THE LAW THAT NEVER WAS:
A Review of Theatrical Censorship in Britain

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Shortly before his death, E. Martin Browne offered *Medieval English Theatre* the papers in his possession relating to his professional involvement in medieval religious drama. These documents now form the E. Martin Browne Archive currently held at Lancaster University (catalogue online at http:/emb.cat-box.net), and comprise his personal notes and working scripts, books, press cuttings, photographs and other miscellanea concerned with his productions of the 1951, 1954, and 1957 York Festival Mystery Plays.

In the archive there are two letters of importance to theatrical history and to the demise of stage censorship in Britain, reminding us that within living memory (at least of the writer of this article), a suppressive system controlled theatres and censored the subject matter of the plays which might be performed in them. Exploration of the issues raised in these letters gives us an insight into the radical confusion of play censorship, blasphemy, and the theatre licensing laws, of the uncertain legal and lay understanding of them, and mistaken assumptions held at that time both by those affected and by those administering them. By examining what the laws and official orders actually said, this essay attempts to resolve the confusion and correct the misapprehensions, and explains how and why for four centuries dramatists and producers accepted that religious plays could not be presented on the stage. In retrospect, E. Martin Browne's brilliantly successful production of the York Cycle in 1951 might be seen as a test case in the controversial area of religious drama, preparing the ground for later productions, and as evidence to support the future abolition of theatrical censorship by Parliament in 1968.[1]

When York was chosen as one of the twenty provincial centres for the celebrations of the 1951 Festival of Britain, Martin Browne recognised an opportunity to revive the York Mystery Cycle for the first time in nearly 400 years, and with official approval. Grant-aid was being offered through the Arts Council to display or restore the special treasures of each chosen centre. If government financial backing encouraged the City Council to choose the Cycle as York's 'special treasure', in return the plays might

escape censorship rules because they had been selected as the community's particular contribution to the high-profile, nation-wide Festival.

To realise a long-standing ambition, Martin Browne turned for help to a close friend, Mary Glasgow, Secretary-General of the Arts Council of Great Britain. She put him in touch with a member of the Festival of Britain Directorate, Huw Wheldon, and at a meeting with him and Keith Thomson, the Artistic Director of the 1951 York Festival, Martin Browne proposed that York should present its play cycle.[2]

Apart from the linguistic and logistic difficulties of condensing the Middle English plays into a three-hour script, rehearsing a mainly amateur cast of a hundred and fifty, assembling a highly complicated set, and designing spectacular stage effects, the major stumbling-block was expected to be the Lord Chamberlain's ban on dramatic representations of the Deity. Throughout Martin Browne's long and illustrious career of producing and teaching religious drama, he accepted that it was 'the censor's stated policy ... that no play in which God or Jesus Christ made a visual appearance could be licensed',[3] and he believed, erroneously, that it would be unlawful to stage, produce, or act in the York plays.

Of course there had been performances of religious and/or scriptural drama from time to time in England, and increasingly often since the end of the nineteenth century,[4] made possible by exploiting the terminology and imprecise drafting of the Theatres Act 1843. Because they will be referred to continually, it is worth formulating the gist of the relevant sections of the Act (given more fully in Appendix A):

1. All places for the public performance of stage plays had to be licensed (s.2).
2. All plays written after 1843 or new parts added to pre-1843 plays, and intended to be acted for payment, had to be licensed (s.12).
3. The Lord Chamberlain had the sole power to license plays (s.12).
4. Notwithstanding the licensing powers of local authorities, he could forbid any play or part of a play anywhere in Great Britain, if he thought it was fitting for 'the Preservation of good Manners, Decorum, or the public Peace so to do' (s.14).
5. An actor was deemed to be acting for hire if money or other reward was charged directly or indirectly for admission to a theatre to see a play (s.16).

By these provisions, William Poel's 1901 production of *Everyman* could evade the Lord Chamberlain's jurisdiction over the play because it was

technically already licensed; it was not a 'new play' (post-1843) as defined in s.12 of the Act. In addition, under s.2 and s.16 of the Act, the place of playing was generally presumed to be exempt from licensing and the actors immune from the threat of fines, since *Everyman* was to be performed on non-commercial premises by amateur actors for a group of members only. Sixty years later, even this apparently definite exemption was to be successfully challenged in the courts in *R v English Stage Company & others* (1966). Until then, and certainly in 1949, it was still generally believed that neither the law nor the Lord Chamberlain could interfere with what consenting Christians got up to in private, and for free.

