. At the same time, other areas of conduct are exempted from legal regulation - and so to speak, from the gaze of public morality... and shifted to a different domain, to be regulated by a different modality of control: that of the freely contracting private individual.[72]

Although Hall's review does not cover the laws of obscenity, his basic argument would nevertheless appear to be applicable. In chapters four and five, increases in both 'permission' and 'regulation' are identified within the Obscene Publications Acts of 1959 and 1964.

These two movements correspond to what Hall called the double taxonomy which underpinned the 'legislation of consent' during the period. Similarly, the consideration of abortion law reform in chapter six also points both to the existence of basic extensions of access to abortion and to the more finely articulated apparatuses of control contained within the Abortion Act of 1967. Hence, one basic conclusion, and one upon which many authors are agreed - Hall, Weeks, Greenwood and Young amongst others - is that the legislation of the period cannot profitably be described by a simple unidimensional word such as 'permissive'. The Wolfenden strategy, as was suggested in the quotation from Hall above, means more, however, than simply the legal articulation of a 'double taxonomy' of permissiveness and control. As Hall argues, it involves a new modality of control - what he refers to as that of 'freely contracting private individuals'. What he seems to be suggesting is that there is a redrawing of the boundaries between state control and private morality. Although distinctive, this is somewhat similar to the argument used above, and derived from Elias, that the historical process we have witnessed, and which is here referred to as 'functional democratisation', involves as one of its fundamental 'moments' progressive social pressure towards self-control.

This process is well described by Cas Wouters in his study of twentieth century Dutch etiquette. Wouters, as has been described above (cf. chapter one), identifies a process of 'informalisation' in which 'dominant modes of social conduct, symbolising institutionalised power relationships, tend towards greater leniency, variety and differentiation'. As part of this process, Wouters notes the growth of what he terms 'individualisation' or 'applying one's own norms'.

This is taken as clear evidence of the increased social constraint towards self-constraint, and he quotes a modern etiquette book:

Whereas we used to be pleasant and polite because etiquette required it, now we are because we ourselves want to be![73]

There has been a rise, Wouters argues, in 'mutually expected self-restraint'. A lessening of the power inequalities, for example, between men and women, adults and youth, is conducive to greater informality in relationships. Such relationships, ie. less formal relationships based on lessened power inequalities, require more deeply established self-restraints than relationships of a more formal structured nature. This relates back to Hall's description of 'consenting legislation', and the 'Wolfenden strategy' which involved a restructuring of the boundaries between 'public' and 'private' morality. These did not, as some authors have argued, mean less control, merely (following Elias, Foucault, and Hall) a different modality of control involving a different balance between external and self-control. We may take this argument one stage further and argue, not simply that the legislation of the period involved a new modality of control, but that the period under consideration involved the realisation that the law might not be the most appropriate means of securing control. As Bland et al have argued:

Wolfenden's recommendations on homosexuality, while they opened up a privatised space in which adult male homosexuals could now operate without the threat of criminal sanction, in no sense advocated the abandonment of 'control' from that space. Power is no longer to be exercised through the operation of law, but what the Report recommends for homosexuality is the diversification of forms of control in the proliferation of new discourses for the regulation of male homosexuals. It explicitly marked out 'a course for treatment' for the homosexual which is distinct from that of the criminal model - henceforward medicine, therapy, psychiatry and social research are to form alternative strategies for the exercise of power. The state abandons legal control of the homosexual, only to

call into play a network of discourses which constitute a new form of intimate regulation of male homosexual practice in the private sphere.[74]

Although chapter seven showed the argument that the state abandoned legal control of the private sphere to be somewhat overstated, the general tenor is accurate. Side by side with the reformulation of legal control were new discourses for the regulation of homosexuality which involved explicit pressure towards self-control. It is worth repeating Abse's closing remarks as his Bill was about to pass its final reading, for they illustrate precisely this point:

I ask for those who have, as it were, been in bondage and for whom the prison doors are now opening to show their thanks by comporting themselves quietly and with dignity. This is no occasion for jubilation, certainly not celebration...Homosexuals must remember, while there may be nothing bad in being a homosexual, there is certainly nothing good.[75]

Summary

This thesis has not only considered changes in legislation, and their underlying philosophy, together with the structural changes that underpinned this legislative moment, but has also sought to bring into the overall picture the role of moral pressure groups. Focussing on Mary Whitehouse and the NVALA, it has been argued that it was precisely those structural changes that were identified as forming the backdrop to the legal changes studied that also prompted the emergence of moral reform groups such as the NVALA. Central to both explanations was the process of secularisation. On the one hand, the declining influence of the Church in matters of morals was, it is

argued, inextricably tied to the emerging importance and influence of other groups in determining standards and providing authority, ie. the process of functional democratisation. On the other hand, this declining influence was seen by groups such as the NVALA as being both a sign of, and a vehicle for, the establishment of the 'new morality' against which the campaigns of the moral reformers were directed.

The process of functional democratisation, involving centrally, as it did, a reduction in the power inequalities between adults and youth, and women and men, together with the aforementioned related process of secularisation, helped to make increasingly visible the 'cultural positions' associated with those groups which were experiencing improved power chances. In post-war British society, the mood of affluence and optimism was to some extent exploited by those who were in positions of relatively increased autonomy. Equally, their demands for the significance of 'their style of life' and ways of behaving were, in some senses, more difficult to stifle. The combination of these processes led to the widespread belief that the previously extant moral consensus either had been, or was in the process of being, destroyed. For many groups in British society at this time, the general experience of social change must have approximated to something akin to what sociologists have described as 'anomie'. This is perhaps best described by Merton in his discussion of the distinction between 'simple' and 'acute' anomie:

Simple anomie refers to the state of confusion in a group or society which is subject to conflict between value-systems, resulting in some degree of uneasiness and a sense of separation from the group; acute anomie, to the deterioration and, at the extreme, the disintegration of value-systems, which results in marked anxieties.[76]

The process of functional democratisation resulted in the increased visibility of 'contending moralities' and gave rise to just such a sense of unease and anxiety. British society was believed to be characterised by moral uncertainty. The campaigns of the moral reform groups were centred around the desire to reclaim a lost 'golden age' in which moral consensus was built on a firm bedrock of traditional Christian ethics, supported and reproduced by the monogamous nuclear family. The concern with permissiveness was primarily with perceived attacks upon, or the perceived decline of, these two central institutions. Many of the social changes of the period were seen as being characteristic of a society in which these institutions were undergoing radical transformation. The process of secularisation, and the Church's varied responses to it, confirmed the perception of the precarious position of traditional Christian teachings, whereas (at least apparently) rising rates of illegitimacy, venereal disease, and divorce reinforced fears for the family. The basis of the campaigns of the major moral reform groups must, therefore, it has been argued, be viewed as part of an 'ideological rearguard action' in defence of ideal conceptions of the nature and roles of these institutions.

