

Romans Won—Whitehouse Nil

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In this article a professional actor, who is also Founder and Organiser of the National Campaign for the Reform of the Obscene Publications Acts, examines the background to "The Romans in Britain" trial. He asserts that Court time and public money spent on this debacle would have been saved if the Attorney General had intervened before the proceedings reached the Old Bailey.

Crippen, Thompson and Bywaters, Christie, acid bath murderer Heath and the Yorkshire Ripper had all been tried there. The setting was the notorious No 1 Court, the venue the Old Bailey and the date 15 March 1982. This time it was the turn of the boyish-looking, uncomplicated face of one Michael Bogdanov to appear in that chilling dock. His alleged crime? The particularly heinous one of directing a stage play in a way that did not meet with the approval of a lone woman who had not even seen it.

As with the committal proceedings at the magistrates' courts some eight months earlier, there were many occasions throughout this preposterous trial when one felt constrained to give oneself an almighty pinch just to make sure that it was really happening. Of one thing we could all be certain. It could only have happened here. The English were once again indulging their absurd obsession with matters sexual—or, rather more accurately, their absurd obsession with the repression of matters sexual, and, on this occasion, more especially with matters homosexual.

In October 1980, the National Theatre staged a specially commissioned play written by a serious playwright of no mean stature. The furore which followed has already assured *The Romans in Britain* and its author Howard Brenton a place in theatrical history, not because of the lack of critical acclaim it attracted (although, personally, I thought the savage attacks it drew from some critics were very misplaced), but for one tiny, 30-second scene of the simulated, attempted homosexual rape of a naked Celt by an invading Roman soldier in 54 BC.

The first outcry against it came from the then Leader of the Greater London Council, and himself a member of the NT Board, Sir Horace Cutler. He described it as a "disgrace to the stage" and later wreaked his revenge by reducing the GLC's annual grant to the theatre. No, it wasn't censorship, he said. It was just that he didn't think that public money should go to subsidise plays he didn't like.

After his emotive outburst on 16 October 1980, needless to say it was no time at all before the self-styled leader of the nation's Puritan Brigade took over the fray. Without even seeing the performance

for herself, Mrs Mary Whitehouse, CBE (Crown Bigot Extraordinary?) straightaway reported it to the police, alleging that it was "obscene" and demanding their investigation. The 1968 Theatres Act incorporates the same legal definition of "obscenity"—the ludicrous "deprave and corrupt" test—as that used in the 1959 Obscene Publications Act, notwithstanding that it is impossible to assess and thus to prove. This must also be the case, of course, when applied to theatrical performances. The Attorney General certainly appeared to think so, since he refused to give his required consent for the play to be prosecuted. Furthermore, he refused to allow Mrs Whitehouse to prosecute privately. She was furious.

I saw the play myself on 24 October 1980. On leaving the theatre I gave a filmed interview for the BBC television programme *Newsnight*, stating my views on the play and Whitehouse's interference. I went home to watch it. However, whereas my interview was completely omitted, one with the interfering lady was transmitted. It had been filmed outside the theatre whilst we were inside watching. She had been specially brought up from her Colchester home and stated, categorically, that she had no intention of seeing the play for herself. Her efforts to censor the National Theatre may, at that time, have been floundering, but the BBC was presumably much more of a push-over.

An Evening at the National

I had no intention of being gagged by the Whitehouse Mafia and decided to give her a taste of her own medicine. On 27 October, therefore, I wrote to Sir Thomas Hetherington, the Director of Public Prosecutions, and asked him to institute legal proceedings against her for wasting police time by reporting a play as obscene which she had never even seen. He replied the next day saying that he had just advised the Metropolitan Police Commissioner that proceedings against the play would not be justified. In other words, it had not infringed the Theatres Act and the law had not been broken. However, he declined to act on my suggestion that she herself should be prosecuted. When he refused to reconsider, I asked him to give his consent for me to prosecute her privately, his consent being required under the Criminal Law Act of 1967. He would not do so. Love all, thus far.

The production continued playing its scheduled performances in repertoire, the management and director happy in the knowledge that it was not unlawful and that the Whitehouse-orchestrated hysteria would soon abate. Mrs Whitehouse's bitter humiliation at the hands of as eminent a member of the Establishment as the Attorney General was not,

alas, to be so easily assuaged. On 19 December 1980, she sent her solicitor, Mr Graham Ross-Cornes, to see the play and "set up" Mr Bogdanov ready for prosecution.

