

Prime Minister ②



The Home Secretary proposes to continue
discussions with Mr. Churchill
on the broadcasting authorities.

QUEEN ANNE'S GATE LONDON SW1H 9AT

He will keep the Govt's willingness
to back amending exemption
from BBC & IBA in reserve. You
will need to have another look

18 December 1985

Dear Willie,
at this stage before 15/1. MEM 18/12

In my letter to you of 5 December I promised to put forward my considered proposals on the handling of Winston Churchill's Private Member's Bill to amend the Obscene Publications Act.

The Bill has not yet been published. Winston Churchill's present intention is that the Bill should make two changes in the law:-

- (i) the basic definition of obscene would stand - i.e. articles which "tend to deprave and corrupt" - but the Bill would qualify it by saying that material should always be regarded as obscene where it portrays certain specific activities such as explicit acts of sexual intercourse involving force or restraint, acts of human urination or excretion, acts of gross violence, etc. and is published in a place to which persons under 18 have access or in broadcast material;
- (ii) the Bill would remove the exemption from prosecution in respect of material broadcast by the BBC or the IBA.

The Bill will raise many difficult questions as it proceeds. For the present the following seem to me the main considerations:

- (i) the Bill deals with matters which are of great public concern. We must seek to secure a positive outcome, which might mean avoiding too high a Government profile. It is important that the Bill should receive a Second Reading so that it can be examined in Committee;
- (ii) the criminal law is an uncertain instrument in this area. It needs to be balanced by other means of regulation and self-regulation, particularly by the broadcasting authorities. We need to have a convincing position across the whole spectrum of public concern; which extends to violence as well as obscenity;

- (iii) the proposed list of matters to be regarded as obscene goes beyond what would probably be endorsed by Parliament. The basic difficulty here is that any list will almost inevitably cover material which is not offensive in certain circumstances and fail to cover material which is generally agreed to be obscene. Such problems have been found over the years to be inherent in the list approach. We shall have endless debates on the Bill about whether particular sexual and violent matters should be included in the list. The present list, which might be held to ban reproductions of the crucifixion, will clearly not do, and it is hard to imagine a satisfactory revision of it. No list could do anything about foul language:
- (iv) it has traditionally been argued that to bring the broadcasting authorities within the scope of the Obscene Publications Act would duplicate their duty under the Charter and the Broadcasting Act not to broadcast material which offends against taste and decency - which should be a sterner test than anything under the Obscene Publications Act. (It is relevant here that the film "First Blood" which was given a "15" certificate for cinema exhibition, was not judged to be suitable for Christmas television viewing). The Chairmen of the BBC and IBA have represented to me their strong opposition to the removal of the exemption. If it were removed it would need to be clear whether the Governors of the BBC and Members of the IBA were liable to prosecution for a criminal offence; or is it to be the programme makers and programme contractors. Either way it could upset the present systems of accountability and responsibility and involve much legal argument. As with cable, any prosecution would need to require the consent of the Director of Public Prosecutions;
- (v) nevertheless, this traditional argument has become less convincing and I doubt if we can oppose in principle the removal of the exemption. But one of the main defects of the Bill in its present form is the link between the removal of the exemption and the proposed list;
- (vi) there are other possible ways of securing the additional protection for children which the promoters of the Bill are seeking. In my view it would be right to provide that where material is published for children or put on sale in such a way that it can be seen, and/or heard by children at the point of sale, the test should be whether the article

would tend to deprave or corrupt such children regardless of what effect, if any, it would have on adults.

I accordingly suggest our approach should be:

- (i) we will continue to explore the ground with Winston Churchill, whom David Mellor met on 17 December;
- (ii) I have seen the broadcasting authorities on both violence and indecency. Privately and publicly, we need to emphasise their responsibility. Both the BBC and the IBA have guidelines on violence. The BBC are reviewing theirs. The key question is the enforcement of these guidelines, and the two authorities have been at pains to emphasise to me the steps they take to ensure this happens. They agreed that they should do more to increase public understanding of the existing procedures and, for example, of the extent to which limitations are imposed on particular programmes. They may also seek to give publicity to their existing arrangements for monitoring public reaction to their programmes which they believe indicate that the general level of public concern is not as high as is sometimes suggested. I will have further exchanges with them in this area;
- (iii) our final attitude should turn on the outcome of these talks and on the final shape of the Bill. I propose to keep in reserve the Government's view on the exemption until I see what emerges on both fronts. Meanwhile in public we shall continue our present line, namely that we recognise the real public concern on these matters, that they are not matters on which it is easy to legislate satisfactorily, that we hope Winston Churchill's initiative can develop to good effect, and that we are in close touch both with him and the broadcasters.

If H Committee members are content with this general approach, Legislation Committee will consider the handling of the Second Reading debate in the usual way on 15 January. I shall keep you and H Committee in touch with later developments.

I am copying this letter to the Prime Minister, the other members of H Committee and to Sir Robert Armstrong.

Yours,
Douglas.





QUEEN ANNE'S GATE LONDON SW1H 9AT

5th. December 1985

Dear Mr. White,

Winston Churchill, who was second in the Private Members' Ballot, has introduced a Bill to amend section 1 of the Obscene Publications Act. The purpose of the Bill, as set out in the long title, is to remove the present exemption from prosecution for material broadcast by the BBC and the IBA and to amend the text of obscenity in respect of articles published in places to which children have access and in respect of television and radio programmes.

The text of the Bill has not yet been published. David Mellor is, however, in informal touch with Winston Churchill, and we hope to have a better idea of the detail of his proposals within the next week or two. The Bill will raise difficult and sensitive issues, both as to substance and as to handling, but I am well aware of the impetus behind it. The purpose of this letter is just to say that, when we have a clearer idea of Winston's detailed proposals, I will be consulting colleagues about the Government's response.

Meanwhile, if the matter is raised in Geoffrey Johnson-Smith's Debate on 6 December on the causes of violence, including the influence of television - or elsewhere - we shall be saying simply that we are well aware of public concern on the matter and that we are giving the Bill very careful consideration.

I am sending copies of this letter to the Prime Minister, Members of H Committee, the Solicitor General and Robert Armstrong.

Yours
Douglas.

The Rt Hon the Viscount Whitelaw, CH, MC