The process of 'privatisation', already highlighted as a significant aspect of the restructuring of the modality of control in the legislative areas under discussion, was also linked to the changing nature and role of the family and religion in contemporary social life. As Berger and Berger have pointed out:

...the declining influence of religion, as a result of the peculiarly modern phenomenon of secularisation, also impacted upon the family. In the medieval world the family was ultimately legitimated in terms of its connection with the sacramental apparatus of the Church. The weakening of this legitimation could not but reduce the authority of the family. To a considerable

extent the church as an institution was also 'privatised'. Other institutions now competed with it in providing moral guidance and authority for individual life. The most important institution doing this was... the modern state, increasingly arrogating to itself final authority in the determination of the obligatory moral standards for society. One might say that, in a certain analogy to ... economic change, the family became a consumer, rather than a producer, of moral values.[77]

'Permissiveness' has, then, been rejected as a simplistic and unidimensional term, valueless for sociological explanation, yet containing a message of continuing cultural relevance and resonance. The legislative changes studied are following Hall, identified as containing within them a 'double taxonomy' of liberation and control. Within these changes was a redrawing of the relationship of the criminal law to public and private behaviour. Whilst, on occasion, the movement of these boundaries could be viewed as liberalisation, that is as involving a diminution of control - for example in the legal changes in the areas of abortion and homosexuality but not prostitution, and, only with great difficulty, in the area of obscenity; the effect in all the areas was to restructure the 'modality' of control, or in Bland et al's terms to 'diversify the forms of control'. More specifically, using Elias' notion of 'functional democratisation' as specifically employed by Wouters in his work on 'informalisation', it was argued that this process which involved a diminution of the power inequalities between various social groups also involved an increased social pressure towards self-control. Increasing emphasis upon self-control is evident in the discourses surrounding moral questions in this period. It is formalised in some of the legislative changes that have been studied, and finds its most coherent philosophical expressions in the writings of both HLA Hart and the Wolfenden Committee.

Viewed from the perspective of the late 1980s, the changes interpreted by some as being revolutionary in the 1960s appear minimal and tame. Few doubt the excitement generated by the first flush of affluence in the decades after the austerity of the war. However, we now seem so far from the philosophies of the 1960s that, for contemporary youth at least, 'hippie' has become a term of abuse and 'hippie values' are reviled. Looking at the area of social change and morality, what is perhaps most surprising is the amount of attention that was, and still is, paid to such changes as did occur. John Hill [78], writing about economic change in the period, has suggested that it was the ideological achievement of the age to focus on the local shifts and transformations whilst concealing the essential continuities of the boundaries and it is probably safe to conclude that much the same could be said of the area of law and morals.

- [1] Watney, S. (1987) op.cit. p.64
- [2] cf. Hall (1979) op.cit.
- [3] Elias (1978) op.cit.
- [4] Elias, N. (1978) What Is Sociology? Hutchinson. p.68
- [5] Wouters, C. (1977) Informalisation and the Civilising Process. in, Gleichmann et al op.cit.
- [6] Pearson, G (1983) Hooligan: A History of Respectable Fears Macmillan.
- [7] Hall (1979) op.cit.
- [8] McCabe, C (1988) Is Television About to Enter the Dark Ages? The Listener 11 February.
- [9] quoted in Weeks, J (1981) Sex, Politics and Society Longman.
- [10] quoted in Smart, C (1984) The Ties That Bind R.K.P.
- [11] H.M. Government (1956) Minutes of Evidence: 278 quoted in, Wilson, E. (1980) Only Halfway To Paradise Tavistock. p.72
- [12] ibid. pp.72-3
- [13] Bouchier, D (1983) The Feminist Challenge Macmillan. p.21
- [14] Smart (1984) op.cit. and Adam, R (1977) A Woman's Place Chatto and Windus. p.163
- [15] Report of the Royal Commission on Population. p.159. quoted in Weeks, J (1981) op.cit. p.236
- [16] Briggs, A. (1961) Seebohm Rowntree Longmans.
- [17] Abrams, M (1959) The Home-Centred Society. The Listener 26 November. quoted in Winship, J (1981) Woman Becomes an Individual: Femininity and Consumption in Women's Magazines 1954-69. Centre for Contemporary Cultural Studies. Special Paper no.65. p.15

[18] *ibid.*

[19] Birmingham Feminist History Group (1979) *Feminism as Femininity in the 1950s. Feminist Review vol.3 pp.49-50*

[20] Cartwright, A (1970) Parents and Family Planning Services R.K.P quoted in Wilson (1980) *op.cit.*

[21] Smart, C (1981) *Law and the Control of Women's Sexuality.* in, Hutter and Williams [eds] *op.cit.* p.48

[22] Wilson (1980) *op.cit.* p.88

[23] Smart (1984) *op.cit.* p.29

[24] *ibid.* p.30

[25] Bouchier (1983) *op.cit.*

[26] Hutter, B and Williams, G (1981) *Controlling Women: The Normal and the Deviant.* in Hutter and Williams [eds] *op.cit.*

[27] Whitehouse (1977) *op.cit.* p.227

[28] Wouters (1977) *op.cit.* p.445

[29] MacInnes, C (1959) Absolute Beginners p.6 quoted in, Frith, S (1983) Sound Effects: Youth, Leisure and the Politics of Rock and Roll Constable. p.182

[30] Pearson (1983) *op.cit.*

[31] Abrams, M (1959) The Teenage Consumer R.K.P. p.9

[32] Masters, B (1985) The Swinging Sixties Constable. p.20

[33] Frith (1983) *op.cit.* p.182

[34] *ibid.*

- [35] for a fuller explanation see; Cohen, P (1972) Subcultural Conflict and Working Class Community. Working Papers in Cultural Studies no.2
- [36] Hebdige, D (1976) The Meaning of Mod. in, Hall and Jefferson. (eds) Resistance Through Rituals p.93
- [37] Subcultures, Cultures and Class. in Hall and Jefferson (1976) op.cit.
- [38] Dunning, E.G., Murphy, P and Williams, J (1988) The Roots of Football Hooliganism R.K.P.
- [39] Hebdige, D quoted in Hillier, B (1983) The Style of the Century Herbert Press. p.146
- [40] Jefferson, in Hall and Jefferson () op.cit.
- [41] Brake, Willis, Hebdige, Jefferson, Hall, Cohen etc.
- [42] Pearson (1983) op.cit. p.15
- [43] Dunning et al (1988) op.cit.
- [44] ibid. p.13
- [45] Middle-Class Radicalism Manchester University Press. (1968). quoted in Muncie, J (1984) The Trouble With Kids Today Hutchinson. pp.111-2
- [46] Hall, S (undated) The Hippies: An American Moment. Stencilled Occasional Papers in Cultural Studies. SP No.16 Centre for Contemporary Cultural Studies.
- [47] Whitehouse (1977) op.cit. p.239
- [48] ibid. p.246
- [49] Lukes, S. (1975) op.cit. p.207
- [50] cf. Goldthorpe, J., Lockwood, D., Bechofer, F and Platt, J (1969) The Affluent Worker in the Class Structure Cambridge University Press; or, Zweig, F (1961) The Worker in an Affluent Society Heinemann.
- [51] Gillis, J (1981) Youth and History: 1977 to the Present Academic Press.