She and her lawyers had scraped the bottom of the legal barrel and came up with the extraordinary "loophole" device of Section 13 of the 1956 Sexual Offences Act, which deals with the so-called "unnatural offences" of indecency between men. Mr Bogdanov was subsequently charged with procuring an act of gross indecency between actors Peter Sproule and Greg Hicks on stage at the Olivier Theatre and also that he was party to the commission of such an act.

The committal proceedings took place at Horseferry Road Magistrates' Court on 29 and 30 June 1981. On behalf of the NCROPA I had organised a placard-carrying demonstration outside the court, fully convinced that the magistrate (Mr Kenneth Harington) would automatically throw out such an absurd allegation, giving Mrs W's knuckles a well-deserved rap in the process, and that would be the end of the matter. In spite of Lord Hutchison QC's submission that the prosecution was "a blatant attempt to circumvent the provisions and safeguards of the Theatres Act" and that there was no case to answer, the misguided magistrate committed it for trial at the Old Bailey and awarded costs for that hearing to Mrs Whitehouse out of public funds.

On 2 July 1981, I wrote to the Attorney General, Sir Michael Havers, to express anger and outrage at the court's decision. What had particularly infuriated me, too, was that, had the Sexual Offences Act been one under which private prosecutions could not proceed without the DPP's permission, there is no doubt in those circumstances, where he had already decided not to prosecute the play himself, he would certainly have refused his permission for this vexatious Whitehouse prosecution. I urged Sir Michael to initiate facilitating legislation immediately, so that this nonsense could never happen again.

Tricks of the Trade

I was present, in the well of the court, on all four days of the Old Bailey trial. Lord Hutchinson, again acting for Bogdanov, asked Mr Justice Staughton, presiding, not to allow jurors who were members of the National Viewers' and Listeners' Association, the Festival of Light or the National Front. The judge agreed with the first two exemptions but, since the NF was a political party, not the last. (An NF group had demonstrated during a performance of the play on 7 November 1980, when eggs, flour and a firework were thrown on to the stage and I wrote at the time to Sir David McNee, the Police Commissioner, to ask if the matter was

being investigated and what steps the police were taking "to ensure the safety of both cast and audiences at future performances of this legally permitted play?")

I will not go into minute detail here about the proceedings which followed over the next three-and-a-half days, since they have been given saturation coverage by the media already. There were, however, some priceless moments during the trial. It was a joy to behold the sight of the bespectacled and bewigged Lord Hutchinson demonstrating to Mrs Whitehouse's solicitor how an actor could hold his penis in his hand with his thumb sticking out and give the impression to a member of the audience (especially one sitting some 90 feet away, as was Mr Ross-Cornes on his visit) of a genuine, sexual erection. As was his later attempt to differentiate between real and simulated acts on the stage, by reference to actual urination, which he accepted would be indecent, and staged urination, using the device of a water-pistol stuffed down one's trousers. He was most surprised when Mr Ross-Cornes said that he had never seen that done, although, since the solicitor also said later that he had never seen a performance of *King Lear* either, his ignorance was, perhaps, to be expected.

Lucky Mr Smith

The first day of the trial consisted of the swearing-in of the jury and the opening of the prosecution's case by Mrs Whitehouse's counsel, Mr Ian Kennedy, QC. Her counsel at the committal proceedings, Mr John Smyth, QC, was apparently ill and unable to appear. Mr Kennedy seemed hesitant and uncertain about the case from the outset. Whether that was because he had taken over the brief at short notice or because of a sense of impending doom, I cannot tell.

In his introductory outline of the rape scene, Mr Kennedy referred to the considerable degree of tension that had been created in the theatre. He then went on to say: "If it continues too long, as long as it would need to in real life, then the impact on the audience would be lost and they would undoubtedly become bored. The moment people started to pass round the chocolates, that would be the end of the message of the play". The suggestion that a scene allegedly so disgusting and horrible could render even a single member of the audience into a state of chocolate-munching boredom, seemed to me a curious contradiction of what he was claiming as the shock impact of the supposed grossly indecent act he was prosecuting.

