

the average man or woman, the ordinary citizen. It is the *publication* of obscenity that the law penalizes. Therefore, as the law stands, the question is whether a book or a play or a picture is or is not obscene to the general public—a question of fact at a time and in a place. Who are the natural judges of fact in such a question? Is a university professor, an alienist, a “pink” editor, a publisher, a novelist, a columnist, a proper judge or a competent witness? Is a magistrate a competent judge? Obviously not. If obscenity be a relative thing, the proper final judge of fact in the case of a book or a play or a picture impugned under the law is a jury drawn from that public which the law is designed to protect. If common sense tells us anything at all on the subject, it tells us that the proper course for the law to take in such a case is a jury trial. If it is a case of a book, swear in a jury, hand the jurors twelve copies and let the verdict settle the matter. There is no need of filling the courtroom with “expert” testimony, for if there be any truth in the theory of the law, the only witnesses whose testimony is valid are the jurors themselves.

It is not a case for “censorship” for there is no “censorship” involved. “Art” is free and untrammelled, the liberty of the press is preserved, speech is

free, but responsibility is enforced, and no one can find fault with that. Any publisher whose “artistic urge” and desire for profits drives him to “take a chance” is free to do so provided that he is willing to take the consequences, too. And thus we avoid the flood of cant that fills the air from time to time, when some noisome piece of literary, dramatic or artistic filth is attacked in the courts in a manner whose futility is enough to make strong men weep with rage at the infantile strategy employed, while the panders pile up their dollars.

Responsibility, not “censorship,” is what is needed, and it is all that is needed, but let us make responsibility real. If the law needs amendment let us amend it by making obscenity a matter of jury trial. It may be objected that an ordinary jury of plain citizens would not be competent to deal with works of literature, however well they might serve in judging the lower, unmistakable cases of obscene publications. But special juries, surely, could be empanelled. There is also the right exercised by attorneys in the defense of challenging jurors which could serve to make juries in these cases well selected and responsible. In any case, we trust a man’s life to a jury: what has “art” to fear from it?

## UPLIFT JOURNALS PLEASE COPY!

By HENDRIK WILLEM VAN LOON

**A**BOUT a year ago I went to the editor of a famous newspaper. It stands forth amidst the dreary marshes of contemporary journalism as the Rock of Tradition, the one and only relic of a better and more enlightened day when newspapermen were newspapermen and dared to speak their mind without bothering about the private tastes and public prejudices of their owners, their wives, or poodle-dogs.

And I spake—“Behold, here is your chance to do a great thing in the land of Manhattan. Whenever there is a just cause that asks a champion, you sharpen the edge of your adamant Vernunft upon the granite stone of reason and bestow upon an agonized world the most convincing, the most penetrating, yea, the dullest editorials that ever were devoted to a good cause. Buckle on your most shining armor and follow me to the nearest news-stand. There you will find, available for common use (and at a small cost) the foulest collection of smut, dirt and plain pornography ever offered to an unsuspecting public in the name of Literature. Smite these corrupters of our children’s morals with the glorious wrath of your outraged decency, and be forever praised.”

But just then a great contest was raging between two mighty political parties and the tri-cornered fight which followed took up all available space—and I had clamored in vain, for absolutely nothing was done.

Then I crossed the street and wearily betook myself to a magazine devoted exclusively to the interests of the under-dog. Never mind the color of the animal. Provided that he be a bona fide, one hundred percent pure, A-1, three star under-dog, he is sure of a hearing within the editorial sanctum. And once more I spake and said—“Ah, ye faithful Galahads, ye who love yellow and brown and green and pink and purple men all the way from Uvkusigsat Fjord to Tierra del Fuego, here is your chance. This time our own children, our own little darlings, are in danger. They cry out, even as my Lord Ghandi, and although they wear pantaloons and eat steaks (the largest steaks available), their need is great. Send one of your clever sleuths to the nearest newspaper stand. He will there discover a collection of sluttish, abominable and saprogenous literature in such quantities that it can pollute an entire continent. Denounce the greedy scoundrels who print it, and gain our everlasting gratitude.”

But a real estate agent in an obscure suburb of a remote western town had refused to sell a house to a Negro. Hence Democracy was on the verge of collapse. Societies for the propagation of everything and societies for the suppression of everything else were beginning to stir. Amidst the din of battle, my little suggestion was ignominiously dropped into the waste-paper basket.

