

AREOPAGITICA RE-WRITTEN

We should be wary therefore what persecution we raise against the living labours of public men, how we spill that seasoned life of man preserved and stored up in books; since we see a kind of homicide may thus be committed, sometimes a martyrdom, and if it extend to the whole impression, a kind of massacre, whereof the execution ends not in the slaying of an elemental life, but strikes at that ethereal and fifth essence, the breath of reason itself, slays an immortality rather than a life . . .

Banish all objects of lust, shut up all youth into the severest discipline that can be exercised in any heritage, ye cannot make them chaste that came not thither so: such great care and wisdom is required to the right managing of this point. Suppose we could expel sin by this means; look how much we thus expel of sin, so much we expel of virtue: for the matter of them both is the same; remove that, and ye remove them both alike.

JOHN MILTON, *Areopagitica*.

THE DEBATE on the censorship of literature is a perennial one, and each generation and each country must, it seems, produce its own good or bad re-writing of *Areopagitica*. This year in both Canada and England the legislators have been at work changing the laws that govern the banning of books. Parliament in England has passed the *Obscene Publications Act, 1959*, which marks a clear advance in the safeguarding of literature and the defining of obscenity, and on which, as the *Times Literary Supplement* remarked recently, "authors, publishers, and those interested in serious literature may congratulate them-

selves". Parliament in Canada has passed Bill C.58, amending the provisions of the Criminal Code in regard to obscene publications; this legislation marks no advance at all in the safeguarding of literature and, in fact, introduces new perils and uncertainties into the process of publication. It has been received with almost universal concern by publishers, book-sellers, librarians and writers, a concern well expressed in the book trade journal, *Quill & Quire*, which remarks in a recent editorial headed "A Thoroughly Dangerous Law" that the amendments "threaten to limit the freedom to read and the freedom of expression very considerably in Canada".

It is this writer's personal opinion that censorship of any kind is morally unjustified and practically self-defeating. It places a premium on obscurantism and intolerance, it lowers the climate of social relations by encouraging the sneak and the informer, and it places works of literature at the mercy of policemen, Customs officers, magistrates and judges whose training does not often include the inculcation of artistic discrimination. Let us remember — even discounting such extreme cases as the celebrated Irish list of banned books — how many works now acknowledged to be of high literary standing have from time to time been attacked in the courts or confiscated by the Customs of even the most democratic countries; they include *Madame Bovary*, *Les Fleurs du Mal*, *La Terre*, *An American Tragedy*, *Salome*, *Ulysses*, *Lady Chatterley's Lover*, *The Rainbow*, *The Naked and the Dead*, *The Woman of Rome*, and *The Psychology of Sex*. Finally, there is no evidence to suggest that a country which imposes a rigorous and unimaginative censorship in fact maintains a high degree of conventional sexual morality; *Les Fleurs du Mal*, for example, was prosecuted in that France of the Second Empire when the great courtesans of Paris prospered with impunity and wielded enormous social power.

However, given a situation in which large groups of the population insist on the continuation of censorship and the majority of the people tacitly agree, it is clear that we have to reckon with some degree of governmental interference in the freedom of publication. And if we accept this interference even temporarily and reluctantly, as for practical purposes we must, the question becomes how best to frame laws which, while satisfying the demand to "protect the young", will also safeguard works of literary, artistic and scientific merit from persecution. It is

doubtful if these two requirements can ever be completely reconciled, but at least a search should be made for the best compromise. It would seem, from a comparison of the laws they have produced this year, that Parliament in England has sought carefully for a good solution and has come very near to attaining the best, while Parliament in Canada has done neither.

