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CIVIL LIBERTIES IMPLICATIONS OF THE PRIMAROLO BILL

The draft bill on the location of pornographic materials presented by Dawn Primarolo MP and supported by two hundred and ~~forty-two~~ ^{many} MPs, the Labour Party Women's conference and the Campaign for Press and Broadcasting Freedom is objectionable to civil libertarians in principle and dangerous in its likely practical effects.

The bill sets out to deal with the affront and hurt felt by many women at the sight of pornographic material on the top shelves of newsagents by creating a new category of shop, licensed to sell pornography and nothing but pornography, by making it an offence to sell pornography on any premises not so licensed, or to sell anything save pornography on any premise licensed for it, and puts trading standards officers in charge of the investigation of such offenses and the bringing of prosecutions under the act. It further defines pornography as 'film, video and any printed matter, which, for the purpose of sexual arousal or titillation, depicts women, or parts of women's bodies, as objects, things or commodities, or in sexually humiliating or degrading poses or being subjected to violence' and further states that the reference to women includes men. The penalties provided for are fines, imprisonment and the closure of the premises.

The principal practical problem with this bill is its definition of pornography, which offers the worst of both worlds, at once a shopping list of prohibited things and one which is phrased in an abstract way. The phrase 'depicts women...as objects' is clearly intended to naturalise into English law the feminist debate around the word 'objectification' and embody in law the perception that it is both avoidable and necessarily a bad thing. The complex and controversial philosophical ramifications of this aside, it is hard to imagine what interpretation even a well-intentioned and liberal judge or magistrate would place on this, let alone a trading standards officer retrained in a week to understand a complex debate.

It has been widely suggested that this bill would bear most heavily on the rights of lesbians and gay men to freedom of expression and some sort of erotic representation of their sexuality. Some defenders of the bill have suggested that much lesbian and gay material is offensive, because objectifying; others have claimed that it will be possible to amend the bill to avoid this.

The former group have of course a right to their opinion, though they should be aware that it is not always a good idea to assume that you know better than an oppressed minority what its needs and faults are. As to the latter suggestion, it is hard to see what amendment would serve. A clause stating that representation of lesbian and gay sexual acts will not of itself be held to constitute prima facie evidence of guilt might seem to

serve, until one reflects that the general direction of the criminal law is to disapprove of male homosexuality and it is likely that many judges would take their cue from this in deciding whether the depiction, actual or implied, of penile-anal intercourse, digital-vaginal penetration or oral-genital intercourse, were 'sexually humiliating or degrading.' Though explicit depiction of such acts is currently illegal in practice, the bill would extend the law to prohibit implied depiction as well as description of such acts in prose. We have already seen the Ecstatic Antibodies exhibition banned in Salford, because of the (inaccurate) assumption by the local authority that one of Tessa Boffin's photographs depicted, at least by implication, an act of cunnilingus; much of the authoritarian feminist writing on representation involves extensive semiological reading, and often wilfully perverse misreading, of images and texts; there is nothing in the bill to indicate that explicit representation is the only thing covered.

It is absolutely clear that the phrase 'humiliating or degrading poses or being subjected to violence' would make impossible any positive representation of sado-masochism whatever, particularly given the 'Operation Spanner' decision.

Much safe sex material, particularly that aimed at changing the behaviour of gay men and lesbians, has usefully deliberately eroticised safe sexual acts, setting out to arouse and titillate as well as to inform; material of this kind from abroad has been confiscated by Customs under present legislation, and is regularly attacked as pornographic by right-wing pro-family campaigners. It is hard to see how such important material could be safeguarded from attack under the bill.

Though the proponents of the bill claim to be in favour of various sorts of erotica depicting mutuality, there are enough authoritarian feminists and christians at large, who believe that any representation of sexual acts is degrading, humiliating and objectifying, by the simple act of bringing the private into public display, that it is likely that almost any erotic representation would be under threat from this bill.

Though the 'for the purposes of sexual arousal or titillation' section of the definition would seem to limit the effect of the bill on non-erotic work, in fact this is a limitation unlikely to operate in practice. One has only to look at the text of Joyce's Ulysses, a novel much censored in its day, to see that it is a text which makes explicit use of the tropes and cliches of pornography for the entirely non-pornographic purpose of painting interior portraits of its characters and their fantasies; in the process, it is undoubtedly, at times and for broader purposes, arousing and titillating. Similarly, frame by frame, various of Madonna's videos contain imagery that falls in the purview of the bill, whatever the overall intention of the work. The failure of the current draft of the bill to provide a defense of overall intention, or indeed of artistic and literary

3

merit, or scientific or social importance, ensures that any work any part of which falls within its definition could be found pornographic.