But, to misquote the excellent Doctor Martinus—"I shall have my say if the world were as full of indifferent editors as New York is full of taxis." And for lack of a convenient church door, I shall hammer my theses to the hospitable wall of The Commonweal and I shall proclaim here and now, and as loudly as I can, that our country is being overrun with and by a putrid stream of the most despicable, the most iniquitous, and on the whole the most dangerous form of a degraded variety of literature; that this stuff is being publicly sold and publicly sent through the mails; and that so far no authority, public or otherwise, seems to be willing or able to stop the dissemination of this literary garbage. So that is that.

If the Postmaster General thinks that I exaggerate, I cordially invite His Honor to meet me in New York and I shall then take him on a little tour of inspection and within one hour I promise to show him more printed filth than we would be able to find by a week of diligent searching along the wicked avenues of those wicked European cities which our professional moralists are forever holding up as the legitimate heirs to Sodom and Gomorrah.

Furthermore, this degraded stuff is not a monopoly of the metropolis. It is sold just as openly in Yellow Springs, Ohio, as in Homer, N. Y., or any other hamlet of our fair land. It is ubiquitous. It is printed by the ton and sold by the bale. It has millions of dollars behind it. And it is of recent origin. The men who publish it make the early productions of the Hearst press look like mild little Sunday school tracts. And worst of all, they commit their crime in the name of Health, of Morals, of the Purity of the Home, and they cover their tracks so cleverly that the ordinary moron who is a post-office inspector or a professional censor shouts—"Why, this is fine stuff. It reads like *The Sheik*, the book that had such beautiful passages about Arabian sunsets," and takes it home to his little girl who is studying shorthand and is making ready for a career on the grand opera stage.

Of course, it is an utter absurdity that I should be obliged to write this. I have all my life fought against censorship. I have frequently helped to hold the gate of the Republic of Letters when worthy reformers tried to push their unwelcome selves into that delectable realm of literature. Hence I can hardly qualify for the rôle of Public Prosecutor.

At the same time, I have two boys of my own. I want them to read most of the books which the Uplift Brotherhood has placed on their little index. But I shall speak words not fit for publication in a respectable magazine if I ever find them in the possession of one of those utterly corrupt sheets which Messieurs Sumner, Ford et al. in their holy zeal and their unholy ignorance have overlooked or which (as is becoming increasingly clear) they purposely overlook because they are afraid to attack a fortress which is defended by all the shyster lawyers of half a dozen metropolai.

If 'twere merely a little fly-by-night publisher, then indeed there would be a chance to gain an easy victory and derive much publicity and great credit as a public benefactor, at practically no risk. Besides, the poor publisher might try to give the world something new in literature. That fact in itself would assure the lynching party the sympathy of our half-literate millions. Their Republic "n'a pas besoin d'hommes de lettres!" But if they fail to appreciate nudity, they can understand nakedness. Hence while they would cheerfully impale the wretch who would dare to print a reproduction of some sublime bit of ancient statuary, they would just as eagerly rally to the defense of that well-beloved editor who presents them twice a week with a photograph of Lizzie the Cloak Model in diverse stages of semi-undressedness. When furthermore, said editor adds the intimate story of Lizzie's life with all its most objectionable and d'Annunzioesque details, he is their friend for life. Do they feel that their own daughters are degraded by the perusal of such nefarious drivel? By no means! For in the last paragraph, the editor (who knows his job) informs them that Lizzie has now turned over a new leaf and that she is conducting a class of darling little Sunday scholars and leads an exemplary life. Being intrinsically besotted by a perverse ideal of morality, the assembled boobs then give three cheers for the Sunday school ma'am and promptly forget the street-walker.

Here I pause to offer my apologies to the street-walker. Compared to the heroines in the aforementioned stories, the average prostitute is an honest and honorable woman. For she is bad in the accepted sense of the word. She knows that she is bad. She makes no bones about being bad. Whereas the leading ladies in aforementioned fables are nasty little creatures who are utterly corrupt, but who successfully demonstrate the truth of that lowest of all modern maxims which bids us not to worry as long as "we can get away with it."

I repeat that if the reader thinks that I am making a mountain out of a molehill, the true test lies around the nearest corner. Let him or her put on his or her galoshes and inspect a news-stand, or the magazine section of a department store. He will there find a collection of "revelations," "dreams," "romances" and "confessions" which in their true nature are nothing but thinly veiled pornography. If he or she has a spare quarter, I shall ask him or her to do me a favor. Let him buy a copy. Let him take it home and read it. Then after half an hour's gargling with strong disinfectants, I want him or her to light a cigarette and ponder upon the strange duality of our official world, which makes a cannibal feast of a book when it contains the word "belly," and which permits the publication and the dissemination of whole wagon loads of stories which Louis XV would have ordered burned by the public hangman and which would have made Casanova blush with shame.