Let us take the English law first, and note its improvements. First, it re-defines obscenity by liberalising the old definition put forward in the Hicklin case of 1868, which for the past ninety years has been the standard test in both English and Canadian courts. The Hicklin definition reads as follows: "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." The definition in the new *Obscene Publications Act, 1959*, states that "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) the effect of any one of its items is, *if taken as a whole*, such as 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.*" I have italicised the passages which seem clear improvements on the Hicklin definition; an item must be corrupting or depraving *as a whole*, and not merely show a *tendency*, while there must be a fair likelihood of corruptible persons reading it; this should effectively thwart any hypothetical arguments about isolated passages of works like *Ulysses* or *The Psychology of Sex* depraving children who may happen to chance upon them.

The second very important provision of the English Act (which incidentally is described as "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") is that which relates to works of literary, scholarly or artistic merit. This falls into two parts. The first states specifically that neither a conviction nor an order for forfeiture shall be made "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". The second provides — and this also is a major victory for the cause of intellectual and artistic freedom — that "the opinion of experts

as to the literary, artistic, scientific or other merits of an article may be admitted in any proceedings under this Act". No longer need we see what happened on several scandalous occasions in the past — English court rooms filled with distinguished critics who had come to give evidence on behalf of a work of literature and were not even allowed to take the witness stand.

In addition to these major advances in the English legislation, it is worth noting three important minor provisions. *Bona fide* ignorance of the contents of a prosecuted work is to be accepted as a defence. Publishers and authors are allowed to appear in court to defend a work in the event of the prosecution of a bookseller for selling it. Finally, the eagerness of informers should be somewhat blunted by a provision that "if as respects any articles brought before it the court does not order forfeiture, the court may if it thinks fit order the person on whose information the warrant for the seizure of the articles was issued to pay such costs as the court thinks reasonable to any person who has appeared before the court to show cause why those articles should not be forfeited." One hopes that English magistrates will apply this clause with the fullest rigour.

Now let us turn to the changes in the Canadian law. These also include a new definition, but they do not include anything resembling the safeguards for serious literature which make the English Act so notable. "For the purposes of this Act," reads the new Canadian definition, "any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one of the following subjects, namely crime, horror, cruelty and violence, shall be deemed to be obscene." Here, indeed, is a radical departure from the Hicklin definition, since the nature of the work — and not its possible effect — is made the criterion by which it shall be judged obscene. At first sight this might seem an advantage, since at least theoretically it takes the argument out of the hands of the sentimental defenders of youthful innocence hypothetically threatened. However, an examination of the clause soon reveals a dangerous vagueness in the choice of words which seems to place the prosecuted work virtually at the mercy of the judge's opinions. How are we to identify the *dominant* characteristic of any work? How are we to decide whether sex is *unduly* exploited? Such questions test the ingenuity even of professional critics. They can only be answered subjectively.

Furthermore, compared with the new English definition, ours is unsatisfactory since it contemplates the condemnation of a work not because *as a whole* it is likely to deprave or corrupt, but merely because *a single dominant characteristic* may be objectionable; the significant rejection by the Minister of an opposition amendment that this be changed to "*the dominant characteristic*" leaves it open to prosecutors or magistrates to argue that a work may have several equally dominant characteristics and that if an emphasis on sex is merely one of them then the work must be condemned. Certainly, as it stands this definition is unclear enough to allow many works now sold freely in Canada to be condemned by prudish judges.

It is true that the Minister has said that the new definition is intended to apply to "a certain type of objectionable material that now appears on the news-stands of Canada and is being sold to the young people of our country with impunity", and that works which have serious literary pretensions will continue to be dealt with under the Hicklin definition (the original definition and not the advantageously amended one in the English Act). But no provision is made in the legislation for such separate treatment, and therefore we have no guarantee that the new definition will not be used indiscriminately in dealing with books of any kind. Mr. Fulton may speak in good faith; he cannot speak for the good faith of his successors or even for that of the police authorities who will presumably bring prosecutions under the Act.

Again, the Minister has made a great deal of the fact that provision is now being made under the new law for a publication to be prosecuted quite apart from its vendor, so that a forfeiture may be ordered without the conviction of any person. However, the law does not specifically guarantee that the vendor shall not be prosecuted, and here the matter is left to the discretion of provincial attorney generals, so that the danger of a bookseller incurring a heavy fine or imprisonment may be lessened, but it is certainly not removed.