As a very public, partly professional, and wholly commercial enterprise, performances of the York Cycle in 1951 would be a much different affair from *Everyman* in 1901. Even so, although pre-1843 date of the plays made them legally exempt from the Theatres Act, those involved in the planned production did expect the plays to fall foul of the Lord Chamberlain's censorship powers, and mistakenly believed that presenting God on the stage would break the blasphemy laws.

Such was the state of play in 1949 when Martin Browne agreed to produce the York Cycle. He had obviously expressed his concern over the legal position to Keith Thomson, who in turn had consulted Huw Wheldon and the Lord Chamberlain for their views, and his letter to Martin Browne (Document A below: PLATES 4 and 5), outlines the supposed problems and possible solutions. The letter was forwarded to Mary Glasgow at the Arts Council and passed on to the London law firm of Bird & Bird for an opinion on the legality of staging the York Mystery Cycle and to performing God on the stage. Document B below (PLATES 6 and 7), the letter from Mr P.B. Williamson of Bird & Bird to Mary Glasgow, states the actual position in law, significantly different from what was widely held to be the case. The two letters record how and why the proposed production of the York Cycle eventually involved the Arts Council, the London legal firm of Bird & Bird, the Festival of Britain Directorate, the Archbishops of Canterbury and York, assorted Church dignitaries, and of course, the then Lord Chamberlain.

Both letters raise and address a variety of questions, but there is no sequential nexus between the points listed in Keith Thomson's letter (Document A) and the answers given by Mr Williamson of Bird & Bird (Document B), because the problems were approached from different understandings of the law. In the following discussion, points raised by correspondingly cross-referenced to the legal facts or opinions given in

PLATE 4: Keith Thomson's letter (Document A) recto

PLATE 5: Keith Thomson's letter (Document A) verso

Reproduced by kind permission of Mrs Mary Thomson.

PLATE 6: Mr P.B. Williamson's letter (Document B) recto

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This image has been removed for copyright reasons. You can see the original if you buy a paper copy of *Medieval English Theatre* 23: see http://www.lancs.ac.uk/users/meth/intro.html for instructions on how to order.

The extracts from Mr Williamson's letter quoted below have been typed out to reproduce as far as possible the format of the original typescript excerpts reproduced in the paper copy.

PLATE 7: Mr P.B. Williamson's letter (Document B) verso

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Document B as: B1; B2; B3 etc. The excerpts are reproduced exactly as they appear in the letters.

Blasphemy

Keith Thomson, in Document A, put the presumed blasphemous implications of staging the York Mystery Cycle first in importance (although as we shall see, blasphemy proved not to be the major issue), and gave a lesser role to the Lord Chamberlain's rules for licensing plays and theatres. Mr Williamson (Document B) had first to explain why, in fact, the blasphemy law was comparatively unimportant, and certainly secondary to the law on stage censorship as laid down in the Theatres Act 1843, before he could answer specific questions on the legality of presenting the plays.

Document A starts by quoting a letter written to Keith Thomson by Huw Wheldon, who had spoken to the Reverend Lawrence Harland (General Secretary of the Advisory Committee of Christian Churches for the Festival of Britain) for his advice on the appearance of God in a play. The Reverend Harland had told Huw Wheldon that in Dorothy L. Sayers' play *The Just Vengeance*, the figure of Our Lord did appear, and that the Reverend Harland himself had produced the play in Lichfield Cathedral in 1946. Based on this information, Huw Wheldon concluded that:

A 1.

> **It is clear, therefore, that if the figure of Our Lord appears in a play which is given in a church that it isn't affected one way or the other by the blasphemy laws. Whether or not the same is true for an open-air performance, I cannot, of course, tell.**

It is uncertain whether Huw Wheldon believed that it was for the Church to decide on what kind of behaviour or speech was blasphemous, or whether he thought that a performance given in a church was somehow sanctified, and would not be considered blasphemous. In either case he had drawn the wrong conclusion from the Reverend Harland's advice. Blasphemy was and still is a criminal offence; neither the Lord Chamberlain nor the Church authorities had the power to rule on what constituted an offence against the law of blasphemy. Also, at the time, legal opinion was that the essential element governing the production of *The Just Vengeance* was not whether the play and the appearance of Our Lord took place in church, but whether the performance was commercial and/or public. It was thought that a private, admission–free performance

would not fall within the Lord Chamberlain's authority over the licensing of plays and theatre, regardless of where it took place (as in the case of William Poel's 1901 production of *Everyman*).