## THE CASE OF JUSTICE FORD

New York City, N. Y.

**T**O the Editor:—In the first number of *The Commonwealth* received I was pained to see your somewhat flippant comments on the Boyd-Sumner debate. It was the pain of disappointment because I expected to find your publication at least in pronounced opposition to the immorality which is the outstanding feature of current fiction.

You will answer that you are opposed to it perhaps. So will every one decent who knows anything about how bad conditions have become.

But what are you or they doing to abate the evil? Mr. Sumner is one of those who not only opposes harmful publications but he is also among those who have started a crusade against them in the only practicable way we have been able to devise.

In that movement I took the initiative by calling a conference at the Hotel Astor, in the winter of 1922. Cardinal Hayes (then Archbishop) deputed Monsignor Lavelle to attend as his personal representative. Bishop Manning sent a representative, also. The Federation of Churches (Protestant) was represented, as were the Salvation Army and a goodly number of religious, patriotic and civic organizations. A representative of the District Attorney's office was invited to inform us on the practical difficulties blocking enforcement of the old anti-obscenity statute. Mr. Meyers was selected by Mr. Banton and sent to represent his office.

After a general discussion of conditions in the publishing field, all agreeing that they were intolerable, a committee was authorized to recommend appropriate legislation. Mr. Martin Conboy, Mr. John S. Sumner, Mr. Meyers and myself were the committee selected. We met repeatedly and after most careful consideration of the problem, drafted the bill which has been before two sessions of the legislature.

Its purpose is to stop up the holes punched in the law by the courts. It was on the recommendation of Mr. Meyers that the provision permitting a prosecution to be based on a part of a publication was inserted. We found that the federal courts did just that in enforcing the United States statute, making it a crime to deposit obscene prints or objects in the mail. Our statute in respect of the descriptive terms employed to designate the things forbidden is the same as the federal statute in substance. Furthermore, the law of Massachusetts, which is effectively enforced, prohibits publications "containing" obscene language.

You see we were eminently practical. No substantive changes in the existing law are proposed. Our amendments would restore the obvious meaning of the statute and change the procedure to conform to that of the federal courts, which really give the only common

sense meaning to the law of which it is susceptible.

Our critics are not honest. They are financially interested. Unfortunately they control practically all the instrumentalities of printed intelligence. Even the little country newspapers are induced by the press associations, which control their advertising, to join in the absurd cry of censorship against our measure.

That objection you mention, about prosecutions based on a word, or a few words of a publication of merit, is one that has been raised by the defendant in any number of prosecutions. The courts have summarily disposed of it as often, as of no force. The courts are ruled by common sense and charged with the duty to see that no injustice is done and that every law is construed reasonably and so as to promote justice. No court may become the instrument of injustice or oppression. The federal courts right here in New York entertain prosecutions based on part of a book. They have been doing so for years and years. Yet never has a book of merit been attacked. So of the law of Massachusetts, the native state of American literature, one might say. The Massachusetts statute makes any obscene language contained in a book the basis of a prosecution. In perhaps a dozen other states, similar language is found in their obscenity statutes. Yet worthy works never have been molested in any of them. The danger from such a provision is purely imaginary.

Get it clearly in mind that we are dealing with crime—a crime older than the common law. Before any prosecution can be instituted, someone must accuse his neighbor of a crime. One who does that, assumes a dangerous responsibility. An acquittal means that the defendant has a right of action against his accuser for malicious prosecution. Dozens of such cases have been tried before me. Indeed, the Society for the Suppression of Vice was so sued a few years ago and suffered a judgment for \$2,500 against it, which was affirmed by the Court of Appeals. Of course, accrued costs and interest made the sum much larger, not to mention the legal fees and other expenses of the judgment debtor.

We must make the meshes of the legal net small enough to catch our fish or we might as well stop fishing. The laws against speeding in order to prevent reckless driving had to be so formed that multitudes habitually violated them with impunity. Indeed, traffic officers at times urge drivers to illegal speed. The ordinances against obstructing sidewalks are another illustration of the dozens of laws technically violated every minute but never enforced against the violators. Yet these laws are universally recognized as necessary to promote public safety and good order. As the Court of Appeals remarked of the obscenity statute,