

Academy Institute of Criminology  
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File: Pornography

Vertical File



GRANT NO. 35/76 - DR J. H. COURT  
"Sexually Explicit Materials and Serious Crime"

... Attached is an additional report from Dr John Court received on 10 October 1977. Appended is a letter dated 12 October 1977 which is relevant to this report.

David Biles

Criminology Research Council: Report No. 7.

(Grant 35/76)

On the prosecution of pornography

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The research findings of Dr. Berl Kutchinsky on the consequences of changing the laws relating to pornography have generated world-wide interest. The influence of his work has been greatly extended by quotation by others who have accepted his findings uncritically. A number of the assertions presented by Dr. Stürup when he visited the Australian Institute of Criminology in November 1975 were based on Kutchinsky's work (see AIC Report 31 by C.R. Bevan).

My own findings have largely been very different from his. Since the legislative conclusions from our data are diametrically opposite, a careful analysis of the data-base for both positions is important.

The following report relates to a paper published (apparently) in 1976 in a medical journal. On receiving a copy, I prepared the attached response but was unable to submit it for publication as it has not yet been possible to locate the source. The article is not cited in Index Medicus. It clearly comes from one of the commercial journals published for the medical profession. I have twice written to the author for full identification of the article, but have received no reply. I therefore submit the original and my response as a report for the information of the Council.

#### RESPONSE

##### Some Side-effects of not prosecuting pornography

Who would believe that sales of chloral hydrate provide a good measure of use of tranquillisers in 1976? Who would believe that evidence on the numbers of tonsillectomies performed in Liverpool has anything to do with the incidence of malaria in West Africa? No-one in the medical profession would be so misled.

How many readers gave uncritical acceptance to Berl Kutchinsky's comments on pornography? (The Effects of NOT prosecuting pornography). The following is intended to indicate that his optimism is misplaced, and suffers the same fallacies as the questions above. In essence his argument was that if only Britain would stop prosecuting pornography, interest and demand would quickly and painlessly show spontaneous remission. Such an effective and inexpensive cure is beguilingly attractive. There is, however, much more to be said, even if one relies only on his own data.

1. His paper is a rewrite of a paper which was originally presented to the International Publishers Association in 1972 and subsequently published in the International Journal of Criminology and Penology. He admitted then that the content referred to data-collection only up to 1969 - the year when the changes in Danish law were completed. He then predicted the demise of pornography. Seven years later it remains alive and well - how embarrassing!

2. He concludes from his evidence of a decline in production in 1969 that "the porno wave was over". Is it really true that one can measure a decline of interest in pornographic publications because the publishers no longer print "Fanny Hill"? In reality, the drop in production was an outcome of gross over-production of erotic novels of that kind when the publishers saw the maximum chance for high prices. Kutchinsky admits this but fails to add here that many of the publishers failed to keep pace with the rapid change in tastes towards more perverted material which occurred after 1967, so that, since his study finished, the market has changed radically.

A better appraisal comes from one of the best-known porn producers, Maurice Girodias. He was interviewed in 1971 on the transition which had occurred and said that "the transformation happens more quickly with Protestant countries like Sweden and Denmark, more slowly with the Latin countries ... he likes such protracted revolutions since he can then do the most profitable business. He admits that in Holland and Denmark, with their small populations he was overtaken by the sexual revolution and his books were already obsolete before they came out, weakened and desexed by the sudden torrent of stronger game".

3. Reduced production of erotic novels tells us nothing of the increased production of the glossy magazines advocating sado-masochism, bestiality, incest etc. which are now the staple diet of porn readers. Strangely, Kutchinsky has omitted from his present paper his admission in the earlier version which read "Another factor which undoubtedly contributed to the remarkable reduction in the sale of pornographic books was the increased sale of pornographic picture magazines. In a certain sense, these magazines took over where the books left off."

4. He has yet to acknowledge that to count how many books are produced in Denmark in 1969 has little or nothing to do with actual consumption there and elsewhere in succeeding years. How many porn shops in other countries including Britain are now stocked with Danish porn? And how much porn is now also being produced in other countries, with some of it imported to Denmark? These are the questions which need answering. Denmark's decisions have had international repercussions. He admits that "underground publications, pirate editions and foreign imported pornography were not included" in his count. That they now form a significant market

is intriguing in the face of his general argument that there is little demand anyway! The growth of the porn industry in places like Amsterdam and Australia has followed the Danish no-prosecution policy.

5. How thorough was his survey of consumption of pornography? "Research on the consumer side in Denmark has been confined to Copenhagen involving a survey of 198 men and 200 women, aged over 18 and interviewed in 1969". How many doctors would accept a drug firm's evaluation of the Pill as adequate after testing on a sample of 398 people? Surely we need better evidence before we ignore a multi-million dollar industry.

6. Kutchinsky repeats his oft-quoted finding that child molestation went down after 1965. He may be right; how would have been fairer to say the number of reports dropped. It would have given a still fairer picture if he had also mentioned that rape reports went up - and up. He might also have wondered why venereal disease has escalated over the same period (gonorrhoea rising from 7,752 cases in 1963 to 15,646 in 1971). These are the kind of side-effects that were always suspected and are now being confirmed in many other countries besides Denmark.