[52] *ibid.* p.187

[53] The Sexual Behaviour of Young People

[54] Ryder, J and Silver, H (1970) Modern English Society Methuen. p.260

[55] cf. Weeks (1981) *op.cit.* p.253

[56] Gillis (1981) *op.cit.* p.187

[57] Tanner, J.H. (1962) Growth at Adolescence Blackwell.

[58] Gillis (1981) *op.cit.* p.190

[59] McIntyre, A (1967) Secularisation and Moral Change Oxford University Press. pp.7-8

[60] Gilbert, A.D. (1980) The Making of Post-Christian Britain Longman p.77

[61] Robinson, J.A.T. (1963) The Debate Continues. in, Edwards and Robinson [eds] The Honest to God Debate SCM Press.

[62] *ibid.* p.246

[63] Sklair, L (1970) The Sociology of Progress RKP.

[64] *op.cit* p.8

[65] Welsby, Canon P.A. (1984) A History of the Church of England: 1945-80 Oxford University Press. p.113

[66] quoted in Welsby (1984) *op.cit.* p.123

[67] Booker (1970) *op.cit.* pp.194-5

[68] Heron, A [ed] (1963) Towards a Quaker View of Sex: An Essay by a Group of Friends Friends Home Service Committee.

[69] Whitehouse (1971) *op.cit.* p45

[70] McIntyre (1967) op.cit. p.57

[71] Hall (1981) op.cit.

[72] ibid.

[73] Wouters, C (1987) Developments in the Behavioural Codes between the Sexes: The Formalisation of Informalisation in the Netherlands, 1930-85. Theory, Culture and Society vol.4

[74] quoted in Greenwood and Young (1981) op.cit.

[75] Hansard HC debs

[76] Merton, R (1957) Social Theory and Social Structure Free Press. p.163

[77] in The War Over The Family Penguin.

[78] Hill, J (1986) Sex, Class and Realism British Film Institute.

BIBLIOGRAPHY

- ABRAMS, M. (1959) The Teenage Consumer Routledge and Kegan Paul. London
- ADAM, R. (1977) A Woman's Place Norton New York.
- ADAMS, M. (1968) Censorship: The Irish Experience Scepter Books. Dublin
- ALDRIDGE, T.M. (1977) The Criminal Law Act, 1977 Butterworths.
- ALSTON, J.P. and TUCKER, F. (1973) The Myth of Sexual Permissiveness. Journal of Sex Research vol.9 pt.1.
- ALTMAN, D. (1986) AIDS and the New Puritanism Pluto Press.
- ARCHBISHOP OF CANTERBURY'S GROUP (1966) Putting Asunder: A Divorce Law for Contemporary Society SPCK. London.
- ARRAN, Lord. (1972) The Sexual Offences Act. Encounter March.
- ASHDOWN-SHARP, P. (1975) Abortion: How We Won the Battle and Nearly Lost the War Nova October.
- BANKS, O. (1981) Faces of Feminism Martin Robertson. Oxford.
- BARBER, D.F. (1972) Pornography and Society Charles Skilton.
- BARKER, D. and ALLEN, S. (1976) Sexual Divisions and Society: Process and Change Tavistock.
- BARKER, M. (1984) A Haunt of Fears: The Strange History of the British Horror Comics Campaign Pluto Press
- BARKER, M. (ed) (1984) The Video Nasties: Freedom and Censorship in the Media Pluto Press.
- BARLOW, G. and HILL, A. [eds] (1985) Video Violence and Children Hodder and Stoughton.
- BARR, J. (1967) The Abortion Battle. New Society 9 March
- BECKER, H. (1963) Outsiders: Studies in the Sociology of Deviance Free Press.
- BELOFF, M. (1972) Onwards from 'OZ' Encounter March.
- BENEDICTUS, D. (1975) Defeated Youth Sunday Times 8 June
- BENNION, F. (1977) Account of the 'Libertine' Trial in Leicester. New Statesman 18 February.
- BERGER, B. and BERGER, P. (1984) The War Over ther Family Penguin
- BIRMINGHAM FEMINIST HISTORY GROUP. (1979) Feminism as Femininity in the 1950s. Feminist Review vol.3.
- BLANCHARD, J. (1982) Prostitution and the Social Control of Female Sexuality. Unpublished MA Thesis. University of Leicester.

- BLAND, R. and WALLIS, R. (1977) Comment on Wilson and Zurcher's Status Inconsistency and Participation in Social Movements. Sociological Quarterly vol.18 no.3
- BLAND, L., McCABE, T. and MORT, F. (1979) Sexuality and Reproduction: Three 'Official' Instances. in, BARRETT, M., CORRIGAN, P., KUHN, A. and WOLFF, J. Ideology and Cultural Reproduction Croom Helm.
- BLOCH, I. (1958) Sexual Life in England, Past and Present Corgi Books.
- BLOM-COOPER, L. and DREWRY, A. [eds] (1976) Law and Morality London.
- BOGDANOR, V. and SKILDELSKY, R. (1970) Age of Affluence Macmillan
- BOOKER, C. (1969) The Neophiliacs Collins. London.
- BOSTON, R. (1966) On Magistrate Leo Gradwell. New Society November.
- BOUCHIER, D. (1983) The Feminist Challenge: The Movement for Women's Liberation in Britain and the United States Macmillan. London.
- BOURNE, A. (1962) A Doctor's Creed Gollanz. London.
- BOWLBY, J. (1963) Child Care and the Growth of Love Penguin
- BOYLE, K., HADDEN, T. and HILLYARD, P. (1975) Law and State Martin Robertson. Oxford.
- BRAKE, M. [ed] (1982) Human Sexual Relations Penguin Books.
- BRAKE, M. (1980) The Sociology of Youth Culture and Youth Subcultures Routledge and Kegan Paul. London
- BRITISH COUNCIL OF CHURCHES. (1966) Sex and Morality SCM Press. London.
- BRITISH MEDICAL ASSOCIATION. (1955) Homosexuality and Prostitution BMA.
- BROOKES, B. (1988) Abortion in England, 1900-67 Croom Helm.
- BROPHY, J. and SMART, C. (1981) From Disregard to Disrepute: The Position of Women in Family Law. Feminist Review October.
- BURNS, A. (1972) Deprave and Corrupt Davis-Poynter.
- CALDER, J. (1970) A Reply to Pamela Hansford Johnson. Encounter April.
- CARTER, A. (1988) The Politics of Women's Rights Longmans.
- CAULFIELD, M. (1975) Mary Whitehouse Mowbrays.
- CHANDOS, J. [ed] (1962) To Deprtave and Corrupt Souvenir Press. London
- CHARNEY, M. (1981) Sexual Fiction New Accents.
- CHESLER, P. (1979) About Men Women's Press.
- CHURCH OF ENGLAND MORAL WELFARE COUNCIL. (1956) Sexual Offenders and Social Punishment Church Information Board