"The case was not about stage censorship", said Mr Kennedy. He then went on to say later: "One can make a telling point. One can get one's message across. One doesn't have to do it this way". He

should really have gone on to say, "One must only do it Mrs Whitehouse's way". If that isn't censorship, I'm Cliff Richard! He continued that "The Theatres Act of 1968 had not done away with the general law". But the preamble to that Act states, categorically, that it is "An Act to abolish censorship in the theatre and to amend the law in respect of theatres and theatrical performances".

Expert Opinion

Mr Ross-Cornes, the prosecution's one and only witness, was then called to give his evidence and this continued into day two. It was hardly surprising to learn that, being a member of Mrs Whitehouse's organisation, he disapproved of nudity on the stage, and also "bad" language and urinating—presumably even with a water pistol. If one thing pointed out the ridiculousness of the charge more than any other, however, it was that, if the play had been directed by a woman, she could not have been prosecuted at all. Section 13 of the Sexual Offences Act only applies to males. Furthermore, if the victim of the attempted rape in the play had been a woman, Michael Bogdanov could not have been prosecuted — surely a case for the Equal Opportunities Commission!

Later on that day, after the Judge had sent the jury away, there was much legal argument, including the admissibility of Mr Ross-Cornes's evidence. He had gone to the theatre, seen the play and then gone backstage to confront Mr Bogdanov. But he had not, however, properly identified himself to the director or cautioned him in a way that a police officer normally would do, according to the Judges' Rules. The defence submitted that, since this was a private prosecution, Mr Ross-Cornes was, in effect, acting in the capacity of a policeman. After much discussion, which continued into day three, Mr Bogdanov went into the witness-box to give his version of their meeting.

The Judge ruled in the prosecution's favour. He also ruled in their favour on three other points. These were (1) that the Sexual Offences Act did apply to acts on stage, (2) that a simulated sexual act could still amount to gross indecency, and (3) that the motive of sexual gratification was not an essential part of the offence. The jury still did not return to court, because counsel for Mrs Whitehouse then asked for another 30-minute adjournment. About an hour later the Clerk of the Court mysteriously announced that the trial would be adjourned until the following day. Quite clearly, something very strange was going on.

When I returned home that Wednesday afternoon, my thoughts returned to the letter I had written to the Attorney General eight months previously and to which I have already referred. There was some-

thing else in that letter which I have so far not revealed. I wrote:

... in view of the extraordinary circumstances surrounding this case, would it not be an eminently suitable occasion for you to enter a stay of proceedings by "nolle prosequi", particularly since you yourself have been involved in the matter and have already decided, in effect, that the law was not broken? This would at least restore some temporary sanity to the legal process in this country and prevent the waste of any further vast amounts of public money on promoting and publicising the perniciously repressive aims and activities of this appalling woman.

Nolle prosequi is a device whereby the Attorney General can intervene and stop legal proceedings on an indictment.

In court next day my hunch that something dramatic was about to happen was soon to be proved right. First of all, Mrs Whitehouse was in Court herself for the first time since the hearing began and a fifth bewigged counsel was seated in the middle of the other four. He was there to represent the Attorney General and to invoke the *nolle prosequi* procedure to stop the case, just as I had urged him to do some eight months earlier. It was all over.

Mrs Whitehouse Draws Back

It was also quite apparent that Mr Justice Staughton was most unhappy with the turn of events but was, of course, powerless to change them. The truth about what had really occurred has become twisted and confused. In court, Mr Kennedy said that it had been established that there was a *prima facie* case to answer but that if Mr Bogdanov were to be convicted, notwithstanding any sentence the judge might impose, his career and private life could be gravely damaged. This sudden tear-jerking demonstration of human compassion certainly rang hollow. As far as the law was concerned, Mrs Whitehouse had already established that there was a *prima facie* case to answer at the committal proceedings. For her to claim now that this was all she ever wanted to do, when she had already achieved that aim last July, was arrant nonsense.

A much more truthful reason was surely that proffered by Michael Bogdanov when he said that she had withdrawn the case because she knew the jury would reject it. His defence counsel were all ready to call a galaxy of celebrated witnesses, including Lord Olivier, Lord Goodman, Sir Peter Hall, Janet Suzman, Peter Brook, Trevor Nunn and the Rev Eric Mathieson, Chaplain to the National Theatre. If the case had gone on, her costs, already near the £20,000 mark, would have at least doubled

(continued on page 77)

tion for the police based not on closer co-operation with the public and a greater degree of accountability, but on a deliberate distancing of the police from democratically elected authority. Paradoxically, his fears for the future could turn out to be much more accurate than his political analysis would suggest. If there is any likelihood of a totalitarian "one-party State" just around the corner, it is much more likely to emerge from the present scenario of economic recession combined with mass unemployment and social unrest than it is from any sudden seizure of power by militant Left-wingers. The reins of power in this country have never been more firmly held by an extreme Right-wing administration, who have had the sense to build up a loyal and well-paid police force—indeed an increase in police pay was one of the first things that Mrs Thatcher did on taking office. Neither, so far as one can gather, are there many generals with Trotskyite views at the Ministry of Defence.

