REPORT

OF THE COMMITTEE

ON RURAL REFORM.
CONSTITUTION OF THE COMMITTEE.

A Committee was appointed by the Minister for Justice on 12th February, 1926:

"to consider and report whether it is necessary or advisable in the interest of public morality to extend the existing powers of the State to prohibit or restrict the sale and circulation of printed matter,"

and was constituted as follows:

ROBERT DONOVAN, ESQ., B.A., Professor of English Literature, University College, Dublin, Chairman.

WILLIAM EDWARD THRIFT, ESQ., M.A., T.D.

VERY REVEREND JAMES DEMPSEY, M.A., P.P.

REVEREND J. SINCLAIR STEVENSON, M.A., B.D.

THOMAS O'CONNELL, ESQ., T.D.

Mr. J. P. CLARE, of the Department of Justice, acted as Secretary to the Committee.
REPORT.

To The Minister for Justice,

The Committee held its first meeting on 17th February, 1926. A general invitation was issued through the press to persons interested in the subject of the inquiry, requesting them to submit for the consideration of the Committee a summary of the evidence and recommendations which they proposed to offer; and special invitations were sent to the following persons and organisations intimating the readiness of the Committee to receive evidence through any witnesses that they might authorise to represent them:

- Catholic Truth Society of Ireland,
- City of Dublin Young Men's Christian Association,
- Church of Ireland Young Men's Christian Association,
- Irish Vigilance Association,
- Dublin Christian Citizenship Council,
- Father Devane, S.J.,
- Catholic Writers' Guild,
- Boys' Brigade,
- Boy Scouts,
- Superior-General, Christian Brothers,
- Catholic Headmasters' Association,
- School Masters' Association,
- Secretary, Dublin Branch, Irish National Teachers' Organisation.

From only one of the organisations to which an invitation was sent was there received an expression of opinion that the existing laws were adequate to prevent the publication and circulation of evil literature, and witnesses from the following organisations were heard:

- Irish Christian Brothers,
- Irish Vigilance Association,
- Dublin Branch, Irish National Teachers' Organisation,
- Catholic Headmasters' Association,
- Catholic Writers' Guild,
- Dublin Christian Citizenship Council,
- Catholic Truth Society,
- Marian Sodalities of Ireland,
The following persons also attended and submitted evidence and recommendations:

Mr. Charles Eason of Messrs. Eason & Son, Ltd.
Mr. D. Bridgman of 'Irish Retail Newsagents', Booksellers' and Stationers' Association.
Mr. J. Booth, Assistant Secretary, Department of Posts and Telegraphs.
Mr. J. Redmond, Superintending Inspector of Customs and Excise.
Mr. Edward Coogan, Deputy Commissioner, Gárda Síochána.
Rev. R. S. Devane, S.J.

The questions raised by the different witnesses concerned:

(a) the ineffectiveness of the existing law arising from the narrow technical meaning attached by the courts to the terms "indecent and obscene";

(b) the wide circulation in Ireland of imported newspapers, the main contents of which are chiefly reports in detail of sensational crimes, social scandals, divorces and incidents of an immoral and degrading nature;

(c) the indiscriminate advertisement and circulation in Ireland of books and pamphlets advocating the use of unnatural means for the prevention of conception;

(d) the circulation of magazines published outside Ireland, some of a pseudo-medical character, in which a propaganda in favour of the use of contra-ceptives is carried on and advertisements of contra-ceptive appliances and remedies for sexual diseases and female disorders are published, and, in the guise of warning articles, descriptions of recondite vices appear from time to time;

(e) the publication of advertisements relating to sexual diseases and female disorders, advertisements that are in many cases employed for the obtaining of addresses of persons likely to become purchasers of contra-ceptive and other publications of a doubtful and immoral character, and of indecent photographs and postcards;

(f) the circulation of books, novels, and magazines, containing fiction of a demoralising kind;

(g) the sale of indecent pictures and photographs.
The Terms "Indecent" and "Obscene."

To the layman the law as it stands might seem to be adequate to prevent many of these abuses. The statutes dealing with the subject are:

Obscene Publications Act, 1857,
Indecent Advertisements Act, 1889,
Dublin Police Act, 1842 (Section 14),
Towns Improvement (Ireland) Act, 1854 (Sec. 72),
Post Office Act, 1908 (Sections 16, 17 & 63),
Customs Consolidation Act, 1876 (Section 42),

and they would appear to provide adequate powers to prevent the importation, publication, sale or distribution of any printed matter of an obviously or grossly obscene character.

It is a misdemeanour under the common law to sell publicly or expose for sale any obscene book, print or paper, &c. Under the Obscene Publications Act, 1857, a justice may, upon proof being given that any obscene book, paper, writing, &c., is kept in any house for the purpose of sale or distribution, issue a warrant to search such house, and if any such book or paper be found therein he may make an order for its destruction. Under the Dublin Police Act, 1842, Section 14, every person who in any thoroughfare or public place within the Metropolitan Police District sells or distributes or offers for sale or distribution any profane or obscene book, paper, print, &c., is guilty of an offence punishable on summary conviction, by a fine not exceeding forty shillings, and in urban areas to which the Towns Improvement (Ireland) Act, 1854, applies Section 72 of that Act makes a similar provision.

The Revenue Commissioners have power to prevent the importation of indecent or obscene prints, paintings, photographs, books, cards or any other indecent or obscene articles, and the Department of Posts and Telegraphs has power to stop all such articles from circulation through the post. It is a punishable offence to send or attempt to send by post any packet which encloses any indecent or obscene print, photograph, lithograph, book or card, or any indecent or obscene article, whether similar to the above or not; or any packet that has on the cover any words or designs of an indecent, obscene, or grossly offensive nature.

Notwithstanding the widespread complaints regarding the circulation of objectionable reading matter in Ireland previous to and since the establishment of the Saorstát the prosecutions under the existing law have been singularly few. Evidence has been forthcoming of only two cases, one of which was recent, in which prosecutions were brought, and in each case there was a conviction. But the latest case was one in which the person
prosecuted was charged with the possession for sale of photographs of a grossly obscene character. The explanation given by some of the witnesses of the general failure to prosecute in less obvious cases is that where they had submitted a publication that seemed to them indecent for a legal opinion they were advised that a prosecution would almost certainly fail owing to the narrow interpretation of the terms "indecent" and "obscene" in the established practice of the courts. This question was formerly considered by a Select Joint Committee of both Houses of the British Parliament in 1908. The difficulty arising from the narrow interpretation of the words by the Courts was explained to the Committee by Mr. William Byrne, C.B., afterwards Sir William Byrne, Under Secretary for Ireland. He said:

"The words 'indecent and immoral' have acquired almost a technical meaning in the practice of the Magistrates' Courts, although there have been very few or no decisions in the High Courts usefully laying down detailed principles. It is the law of England that it is an offence to publish anything the tendency of which is to deprave and corrupt those whose minds are open to such an immoral influence. The difficulty is to get that excellent principle translated into action in the courts. I think some benefit would be derived if instead of using merely the words 'indecent and obscene' or 'indecent or obscene' in every Act of Parliament dealing with the matter, words were inserted to make it quite clear that anything calculated to influence the passions or to suggest or invite to sexual immorality, or in any other way to corrupt and deprave, should be included within the word 'indecent.' I do not see how it can be done in any other way. It must be made clear that indecency includes what is corrupting, even if it does not go so far as indecency in the sense of the words 'indecent exposure.'"

The Committee in their report dealt with the point. They said:

"After the evidence which they have heard the Committee have come to the conclusion that the police can always obtain convictions in cases in which the matter complained of is grossly obscene, but it is often very difficult for them to prosecute in cases of a less obvious character. For although the definition of 'obscenity' which was laid down by Lord Chief Justice Cockburn, in the case of Reg. v. Hicklin, and which the Committee are informed has been accepted as accurate, is wide and far-reaching, it is apparently not always easy to make it apply in many cases where it would be desirable to take proceedings, but in which the matter complained of, although objectionable and indecent, cannot with any accuracy be described as
obscene. Magistrates who would themselves be willing to convict, if the cases were left in their hands, often do not feel themselves justified in sending them on for trial.”