- CHURCH OF ENGLAND MORAL WELFARE COUNCIL. (1952) The Problem of Homosexuality Church Information Board.
- CLARKE, A. (1987) Moral Protest, Status Defence and the Anti-Abortion Campaign British Journal of Sociology XXXVIII no.2
- CLARKE, A. (1987) Moral Reform and the Anti-Abortion Movement. Sociological Review. vol.35.
- CLARKE, A. (1970) Abortion Act: Inquiry or Farce? Humanist News October
- CLARKE, A. (1970) The Abortion Act Vindicated. Humanist April.
- CLIFF, D. (1979) Religion, Morality and the Middle Class. in, King, R and Nugent, N. Respectable Rebels: Middle Class Campaigns in Britain in the 1970s Hodder and Stoughton.
- COHEN, P. (1972) Subcultural Conflict and Working Class Community. Working Papers in Cultural Studies no.2
- COHEN, S. (1980) Folk Devils and Moral Panics Martin Robertson. Oxford.
- COOTE, A. and CAMPBELL, B. (1982) Sweet Freedom Picador.
- COSER, L. (1978) The Bridling of Affect and the Refinement of Manners. Contemporary Sociology vol.7
- COURT, J.H. (1980) Pornography: A Christian Critique IVCF.
- COURT, J.H. (1977) Pornography and Sex Crimes: A Re-evaluation in the Light of Recent Trends Around the World. International Journal of Criminology and Penology vol.5
- COURT, J.H. (undated) Pornography, Harm and Williams. NVALA.
- COUSINS, M. and HUSSAIN, A. (1984) Michel Foucault Macmillan. London.
- COWARD, R. (1978) Sexual Liberation and the Family. M/F vol.1
- COX, A. (1975) Civil Liberties in Britain Penguin
- CRAIG, A. (1962) The Banned Books of England George Allen and Unwin. London.
- CURRIE, A. and GILBERT, D. (1972) Religion. in Halsy, A.H. Trends in British Society Since 1900 Macmillan. London.
- DAVIES, C. (1975) Permissive Britain Pitman
- DAVIS, K. (1937) The Sociology of Prostitution. American Sociological Review vol.2.
- DEVLIN, P. (1959) The Enforcement of Morals Oxford University Press
- DHAVAN, R. and DAVIES, C. (1978) Censorship and Obscenity Martin Robertson. Oxford.
- DICKENS, B.M. (1966) Abortion and the Law MacGibbon and Kee. London.

- DICKSON, D.T. (1968) Bureaucracy and Morality: An Organisational Perspective on a Moral Crusade. Social Problems vol.16.
- DIGGORY, P.L.C. and SIMMS, M. (1970) Two Years After the Abortion Act. New Scientist vol.48
- DOMINIAN, J. (1971) The Church and the Sexual Revolution SCM.
- DUNNING, E., MURPHY, P. and WILLIAMS, J. (1988) The Roots Of Football Hooliganism: An Historical and Sociological Study Routledge and Kegan Paul
- DURKHEIM, E. (1970) Suicide Routledge and Kegan Paul
- DURKHEIM, E. (1964) The Division of Labour in Society
- EDGAR, D. (1987) The Morals Dilemma. Marxism Today October.
- EDWARDS, S. (1981) Female Sexuality and the Law Martin Robertson. Oxford
- ELIAS, N. (1987) The Changing Balance of Power Between the Sexes - A Process-Sociological Study: The Example of the Ancient Roman State. Theory, Culture and Society vol.4
- ELIAS, N. (1982) State-Formation and Civilization Basil Blackwell. Oxford
- ELIAS, N. (1978) The Civilizing Process Basil Blackwell. Oxford.
- ELIAS, N. (1978) What is Sociology? Hutchinson.
- ELLIS, H. (1936) Sexual Inversion Random House. New York.
- EYSENCK, H.J. (1970) Obscenity-Officially Speaking. Penthouse
- EYSENCK, H.J. and NIAS, D.K.B. (1980) Sex, Violence and the Media Paladin
- FARREN, M. and BARKER, E. (1972) Watch Out Kids Open Gate Books. London.
- FAUST, B. (1981) Women, Sex and Pornography Penguin.
- FERMAN, J. (1976) On 'Deep Throat'. New Statesman 16 July.
- FERGUSON, M. (1983) Forever Feminine: Women's Magazines and the Cult of Femininity Heinemann.
- FINDLATER, R (1967) Banned!- A Review of Theatrical Censorship in Britain MacGibbon and Kee
- FOUCAULT, M. (1971) Orders of Discourse. Social Science Information vol.10
- FOUCAULT, M. (1981) The History of Sexuality Pelican.
- FOUCAULT, M. (1987) The Use of Pleasure Penguin.
- FOUNTAIN, N. (1988) Underground: The London Alternative Press, 1966-74 Comedia.
- FRIEDENBERG, E.Z. (1963) The Image of the Adolescent Minority. Dissent vol.10

