

## COMMENTARY

OBSCENITY AND THE LAW. On the first page of his important book, *Obscenity and the Law* (Secker and Warburg, 25s.), Mr Norman St John-Stevas denies the possibility of defining the 'obscene'. It is indeed the contemporary ambiguity of the notion, and especially its confusion with the 'pornographic', that has created the difficulty of determining an offence in law. And the recent activities of the Director of Public Prosecutions, in instituting proceedings against the authors and publishers of five books reputed to be obscene, together with the conflicting rulings of the judges and the failure to convict in three of the cases, indicate the need for some clarification, not to say some reform, of the law.

Mr St John-Stevas's book is a valuable survey of the whole question, and in particular of the social attitudes which have been so variously reflected in legal action. He has no difficulty in showing that one age's meat is another age's poison, and that the Act of 1857 (Lord Campbell's Act), under which most prosecutions have subsequently been brought, is unsatisfactory. Sir Alexander Cockburn's famous judgment of 1868, in which he laid down the test for obscenity ('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'), has in practice led to astonishing anomalies.

As a result of the prosecutions of 1954 there arose a considerable demand for a reform of the law, and Mr St John-Stevas was largely responsible for the Bill sponsored by a Committee of the Society of Authors, which received its first reading in the House of Commons last year. The Bill lays special emphasis on the intention of the author and publisher: the accused must be proved either 'to have intended to corrupt the persons to or among whom the said matter was intended or was likely to be distributed, circulated, sold, or offered for sale' or 'that in so distributing, etc., he was reckless as to whether the said matter would or would not have a corrupt effect upon such persons'. The Bill also makes provision for expert evidence as to the 'literary or artistic merit, or the medical, legal, political, religious or scientific character or importance of the said matter'.

These are important innovations, but they would seem to create new difficulties. To prove a man's intention is in effect to enter the arena of moral judgment, and a principal defect of Mr St John-Stevas's book is that it never comes to grips with the moral issues involved. It is easy to detect the absurdities of the Irish Censorship, and a selection of books from the Roman Index can be surprising reading; but we should prefer to have a serious treatment of the moral premisses which the law should embody. Some account of the cardinal virtue of prudence might have been relevant here. For, as St Thomas insists, 'if a person is to be prudent he must first be adjusted to the ends of life. He cannot come to right conclusions unless his principles are sound. Therefore prudence presupposes that his intelligence has a habit of insight and that his affections are rightly mustered by the moral virtues.' The writer, of all people, must accept the responsibility—the prudential responsibility—of affecting the judgment of his readers. And if his intention is to be legally significant, one has the right to go on to ask: 'intend to do what?' To quote the Kinsey Report on the small influence of pornographic literature on sexual conduct is a poor substitute for enquiring into the Christian tradition which requires a man to consider what ends his actions are *intended* to serve.

It is unreasonable to expect a treatise of moral theology in a book which is explicitly concerned with a purely legal problem. But if the proposed reform invokes the important moral principle of the author's intention, then a serious consideration of the bases of moral action might seem to be called for. In the matter of obscenity as in so much else besides, there is nowadays a fatal embarrassment at facing the radical fact that, while the conventions of social life may alter, the moral law itself belongs to the nature of man as made by God to serve him. It is a great pity that the only religious and moral considerations in Mr St John-Stevas's book relate to censorship, and thus the impression is given that the religious attitude in this matter is only concerned with prohibition.

But *Obscenity and the Law* is a courageous and admirably documented guide to a tangled subject, and its publication should certainly help to end the present unsatisfactory situation, which seems less concerned with affirming a moral law than with spasmodically—and often unsuccessfully—pursuing the outrageous.