At the beginning of his written opinion, Mr Williamson had differentiated between the two legal aspects of a performance of the York Cycle in order of their importance:

B 1a.

> There appear to me to be two aspects of the matter, first, the general control of theatres and the presentation of stage plays for hire and second the application of the law of blasphemy.

Prioritising and emphasising the law relating to the control of theatres and plays, Mr Williamson also commented on an early seventeenth-century statute, and its possible influence on later censorship of religious drama.

> So far as the first is concerned, the relevant statute is still the Theatres Act of 1843, but it may not be amiss to note that one of its predecessors, which it repealed, was an act of James I's reign (3 Jac.I c.21) the purpose of which was "for the preventing and avoiding of the great abuse of the holy name of God in stage plays, enterludes, May games, shews, and such like": which it achieved by providing that if "any person or persons do or shall in any stage play, enterlude, shew, May game or pageant, jestingly or profanely speak or use the holy name of God, or of Christ Jesus, or of the Holy Ghost, or of the Trinity, which are not to be spoken but with fear and reverence (he or they) shall forfeit for every such offence by him or them committed ten pounds".
>
> This enactment has, as I say, been repealed, but it gives some idea of the object of the legislature, and, as I see it, the Theatres Act of 1843 was intended to continue the good work of the earlier statutes, but in a more comprehensive and detailed way, by providing for the licensing of (a) theatres and (b) stage plays.

The 'good work' of the 1605 and other Acts seems to be a reference to the general control of theatrical performances, not explicitly to the prevention of 'the great abuse of the holy name of God in stage plays …', because the dramatic presentation of religious themes or persons was not mentioned at all in either the 1737 Theatres Act or the 1843 Theatres Act.[5]

By the mid-twentieth century, it had long been established in the courts as to what constituted blasphemy. Whatever the legal implications may have been in the early seventeenth-century of the words 'jestingly and profanely', from a modern, legal perspective they could hardly apply to a

1951 performance of serious religious drama. Mr Williamson drew the logical conclusion:

B1b.

> It does not seem to me at the moment that the blasphemy laws are immediately relevant.
>
> but while it might be said that any jesting or profane use of the holy name of God etc, in a play was in fact ridiculing the Deity, such cases as I have referred to seem to indicate that the law of blasphemy is directed rather against attacks on Christianity as a religion rather than mere ribald or profane speech.

Mr Williamson only referred to the appearance of Our Lord in *The Just Vengeance* towards the end of Document B, after he had explained the blasphemy laws[6] and the sections of the 1843 Theatres Act concerning the presentation of plays for hire:

B1c.

> It would be interesting, by the way, to learn more about the circumstances in which the Dorothy Sayers Play was put on at Litchfield and why no licence was required. Possibly the performance was given either in private or without charging any fee for admission.

Unlike William Poel's 1901 production of pre-1843 *Everyman*, it was assumed that Dorothy L. Sayers' post-1843 play *The Just Vengeance* would require the Lord Chamberlain's licence if it were to be presented commercially.

At the time the two letters were written, it seems that a decision had already been made to stage the York Cycle out-of-doors.[7] Huw Wheldon, still pursuing the idea that the figure of Our Lord appearing in a play given in a church would not be affected by the blasphemy laws, had said in his letter to Keith Thomson:

A 2.

> Whether or not the same is true for an open-air performance, I cannot of course tell.

Whereas Mr Williamson, having settled the blasphemy issue, was still considering the control over plays not presented for hire:

B 2.

> I have so far found nothing that would apply to the gratuitous presentation of a play or pageant in a Cathedral or out of doors.

('Gratuitous' in the sense of 'given for free').

The 1843 Theatres Act was no help in this instance. Mr Williamson may have consulted a 1909 Parliamentary Report on the censorship of stage plays, in which evidence was given about whether a pageant in the open air needed a licence, but the question of a gratuitous presentation did not arise is the report.[8]

Keith Thomson quoted more of Huw Wheldon's letter, and still focused on the blasphemy laws, passed on the Reverend Harland's advice about how best to avoid contravening them:

A 3.

> Harland in any event thinks that two things are reasonably definite. 1) If the Archbishop gave his blessing to the performance of the York plays, that it would be impossible in practice for a legal objection to be raised under blasphemy acts or any other acts. 2) The Archbishop probably would give his blessing if asked.

In the legal opinion sent to Mary Glasgow, Mr Williamson tactfully corrected the mistaken belief that the blasphemy laws were legally the concern of, or influenced by the Church. Instead they were solely the province of the criminal law.