The same difficulty has presented itself to the Australian Customs authorities in controlling the importation of undesirable publications, pictures and other articles into Australia. Under the more restricted interpretation of the terms “indecent and obscene” the authorities found that objectionable articles and publications were being passed through the ports. They have accordingly issued a Trade and Customs Order to their officers in which the difficulty has been dealt with. The Order reads:

“... It is quite possible that hitherto the word ‘indecent’ has been interpreted in the extreme sense as indicating something immoral.

The Standard Dictionary defines ‘indecent’ as:

(a) Offensive to common propriety, or adjudged to be subversive of morality; offending against modesty or delicacy; unfit to be seen or heard; immodest, gross, obscene;

(b) Contrary to what is fit and proper, unbecoming.’

The term ‘indecent’ is to be interpreted in the wider sense, and all postcards, pictures and the like, the obvious intention of which is to cater to the immodest as well as the indecent tastes of purchasers are to be detained, and report (accompanied by fair representative samples) is to be submitted to the Controller-General for decision.

Particular attention is to be directed to any such pictures or literature (intended for the young) which offend against modesty or common propriety.

In carrying these instructions into effect Collectors should be guided by what is usually considered unobjectionable in the household of the ordinary self-respecting citizen.”

Several of the witnesses to whom the terms of this Order were submitted expressed approval of its principles and aim, but a gentleman of legal training observed that its terms would require careful consideration, as they seemed too general for a statutory definition. But all the witnesses advocated a new definition of the terms so as to include not only what was grossly “indecent” and “obscene,” but what was generally demoralising and offensive in sexual matters to the moral ideas of the community generally.

A Difficulty.

It seems to the Committee that there must always be a difficulty in checking effectually by the application of the criminal law offences against decency and morality except in cases where
the standard by which the offence is tested is absolute and generally accepted and inmitigable by circumstances and conditions such as those arising from the obvious purpose of the persons charged with the offence, or the age of those exposed to the demoralising influence of the offence. Ideas of decency vary, not merely between country and country, but between individual and individual in the same country. Further, what would be demoralising in the hands or to the eyes of the young might be quite without such effect upon those of mature age. And while in the case of publications it is possible to distinguish between those which are written with an obviously obscene intent, and those into which the gross or indecent enters only incidentally as reflecting the reality of life, it cannot be always easy for a judge or magistrate in applying the criminal law with its penalties to draw a definite line. The tendency will always be in such cases to give the person indicted the benefit of the doubt, and hence there is likely to be always a gap between the standards that the moral sense of the community is endeavouring to uphold, and the standards maintained by the sanctions of the criminal law.

The Committee is of opinion that in the case of the Saorstát the effective remedy is to be sought in a scheme of prevention, rather than in the application of the criminal law. Perhaps the chief reasons for the infrequency of prosecution notwithstanding the widespread complaints regarding the publications in circulation are, first, that the publications complained of are mainly imported; and, second, that even these publications while in their general effect demoralising, are demoralising not so much because any part of their contents taken separately could be regarded as a breach of the law, but that the publications taken as a whole are obviously designed to cater for a morbid taste and curiosity, and to satisfy an unhealthy sensationalism. Witnesses were practically unanimous in their objections to a certain class of weekly newspapers, in which the sensational crimes, divorce cases and prosecutions for sex offences of the week preceding publication are collected in a mass and provide three-fourths of the matter for reading contained in the papers. Taken singly the publication of the several items of news in these papers might be defended on the ground that it was an item of public interest, and if published in the ordinary course of the day's news in a daily newspaper the defence might be accepted, though too often even in the daily newspaper the detailed manner in which divorce cases and sexual crimes or murders into which the sexual element enters are reported is highly objectionable. But it is clear that even where the charge of legal indecency or obscenity might not lie against these sordid items of the news of the day, the collection and compilation of such occurrences throughout the whole British Isles, and sometimes the English-speaking world, and their publication under flaring headlines that emphasise their abnormal and immoral character
results in the production of a publication that may be thoroughly
demoralising. Such agglomerations of the reports of sordid
cri mes and scandals present wholly distorted pictures of social
life, and, while tending to excite in morbid minds the impulse
to imitation, weaken one of the strongest restraints upon anti-
social action, the fear of provoking social condemnation and
ostracism. The publishers of papers of this character are
beyond the reach of the law of the Saorstát. No new definition
of the terms "indecent and obscene" would enable the authori-
ties to check what is an undoubted evil. Some improvement
may be expected to result from the Act recently passed by the
British Parliament "to regulate the publication of reports of
judicial proceedings in such manner as to prevent injury to
public morals." It prohibits the printing or publishing:

(a) "in relation to any judicial proceedings any indecent
matter, or indecent medical, surgical, or physiological
details, being matter or details the publication of which
would be calculated to injure public morals;" and
(b) "in relation to any judicial proceedings for dissolution of
marriage, for nullity of marriage, or for judicial separa-
tion, or for restitution of conjugal rights, any particulars
other than:

(1) the names, addresses and occupations of the parties
and witnesses;
(2) a concise statement of the charges, defences and
countercharges in support of which evidence has
been given;
(3) submissions on any point of law arising in the
course of the proceedings, and the decision of the
court thereon;
(4) the summing-up of the judge and the finding of the
jury (if any) and the judgment of the court, and
observations made by the judge in giving judg-
ment;"

and provides further that "nothing in this part of the
sub-section shall be held to permit the publication of
anything contrary to the provisions of paragraph (a)."

The mere curtailment of the detailed reports of such cases
will undoubtedly get rid of some of the most objectionable fea-
tures of the papers complained of. But it has been pointed out
that there is nothing in the Act that would check the mis-
directed enterprise of the newspapers themselves in supplement-
ing the reports by details obtained through their own inquiries.
Even now some of these papers endeavour to maintain the
unhealthy sensationalism produced by legal reports of crime and
social scandal, by means of interviews with notorious criminals
and, sometimes, with their victims, by biographies and auto-
biographies of these "celebrities," by pictures and photographs
of the scenes and actors of sordid tragedies. There is nothing in the measure referred to that can restrain these activities. The Committee is unanimously of opinion that there is need in the Saorstát of some means other than criminal prosecution, which in the case of practically all the publications of which complaint is made could not reach the publishers, who are beyond the reach of the laws of the Saorstát. It was urged by some of the witnesses that the vendors of such papers might be made amenable. But the members of the Committee think that to impose upon the vendors the duty of censoring all the publications for which there is a demand would be to impose upon them a duty which it would be impossible to discharge. The Irish Retail Newsagents', Booksellers' and Stationers' Association, through its delegated representatives, have declared their readiness to abstain from the sale of any publication which the authorities might warn them was of a demoralising character. But they submitted that they would be quite unable to examine and judge from the point of view of public morality, in the time available, the great variety of papers that they receive for sale. The Committee agrees with that view, and is of opinion that the censorship should be by State Authority.

A Censorship Committee.

Moreover, as even a State Authority could not effectively prevent the circulation of an ephemeral publication in the time between its arrival at the ports of the Saorstát and its distribution to the public, power should be taken to prohibit generally the circulation of future issues of any newspaper, magazine or other publication where it is found to be usually of a debasing or demoralising kind. The Committee thinks that the Minister for Justice should be entrusted with this power. To assist him in its exercise a permanent Committee should be established of nine to twelve persons representative of the religious, educational and literary or artistic opinion of the Irish public. The secretary should be a permanent official and a member of the staff of the Department of Justice. The duty of the Committee should be to advise the Minister in the case of any publications complained of, and the Minister's authority should be final. He should have power to prohibit, through advertisement in "Iris Oifigiúil" the circulation of any offending publication; and the circulation, sale and exposure for sale of such publication should thereupon become illegal. Any person found publishing, circulating, selling or exposing for sale the condemned publication should be made liable to an appropriate penalty. The prohibition in "Iris Oifigiúil" should be final evidence of the illegality of the publication; and the prosecutor should not be called upon to prove, or the justice to examine and decide, whether the publication was or was not "indecent and obscene" in the present restricted technical sense of these words. A list con-
taining the titles of the prohibited publications should be published from time to time by the Minister for Justice for the guidance of booksellers and newsvendors.

Canada, which has had a similar problem to deal with, by reason of the volume of undesirable publications coming from beyond its frontier, has solved the problem by prohibition and publication of a prohibited list. In South Africa the opinion of the Minister for Customs as to the admissibility of such imports is final. The Australian Commonwealth has also its list of prohibited external publications. A similar protection is needed by the Saorstát.