7. The bland assertion that Danes became familiar with porn and "the satiation point was quickly reached" sounds as if it is based on substantial evidence. Reference back to his earlier paper reveals that he actually failed to appreciate the difference between saturation (how many people had ever seen porn) and satiation (individuals seeing as much as they wanted). Following his reasoning we would conclude that since, say, 95 per cent of the population has drunk alcohol by the age of 21, satiation has now occurred and there is no longer a market for beer. That doesn't sound right!

It is a pity this section of his paper has now been abbreviated because the earlier version included the honest comment on readership that "this estimate, however, should not be taken too seriously."

8. A documentation of the "complete departure of the 'international porn Mafia' from the scene in Denmark" is called for. A personal visit to the Danish police in mid-1974 confirmed for me that the machinery was still working very efficiently then. Police in Australia assure me that the advent of porn has attracted similar influences. A grand jury in New York in April 1973 reported that 90 per cent of pornography was tied up with organized crime. Britain would be unwise to believe with naive optimism that it can escape the same influence when the possibilities for exploitation are so attractive.

9. If Britain were really to take Kutchinsky's advice and stop prosecuting it would be not only unwise but illegal. Denmark changed its approach only after withdrawing as a signatory to the International Convention for the Suppression of the circulation of and traffic in obscene publications. The United Kingdom remains a signatory to this Convention which makes it a punishable offence to

"make or produce or have in possession obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films or any other obscene objects".

10. Evidence since Kutchinsky stopped collecting data in 1969 clearly indicates that his predictions have not come true. There is evidence which suggests the harm one always suspected does in fact occur. The links are as tenuous as those between smoking and lung cancer. In these

circumstances the classic medical principle "primum non nocere" applies. And, in the light of the international agreement noted above, those practitioners who have come to believe in the therapeutic value of porn should consider the ethics involved in breaking the law by introducing it to their patients.



# The Effects of Not Prosecuting PORNOGRAPHY

By Berl Kutchinsky



*The window of a porn shop in Copenhagen.*

With reference to the general availability of pornography, the UK finds itself very much in the same stage as Denmark was in 1968.

The Danes reaction to pornography resembled the way they took to bananas after suffering the deprivation of World War Two. When the banana boats started bringing in their cargoes again, everyone was eager to buy. But after a few months satiation point was reached—and the banana took over its modest position among the daily consumables of the country.

During the years 1963 to 1968 there was a huge upsurge in production and

consumption of erotic literature in Denmark. At least 5,600,000 books belonging to the categories "pornographic, erotic realism or sexual education" were printed in the country—a figure greater than Denmark's population.

This terrific porno harvest was not, as often thought, the consequence of legislative changes, but was rather the combined result of a provocative publishers' policy and permissive court practice.

In the year when the penal law ban on pornographic literature was repealed—and therefore at a time when publicity for this kind of

publication was stronger than ever—production reached a peak. Most of Denmark's population became to a greater or lesser extent, familiar with it. But because interest was mainly based on curiosity rather than genuine need, the satiation point was quickly reached.

Two facts become prominent when one views the relationship between law and eroticism in a general perspective. Firstly, in nearly every country the law is used to suppress eroticism in varying degrees; and second, there is nevertheless a general tendency in most countries towards a disengagement of the law in this field.

In Denmark the situation took a crucial turn in 1967 when Parliament decided to abolish all restrictions on pornographic writings. This step—itsself part of the universal movement towards greater freedom of sexual expression—undoubtedly also became a factor which provoked similar developments in other countries.

To some authorities and people in those countries, Denmark's trend was regarded mainly as a nuisance—a course of "smut" sweeping across borders. Many other people saw it as a natural experiment in liberalism which offered a lesson that might be useful in their own planning.

Until 1967 Denmark's penal code laid down punishment from fines to imprisonment for the production or distribution of "obscene publications". The interpretation of "obscene" has often been in dispute, but prosecutions in Denmark were mainly concerned with writings in which the erotic descriptions were of a considerable "gravity" (that is hard-core pornography) and which were lacking literary, artistic or other cultural values.

A fundamental change in the legal view came in 1964 when two publishers prepared a Danish edition of John Cleland's *"Memoirs of a Woman of Pleasure"*—a book which had been the subject of an obscenity conviction in 1958. The Danish version, under the title *"Fanny Hill"*, was acquitted by the Supreme Court.

This finding threw considerable doubt on what could in future be considered obscene and led to Denmark's Minister of Justice asking the Permanent Criminal Law Committee to consider the whole question of pornography.

The Committee presented its report in 1966, recommending a total repeal of the ban on pornographic writings.

Two years after Parliament had acted on this, it was decided to carry the liberalisation a step further by repealing the remaining restrictions on pornographic pictures and objects, except for the sale of such material to anyone aged under 16.

While these legislative changes were a consequence of the changing views on the necessity of engaging the law in the protection of decency and morality, an influential factor was the number of erotic books flooding the country.