B 3.

> With all respect to Mr. Wheldon and Mr. Harland, I very much doubt whether it is correct to say either that a performance in a church would be beyond the blasphemy laws or that the approval of an Archbishop or Bishop would of itself oust the jurisdiction of the Criminal Law if any public performance wherever held was in fact calculated to produce a breach of the peace.

Pointing out that a consecrated site did not automatically protect a performance against a charge of blasphemy, Mr Williamson disposed of the unfounded fear that simply presenting God on the stage was an offence under the law. However, he issued a necessary warning that under s.14 of the 1843 Theatres Act, the threat of a breach of the peace would allow the Lord Chamberlain to forbid the performance of any play. That issue, and the law on commercial playing places, would prove to be the real problems.

Playing Places and Play Licences

Finally in his letter to Martin Browne Keith Thomson mentioned what he evidently thought was an unimportant issue compared to the blasphemy law, and reproduced the reply he had already received from the Lord Chamberlain. This reply summarised sections 2 and 12 of the Theatres

Act 1843 (c.68): the legal rules relating to commercial playing places (i.e. 'all places of public resort for the public performance of plays'), and to the licensing of plays, as they would affect the proposed performances of the York Plays.

A 4

2. (a) "If a fee for admission is charged, the play performed requires to be licensed by the Lord Chamberlain, provided it is one subject to censorship.

(b) Only those plays written after the passing of the Theatres Act, that is after 1843, are subject to pre-production censorship.

3. The York Cycle of Miracle Plays, being of medieval date, could, therefore, be performed with in or out of doors, without the necessity of first securing a licence from the Lord Chamberlain.

Here was official confirmation that, contrary to theatrical tradition, it was, and always had been, legal to perform any play written before 1843 (and not subsequently altered) without a licence from the Lord Chamberlain. Mr Williamson confirmed that:

B 4.

only new plays (that is those written after the passing of the Act of 1843) or new additions to old plays, require a licence. It is accordingly correct to say that the York Cycle, being of medieval date, would not require a licence, at any rate as long as no modern interpolations were made in the original text;

The Lord Chamberlain's next statement:

A 5.

The fact that the figure of Christ is represented in them and speaks, does not affect the legal issue.

negated another firmly held conviction about religious drama, and Mr Williamson agreed that:

B 5.

the representation of the figure of Christ, whether silent or speaking, does not, of itself, seem to affect the position.

[of whether a play need be licensed or would be exempt].

At last an official admission that there was nothing illegal in representing God on the stage. Nevertheless there was a reminder of the kind of unlimited authority which the Lord Chamberlain had exercised in the past, and might do again:

A 6.

> 4. His Lordship would have power to interfere with such medieval miracle plays only if he were of the opinion that intervention was essential in the interests of "good manners, decorum or the public peace".

A statement duly replicated by Mr Williamson, that under s.14 of the Theatres Act 1843, quoting the phrase that echoes down through all the records of theatrical censorship:

B 6.

> By Section 14 of the Act, however, the Lord Chamberlain has power to intervene even in the case of plays which do not require his licence, if, in his opinion that is any threat to "good manners, decorum or the public peace".

The Lord Chamberlain thought that where the Archbishop of York's support might come into effect (see A3 and B3) would be if his open approval of the plays dissuaded lay members of the Church from publicly objecting to them. The possibility of demonstrations against the plays might be sufficient grounds for the Lord Chamberlain to invoke s.14 of the 1843 Theatres Act, and impose a ban on the performance of the plays to prevent a potential threat to public order, but:

A 7.

> Where a production is being organised with the support of the …. "highest ecclesiastical authorities", it would seem in the highest degree improbable that the Lord Chamberlain would ever have cause for action on these terms."

Mr Williamson had already acknowledged that it was extremely unlikely that the approval of an Archbishop or Bishop 'would be given if there was any risk of crossing the borderline' between what would be acceptable to practising Anglicans and what might cause a public demonstration. He added a necessary warning:

B 7.

> Even so, a fanatical Low Church Protestant is not likely to be easily convinced by the approval of a High Church Bishop, and

> unfortunately in these matters passions runs high, without much regard to what is reasonable in the eyes of an impartial layman.

Before he received the legal opinion, Keith Thomson had been reassured by the Reverend Harland's views passed on by Huw Wheldon, and by the information from the Lord Chamberlain's Office. He wrote to Martin Browne:

A 8.