As to provisions for the defence of literature such as distinguish the English Act, it is in these that the Canadian legislation is totally deficient. A small group of opposition members supported an amendment providing for the new definition to be applied only to a publication "which is without literary or scientific merit". The amendment was rejected by the Minister and his reason for doing so, as expressed during the discus-

sion in committee, must strike anyone who takes seriously the issue of artistic freedom as both frivolous and obstructionist. "It seems to me," he remarked, "that the insertion of those particular words ('and which is without literary or scientific merit') would impose definitely on a person who intended to publish an obscene book the necessity merely to put in one chapter, or indeed one paragraph, with literary or scientific merit, and then he would argue that his book did contain some passages of literary or scientific merit. Therefore, he would say, this book should not be found to be obscene." It would not, one imagines, have been difficult for a government genuinely concerned for the public good in matters of literature and art to have formulated a clause that would have protected *bona fide* examples of serious writing while excepting those curious products of ministerial fantasy, books which perform the extraordinary feat of being bad throughout except for the single good paragraph that shines out like a diamond in the mire.

As for expert evidence, that got very short shrift from Mr. Fulton. "It is my view," he said, "that this type of definition does not lend itself to the giving of opinion evidence by experts." And Mr. Fulton's view unfortunately prevailed.

The lack of space prevents me from dealing with the clauses in the Canadian act which provide for enforcement; I have concentrated on the issues which most immediately concern authors. And these aspects alone reveal that our legislators have imposed on us an equivocal, hasty and dangerous law which can only bring a new element of insecurity into literary life.

But before leaving the subject one cannot avoid recording one's impression of the difference of atmosphere surrounding the passing of the two Acts. Once they had taken the plunge, the English Members of Parliament seem to have been inspired by the sense that they were carrying out an historic reform, and the speech with which the noted British jurist, Lord Birkett, introduced the Act into the House of Lords had what the *Times Literary Supplement* called "a Miltonic ring" as he spoke of the freedom of writing in clear tones which make one return with embarrassment to the timidity or—worse—the indifference that prevented all but four of our Members of Parliament from voting for the protection of literature.

The English have re-written *Areopagitica* for their own generation,

and re-written it well. We have allowed our legislators to re-write it very badly, and it becomes our duty, as men and women interested in serious literature, to remind them unequivocally that Milton belongs to our tradition as well, and to make sure that all the victories do not go to the pressure groups which would like to undermine the freedoms of expression he so convincingly defended.



THE NEXT ISSUE of *Canadian Literature* will be devoted largely to current Canadian books. It will include the annual Bibliography of books and literary articles in English and French, and also an extensive review section with articles by, among others, **Herbert Read**, **Peter Quennell**, **Margaret Ormsby**, **Jean-Guy Pilon** and **R. E. Watters**. The longer features of the issue will include *The Story of a Novel* by **Hugh MacLennan** and a study of the literature of the Klondike Gold Rush by **Pierre Berton**, a long satirical poem on literary trends by **Wilfred Watson** and articles by **Hugo McPherson** on the novels of Robertson Davies and by **James Reaney** on the work of Jay Macpherson and other younger poets.

Other articles to appear in Nos. 3 and 4 will include studies of Canadian anthologies by **Robert Weaver**, of the immigrant in Canadian literature by **Ruth McKenzie**, and of the CBC Critically Speaking programme by **Tony Emery**, some reflections on the rôle of the dramatist by **Lister Sinclair**, and essays on Anne Hébert's poems by **Jeanne Lapointe** and on the plays of Gratien Gélinas by **Marguerite Primeau**, together with a feature on Eskimo poetry by **Edmund Carpenter**, including translations of poems and Eskimo drawings. Early issues will also contain previously unpublished drawings by B. C. Binning, Jack Shadbolt, Molly Bobak and Gordon Smith.