But the grounds of prohibition should be strictly limited to the case of publications undesirable from the point of view of public morality. The danger has been pointed out that a censorship might be exercised to restrict the circulation of papers because of objection to the political or economic opinions expressed or advocated by the papers. Such a danger should be obviated by a statutory limitation of the grounds on which the order of prohibition should be based.

The existence of a list of prohibited publications would render more effective the surveillance of the authorities in the Customs and Post Office. Though at present the law gives them power to prevent the importation and the circulation of indecent and obscene matter, their intervention is limited to cases coming to notice accidentally. The Customs authorities do not and cannot search all parcels and packets passing through the ports. They confine their searches to cases suspected of contraband contents and to experimental tests of a limited number of consignments. Only accident may disclose objects or publications to which Section 42 of the Customs Consolidation Act, 1876, applies; and even then the difficulty arises for them of deciding what is "indecent or obscene" within the meaning of the law. In the case of the Post Office the authorities possess no such right of search, and may not open for examination closed letters or packets passing through the post except in any special case where a specific warrant to do so is directed to the Minister for Posts and Telegraphs by the Minister for Justice. Except where the indecent character of the contents of a postal packet is exposed accidentally or through an incomplete enclosure, the Post Office can exercise no control. But the Customs control would be much more effective if the officials were instructed by a list of prohibitions and could deal with parcels of printed matter as they now deal with suspected contraband. Similarly in the case of newspapers and other printed matter in open covers passing through the post surveillance would become more effective.
The Propaganda Advocating the Prevention of Conception.

There is one class of publication as to the undesirability of the indiscriminate circulation of which all the witnesses were agreed, but which there is no law to restrain. As regards the widely disseminated and increasing propaganda in favour of the limitation of families by the unnatural prevention of conception, the law of the Saorstát in relation to this matter, which is the law as it existed in Great Britain and Ireland before the establishment of the Saorstát, is laxer than in the Dominions, or in the United States, or in many of the Continental European countries. The Federal Law of 1873 in the United States declares to be non-mailable matter "every written or printed card, letter, circular, book, pamphlet, advertisement or notice of any kind giving information, directly or indirectly . . . how or by what means conception may be prevented." It makes liable to a fine of not more than five thousand dollars or imprisonment for not more than five years, or both, "whoever knowingly deposits or causes to be deposited for mailing or delivery or knowingly takes or causes to be taken such matter from the mails." Twenty-four States make it a crime to publish or advertise contra-ceptive information. In Canada the publication or advertisement of instructions for the preventing of conception or the causing of abortion or miscarriage is a criminal offence incurring two years' imprisonment. Victoria, New Zealand and Tasmania by their Statutes bring the propaganda within the scope of the penal statutes relating to indecent and obscene publications. Under the British law there is no restriction of the propaganda. The division of opinion on the subject in Great Britain has prevented any restriction being imposed upon publications of the kind. That division has been growing of late years. Though the Lambeth Conference in 1920 issued "an earnest warning against the use of unnatural means by which conception is frustrated," the House of Lords recently by a majority passed a resolution in favour of giving instruction at the health centres to married women in the use of contra-ceptives. The Congress of the Labour Party by a small majority has since endorsed the opinion of the House of Lords. Journals of high standing open their columns to writers who, on economic grounds, advocate the practices as a remedy for an alleged excess of population. The propaganda is continuing under the patronage of distinguished persons, though the Joint Select Committee of the British Houses of Parliament in 1908 recommended that it should be made illegal to advertise drugs or articles designed for the prevention of conception. In consequence of this disagreement the British law remains laxer in regard to the propaganda in favour of the prevention of conception than the law in most countries. The attitude of the Lambeth Conference was in harmony with what seemed as
recently as 1910 to be the common opinion of Europe on the subject. At an International Conference in Paris in 1910 the delegates of all the countries represented unanimously agreed to call attention to the danger with which, by drying up their very source of life, this vile propaganda threatens all nations." But at the International Conference (held in Geneva in 1923) for the suppression of the Circulation of and Traffic in Obscene Publications, the British Delegate, Sir Archibald Bodkin, opposed the proposal of M. Hennequin, the Delegate of France, who proposed to recommend that the anti-conception propaganda and the procuring and use of remedies, substances, or objects for the prevention of conception should be made a punishable offence. "So far as Great Britain is concerned," Sir Archibald Bodkin said, "the subject of the use of contraceptives is a highly controversial subject; that is to say, public opinion is greatly divided on the question . . . . Some time ago there was a discussion upon this question, and it was found impossible to introduce any legislation dealing with the matter, with the hope of any such proposals being adopted."

From the evidence before us we have come to the conclusion that no similar division of opinion exists in the Saorstát, and that the sentiment expressed by the legislation of America, the Dominions, France and elsewhere preponderates here. Some of the witnesses, it is true, stated that the growing opinion in Great Britain in support of the propaganda is beginning to exist in the Saorstát, and the practices recommended to be followed by a limited number of persons. They further expressed the view that it would be an unwarranted interference with individual liberty to prohibit the practices. But even they recognised the dangers attendant on the propaganda as at present conducted. There are in fact two questions to be considered with only one of which the Committee is immediately concerned. Apart altogether from the grave moral question of the extent to which it may be desirable for the State to interfere with the sale of objects and drugs used for the prevention of conception, there remains the question of the dangers consequential upon a propaganda conducted indiscriminately, the books and pamphlets of which are uncontrolled in their contents and distribution, and are scattered abroad among the young and unmarried as well as among those married and of mature age. Witnesses who maintained a reserved attitude upon the question of the total prohibition acknowledged these dangers.

The effects of the propaganda are not limited by the professed economic and humanitarian aims of some of the writers. There is evidence that others deliberately extend their activities among the young and unmarried of both sexes; and that the practices are now advocated as a means of avoiding the consequences of sexual indulgence among the unmarried. In some of the publications this aspect of the practice is commended,
and books are beginning to appear in which the knowledge and the use of the means of preventing conception are specially commended as opening the way to sensual indulgence for those who desire to avoid the responsibilities of the married state. The sale of the literature of the propaganda is often in the hands of those who trade, not merely in contra-ceptive instruments and drugs, but in vulgar and suggestive photographs designed to inflame the passions. This development has had its parallel in the Netherlands, where there was no law against similar propaganda or against the sale of contra-ceptives. At the Geneva Conference in 1923 the Delegate of the Netherlands, while “respecting the liberty of the individual,” said that “the dangers of this propaganda were perceived to be very great, especially among the rural population, and I am convinced that in ten years’ time everyone will agree that such propaganda constitutes a punishable offence.”

There is no evidence forthcoming that any of the publications complained of have their origin in the Saorstát, but they are all on sale and the cheaper pamphlets of the propaganda are purchasable in the poorer districts of Dublin. The effects of an indiscriminate advertisement and circulation of the publications are not to be judged by the professed original intentions of some of the authors. Undoubtedly the propaganda has now assumed the character of a widespread dissemination of knowledge propagated to free vice of one of its most powerful restraints. The effect upon general morality must ultimately be very bad. The witnesses were practically all agreed that this propaganda is offensive to the preponderant moral sense of the community of the Saorstát. The one or two witnesses who expressed doubts as to the desirability of prohibiting absolutely the publication and circulation of the books and pamphlets commending the practice of contra-ception, agreed that the matter and advice contained in them should be left entirely to the medical profession to deal with. But the great majority of the witnesses expressed the strongest repugnance to the toleration of such publications.

Publications.

The Committee is unanimously of opinion that whatever may have been the motives of the originators of the propaganda its effect upon public morality is vicious in the extreme; and that the Saorstát should range itself with those countries where it has been made wholly illegal. Here also the authorities have to deal with publications of external origin, and the same machinery that would prevent the importation and circulation of undesirable magazines and newspapers would be effective in preventing the continued indiscriminate circulation of the books and pamphlets that advocate the unnatural prevention of conception.
Advertisements.