> It looks to me very much as though we will be all right but I still consider it important to have this confirmed or, if legal difficulties arise, to take the necessary steps to get the backing of the two Archbishops and if necessary the Lord President as well.

Noting that 'Lord President' in A8 was presumably a mistake for 'Lord Chamberlain', Mr Williamson approved Keith Thomson's suggestion 'to obtain the maximum number of approvals beforehand', and recommended:

B 8.

> I would accordingly recommend that the prior approval of both the two Archbishops and the Lord Chamberlain should first be sought, accompanying the application, if possible, with the full text of the script, so that it would be abundantly clear exactly what it is proposed should be done.

Covering all bases, Mr Williamson pointed out that in fact the Lord Chamberlain's writ did not run in York for the licensing of theatres. Under s.5 of the 1843 Theatres Act, his authority only extended to 'the Cities of *London* and *Westminster*, and of the Boroughs of *Finsbury* and *Marylebone*, the *Tower Hamlets*, *Lambeth*, and *Southwark* ... *New Windsor* ... and *Brighthelmstone* [Brighton] ...' He could order any theatre licensed by him, or any patent theatre, to be closed on account of riot or misbehaviour, or on 'such occasions as to the Lord Chamberlain shall see fit' (1909 *Report* vi). Beyond the limits of his jurisdiction, powers to license 'Houses for the Performance of Stage Plays' had been given to County Councils who might delegate them to Justices of the Peace if they so wished, and the Justices of the Peace were charged with 'insuring Order and Decency in the theatres they licensed'.[9] They might 'order any theatre licensed by the local authority to be closed on account of riot, or breach of any regulations made by the authority' (1909 *Report* vi). In York, stage–play licences were 'granted by the Watch Committee, and Music and Dancing Licences by the Justices in Session'.[10] In spite of having no jurisdiction over provincial theatres, the Lord Chamberlain was prepared to ignore the legal restrictions placed on his actions by the 1843 Act. He

intervened personally to prohibit a performance of *The Mikado* taking place in the provinces, although the piece was already licensed by him (1909 *Report* 1560-1564). Sir William S. Gilbert, the librettist of *The Mikado*, was told that 'it might give offence to our Japanese allies' (3444), presumably because a Japanese Emperor was one of the less savoury characters. The licence was restored 'after a certain period' — a length of time identified by a Committee member as 'after the Lord Chamberlain found out how very much amused the Japanese people were by his action' (2201).

Common Law v Theatrical Myth

On the official and legal evidence presented in Documents A and B, it had been within the law, certainly since 1843, to perform any kind of medieval play, religious or secular, in its original form, and if the script also required the impersonation of God on the stage, then that too was within the law.

In 1949, the letter from the Lord Chamberlain's Office (A4 and A5 above) unequivocally stated that only plays written after 1843 needed a licence, and that the representation of Christ in the plays 'does not affect the legal issue'. Bernard Miles was told much the same in 1960 when he made a second attempt to stage a production of the *Wakefield Mystery Plays* at his Mermaid Theatre. For plays written before 1843, 'the Lord Chamberlain does not interfere and it is permissible for Christ to be personified on the stage'. For plays written since 1843, 'the Lord Chamberlain will not allow Christ or the Deity to be impersonated on the stage, [only] a bright light or a voice off stage is allowed'.[11] Even for post-1843 plays the Lord Chamberlain did not use the words 'unlawful' or 'against the law', but that he 'will not allow' an impersonation of Christ. Since it is clear that no statute law had ever been promulgated explicitly forbidding religious drama or the personification of God on the stage, the obvious question to ask is whether the twentieth-century producers of religious drama knew what the 1843 Theatres Act actually said, and if so, why did they accept that the Lord Chamberlain had the authority in law to ban medieval mystery plays?

It is probable that William Poel and Nugent Monck, and their contemporary theatrical producers, knew the legal conditions for licensing plays and theatres, but were inhibited from relying on the terms of the Act because they were aware of the problematic way they were applied. Sections of the 1843 Act (see page 35 above and Appendix A) were open to subjective interpretation, or so hedged about with qualifications and

exceptions (noted by Mr Williamson in B4, B6, B7, and B8 above), that the Lord Chamberlain's powers were too uncertain to be confidently and successfully tested: too uncertain in the sense that the Lord Chamberlain could interpret the phrase 'good manners, decorum, or the public peace' however he chose in order to forbid a play. The leniency or strictness of the interpretation might vary from time to time according to the personal prejudices of the current holder of the office. Again, no rules were laid down, and it was not known in advance exactly what might to be disapproved of or what kind of additions or alterations to an old play would convert it to a 'new' play so as to bring it within s.1.

