

SEX AND LAW

by

Francis Bennion, of the Middle Temple, Barrister

Francis Bennion was one of the Parliamentary counsel from 1953 to 1964 and again from 1973 to 1975. As chairman of the Statute Law Society, he proposed some form of working co-operation with the office. He received a decidedly chilly response from Sir Henry Rowe, chief Parliamentary counsel, 'There could be no question of giving you or your society any facilities for discussing our work with us, whether before, whilst, or after it is done.' It was Bennion who drafted the evidence - a model of lucidity - submitted to the Williams Committee on Obscenity and Film Censorship by the Defence of Literature and the Arts Society.

A DISCUSSION has developed in these pages about sexual ethics and the role of law. It would be more accurate to call it a dispute. The Editor is responsible for this, as for everything else appearing here. He has positively incited me to join in. I do not complain: the issues are important.

The lobbies who are party to the dispute may be severally described as puritans and libertines. I am to be included among the latter. My concern in this article is to invite the reader to consider certain relevant facts about the puritans. This is a scholarly journal, read mainly by those schooled in the austere discipline of law. One might reasonably expect persons writing for it to respect that discipline, and couch their contributions in language marked by such lawyer-like qualities as accuracy, balance, restraint and objectivity. In the case of the puritans, this expectation is disappointed.

The puritans are represented in the present fracas by Hugh S Watts (who I regret to say is a member of my own Inn, the Middle Temple) and Dr H Edelston, a psychiatrist. I begin with Mr Watts.

Mr Watts has taken it upon himself, in conjunction with the legal adviser to the Nationwide Festival of Light, to found an organisation solely devoted to pressing for implementation of the obscenity laws. We have in this country efficient police forces charged with the duty of enforcing the law. We have also the Office of the Director of Public Prosecutions, charged with the like duty. We have the Home Office and we have the Lord Chancellor's Department.

None of this is sufficient for Mr Watts. He feels impelled to augment these powerful forces of the state by setting up his own puny organisation. Puny it may be, but to him that does not matter. Mr Watts is a zealot, fired by unquenchable desires. People who aim to supply the undoubted public demand for erotica must be crushed, says Mr Watts.

Why does a man behave like this? No doubt the answer lies deep in his own sexual history. I am not competent even to speculate. My concern is simply to protect the population at large from repression. Repression of this sort is particularly difficult to counter because of the subject matter. Our culture likes to pretend that sex does not exist. You can joke about it (in certain contexts) but you must never take it seriously. Unless to condemn, along with all the other Pharisees.

The piece by Mr Watts in the Michaelmas 1978 issue of *The Advocate* is not worthy of a legal journal. It is disconnected. It rambles. It

betrays the common vice of the puritan lobby. So certain are its members of rectitude that they see no need for rational argument. If you do not see things as they do you are damned. Hell-fire awaits you, so it is pointless to counter you with logic.

Nor is it worth using words according to their meaning. In my article in the Michaelmas 1978 issue I suggested that no person has a right to complain about what other people do *unless it is done to him*. I added: 'Busybody moralists of the Whitehouse type usually forget that important qualification.' It was all I said about Mrs Whitehouse. There was not a word more.

Yet in the Easter 1979 issue Mr Watts says 'I'm sorry Francis Bennion had to indulge in an emotive diatribe against Mrs Whitehouse.' A diatribe is an extended, long-winded rant. An emotive diatribe is an extended, long-winded rant suffused with emotional colouring. No balanced person could describe my eleven words on Mrs Whitehouse thus. So much for Mr Watts.

I turn next to Dr Edelston, who writes pamphlets for the Responsible Society. (If the well-meaning members of that body knew what deprivation, frustration and misery they were responsible *for* they might change its title.) Dr Edelston is more to blame than Mr Watts, because he sails under the colour of his medical qualifications. Hapless laymen might feel bound to believe him. They would be very much mistaken.

Dr Edelston, in his article in the Easter 1979 issue, has the effrontery to describe my statement that children are harmed by the concealment and distortion of sexual information as a 'now outdated notion'. I cannot hide my reluctant admiration here. There is a sublime cockiness about such a fuddy-duddy's pretence to be more *avant* than the *avant garde*.

Then Dr Edelston goes on to refer (without giving details) to the damage done to young people by 'harmful experimentation' in sex. He is not talking about the undoubted harm caused by sexually-transmitted disease or undesired conception. No, it is sex itself he finds harmful. He is a sex hater. Nature equips young people at puberty with sexual desire and sexual capacity. The puritan lobby will have none of it. They distrust nature. They know better than nature. Killjoys and spoil-sports, they besmirch what is beautiful and kill what is natural. Guilt is what they peddle. Anxiety is what they breed. Unhappiness is the fruit of their anti-life philosophy.

So determined is Dr Edelston to pursue this line that he denies all virtue to his opponents. Their philosophy is 'I want it and I want it now'.

They call for 'instant sex and marriage without obligation'. Their line is 'No holds barred instant obscenity and pornography with no control, nor any thought for the meaning and consequences'.

To refute a man it may be necessary to represent him. How often do the puritan lobby take refuge in that last desperate resort of those whose arguments are threadbare. The truth is that sexual emancipation can (and should) go along with a responsible attitude, an insistence on free and meaningful consent, a deep respect for the beauty and significance of human sexuality.

I repeat what I said in my last article in this journal, which fittingly was concerned only with lawyers and the law. I said then, and the puritan lobby only confirms its validity, that the law should do as little as possible to enforce sexual morality. Whatever the law does here, it is a trespasser on an acutely personal field. It should keep off it. Certainly it should give no countenance to self-appointed moral guardians such as the Watts and Edelstons of this world. The law should leave sex, the supremely personal quality, to the privacy of personal relationships. It should only intervene to prevent coercion.