Some of these books were used as

pile drivers against the crumbling walls of the relevant Penal Law. In other words, the repeal of the ban on pornographic literature in 1967 was a consequence of an enormous production of pornographic books, rather than a cause of such production.

This fact, not well-known outside Denmark, is borne out by information obtained through questionnaires sent to all publishers in Denmark who might have issued any kind of "pornographic, erotic realism, or sexual education literature".

Of the 146 publishers approached, 20 had published books within the categories mentioned. And in the period covered by the questionnaire—1953-1969—a total of 7,211,000 such books were published in the country. Underground publications, pirate editions and foreign imported pornography were not included.

After a wave of books beginning in 1955 with Jean Genet's *"The Diary of a Thief"*, Henry Miller's *"The Rosy Crucifixion"* and Ragnar Mykle's *"The Song of the Red Ruby"*, a decline set in towards the end of the fifties. After 1961 a new wave started, based mainly on some books by Danish authors.

From 1965 the increase turned into a steep upsurge. In 1966 the production figure of erotic and pornographic literature passed the million mark and the following year—in 1967, the year of the repeal—the peak was reached with an output of 1,405,000 copies of erotic fiction books.

In the same year, 242,000 sex education books were produced, their popularity being attributed to the inclusion of numerous photographs of coital positions.

The year 1968 was the second largest year in terms of production (1,208,000 erotic fiction books) but the following year showed an impressive drop, only 116,000 such books being produced in 1969. Denmark's porno wave was over.

The reason for the tremendous drop in production of these books in 1969 is attributable, firstly, to the population's satiation with pornography during the mid-sixties and, as a consequence, the considerable over-production of such books in 1967 and 1968.

As a result, many publishers were stuck with large quantities of unsold books which were later cast on the

market at prices often marked down below production cost.

Research on the consumer side in Denmark, has been confined to Copenhagen, involving a survey of 198 men and 200 women, aged over 18 and interviewed in 1969.

No less than 87 per cent of the men and 73 per cent of the women admitted having read at least one pornographic book. But the average number of books read by all respondents in the survey was estimated at 13.1 per person.

Although men tended to read more pornography than women, the difference was not very striking. For example, while 40 per cent of the men admitted reading two to nine such books, the figure for women reading similar numbers was 33 per cent.

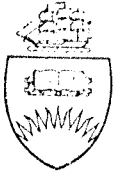
The reading of at least 10 pornographic books was more often found among young men than among middle-aged and older men. Among males aged 18-29 years, 48 per cent had read at least ten pornographic books as against 29 per cent who were aged 30 or older. An unexpected outcome which emerged from an analysis of the high availability of hard-core pornography in Denmark was a considerable decrease in at least one type of serious sex offence, that of child molestation.

Between 1965, the first year of hard-core pornographic pictures, and 1969, the number of cases of this type dropped from 220 to 87. In 1974 a further reduction occurred and almost a zero level reached now.

Nearly all pornoshops not situated in tourist areas have gone out of business. Live "sex shows" have virtually disappeared from Denmark due to police action. In this instance, the police are ostensibly acting in defence of public health and fire regulations, although there is a certain amount of Government pressure being brought to bear on Chiefs of Police so that Denmark does not enjoy the dubious honour of being the Porn Centre of Europe.

One of the results of the Danes' way of dealing with pornography generally has been a complete departure of the "international porn Mafia" from the scene in Denmark.

If the "porn wave" in Britain follows the Danish pattern, a substantial resolution of the problem, occurring spontaneously and without Governmental involvement or expense should occur quite soon.



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12th October, 1977.

Mr. W. Miller,  
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Dear Mr. Miller,

I have at last received a reply to my enquiries of Dr. Kutchinsky regarding the paper over his name contained in Report No. 7 to the Council.

In the light of his reply I think it important that the report should be modified to note that Dr. Kutchinsky does not accept responsibility for the paper entitled "The effects of not prosecuting pornography".

While my critique is, I believe, fair regarding the content, it would not be appropriate to take this as Dr. Kutchinsky's work even though his name is attached to it and it does refer to his research.

A quotation from Dr. Kutchinsky's letter to me (dated October 5, 1977) will establish the rather unsatisfactory credentials of the report

"I have not written an article on "The effects of not prosecuting pornography". Most unfortunately, an article of that name was published in the British Journal of Sexual Medicine in April 1976, and my name was placed as if I were the author of that article. That was a serious mistake. The article was written by Dr. E.J. Trimmer, the Editor of that journal, who had interviewed me about one year earlier. Dr. Trimmer thought he had sent me the manuscript for correction (which he had not) and that my lack of answer was equal to acceptance. I could not persuade him to publish the fact that he and not I had written the article, but he did take in a note in the next issue correcting some of the worst errors as being due to "the editing".

I cannot take any responsibility for the article and ask you not to quote it."

Would you kindly attach this information to the reports you have received. I shall meantime now I know the source, seek out the note referred to in a later issue and published by way of correction.

Yours sincerely,

J.H. Court.

*Yagore.*  
*Pl. file a pass to Mr. Biles*  
*14/10/77*