Although it is clear that no statutory law had ever been promulgated which explicitly forbade religious drama or the personification of God on the stage, there is written evidence, from the nineteenth and twentieth centuries at least, that such a ban did exist, *de facto* if not *de jure*, described as 'a departmental rule of the Lord Chamberlain's office'.[12] It was implemented entirely at the discretion or whim of the appointed censor, even in 1960, when the Lord Chamberlain's Office could rule that adapting or modernising either the '*dialogue or dress*' of the proposed production of the *Wakefield Mystery Plays* in the Mermaid Theatre would convert them into 'new' (post-1843) plays, and bring them within the sphere of the 'ban on the impersonation of Christ or the Deity'.[13]

It may seem a broad interpretation of s.12 to declare that modernising the dialogue would be equivalent to introducing a 'new scene, prologue, epilogue, or other part' to an old play; broader still if the Lord Chamberlain expected the actors to wear 'original' medieval dress instead of modern versions of such costumes, in order to avoid submitting the play for licensing. But an appeal against the ruling, or an explanation of the reasons for it, was apparently not feasible even when censorship was supposed to be more relaxed. As late as 1967 it was stated that 'The Lord Chamberlain has always regarded "action" or "business and dress" as integral parts of the play and subject to his control'.[14] But who knows what might have been the original 'action' or 'business' in a fifteenth-century play without the benefit of explicit stage directions or copious director's notes? Invoking s.12 of the Act would always allow the Lord Chamberlain to forbid the acting or presenting of a pre–1843 play, subject only to his personal interpretation of the condition that 'every new Act, Scene, or other part added to any old Stage Play' converted it to a new play. In 1959, Bernard Miles, defeated by the unforeseen ambiguities and uncertainties of theatrical censorship, abandoned his first attempt to stage

the *Wakefield Mystery Plays* in his newly built Mermaid Theatre. Instead he staged a production of *Lock up Your Daughters*,[15] a musical version of Henry Fielding's 1730 play *Rape upon Rape*. There were no objections by the Lord Chamberlain's Office to 'modernising' this script; a bawdy play was as permissible in 1960 as it was in 1730, and officially preferable to religious drama at any time.

In 1949, those principally involved in organising the York Festival were obviously convinced that the ban on performing the York plays was derived from the blasphemy laws. But even the 1605 Act of 3 Jac. 1, c.21, uniquely the only statute designed to prevent the offence of blasphemy in any kind of theatrical entertainment, did not expressly forbid the personification of God on the stage, only the jesting or profane use of His name. When this Act was repealed by s.1 of the Theatres Act 1843, there was nothing in the new statute banning religious plays *per se*, nor any replacement of the 1605 sanction against 'the great abuse of the holy name of God in stage plays'.

Blasphemy, as Mr Williamson pointed out (B3), was paradoxically not a matter for the Church, nor did the Archbishop of York have the power to guarantee immunity from prosecution, because blasphemy had nothing to do with canon law. A seventeenth-century judicial decision laid down that 'Christianity was parcel of the common law' because Church and State were regarded as a single society, making Christianity part of the law of England (but only that particular brand taught by the Anglican Church).[16] The State, not the Church, made the laws and took action against blasphemous behaviour, and subsequent Acts of Parliament concerning religious faith and dogma were as much to do with discouraging dissension and civil disorder as with protecting the holy name of God.

Conversely, the complete integration of Church and State allowed the Act of 13 Car. 2 (1661), made against the criminal offence of treason, to punish words which seem to be solely the concern of the Church authorities. In *Le Roy* v *Field* (1661), the defendant was indicted and found guilty of treason because he had said in the pulpit: 'the government of the Church of England is popish, superstitious and will-worship, and who hath required those things in your hands?' *Will-worship* — 'worshipping according to one's own will or fancy', or, more to the point, worship 'imposed by human will without divine authority' (*OED* sv), implied that the Crown had ordered these things. Blaming the crown undermined his defence that he had been wrongly indicted; he had been speaking on spiritual and ecclesiastical matters, not treasonably against the civil

government. But the Attorney–General, the government's legal adviser, ruled that '*le* civil & ecclesiastical government *est compositum, & tout concenter in le Roy*' ('the civil and ecclesiastical government is joined and all concentrated in the King'), and speaking against the Church was the same under the Act as speaking treasonably against the King.[17]