- FRANCOMBE, C. (1984) Abortion Freedom: A Worldwide Movement George Allen and Unwin.
- FRITH, S. (1983) Sound Effects: Youth, Leisure and the Politics of Rock and Roll Constable
- FRYER, P. (1967) A Map of the Underground. Encounter October.
- FRYER, P. (1968) Censorship at the British Museum. Encounter October.
- FRYER, P. (1966) Private Case-Public Scandal Secker and Warburg.
- FRYER, P. (1967) To Deprave and Corrupt. Encounter. March.
- GAGNON, J.H. and SIMON, W. (1967) Sexual Deviance Harper and Row. New York.
- GALE, G. (1972) Review of the 'Longford Report'. Spectator September.
- GAY LEFT COLLECTIVE (1980) Homosexuality: Power and Politics Allison and Busby.
- GILBERT, A.D. (1980) The Making of Post-Christian Britain Longman.
- GILLIE, O., WALLACE, M., ASHDOWN-SHARP, P. and ZIMMERMAN, L. (1975) Abortion Horror Tales Revealed as Fantasies. Sunday Times 30 March.
- GILLIS, J.R. (1981) Youth and History Academic Press.
- GIRODIAS, M. (1966) The Erotic Society. Encounter February.
- GITTENS, D. (1985) The Family in Question Macmillan
- GLEICHMANN, P.R., GOUDSBLOM, J. and KORTE, H. (1977) Human Figurations Amsterdams Sociologisch Tijdschrift.
- GOLDTHORPE, J., LOCKWOOD, D., BECHOFER, F. and PLATT, J. (1969) The Affluent Worker in the Class Structure Cambridge University Press.
- GOODHART, A.L. (1961) The Shaw Case: The Law and Public Morals. The Law Quarterly Review. vol.77 October
- GOSLING, R. (1962) Sum Total Faber and Faber.
- GOSLING, R. (1966) On the Trial of 'Golden Convulvulus' New Society March.
- GREENWOOD, V. (1973) The Theft of the Body: The Sociology of the Abortion Law. Unpublished MA Thesis. University of Sheffield.
- GREENWOOD, V. and YOUNG, J. (1976) Abortion in Demand Pluto Press.
- GREY, A. (1975) Homosexual Law Reform. in, Frost, B. The Tactics of Pressure Stainer and Bell
- GUMMER, J Selwyn. (1971) The Permissive Society Cassell and Co.
- GUSFIELD, J.R. (1963) Symbolic Crusade: Status Politics and the American Temperance Movement Urbana; University of Illinois Press.

- HALL, S. (1979) Drifting into a Law and Order Society. Cobden Trust Human Rights Day lecture.
- HALL, S., CLARKE, J., CRITCHER, C. and ROBERTS, B. (1978) Policing the Crisis Macmillan.
- HALL-WILLIAMS, J.E. (1961) The Ladies Directory and Criminal Conspiracy. Modern Law Review vol.24.
- HANSARD
- HANSEN, S. and JENSEN, J. (1971) The Little Red Schoolbook Stage One.
- HARRIS, P. (1980) An Introduction to Law Wiedenfeld and Nicolson.
- HART, H.L.A. (1963) Law, Liberty and Morality Oxford University Press.
- HART, H.L.A. (1967) Social Solidarity and the Enforcement of Morality. University of Chicago Law Review vol.35
- HAZELL, R. (1974) Conspiracy and Civil Liberties. Occasional Papers on Social Administration. Social Administration Research Trust.
- HEBDIGE, D. (1979) Subculture: The Meaning of Style New Accents.
- HERON, A. [ed] (1963) Towards a Quaker View of Sex: An Essay by a Group of Friends Friends Home Service Committee.
- HEWISON, R. (1986) Too Much!: Art and Society in the Sixties, 1960-75 Methuen.
- HEWITT, P. (1982) The Abuse of Power Martin Robertson.
- HILL, D. (1960) The Habit of Censorship. Encounter. September.
- HILL, J. (1986) Sex, Class and Realism: British Cinema, 1956-63 British Film Institute.
- HILLIER, B. (1983) The Style of the Century, 1900-80 Herbert Press.
- HINDELL, K. and SIMMS, M. (1971) Abortion Law Reformed Peter Owen.
- HINDELL, K. and SIMMS, M. (1968) How the Abortion Lobby Worked. Political Quarterly vol.39 no.3
- HINDELL, K. and SIMMS, M. (1961) The Law Relating to Therapeutic Abortion. Law Society's Gazette vol.58 no.9
- HOGGETT, A.J.C. (1968) The Abortion Act, 1967. Criminal Law Review
- HOLBROOK, D. (1972) On 'Oh! Calcutta!' Spectator 5 February.
- HOLBROOK, D. (1972) The Pseudo-Revolution Willmer Bros. Books.
- HOLLANDER, X. (1972) The Happy Hooker Tandem.
- HOME OFFICE (1945-75) Criminal Statistics for England and Wales. HMSO.
- HOME OFFICE (1957) Report of the Committee on Homosexuality and

Prostitution. Cmd.247. HMSO.

HOME OFFICE (1979) Report of the Committee on Obscenity and Film Censorship. Cmd.7772. HMSO

HOME OFFICE (1974) The Working Party on Vagrancy and Street Offences: Working Paper. HMSO.

HOPKINS, H. (1963) The New Look Secker and Warburg.

HORDERN, A. (1971) Legal Abortion: The English Experience Pergamon Press

HUDSON, K. (1983) Dictionary of the Teenage Revolution and its Aftermath Macmillan

HUGHES, D.A. [ed] (1970) Perspectives on Pornography Macmillan. London.

HUMPHRIES, S. (1981) Hooligans or Rebels?: An Oral History of Working-Class Childhood and Youth, 1889-1939 Blackwell

HUNT, A. (1978) The Sociological Movement in Law Macmillan.

HUTTER, B. and WILLIAMS, G. (1981) Controlling Women: The Normal and the Deviant Croom Helm.

HYDE, H.M. (1964) A History of Pornography Heinemann. London.

HYDE, H.M. (1970) The Other Love Heinemann. London.

INGLIS, B. (1965) Private Conscience Public Morality Four Square.

INGRAM, I.M. (1971) Abortion Games: An Inquiry into the Working of the Act. Lancet ii, 1197.

IRVING, C., WALLINGTON, J. and HALL, R. (1964) Scandal 63: The Profumo Sensation Complete Mayflower Dell.

JEFFERSON, T. (1975) Cultural Responses of the Teds. Working Papers in Cultural Studies nos.7/8

JENKINS, A. (1961) Law For The Rich Victor Gollanz.

JENKINS, D. (Bishop of Durham) (1985) A Theology for the Liberation of Tomorrow's Britain. Guardian 15 April.

JENKINS, R. (1959) Obscenity, Censorship and the Law. Encounter October.

JOHNSON, P. Hansford. (1970) Peddling the Pornography of Violence. Encounter April.

JOHNSON, P. Hansford. (1967) On Iniquity Macmillan. London.

KENNEDY, L. (1987) The Trial of Stephen Ward Gollanz.