The provision of closure of premises as a penalty under the act is an innovation in English law, and is presumably intended as a parallel to the provisions whereby, for example, under customs law, a yacht used to transport contraband can be confiscated. The failure of the bill to define what is meant by closure of premises is a piece of bad drafting; it is hard though to see how a more thought out version of this penalty could be less pernicious and less a threat to civil liberties.

One of the principal dangers of this Bill is its likely effect on freedom of expression generally; the looseness of the definition of pornography and the draconian nature of the penalty of closure will oblige almost all commercial enterprises, both producers and retailers, to preternatural caution, since any conviction for any single item might lead to the effective bankruptcy of the retail premises concerned. One has only to look at the caution many publishers have shown with lesbian and gay themes as a result of Clause 28.

This would particularly inhibit alternative groups like small presses and the collectives which have been producing women-oriented sexually explicit material. Even when this is explicitly feminist in its intention, much of this material, Serious Pleasure, the Sheba Feminist Publishers anthology of lesbian erotica, or Quim, has been attacked as pornographic by some other feminists. If material of this kind were found to be pornographic, its availability would be limited to male-run, male-frequented pornography shops, unlikely to stock it in the first place and harrowingly uncongenial places for women to visit.

Presumably many local councils would refuse to license any pornography shops in their area; this would mean that any woman, lesbian or heterosexual, or any isolated gay man, who wished access to material that had been redefined as pornographic, would have to travel to other cities on the off chance that a heterosexually-oriented male porn-shop was carrying material they wished to see. One of the effects of this bill would be to make erotic material less available to women.

The bill does not specify who is to train trading standards officers in their new job as censors and interpreters of the law; it requires that local government officers, whose entire training is in drastically different areas, be obliged to decide complex matters of definition and intent. Presumably the intention is that they be trained in recognizing what is, and what is not, pornography by the groups most involved in deciding it hitherto - the Obscene Publications Squad, the National Viewers and Listeners Association or the Campaign Against Pornography. Presumably, the standard procedure would be that officers would

act after the laying of information in the form of complaints; it is likely that many such complaints would not be spontaneous reactions to offense by genuine members of the public, but form part of orchestrated campaigns by organisations such as NVALA, privileging the hidden agendas of such groups at public expense.

This is likely to ensure that the law is enforced against such traditional targets of censors as lesbians and gay men, and other alternative groups; it is unlikely that such training will enable trading standards officers, no matter how dedicated, to distinguish commercial pornography from serious art, or make an informed judgement on what lesbian and gay material is, or is not, oppressive, particularly since this bill makes no attempt to guide them.

Because of the over-representation of white middle-class men in the judiciary and magistrature, the bill will impose a unitary standard of sexual representation on all minority cultures.

It is also hard to see how enforcement of the bill could be regulated so that the same work was found pornographic, and the same work not pornographic, in all areas. Justice that varies locally is not justice.

The bill does not discuss the cost of training these officers, and of recruiting new officers to cope with the increased burden of work; presumably central government would not meet these and other costs involved, and local authorities would have to divert expenditure from other important areas to cover it. Nor does it provide for exemption on the grounds of conscience for officers who, whether through commitment to freedom of speech, or disinclination to spend their time examining such material, do not wish to do the work.

To summarise, the major problem with this bill is that it purports to be about the location of potentially offensive material, but is in effect a draconian censorship law. The bill purports to defend the rights of women, but protects them at the expense of their freedom. It is hard to see how it can be made less dangerous and less in conflict with civil liberties; it can and must be opposed.

I suggest that the decision of the AGM to oppose the bill actively, and a detailed analysis of the reasons behind that decision, be communicated to the Parliamentary Civil Liberties Group and all MPs. There should be an article in Agenda suggesting that members of Liberty write to their MPs. Whenever there is public discussion of this issue, there should be a press statement indicating Liberty's position. This bill has considerable implications for NALGO, to whom Liberty's position should be made clear.