The wording of the Blasphemy Act of 1698 (9 & 10 Will. 3, c.32), that 'Christian persons denying the Trinity or the Christian religion may prove destructive to the welfare of this kingdom', and the stronger terms of 60 Geo. 3 & 1 Geo. 4 (1819), spelled out clearly that because the monarch was the Head of both the State and the Church, criticism of the King or his government was considered to be equally as blasphemous as denying the Christian religion. The 1819 Act, intended 'for the more effectual Prevention and Punishment of blasphemous and seditious libels', gave precedence to libellous actions against the King over religious matters, explaining that libels were those:

> ... tending to bring into Hatred and Contempt the Person of His Majesty, His Heirs or Successors, or the Regent, or the Government and Constitution of the United Kingdom ... or either House of Parliament, or to excite His Majesty's Subjects to attempt the Alteration of any Matter in Church or State as by Law established, otherwise than by lawful Means ...

Is it reasonable to assume that the 'ban' on religious drama originated or developed from these two laws? The 1698 Act recognised that the Church was subsumed in the State; the 1819 Act spelled out the unity of Crown, Parliament, and Church; criticism of any of these institutions was said to be blasphemous. In that context, perhaps portraying the monarch, politicians, or religious matters on stage might be deemed equally libellous actions, and affect the licensing of any plays which included royal, political, or scriptural characters.

During the nineteenth-century, and after the 1843 Theatres Act, the legal concept of blasphemy had ceased to apply to criticism of the Crown or of Parliament. In 1883, judges' rulings resulted in the formulation that blasphemy was the publication of words (written or spoken) attacking the Christian religion or the Bible, so violent, scurrilous, or ribald as to pass the limits of decent controversy, and tending to lead to a breach of the peace. Discussing 'with gravity and decency questions of Christian doctrine or statements in the Scriptures and even questioning their truth' was not to be deemed blasphemous.[18] This interpretation of the law was in

force when Nugent Monck reported that two policemen, who arrested him before his production of the *Coventry Passion Play* in 1909, had 'also read him sections of the Blasphemy Laws'.[19] But at that point he had not committed any offence which could be construed as blasphemous under the 1883 rule. He had not 'published' any words calculated to outrage the feelings of members of the community, either in rehearsal or in advertisements for the forthcoming production. It is possible that Monck's arrest was the outcome of information laid by a common informer, on which the police had to act, but in fact no criminal prosecution followed the arrest. Nor could one have been carried out, because by the 1883 definition of blasphemy (still effective in 1949 when preparations for the 1951 York Festival were under way), serious and devout modern religious plays or medieval mystery and morality plays could hardly be accused of transgressing the common law.

It was not the law of blasphemy, but the 1843 Theatres Act, which was thought to put William Poel's *Everyman* in 1901 outwith the Lord Chancellor's authority, and Nugent Monck's proposed 1909 production within it. Although both were pre-1843 plays, the original production of *Everyman* was a non-commercial private performance, whereas Nugent Monck had advertised the sale of tickets in advance for a commercial performance in an unlicensed theatre, contravening s.16 and s.2 of the Act. But he had also edited and modernised the texts of the medieval plays, bringing them within the licensing requirement of s.12. With time Monck became wiser. In 1938 he presented the same *Coventry Passion Play* in Norwich, for a private society, with admission to members only, in the belief that this time there was no infringement of the 1843 Act, and that there could be no lawful grounds for intervention by the Lord Chamberlain.

The Origins and Purposes of Theatrical Censorship

The stringent control exercised over the English stage for four centuries was consequent on political and constitutional changes in the sixteenth-century. Although the objectives of censorship changed over time, the first moves towards a structured system were generated in the dangerously uncertain religious climate of the Reformation. When Henry VIII declared himself Head of the Church in England and Ireland, his assertion of supremacy went hand-in-hand with the suppression of those public entertainments which had verbal and visual reminders of Catholic observances and rituals, and which, if the entertainments took place in the

streets and open surroundings, would be ideal for encouraging spectators to make derogatory or provocative comments about the play content. Henry and his Protestant and Roman Catholic successors also took control of printing and publishing. It was essential for the Crown to maintain political stability while promoting the current religious dogma; there were sufficient historical examples of unruly demonstrations for, or against, the unpopular policies of a ruler which later escalated into full–scale rebellion.