KINSEY, A., POMEROY, W.A. and MARTIN, C.E. (1948) Sexual Behaviour in the Human Male Saunders and Co.

KIRKUP, J. (1976) On 'The Love That Dares To Speak Its Name'. Observer 17 July.

- KRONHAUSEN, E. and KRONHAUSEN, P. (1967) Pornography and the Law New English Library.
- LAMBERT, J.W. (1967) The Folly of Censorship. Encounter
- LEAVIS, F.R. (1961) The New Orthodoxy. Spectator 19 February.
- LEE, S. (1986) Law and Morals: Warnock, Gillick and Beyond Oxford University Press.
- LEIGH, D. (1979) Sex Offenders and the Chemical Cure. Evening Standard 7 February
- LEISER, B.M. (1986) Liberty, Justice and Morals Macmillan. New York.
- LEVIN, B. (1972) The Pendulum Years Pan Books.
- LEVITAS, R. [ed] (1986) The Ideology of the New Right Polity Press.
- LITCHFIELD, M. and KENTISH, S. (1974) Babies For Burning Serpentine Press.
- LONGFORD REPORT ON PORNOGRAPHY. (1972) Coronet Books.
- LOVENDUSKI, J. and OUTSHOORN, J. [eds] (1986) The New Politics of Abortion Sage. London.
- LUKES, S. (1975) Emile Durkheim: An Historical and Critical Study Peregrine.
- LUMSDEN, A. (1982) Gay News Blasphemy Trial: It Looks Like The End of the Road. Gay News 242. June 10-23.
- LUMSDEN, A. (1986) New Bill, Old Values. New Statesman 28 February.
- MCCABE, C. (1988) Is Television About to Enter the Dark Ages? The South Bank Lecture 1988. The Listener 11 February.
- McGLASHEN, A. (1963) Sex on these Islands. Encounter July.
- MCGREGOR, O.R. (1972) Equality, Sexual Values and Permissive Legislation: The English Experience. Journal of Social Policy vol.28.
- MACINNES, C. (1980) Absolute Beginners Allison and Busby.
- MACINNES, C. (1962) Experts on Trial. Encounter March
- MacINTYRE, A. (1967) Secularisation and Moral Change Oxford University Press.
- MacINTYRE, A. and EDWARDS, D. [eds] (1963) The Honest To God Debate SCM Press.
- MCKIE, D. and COOK, C. (1972) The Decade of Disillusion: British Politics in the Eighties. Macmillan. London
- MARCUS, S. (1966) Pornotopia. Encounter August.
- MARK, Sir R. (1978) In The Office Of Constable Collins.

- MARK, Sir R. (1977) Policing in a Perplexed Society George Allen and Unwin.
- MARSH, D and CHAMBERS, J. (1981) Abortion Politics Junction Books.
- MARTIN, B. (1983) A Sociology of Contemporary Cultural Change Basil Blackwell.
- MARTIN, K. (1954) Sadism for Kids. New Statesman and Nation 25 September.
- MARWICK, A. (1982) British Society Since 1945 Penguin.
- MASTERS, B. (1985) The Swinging Sixties Constable.
- MELLY, G. (1972) Revolt into Style: The Pop Arts in Britain Penguin.
- MERTON, R. (1957) Social Theory and Social Structure Free Press. New York
- MIDGLEY, T.S. (1975) The Role of Legal History. British Journal of Law and Society vol.2 No.2
- MILLS, C.W. (1959) The Sociological Imagination Oxford University Press
- MINISTRY OF LABOUR (1955-63) The Labour Gazette HMSO
- MISHAN, E.J. (1972) Making the World Safe for Pornography. Encounter. March.
- MITCHELL, B. (1967) Law, Morality and Religion in a Secular Society Oxford University Press.
- MONIGOMERIE, J. (1970) Pornography and Violence: A Reply to Pamela Hansford Johnson. Encounter
- MORT, F. (1987) Dangerous Sexualities: Medico-Moral Politics in England Since 1830 Routledge and Kegan Paul.
- MUNCIE, J. (1984) The Trouble With Kids Today Hutchinson
- NATIONAL COUNCIL FOR CIVIL LIBERTIES. (1972) Against Censorship NCCL.
- NATIONAL COUNCIL FOR CIVIL LIBERTIES. (undated) Whose Conspiracy NCCL.
- NATIONAL DEVIANCY CONFERENCE (1980) Permissiveness and Control: The Fate of Sixties Legislation Macmillan. London.
- NATIONAL VIEWERS AND LISTENERS ASSOCIATION (undated) Comments on Some Aspects of the Report of the Committee on Obscenity and Film Censorship. NVALA.
- NATIONAL VIEWERS AND LISTENERS ASSOCIATION (undated) Comments on the Williams Report. NVALA
- NATIONAL VIEWERS AND LISTENERS ASSOCIATION. (undated) Pornography: A Matter of Taste? NVALA.
- NATIONWIDE FESTIVAL OF LIGHT. (1978) Obscenity, Indecency and Violence in Publications and Film Censorship. NFoL.

- NATIONWIDE FESTIVAL OF LIGHT (1980) Observations on the Report of the Committee on Obscenity and Film Censorship. NFOI.
- NEVILLE, R. (1972) Never Trust Anyone Over Thirty! OZ no.40
- NEVILLE, R. (1971) Playpower Paladin.
- NEW MUSICAL EXPRESS. (1983) Knockabout: Knocked About and Nearly Knackered. 12 March.
- NORMAN, E. (1970) Establishment Versus Radicals. Spectator 12 December.
- NUTTALL, J. (1970) Bomb Culture Paladin. London.
- OFFICE OF POPULATION, CENSUSES AND SURVEYS. (1965-80) Social Trends HMSO
- O'HIGGINS, P. (1972) Censorship in Britain Nelson.
- OLLMAN, B (1979) Social and Sexual Revolution Pluto Press.
- OSSOWSKA, M. (1986) Bourgeois Morality Routledge and Kegan Paul. London
- OZ
- PALMER, T. (1971) The Trials of OZ Blond and Briggs. London.
- PARSONS, T. (1951) The Social System Routledge and Kegan Paul
- PASSAS, N. (1988) Anomie and Social Change: The Case of Abortion. Unpublished paper delivered at the British Sociological Association Conference. Edinburgh.
- PAWLING, C. (1984) Popular Fiction and Social Change Macmillan. London.
- PEARSON, G (1983) Hooligan: A History of Respectable Fears Macmillan.
- PECKHAM, M. (1966) Pornotopia. Encounter
- PEEL, J. and POTTS, M. (1969) A Textbook of Contraceptive Practice Cambridge University Press.
- PERRIN, N. (1970) Dr. Bowdler's Legacy. A History of Expurgated Books in England and America Macmillan.
- PHELPS, G. (1975) Film Censorship. Gollanz.
- PLAYFAIR, G. (1969) Six Studies in Hypocrisy Martin Secker and Warburg.
- PLUMMER, K. (1981) The Making of the Modern Homosexual Hutchinson.
- POLSKY, N. (1961) The Village Beat Scene: Summer 1960. Dissent VIII.
- PORT, K.A. (1960) A Wreath for the Gamekeeper. Encounter February.
- POTTS, M., DIGGORY, P. and PEEL, J. (1977) Abortion Cambridge University Press.
- PRATT, J.D. (1982) The Sexual Landscape: Repression or Freedom? Theory, Culture and Society