Connected with this subject is the publication of a certain class of advertisements. The legislation of various Australasian States prohibits the publication of "any advertisement, picture or printed or written matter relating to any complaint or infirmity arising from or relating to sexual intercourse, or to nervous debility or female irregularities, or which might reasonably be construed as relating to any illegal medical treatment or illegal operation." There is evidence that an indirect purpose of such advertisements is to obtain the addresses of persons who might be likely purchasers of pamphlets of an immoral character, vulgar or indecent photographs, contra-ceptive appliances, and even drugs to effect abortion. An innocent-looking advertisement of pills to prevent fat when replied to by a young girl led to the receipt of a parcel of immoral advertisements. The newspapers and magazines that publish the advertisements are very often, though not always, of the kind described in preceding paragraphs of this report. A communication received from a committee interested in the subject of our inquiry states that "they find that wherever there is indecent or suggestive literature there also will be found advertisements of articles and drugs to prevent conception and of the literature of the contra-ceptive propaganda." The secretary of that committee, a pharmaceutical chemist, states that the "female pills" often advertised in these journals "are only camouflaged abortefacients." The prohibition of the advertisements, it is suggested, would exclude the indecent or suggestive literature. This, however, does not hold universally. Some of the publications of which reasonable complaint is made publish none of the advertisements; while, on the other hand, advertisements of the literature of contra-ception are to be found in journals otherwise of the highest standing. The Committee, however, agrees that the Australasian laws set a precedent that it is desirable to follow.

Books.

The question regarding books is of a more difficult character than that relating to fugitive publications though, perhaps, not so important in this enquiry, owing to their more limited sale. Literature has established for itself a wide range in the choice of subject matter and the form of treatment. In the classics, ancient and modern, will be found precedent for the choice of subjects indecent and indecent, but scarcely anybody proposes to ban the classics. It is true one witness would ban Rabelais and Balzac, and is of opinion that Bowdler's edition of Shakespeare is to be preferred. On the other hand a clergyman keenly interested in the suppression of evil literature thinks that nobody would make himself so ridiculous as to ban Shakespeare. The difference of opinion between two witnesses having the same aims probably arose from the fact that one was applying the
test *virginibus puerisque*, while the other was thinking of what would be demoralising to persons of mature minds. But the State could not accept the former test for what is permissible without destroying a liberty that authors have always enjoyed. The censorship that should protect the young from literary influences pernicious to the immature is the censorship exercised in the home, the school, and through the spiritual director. But literature has never been restricted in any country to writings that meet the standard to be observed in works intended only for the youth and the maiden. And in fact unless all the agencies of moral culture are constantly and effectively employed for the maintenance of a healthy public taste amongst the young it is certain that no effort of the State can prevent the public taste from becoming corrupt. At the same time it must be recognised that many contemporary writers exercise a licence much less controlled by concern for the accepted moral standards than did their predecessors. In their choice of subject and in the mode of treatment there are far less reserve and reticence than were formerly observed, while the moral suggested is not seldom such as would undermine the accepted standards if it were to be generally accepted. Unless the treatment is " obscene " in the technical sense in which the law is now authoritatively interpreted, there is no limit to this licence. The legal opinion obtained by the London Public Morality Council from its legal adviser respecting a novel submitted to him with a view to prosecution will indicate the extent of the licence. Having quoted the definition of obscenity given by the Lord Chief Justice Cockburn:

"I think the test of obscenity is this, 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,"

which is the definition accepted by the Courts, Counsel said:

"That judgment was given in 1868, and ideas as to morality have changed a good deal since then. I have read the book . . . . and the only part of it which in my opinion could be regarded as within that test is as to the feminist right to the satisfaction of desire without marriage, but there is no obscenity of expression, and although this, and other parts of the book, may be regarded as immoral I do not think that an ordinary court would find them to be obscene, and I should say there would be little chance of getting a conviction. It could not now be contended that arguments as to birth control, or the advocacy of polygamy or polyandry, if conducted in decent language, are obscene and criminal, and if proceedings were taken under the Act the only result would be to give the book in question a gratuitous advertisement. My answers, therefore, to the questions put to me are all in the negative."
The law therefore apparently imposes little restriction on a writer's selection of matter. A charge of obscenity will depend to a great extent on the manner in which his subjects are dealt with, and it would be difficult to frame a law prohibiting books of an immoral tendency that would not impose restrictions on authors from which literature has ever been free. Nevertheless, it ought not to be difficult for a group of citizens selected for their culture, good sense and respect for morality to recognise books written with a corrupt intent, or aiming at notoriety and circulation by reason of their appeal to sensual or corrupt instincts and passions, and to discriminate such books from those having a purely literary aim in view but which, as part of their reflection of the world, admit representation of the vices or the passions that exist. Many of the books which are stated to be in circulation in Ireland and of which witnesses complain have no literary merit whatever. They are frankly pornographic and rely upon their pornographic matter for their appeal. A Censorship Committee that would deal with undesirable newspapers should be competent to restrain such obviously evil literature, and we recommend that one of its functions should be to advise the Minister with regard to such publications.

Recommendations.

The Committee recommend:

1. That the existing laws relating to indecent and obscene publications should be amended to give a wider interpretation to the terms "indecent and obscene" so as to make the law applicable to matter indecent in the wider sense of that word and to matter intended to excite sensual passion.

2. That legislative provision should be made on the lines of the measure recently passed by the British Parliament for the control of reports of judicial proceedings; but extended to apply the principles of that Act also to journalistic reports and writings other than reports of proceedings in the Courts.

3. That a Board or Committee consisting of from nine to twelve persons, representative of the religious, educational and literary or artistic interests of the Saorstát, should be constituted, with a permanent official as secretary, to advise the Minister for Justice as to any books, newspapers or magazines circulated in the Saorstát that, in the opinion of the Board, are demoralising and corrupting; that the Minister should have power to prohibit by notice in "Iris Oifigiúil" the circulation of such publications; that after such notice persons exposing for sale or circulating any prohibited book, newspaper or magazine should be punishable by fine or imprisonment or both; that the notice in "Iris Oifigiúil" should be sufficient evidence in the courts of sum-
mary jurisdiction as to the character of the publication, but that the ground of prohibition should be strictly limited and should not extend to questions of a political or economic kind.

4. That the sale and circulation, except to authorised persons, of books, magazines and pamphlets that advocate the unnatural prevention of conception should be made illegal, and be punishable by adequate penalties.

5. That the defect in the Obscene Publications Act, 1857, which requires that before the police can obtain a warrant under that Act to search premises where indecent publications, books, etc., are known or suspected to be, they have to prove that a sale has been made from the premises, should be amended and provision made that the police may be granted a warrant by a District Justice in any case where an officer of the Garda Síochána not below the rank of Superintendent applies for a warrant on the ground that he has reason to believe and does believe that the indecent articles are kept on the premises for the purposes of sale.

6. That following on the lines of Australasian legislation the Indecent Advertisements Act, 1889, should be amended (a) to increase the maximum penalties, (b) to include within the definition of "indecent advertisement" any document or picture or printed or written matter which relates or refers, or may be reasonably supposed to relate or refer, to any disease affecting the generative organs of either sex, or to any complaint or infirmity arising from or relating to sexual intercourse, or to the prevention or removal of irregularities in menstruation, or to drugs, medicines, appliances, treatment, or methods, for procuring abortion or miscarriage or preventing conception.

7. That supplemental to the power of prohibition recommended to be given to the Minister for Justice, the Customs Authorities should be empowered to stop the importation of all books, papers, magazines and other publications included in the prohibited list referred to in our recommendation No. 3 and, unless they are consigned to authorised persons, the books, magazines and pamphlets referred to in our recommendation No. 4; and that the Post Office Authorities should be empowered to refuse postal matter known to contain any such prohibited books, papers, magazines or pamphlets and to detain such matter coming to notice in the post.

8. That the new definition of "indecent and obscene" matter should be made to apply to indecent prints, photographs and postcards.

Finally the Committee desires to place on record its appreciation of the valuable assistance received from its Secretary, Mr. J. P. Clare, to whose industry in collecting and marshalling
the results of kindred inquiries in the past and the legislation of many countries, the Committee are indebted for a wide knowledge of world opinion and of legislative precedent in relation to the questions arising out of the terms of reference.

(Signed) ROBERT DONOVAN (Chairman).

WM. E. THRIFT.

JAMES J. DEMPSEY.

J. SINCLAIR STEVENSON.

TOMAS O CONAILL.

(Signed) J. P. CLARE (Secretary).