In effect therefore, we have a situation where strenuous efforts are being made to bring about stronger police control, and the dilution of accountability; a situation in which public opinion is being inflamed towards this end by inaccurate information disseminated by an unscrupulous Press; and a situation in which racism is being used deliberately as a divisive measure to aggravate people's fears for their own safety. It is not a reassuring background for the coming summer months.

Freethinker Fund

Contributions to the Fund continue to arrive and Glasgow Humanist Society has sent a very generous donation of £65 to the Centenary Appeal. Increasing costs are always a problem. But it is important that the humanist movement has a campaigning journal that appears every month.

The list of contributors is recorded below with our thanks.

Anonymous, £2; B. Able, £7; C. Blakely, £4; J. W. Buck, £2; B. A. Burfoot, £2; E. Cecil, £2; B. Clarke, £5; C. F. Clarke, £10; J. B. Coward, £2; R. J. C. Fennell, £7; P. Forrest, £3; Glasgow Humanist Society (Centenary Appeal), £65; W. J. Glennie, £1; D. Harper, £7; J. K. Hawkins, £3; E. Hillman, £3; D. J. Holdstock, £2; H. J. Jakeman, £7; I. Jones, £2; E. W. Lambert, £5; D. R. Leighton, £1; W. K. Lloyd-Williams, £1; G. S. Mellor, £7; G. J. Mephram, £2; F. H. and U. Neville, £7; A. Oldham, £7; F. Pamphilon, £1; A. M. Parry, £3; V. S. Petherham, £2; R. Saich, £2; E. W. Sinclair, £10; T. Stevenson, £2; D. Swan, £2; N. G. Thanki, £1; N. Thomas, £15; R. L. E. Torode, £2; F. White, £1; D. T. Wood, £2.

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and, with an acquittal, she would probably have been landed with the defence costs as well. As it was, this interfering busybody had run up a £40,000 bill which the British tax-payer will have to find for the defence costs, which were awarded out of public funds, as were the costs of the committal proceedings.

But need any of this have happened at all? I think not. In the first place, the original application for a summons against Michael Bogdanov should have been refused. This was no ordinary case and had already received enormous publicity. The issuing magistrate must have known about it and that the DPP and the Attorney General had both refused to consent to a prosecution of the play under the appropriate Act. In other words it was not unlawful. It was irresponsible of him to ignore this fact.

The Public Pays

Secondly, having got as far as the court, the committal proceedings magistrate should certainly have unhesitatingly thrown it out instead of sending it for trial. Thirdly, the Attorney General, who alone has the power to do so, and who was already much involved, should have intervened long before the case reached Old Bailey level. His reply to my request for him to do so said that he would consider taking such action "if and when he is asked to do so by the Defendant or his legal representatives". I am advised that he has the power to enter a *nolle prosequi* of his own volition but, in any case, Mr Bogdanov's solicitors had made several approaches to him in the interim. His long overdue intervention has resulted in a hefty bill for the taxpayer, a year of stress and anguish for Michael Bogdanov and his family and, at the end of it all, still no proper legal clarification of the situation which will have to be remedied by Parliament but a year later than was necessary.

Ironically, for all his "help" in mistakenly allowing her to continue her venomous action, until she got cold feet and then begged for his assistance to rescue her, Mrs Whitehouse is now attacking Sir Michael Havers for preventing the case from going its full course.

Freethinkers generally will not, I would guess, expect the last word in a controversy of this kind to be allowed a gentleman of the cloth. But there are, happily, exceptions, and the Rev Eric Mathieson is certainly one of them. Of all the many criticisms levelled against Mary Whitehouse throughout this ridiculous affair, none can be more uncompromising than his. He said that she had brought her case in malice and that "the spiritual fascism she advocates has got to be resisted. She has a good deal of egg on her face today—and hallelujah!"