- PRATT, J.D. and SPARKS, R. (1987) New Voices From the Ship of Fools. Contemporary Crises II.
- PYM, B. (1974) Pressure Groups and the Permissive Society David and Charles.
- RAPP, R (1979) Examining Family History. Feminist Studies vol.5
- REMBAR, C. (1969) The End of Obscenity Andre Deutsch.
- RICHARDS, P.G. (1972) Parliament and Conscience George Allen and Unwin.
- ROBERTSON, G.R. (1980) Frightening the Horses. Media, Law and Practice vol.1
- ROBERTSON, G.R. (1985) How Scum Draws a Line for the Censors. Guardian 15 April
- ROBERTSON, G.R. (1979) Obscenity Wiedenfeld and Nicolson.
- ROBERTSON, G.R. (1976) Reluctant Judas Temple Smith.
- ROBERTSON, G.R. (1980) The Future of Film Censorship. British Journal of Law and Society vol.7
- ROBINSON, J.A.T. (1970) Christian Freedom in a Permissive Society SCM Press.
- ROBINSON, J.A.T. (1963) Honest To God SCM Press.
- ROBINSON, P. (1976) The Modernisation of Sex Paul Elek. London.
- ROCK, P. and COHEN, S. (1970) The Teddy Boys. in, Bogdanor and Skidelsky [eds] (1970) Age of Affluence
- ROLPH, C.H. [ed] (1961) Does Pornography Matter? Routledge and Kegan Paul
- ROLPH, C.H. (1961) The Trial of Lady Chatterley Penguin. London.
- ROLPH, C.H. (1959) Obscene Publications: The New Act. Solicitor's Journal 20 November.
- ROLPH, C.H. (1973) The Uses of Conspiracy. New Statesman 3 August.
- ROLPH, C.H. (1965) Wolfenden Revived. New Statesman 21 May
- RUBIN, J. (1970) Do It! Simon and Schuster.
- RYDER, J. and SILVER, H. (1970) Modern British Society Methuen
- SELBY Jr, H. (1966) Last Exit To Brooklyn Calder and Boyars.
- SENNETT, R. (1975) The Fall of Public Man Faber and Faber.
- SHAPIRO, R. (1985) Britain's Sexual Counter-Revolutionaries. Marxism Today February.
- SIMMS, M. (1974) Abortion Law and Medical Freedom. British Journal of Criminology vol.14

SIMMS, M. (1970) Abortion Law Reform: How The Controversy Changed. Criminal Law Review October.

SIMMS, M. (1981) Abortion: The Myth of the Golden Age. in, Hutter and Williams [eds] Controlling Women (1981) Croom Helm

SIMMS, M. (1978) Forty Years Back - Abortion in the Press, in Abortion: Ten Years On Birth Control Trust.

SIMMS, M. (1973) How Do We Judge The Abortion Act? Reflections On The Lane Committee and the 1967 Abortion Act. Public Health, London no.87

SIMMS, M. (1969) The Abortion Act- One Year Later. British Journal of Criminology July.

SIMMS, M. (1975) The Progress of the Abortion (Amendment) Bill. Family Planning no.24

SIMPSON, A.W.B. (1983) Pornography and Politics: The Williams Committee in Retrospect Waterlow Publishers.

SION, A.A. (1977) Prostitution and the Law Faber and Faber.

SKED, A. (1987) Britain's Decline Basil Blackwell

SKLAIR, L. (1970) The Sociology of Progress Routledge and Kegan Paul.

SOCIAL TRENDS (1970-80) Office of Population, Censuses and Surveys.

SMART, C. (1979) The New Female Criminal: Reality or Myth? British Journal of Criminology no. 19

SMART, C. (1984) The Ties That Bind: Law, Marriage and the Reproduction of Patriarchal Relations Routledge and Kegan Paul.

SMITH, L.J.F. (1980) The Abortion Controversy 1936-77: A Case Study in the Emergence of Law. Unpublished Ph.D. Thesis. University of Edinburgh.

SMOKER, B. (1971) Big Blue Schoolboy at Lambeth. Peace News 9 July.

SOCIETY OF CONSERVATIVE LAWYERS. (1971) The Pollution of the Mind. Unpublished.

SPARROW, J. (1962) Regina v. Penguin Books Ltd. An Undisclosed Element in the Case. Encounter no. 18

SPICER, R. (1981) Conspiracy: Law, Class and Society. Lawrence and Wishart. London.

STANWORTH, M. (1987) Reproductive Technologies: Gender, Motherhood and Medicine Polity Press.

STEEL, D. (1968) Reflections on the Abortion Act. Medical Tribune 31 October.

STEINER, G. (1966) Pornography and the Consequences. Encounter March.

STEVAS, N. St. J. (1955) Obscenity and Law Reform. Spectator 4 February.