28th December, 1926.
REPORT
OF
THE COMMITTEE
ON
EVIL LITERATURE.

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REPORT

THE COMMITTEE

IMMEDIATE
CONSTITUTION OF THE COMMITTEE.

A Committee was appointed by the Minister for Justice on 12th February, 1926:

"to consider and report whether it is necessary or advisable in the interest of public morality to extend the existing powers of the State to prohibit or restrict the sale and circulation of printed matter,"

and was constituted as follows:—

ROBERT DONOVAN, Esq., B.A., Professor of English Literature, University College, Dublin, Chairman.

WILLIAM EDWARD THRIFT, Esq., M.A., T.D.

VERY REVEREND JAMES DEMPSEY, M.A., P.P.

REVEREND J. SINCLAIR STEVENSON, M.A., B.D.

THOMAS O'CONNELL, Esq., T.D.

Mr. J. P. CLARE, of the Department of Justice, acted as Secretary to the Committee.
REPORT.

To The Minister for Justice,

The Committee held its first meeting on 17th February, 1926. A general invitation was issued through the press to persons interested in the subject of the inquiry, requesting them to submit for the consideration of the Committee a summary of the evidence and recommendations which they proposed to offer; and special invitations were sent to the following persons and organisations intimating the readiness of the Committee to receive evidence through any witnesses that they might authorise to represent them:

- Catholic Truth Society of Ireland,
- City of Dublin Young Men's Christian Association,
- Church of Ireland Young Men's Christian Association,
- Irish Vigilance Association,
- Dublin Christian Citizenship Council,
- Father Devane, S.J.,
- Catholic Writers' Guild,
- Boys' Brigade,
- Boy Scouts,
- Superior-General, Christian Brothers,
- Catholic Headmasters' Association,
- School Masters' Association,
- Secretary, Dublin Branch, Irish National Teachers' Organisation.

From only one of the organisations to which an invitation was sent was there received an expression of opinion that the existing laws were adequate to prevent the publication and circulation of evil literature, and witnesses from the following organisations were heard:

- Irish Christian Brothers,
- Irish Vigilance Association,
- Dublin Branch, Irish National Teachers' Organisation,
- Catholic Headmasters' Association,
- Catholic Writers' Guild,
- Dublin Christian Citizenship Council,
- Catholic Truth Society,
- Marian Sodalities of Ireland.
The following persons also attended and submitted evidence and recommendations:

Mr. Charles Eason of Messrs. Eason & Son, Ltd.

Mr. D. Bridgman \Irish Retail Newsagents', Booksellers'

Mr. James J. Hart and Stationers' Association.

Mr. J. Booth, Assistant Secretary, Department of Posts and Telegraphs.

Mr. J. Redmond, Superintending Inspector of Customs and Excise.

Mr. Edward Coogan, Deputy Commissioner, Gárdha Síochána.

Rev. R. S. Devane, S.J.

The questions raised by the different witnesses concerned:

(a) the ineffectiveness of the existing law arising from the narrow technical meaning attached by the courts to the terms "indecent and obscene";

(b) the wide circulation in Ireland of imported newspapers, the main contents of which are chiefly reports in detail of sensational crimes, social scandals, divorces and incidents of an immoral and degrading nature;

(c) the indiscriminate advertisement and circulation in Ireland of books and pamphlets advocating the use of unnatural means for the prevention of conception;

(d) the circulation of magazines published outside Ireland, some of a pseudo-medical character, in which a propaganda in favour of the use of contraceptives is carried on and advertisements of contraceptive appliances and remedies for sexual diseases and female disorders are published, and, in the guise of warning articles, descriptions of recondite vices appear from time to time;

(e) the publication of advertisements relating to sexual diseases and female disorders, advertisements that are in many cases employed for the obtaining of addresses of persons likely to become purchasers of contraceptive and other publications of a doubtful and immoral character, and of indecent photographs and postcards;

(f) the circulation of books, novels, and magazines, containing fiction of a demoralising kind;

(g) the sale of indecent pictures and photographs.
The Terms "Indecent" and "Obscene."

To the layman the law as it stands might seem to be adequate to prevent many of these abuses. The statutes dealing with the subject are:

- Obscene Publications Act, 1857,
- Indecent Advertisements Act, 1889,
- Dublin Police Act, 1842 (Section 14),
- Towns Improvement (Ireland) Act, 1854 (Sec. 72),
- Post Office Act, 1908 (Sections 16, 17 & 63),
- Customs Consolidation Act, 1876 (Section 42),

and they would appear to provide adequate powers to prevent the importation, publication, sale or distribution of any printed matter of an obviously or grossly obscene character.

It is a misdemeanour under the common law to sell publicly or expose for sale any obscene book, print or paper, &c. Under the Obscene Publications Act, 1857, a justice may, upon proof being given that any obscene book, paper, writing, &c., is kept in any house for the purpose of sale or distribution, issue a warrant to search such house, and if any such book or paper be found therein he may make an order for its destruction. Under the Dublin Police Act, 1842, Section 14, every person who in any thoroughfare or public place within the Metropolitan Police District sells or distributes or offers for sale or distribution any profane or obscene book, paper, print, &c., is guilty of an offence punishable on summary conviction, by a fine not exceeding forty shillings, and in urban areas to which the Towns Improvement (Ireland) Act, 1854, applies Section 72 of that Act makes a similar provision.

The Revenue Commissioners have power to prevent the importation of indecent or obscene prints, paintings, photographs, books, cards or any other indecent or obscene articles, and the Department of Posts and Telegraphs has power to stop all such articles from circulation through the post. It is a punishable offence to send or attempt to send by post any packet which encloses any indecent or obscene print, photograph, lithograph, book or card, or any indecent or obscene article, whether similar to the above or not; or any packet that has on the cover any words or designs of an indecent, obscene, or grossly offensive nature.

Notwithstanding the widespread complaints regarding the circulation of objectionable reading matter in Ireland previous to and since the establishment of the Saorstát the prosecutions under the existing law have been singularly few. Evidence has been forthcoming of only two cases, one of which was recent, in which prosecutions were brought, and in each case there was a conviction. But the latest case was one in which the person...
prosecuted was charged with the possession for sale of photographs of a grossly obscene character. The explanation given by some of the witnesses of the general failure to prosecute in less obvious cases is that where they had submitted a publication that seemed to them indecent for a legal opinion they were advised that a prosecution would almost certainly fail owing to the narrow interpretation of the terms "indecent" and "obscene" in the established practice of the courts. This question was formerly considered by a Select Joint Committee of both Houses of the British Parliament in 1908. The difficulty arising from the narrow interpretation of the words by the Courts was explained to the Committee by Mr. William Byrne, C.B., afterwards Sir William Byrne, Under Secretary for Ireland. He said:

"The words 'indecent and immoral' have acquired almost a technical meaning in the practice of the Magistrates' Courts, although there have been very few or no decisions in the High Courts usefully laying down detailed principles. It is the law of England that it is an offence to publish anything the tendency of which is to deprave and corrupt those whose minds are open to such an immoral influence. The difficulty is to get that excellent principle translated into action in the courts. I think some benefit would be derived if instead of using merely the words 'indecent and obscene' or 'indecent or obscene' in every Act of Parliament dealing with the matter, words were inserted to make it quite clear that anything calculated to influence the passions or to suggest or invite to sexual immorality, or in any other way to corrupt and deprave, should be included within the word 'indecent.' I do not see how it can be done in any other way. It must be made clear that indecency includes what is corrupting, even if it does not go so far as indecency in the sense of the words 'indecent exposure.'"

The Committee in their report dealt with the point. They said:

"After the evidence which they have heard the Committee have come to the conclusion that the police can always obtain convictions in cases in which the matter complained of is grossly obscene, but it is often very difficult for them to prosecute in cases of a less obvious character. For although the definition of ' obscenity ' which was laid down by Lord Chief Justice Cockburn, in the case of Reg. v. Hicklin, and which the Committee are informed has been accepted as accurate, is wide and far-reaching, it is apparently not always easy to make it apply in many cases where it would be desirable to take proceedings, but in which the matter complained of, although objectionable and indecent, cannot with any accuracy be described as
obscene. Magistrates who would themselves be willing to convict, if the cases were left in their hands, often do not feel themselves justified in sending them on for trial."

The same difficulty has presented itself to the Australian Customs authorities in controlling the importation of undesirable publications, pictures and other articles into Australia. Under the more restricted interpretation of the terms "indecent and obscene", the authorities found that objectionable articles and publications were being passed through the ports. They have accordingly issued a Trade and Customs Order to their officers in which the difficulty has been dealt with. The Order reads:

"It is quite possible that hitherto the word 'indecent' has been interpreted in the extreme sense as indicating something immoral.

The Standard Dictionary defines 'indecent' as:

(a) Offensive to common propriety, or adjudged to be subversive of morality; offending against modesty or delicacy; unfit to be seen or heard; immodest, gross, obscene;

(b) Contrary to what is fit and proper, unbecoming.'

The term 'indecent' is to be interpreted in the wider sense, and all postcards, pictures and the like, the obvious intention of which is to cater to the immodest as well as the indecent tastes of purchasers are to be detained, and report (accompanied by fair representative samples) is to be submitted to the Controller-General for decision.

Particular attention is to be directed to any such pictures or literature (intended for the young) which offend against modesty or common propriety.

In carrying these instructions into effect Collectors should be guided by what is usually considered unobjectionable in the household of the ordinary self-respecting citizen."

Several of the witnesses to whom the terms of this Order were submitted expressed approval of its principles and aim, but a gentleman of legal training observed that its terms would require careful consideration, as they seemed too general for a statutory definition. But all the witnesses advocated a new definition of the terms so as to include not only what was grossly "indecent" and "obscene," but what was generally demoralising and offensive in sexual matters to the moral ideas of the community generally.

A Difficulty.

It seems to the Committee that there must always be a difficulty in checking effectively by the application of the criminal law offences against decency and morality except in cases where
the standard by which the offence is tested is absolute and generally accepted and immitigable by circumstances and conditions such as those arising from the obvious purpose of the persons charged with the offence, or the age of those exposed to the demoralising influence of the offence. Ideas of decency vary, not merely between country and country, but between individual and individual in the same country. Further, what would be demoralising in the hands or to the eyes of the young might be quite without such effect upon those of mature age. And while in the case of publications it is possible to distinguish between those which are written with an obviously obscene intent, and those into which the gross or indecent enters only incidentally as reflecting the reality of life, it cannot be always easy for a judge or magistrate in applying the criminal law with its penalties to draw a definite line. The tendency will always be in such cases to give the person indicted the benefit of the doubt, and hence there is likely to be always a gap between the standards that the moral sense of the community is endeavouring to uphold, and the standards maintained by the sanctions of the criminal law.

The Committee is of opinion that in the case of the Saorstát the effective remedy is to be sought in a scheme of prevention, rather than in the application of the criminal law. Perhaps the chief reasons for the infrequency of prosecution notwithstanding the widespread complaints regarding the publications in circulation are, first, that the publications complained of are mainly imported; and, second, that even these publications while in their general effect demoralising, are demoralising not so much because any part of their contents taken separately could be regarded as a breach of the law, but that the publications taken as a whole are obviously designed to cater for a morbid taste and curiosity, and to satisfy an unhealthy sensationalism. Witnesses were practically unanimous in their objections to a certain class of weekly newspapers, in which the sensational crimes, divorce cases and prosecutions for sex offences of the week preceding publication are collected in a mass and provide three-fourths of the matter for reading contained in the papers. Taken singly the publication of the several items of news in these papers might be defended on the ground that it was an item of public interest, and if published in the ordinary course of the day's news in a daily newspaper the defence might be accepted, though too often even in the daily newspaper the detailed manner in which divorce cases and sexual crimes or murders into which the sexual element enters are reported is highly objectionable. But it is clear that even where the charge of legal indecency or obscenity might not lie against these sordid items of the news of the day, the collection and compilation of such occurrences throughout the whole British Isles, and sometimes the English-speaking world, and their publication under flaring headlines that emphasise their abnormal and immoral character...
results in the production of a publication that may be thoroughly demoralising. Such agglomerations of the reports of sordid crimes and scandals present wholly distorted pictures of social life, and, while tending to excite in morbid minds the impulse to imitation, weaken one of the strongest restraints upon anti-social action, the fear of provoking social condemnation and ostracism. The publishers of papers of this character are beyond the reach of the law of the Saorstát. No new definition of the terms "indecent and obscene" would enable the authorities to check what is an undoubted evil. Some improvement may be expected to result from the Act recently passed by the British Parliament "to regulate the publication of reports of judicial proceedings in such manner as to prevent injury to public morals." It prohibits the printing or publishing:

(a) "in relation to any judicial proceedings any indecent matter, or indecent medical, surgical, or physiological details, being matter or details the publication of which would be calculated to injure public morals;" and

(b) "in relation to any judicial proceedings for dissolution of marriage, for nullity of marriage, or for judicial separation, or for restitution of conjugal rights, any particulars other than:

(1) the names, addresses and occupations of the parties and witnesses;

(2) a concise statement of the charges, defences and countercharges in support of which evidence has been given;

(3) submissions on any point of law arising in the course of the proceedings, and the decision of the court thereon;

(4) the summing-up of the judge and the finding of the jury (if any) and the judgment of the court, and observations made by the judge in giving judgment;"

and provides further that "nothing in this part of the sub-section shall be held to permit the publication of anything contrary to the provisions of paragraph (a)."

The mere curtailment of the detailed reports of such cases will undoubtedly get rid of some of the most objectionable features of the papers complained of. But it has been pointed out that there is nothing in the Act that would check the mis-directed enterprise of the newspapers themselves in supplementing the reports by details obtained through their own inquiries. Even now some of these papers endeavour to maintain the unhealthy sensationalism produced by legal reports of crime and social scandal, by means of interviews with notorious criminals and, sometimes, with their victims, by biographies and autobiographies of these "celebrities," by pictures and photographs
of the scenes and actors of sordid tragedies. There is nothing in the measure referred to that can restrain these activities. The Committee is unanimously of opinion that there is need in the Saorstát of some means other than criminal prosecution, which in the case of practically all the publications of which complaint is made could not reach the publishers, who are beyond the reach of the laws of the Saorstát. It was urged by some of the witnesses that the vendors of such papers might be made amenable. But the members of the Committee think that to impose upon the vendors the duty of censoring all the publications for which there is a demand would be to impose upon them a duty which it would be impossible to discharge. The Irish Retail Newsagents', Booksellers' and Stationers' Association, through its delegated representatives, have declared their readiness to abstain from the sale of any publication which the authorities might warn them was of a demoralising character. But they submitted that they would be quite unable to examine and judge from the point of view of public morality, in the time available, the great variety of papers that they receive for sale. The Committee agrees with that view, and is of opinion that the censorship should be by State Authority.

A Censorship Committee.

Moreover, as even a State Authority could not effectively prevent the circulation of an ephemeral publication in the time between its arrival at the ports of the Saorstát and its distribution to the public, power should be taken to prohibit generally the circulation of future issues of any newspaper, magazine or other publication where it is found to be usually of a debasing or demoralising kind. The Committee thinks that the Minister for Justice should be entrusted with this power. To assist him in its exercise a permanent Committee should be established of nine to twelve persons representative of the religious, educational and literary or artistic opinion of the Irish public. The secretary should be a permanent official and a member of the staff of the Department of Justice. The duty of the Committee should be to advise the Minister in the case of any publications complained of, and the Minister's authority should be final. He should have power to prohibit, through advertisement in “Iris Oifigiúil” the circulation of any offending publication; and the circulation, sale and exposure for sale of such publication should thereupon become illegal. Any person found publishing, circulating, selling or exposing for sale the condemned publication should be made liable to an appropriate penalty. The prohibition in “Iris Oifigiúil” should be final evidence of the illegality of the publication; and the prosecutor should not be called upon to prove, or the justice to examine and decide, whether the publication was or was not “indecent and obscene” in the present restricted technical sense of these words. A list con-
taining the titles of the prohibited publications should be published from time to time by the Minister for Justice for the guidance of booksellers and newsvendors.

Canada, which has had had a similar problem to deal with, by reason of the volume of undesirable publications coming from beyond its frontier, has solved the problem by prohibition and publication of a prohibited list. In South Africa the opinion of the Minister for Customs as to the admissibility of such imports is final. The Australian Commonwealth has also its list of prohibited external publications. A similar protection is needed by the Saorstát.