- STEVAS, N. St. J. (1956) Obscenity and the Law Secker and Warburg.
- STEVAS, N. St. J. (1955) The Obscene Publications Bill, 1955.
The Author Spring. no.3
- STEVENS, I.N. and YARDLEY, D.C.M. (1982) The Protection of Liberty Basil Blackwell.
- STOCKWOOD, M. (1971) The Prurient and the Puerile. Books and Bookmen October.
- STREET, H. (1982) Freedom, The Individual and the Law Pelican.
- SUTHERLAND, J. (1982) Offensive Literature: Decensorship in Britain 1960-82 Junction Books.
- TAYLOR, I. (1987) Violence and Video: For a Social Democratic Perspective. Contemporary Crises II.
- TOLSON, A. (1975) The Family in a Permissive Society. Occasional Papers in Cultural Studies. Centre for Contemporary Cultural Studies. University of Birmingham.
- TOYNBEE, P. (1981) On the Williams Report. The Guardian 30 October.
- TRACEY, M. and MORRISON, D. (undated) The Jericho People: Mary Whitehouse and the National Viewers' and Listeners' Association. Report to the Social Science Research Council.
- TRACEY, M. and MORRISON, D. (1979) Whitehouse Macmillan. London.
- TREVELYAN, J. (1960) The Censor's Reply. Encounter September.
- TREVELYAN, J. (1973) What The Censor Saw Michael Joseph.
- TREVOR-ROPER, H. (1968) The Philby Affair. Encounter April.
- TRIBE, D. (1973) Questions of Censorship George Allen and Unwin.
- VAN STOLK, B. and WOUTERS, C. (1987) Power Changes and Self-Respect: A Comparison of Two Cases of Established-Outsider Relations. Theory, Culture and Society vol.4
- WALLIS, R. (1977) A Critique of the Theory of Moral Crusades as Status Defence. Scottish Journal of Sociology vol.1 pt.2
- WALLIS, R. (1972) Dilemma of a Moral Crusade. New Society 13 July.
- WALLIS, R. (1976) Moral Indignation and the Media: An Analysis of the NVALA. Sociology vol.10
- WALLIS, R. (1976) Processes in the Development of Social Movements: Goal Displacement and the Routinisation of Charisma in the Nationwide Festival of Light. Scottish Journal of Sociology vol.1 pt.1
- WALLIS, R. and BLAND, R. (1978) Five Years On: Report of a Survey of Participants in the Nationwide Festival of Light in Trafalgar Square. London 25 September 1976. Report to the Social Science Research Council.

- WALLIS, R. and BLAND, R. (1979) Purity in Danger: A Survey of Participants in a Moral Crusade Rally. British Journal of Sociology vol.30
- WALMSLEY, R. (1978) Indecency between Males and the Sexual Offences Act, 1967. Criminal Law Review
- WALMSLEY, R. and WHITE, K. (1978) Sexual Offences, Consent and Sentencing. Home Office Research Study. HMSO. London.
- WALTER, N. (1977) Blasphemy in Britain: The Practice and the Punishment of Blasphemy and the Trial of Gay News. Rationalist Press Association.
- WANDOR, M. (1987) Look Back in Gender: Sexuality and the Family in Post-War British Drama Methuen.
- WATKINS, A. (1969) On the Trial of My Secret Life. New Statesman 14 February
- WATNEY, S. (1987) Policing Desire: Pornography, AIDS and the Media Comedia.
- WEEKS, J. (1977) Coming Out: Homosexual Politics in Britain from the Nineteenth Century to the Present Quartet Books.
- WEEKS, (1981) Sex, Politics and Society: The Regulation of Sexuality Since 1800 Longman.
- WEEKS, J. (1985) Sexuality and its Discontents Routledge and Kegan Paul.
- WEINER, B. (1981) The Romans in Britain Controversy. The Drama Review vol.25. no.1
- WELSBY, P.A. (1984) A History of the Church of England 1945-80 Oxford University Press.
- WERTHAM, F. (1954) Seduction of the Innocent Reinhart and Co. Ltd.
- WHITEHOUSE, M. (1982) A Most Dangerous Woman? Lion Publishing.
- WHITEHOUSE, M. (1971) Backlash. Books and Bookmen October.
- WHITEHOUSE, M. (1967) Cleaning Up TV. Blandford.
- WHITEHOUSE, M. (1977) Whatever Happened To Sex? Hodder and Stoughton.
- WHITEHOUSE, M. (1971) Who Does She Think She Is? New English Library.
- WHITELEY, C. and WHITELEY, W. (1967) Sex and Morals Batsford. London.
- WILDEBLOOD, P. (1957) Against The Law Penguin.
- WILLIAMS, D.G.T. (1964) Sex and Morals in the Criminal Law 1954-63. Criminal Law Review
- WILLIAMS, G. (1966) Authoritarian Morals and the Criminal Law. Criminal Law Review. March.
- WILLIAMS, G. (1961) Conspiring to Corrupt. Listener 24 August.

- WILLIAMS, R. (1961) The Law and Literary Merit. Encounter September.
- WILSON, E. (1980) Only Halfway To Paradise: Women in Postwar Britain 1945-68 Tavistock.
- WILSON, E. (1977) Women and the Welfare State Tavistock.
- WINSHIP, J. (1981) Woman Becomes an Individual: Femininity and Consumption in Women's magazines 1954-69. Centre for Contemporary Cultural Studies. Special Paper no.65
- WISTRICH, E. (1978) I Don't Mind the Sex, Its The Violence Marion Boyars.
- WISTRICH, E. (1980) Review of the 'Report of the Williams Committee on Obscenity and Film Censorship' pertaining to film Censorship. Media, Law and Practice vol.1
- WOLFENDEN, J.F. (1976) Turning Points: Memoirs. Bodley Head.
- WOLFENDEN, J.F. (1960) The Homosexual and the Law: Ahead of Public Opinion? New Statesman 25 June.
- WOOD, M. and HUGHES, M. (1984) The Moral Basis of Moral reform: Status Discontent vs. Culture and Socialisation as Explanations of Anti-pornography Social Movement Adherence. American Sociological Review vol.49
- WOOTTON, G. (1978) Pressure Group Politics in Contemporary Britain Lexington Books. Massachusetts.
- WORSTHORNE, P. (1973) Thoughts After Longford. Encounter May.
- WOUTERS, C. (1987) Developments in the Behavioural Codes Between the Sexes: The Formalisation of Informalisation in the Netherlands, 1930-85. Theory, Culture and Society vol.4
- WOUTERS, C. (1986) Formalisation and Informalisation, Changing Tension Balances in Civilising Processes. Theory, Culture and Society. vol.3
- WOUTERS, C. (1977) Informalisation and Civilising Processes. in, Gleichmann, P et al. Human Figurations Amsterdams Sociologisch Tijdschrift.
- YOUNG, W. (1963) The Profumo Affair: Aspects of Conservatism Penguin.
- ZACK, D. (1969) Smut for Love, Art, Society. Art and Artists December.
- ZELICK, G. (1971) Films and the Law of Obscenity. Criminal Law Review
- ZELICK, G. (1971) Two Comments on Search and Seizure under the Obscene Publications Act. Criminal law Review
- ZINNER, M. (1978) Michel Foucault: La Volonte de Savoir. Telos no.36
- ZURCHER, L.A., KIRKPATRICK, R., CUSHING, R.G. and BOWMAR, C.K. (1973) Ad-Hoc Anti-pornography Organisations and their Active Members: A Research Summary. Journal of Social Issues vol.29 no.3
- ZWEIG, F. (1961) The Worker in an Affluent Society Heinemann.