But the grounds of prohibition should be strictly limited to the case of publications undesirable from the point of view of public morality. The danger has been pointed out that a censorship might be exercised to restrict the circulation of papers because of objection to the political or economic opinions expressed or advocated by the papers. Such a danger should be obviated by a statutory limitation of the grounds on which the order of prohibition should be based.

The existence of a list of prohibited publications would render more effective the surveillance of the authorities in the Customs and Post Office. Though at present the law gives them power to prevent the importation and the circulation of indecent and obscene matter, their intervention is limited to cases coming to notice accidentally. The Customs authorities do not and cannot search all parcels and packets passing through the ports. They confine their searches to cases suspected of contraband contents and to experimental tests of a limited number of consignments. Only accident may disclose objects or publications to which Section 42 of the Customs Consolidation Act, 1876, applies; and even then the difficulty arises for them of deciding what is "indecent or obscene" within the meaning of the law. In the case of the Post Office the authorities possess no such right of search, and may not open for examination closed letters or packets passing through the post except in any special case where a specific warrant to do so is directed to the Minister for Posts and Telegraphs by the Minister for Justice. Except where the indecent character of the contents of a postal packet is exposed accidentally or through an incomplete enclosure, the Post Office can exercise no control. But the Customs control would be much more effective if the officials were instructed by a list of prohibitions and could deal with parcels of printed matter as they now deal with suspected contraband. Similarly in the case of newspapers and other printed matter in open covers passing through the post surveillance would become more effective.
The Propaganda Advocating the Prevention of Conception.

There is one class of publication as to the undesirability of the indiscriminate circulation of which all the witnesses were agreed, but which there is no law to restrain. As regards the widely disseminated and increasing propaganda in favour of the limitation of families by the unnatural prevention of conception, the law of the Saorstát in relation to this matter, which is the law as it existed in Great Britain and Ireland before the establishment of the Saorstát, is laxer than in the Dominions, or in the United States, or in many of the Continental European countries. The Federal Law of 1873 in the United States declares to be non-mailable matter "every written or printed card, letter, circular, book, pamphlet, advertisement or notice of any kind giving information, directly or indirectly as to how or by what means conception may be prevented." It makes liable to a fine of not more than five thousand dollars or imprisonment for not more than five years, or both, "whoever knowingly deposits or causes to be deposited for mailing or delivery or knowingly takes or causes to be taken such matter from the mails." Twenty-four States make it a crime to publish or advertise contra-ceptive information. In Canada the publication or advertisement of instructions for the preventing of conception or the causing of abortion or miscarriage is a criminal offence incurring two years' imprisonment. Victoria, New Zealand and Tasmania by their Statutes bring the propaganda within the scope of the penal statutes relating to indecent and obscene publications. Under the British law there is no restriction of the propaganda. The division of opinion on the subject in Great Britain has prevented any restriction being imposed upon publications of the kind. That division has been growing of late years. Though the Lambeth Conference in 1920 issued "an earnest warning against the use of unnatural means by which conception is frustrated," the House of Lords recently by a majority passed a resolution in favour of giving instruction at the health centres to married women in the use of contra-ceptives. The Congress of the Labour Party by a small majority has since endorsed the opinion of the House of Lords. Journals of high standing open their columns to writers who, on economic grounds, advocate the practices as a remedy for an alleged excess of population. The propaganda is continuing under the patronage of distinguished persons, though the Joint Select Committee of the British Houses of Parliament in 1908 recommended that it should be made illegal to advertise drugs or articles designed for the prevention of conception. In consequence of this disagreement the British law remains laxer in regard to the propaganda in favour of the prevention of conception than the law in most countries. The attitude of the Lambeth Conference was in harmony with what seemed as
recently as 1910 to be the common opinion of Europe on the subject. At an International Conference in Paris in 1910 the delegates of all the countries represented "unanimously agreed to call attention to the danger with which, by drying up their very source of life, this vile propaganda threatens all nations." But at the International Conference (held in Geneva in 1923) for the suppression of the Circulation of and Traffic in Obscene Publications, the British Delegate, Sir Archibald Bodkin, opposed the proposal of M. Hennequin, the Delegate of France, who proposed to recommend that the anti-conception propaganda and the procuring and use of remedies, substances, or objects for the prevention of conception should be made a punishable offence. "So far as Great Britain is concerned," Sir Archibald Bodkin said, "the subject of the use of contraceptives is a highly controversial subject; that is to say, public opinion is greatly divided on the question... Some time ago there was a discussion upon this question, and it was found impossible to introduce any legislation dealing with the matter, with the hope of any such proposals being adopted."

From the evidence before us we have come to the conclusion that no similar division of opinion exists in the Saorstát, and that the sentiment expressed by the legislation of America, the Dominions, France and elsewhere preponderates here. Some of the witnesses, it is true, stated that the growing opinion in Great Britain in support of the propaganda is beginning to exist in the Saorstát, and the practices recommended to be followed by a limited number of persons. They further expressed the view that it would be an unwarranted interference with individual liberty to prohibit the practices. But even they recognised the dangers attendant on the propaganda as at present conducted. There are in fact two questions to be considered with only one of which the Committee is immediately concerned. Apart altogether from the grave moral question of the extent to which it may be desirable for the State to interfere with the sale of objects and drugs used for the prevention of conception, there remains the question of the dangers consequential upon a propaganda conducted indiscriminately, the books and pamphlets of which are uncontrolled in their contents and distribution, and are scattered abroad among the young and unmarried as well as among those married and of mature age. Witnesses who maintained a reserved attitude upon the question of the total prohibition acknowledged these dangers.

The effects of the propaganda are not limited by the professed economic and humanitarian aims of some of the writers. There is evidence that others deliberately extend their activities among the young and unmarried of both sexes; and that the practices are now advocated as a means of avoiding the consequences of sexual indulgence among the unmarried. In some of the publications this aspect of the practice is commended,
and books are beginning to appear in which the knowledge and the use of the means of preventing conception are specially commended as opening the way to sensual indulgence for those who desire to avoid the responsibilities of the married state. The sale of the literature of the propaganda is often in the hands of those who trade, not merely in contra-ceptive instruments and drugs, but in vulgar and suggestive photographs designed to inflame the passions. This development has had its parallel in the Netherlands, where there was no law against similar propaganda or against the sale of contra-ceptives. At the Geneva Conference in 1923 the Delegate of the Netherlands, while "respecting the liberty of the individual," said that "the dangers of this propaganda were perceived to be very great, especially among the rural population, and I am convinced that in ten years' time everyone will agree that such propaganda constitutes a punishable offence."

There is no evidence forthcoming that any of the publications complained of have their origin in the Saorstát, but they are all on sale and the cheaper pamphlets of the propaganda are purchasable in the poorer districts of Dublin. The effects of an indiscriminate advertisement and circulation of the publications are not to be judged by the professed original intentions of some of the authors. Undoubtedly the propaganda has now assumed the character of a widespread dissemination of knowledge propagated to free vice of one of its most powerful restraints. The effect upon general morality must ultimately be very bad. The witnesses were practically all agreed that this propaganda is offensive to the preponderant moral sense of the community of the Saorstát. The one or two witnesses who expressed doubts as to the desirability of prohibiting absolutely the publication and circulation of the books and pamphlets commending the practice of contra-ception, agreed that the matter and advice contained in them should be left entirely to the medical profession to deal with. But the great majority of the witnesses expressed the strongest repugnance to the toleration of such publications.

Publications.

The Committee is unanimously of opinion that whatever may have been the motives of the originators of the propaganda its effect upon public morality is vicious in the extreme; and that the Saorstát should range itself with those countries where it has been made wholly illegal. Here also the authorities have to deal with publications of external origin, and the same machinery that would prevent the importation and circulation of undesirable magazines and newspapers would be effective in preventing the continued indiscriminate circulation of the books and pamphlets that advocate the unnatural prevention of conception.
Advertisements.

Connected with this subject is the publication of a certain class of advertisements. The legislation of various Australasian States prohibits the publication of "any advertisement, picture or printed or written matter relating to any complaint or infirmity arising from or relating to sexual intercourse, or to nervous debility or female irregularities, or which might reasonably be construed as relating to any illegal medical treatment or illegal operation." There is evidence that an indirect purpose of such advertisements is to obtain the addresses of persons who might be likely purchasers of pamphlets of an immoral character, vulgar or indecent photographs, contra-ceptive appliances, and even drugs to effect abortion. An innocent-looking advertisement of pills to prevent fat when replied to by a young girl led to the receipt of a parcel of immoral advertisements. The newspapers and magazines that publish the advertisements are very often, though not always, of the kind described in preceding paragraphs of this report. A communication received from a committee interested in the subject of our inquiry states that "they find that wherever there is indecent or suggestive literature there also will be found advertisements of articles and drugs to prevent conception and of the literature of the contra-ceptive propaganda." The secretary of that committee, a pharmaceutical chemist, states that the "female pills" often advertised in these journals "are only camouflaged abortifacients." The prohibition of the advertisements, it is suggested, would exclude the indecent or suggestive literature. This, however, does not hold universally. Some of the publications of which reasonable complaint is made publish none of the advertisements; while, on the other hand, advertisements of the literature of contra-ception are to be found in journals otherwise of the highest standing. The Committee, however, agrees that the Australasian laws set a precedent that it is desirable to follow.

Books.

The question regarding books is of a more difficult character than that relating to fugitive publications though, perhaps, not so important in this enquiry, owing to their more limited sale. Literature has established for itself a wide range in the choice of subject matter and the form of treatment. In the classics, ancient and modern, will be found precedent for the choice of subjects indelicate and indecent, but scarcely anybody proposes to ban the classics. It is true one witness would ban Rabelais and Balzac, and is of opinion that Bowdler's edition of Shakespeare is to be preferred. On the other hand a clergyman keenly interested in the suppression of evil literature thinks that nobody would make himself so ridiculous as to ban Shakespeare. The difference of opinion between two witnesses having the same aims probably arose from the fact that one was applying the
test *virginibus puérisque*, while the other was thinking of what would be demoralising to persons of mature minds. But the State could not accept the former test for what is permissible without destroying a liberty that authors have always enjoyed. The censorship that should protect the young from literary influences pernicious to the immature is the censorship exercised in the home, the school, and through the spiritual director. But literature has never been restricted in any country to writings that meet the standard to be observed in works intended only for the youth and the maiden. And in fact unless all the agencies of moral culture are constantly and effectively employed for the maintenance of a healthy public taste amongst the young it is certain that no effort of the State can prevent the public taste from becoming corrupt. At the same time it must be recognised that many contemporary writers exercise a licence much less controlled by concern for the accepted moral standards than did their predecessors. In their choice of subject and in the mode of treatment there are far less reserve and reticence than were formerly observed, while the moral suggested is not seldom such as would undermine the accepted standards if it were to be generally accepted. Unless the treatment is "obscene" in the technical sense in which the law is now authoritatively interpreted, there is no limit to this licence. The legal opinion obtained by the London Public Morality Council from its legal adviser respecting a novel submitted to him with a view to prosecution will indicate the extent of the licence. Having quoted the definition of obscenity given by the Lord Chief Justice Cockburn:

"I think the test of obscenity is this, 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,"

which is the definition accepted by the Courts, Counsel said:

"That judgment was given in 1868, and ideas as to morality have changed a good deal since then. I have read the book . . . . . and the only part of it which in my opinion could be regarded as within that test is as to the feminist right to the satisfaction of desire without marriage, but there is no obscenity of expression, and although this, and other parts of the book, may be regarded as immoral I do not think that an ordinary court would find them to be obscene, and I should say there would be little chance of getting a conviction. It could not now be contended that arguments as to birth control, or the advocacy of polygamy or polyandry, if conducted in decent language, are obscene and criminal, and if proceedings were taken under the Act the only result would be to give the book in question a gratuitous advertisement. My answers, therefore, to the questions put to me are all in the negative."
The law therefore apparently imposes little restriction on a writer's selection of matter. A charge of obscenity will depend to a great extent on the manner in which his subjects are dealt with, and it would be difficult to frame a law prohibiting books of an immoral tendency that would not impose restrictions on authors from which literature has ever been free. Nevertheless, it ought not to be difficult for a group of citizens selected for their culture, good sense and respect for morality to recognise books written with a corrupt intent, or aiming at notoriety and circulation by reason of their appeal to sensual or corrupt instincts and passions, and to discriminate such books from those having a purely literary aim in view but which, as part of their reflection of the world, admit representation of the vices or the passions that exist. Many of the books which are stated to be in circulation in Ireland and of which witnesses complain have no literary merit whatever. They are frankly pornographic and rely upon their pornographic matter for their appeal. A Censorship Committee that would deal with undesirable newspapers should be competent to restrain such obviously evil literature, and we recommend that one of its functions should be to advise the Minister with regard to such publications.

Recommendations.

The Committee recommend:

1. That the existing laws relating to indecent and obscene publications should be amended to give a wider interpretation to the terms "indecent and obscene" so as to make the law applicable to matter indecent in the wider sense of that word and to matter intended to excite sensual passion.

2. That legislative provision should be made on the lines of the measure recently passed by the British Parliament for the control of reports of judicial proceedings; but extended to apply the principles of that Act also to journalistic reports and writings other than reports of proceedings in the Courts.

3. That a Board or Committee consisting of from nine to twelve persons, representative of the religious, educational and literary or artistic interests of the Saorstát, should be constituted, with a permanent official as secretary, to advise the Minister for Justice as to any books, newspapers or magazines circulated in the Saorstát that, in the opinion of the Board, are demoralising and corrupting; that the Minister should have power to prohibit by notice in "Iris Oifigiúil" the circulation of such publications; that after such notice persons exposing for sale or circulating any prohibited book, newspaper or magazine should be punishable by fine or imprisonment or both; that the notice in "Iris Oifigiúil" should be sufficient evidence in the courts of sum-
mary jurisdiction as to the character of the publication, but that the ground of prohibition should be strictly limited and should not extend to questions of a political or economic kind.

4. That the sale and circulation, except to authorised persons, of books, magazines and pamphlets that advocate the unnatural prevention of conception should be made illegal, and be punishable by adequate penalties.

5. That the defect in the Obscene Publications Act, 1857, which requires that before the police can obtain a warrant under that Act to search premises where indecent publications, books, etc., are known or suspected to be, they have to prove that a sale has been made from the premises, should be amended and provision made that the police may be granted a warrant by a District Justice in any case where an officer of the Garda Síochána not below the rank of Superintendent applies for a warrant on the ground that he has reason to believe and does believe that the indecent articles are kept on the premises for the purposes of sale.

6. That following on the lines of Australasian legislation the Indecent Advertisements Act, 1889, should be amended (a) to increase the maximum penalties, (b) to include within the definition of "indecent advertisement" any document or picture or printed or written matter which relates or refers, or may be reasonably supposed to relate or refer, to any disease affecting the generative organs of either sex, or to any complaint or infirmity arising from or relating to sexual intercourse, or to the prevention or removal of irregularities in menstruation, or to drugs, medicines, appliances, treatment, or methods, for procuring abortion or miscarriage or preventing conception.

7. That supplemental to the power of prohibition recommended to be given to the Minister for Justice, the Customs Authorities should be empowered to stop the importation of all books, papers, magazines and other publications included in the prohibited list referred to in our recommendation No. 3 and, unless they are consigned to authorised persons, the books, magazines and pamphlets referred to in our recommendation No. 4; and that the Post Office Authorities should be empowered to refuse postal matter known to contain any such prohibited books, papers, magazines or pamphlets and to detain such matter coming to notice in the post.

8. That the new definition of "indecent and obscene" matter should be made to apply to indecent prints, photographs and postcards.

Finally the Committee desires to place on record its appreciation of the valuable assistance received from its Secretary, Mr. J. P. Clare, to whose industry in collecting and marshalling
the results of kindred inquiries in the past and the legislation of many countries, the Committee are indebted for a wide knowledge of world opinion and of legislative precedent in relation to the questions arising out of the terms of reference.

(Signed) ROBERT DONOVAN (Chairman),
WM. E. THRIFT,
JAMES J. DEMPSEY,
J. SINCLAIR STEVENSON,
TOMAS O CONAILL.

(Signed) J. P. CLARE (Secretary).

28th December, 1926.