Henry's 1534 Act of Supremacy denied the Pope's authority and proclaimed the King 'supreame head of the Churche of Englande and allso of Irelande'. Besides punishing opposition to his repudiation of the Pope's authority at even the highest level of government (as in the case of the execution of his ex-Lord Chancellor Sir Thomas More), Henry intended to prevent possible repercussions from public performances of religious drama. A letter reputedly sent by the King in the 1530s to the York Justices of the Peace, after an 'evil and seditious rising' at a performance of an interlude of St Thomas the Apostle, might be the first official warning of the danger that such plays could incite a breach of the peace.[20] Whether this letter was genuine or not, a move to ban plays with a perceived doctrinal bias in order to remove the opportunity for public dissension would be a logical step, duly taken by the 'Acte for thadvauncement of true Religion, and for thabbolisshment of the contrarie' (1542–1543). The conditions for dramatic performances were set out, and the King confirmed that it was conditionally lawful for all his subjects throughout the kingdom to:

> ... set foorthe songes plaies and enterludes ... for the rebuking and reproching of vices, and the setting foorthe of vertue; so allwaies the saide songes plaies or enterludes meddle not with interpretacions of Scripture, contrarye to the doctryne set foorth (or to be sett furthe) by the Kinges Majestie ... (s.7)

Judging by his constitutional pronouncements, Henry VIII seems to be have been not so much anti–Catholic and anti-drama as anti-Pope and anti-Reformation. The Act of 1542–1543 was comprehensively designed to prevent the spread of the Reformation in England through 'bokes wrytings sermons disputacions arguments balades rymes songes teachings and instruccions', as well as plays. Old and New Testament books in English 'being of the craftye false and untrue translacion of Tyndale' were banned (s.1), although those 'not being of Tindalles translacions' were exempt (s.4). Any 'printer boke bynder bokeseller' who printed or did 'utter sell give or deliver' any books or writings contrary to the doctrine set forth in 1540

would be imprisoned and fined (s.2). Anyone possessing writings in English against the 'blessed Sacrament of the Aultare', or supporting the 'dampnable opynions of the Secte of the Anabaptists' would be fined (s.3), and finally, no-one who was not authorised by the State or the Church could 'reade preache or teache openlie ... the Byble or any parte of Scripture in Englishe' (s.8).[21]

In general, sixteenth–century royal orders and proclamations, and statutes suppressing publication and dramatic performances of controversial material were politically motivated to prevent civil disorder, not aimed exclusively at religious plays. As a political statement, an act of 1547 (1 Edw. 6, c.12, s.6) followed Henry VIII's example, and ordered no-one to claim that the King:

> ... is not, or ought not to be, supreme head in earth of the Church in *England* and *Ireland* ... or that the bishop of *Rome* ... is or ought to be by the laws of God supreme head of the same churches.

Then the 1548 Act of Uniformity (2 & 3 Edw. 6, c.1) enforced the prescribed outward forms of devotion, and ruled that interludes, plays, songs, and rhymes must not contain anything 'depraving and despising' the Book of Common Prayer. Edward had repealed Henry VIII's more liberal 1543 Act concerning the drama; his proclamations of 1549 and 1551 hint that widespread unrest in the country required stricter measures.

Edward's 1549 proclamation placed a total ban, for a short period (6 August to 1 November 1549), on all and every kind of dramatic performance. On the grounds that many players played interludes containing 'matter tendyng to sedicion and contempnyng of sundery good order and lawes', he forbade any of his subjects to play openly or secretly, in English, any kind of 'Interlude, Plaie, Dialogue or other matter set furthe in forme of Plaie in any place publique or private'. The 1551 proclamation was intended 'for the reformacion of Vagabondes, tellers of newes, sowers of sedicious rumours, *players* and printers without licence'. Besides charging all his subjects to amend their manners, to 'live according to the profession of Christen men', and to observe his laws, statutes, and proclamations, which his officials were ordered to enforce, the King introduced new controls and punishments for 'Printers, Bokeselers, and Plaiers of Enterludes'. He commanded that:

> ... no printer or other person do print nor sel ... any matter in the thenglish to*ng*, nor ... sel or otherwise dispose abrode any mattre, printed in any forreyn dominion in thenglishe tongue, onles the

> same be firste allowed by his maiestie ... vpon payne of Imprisonment without bayle or mayne price ... Nor that any common players or other persons, vpon like paines, to play in thenglish tong, any maner Enterlude, play or mattre, without they have special licence to shew for the same in writing under his maiesties signe ... [22]

Queen Mary copied Edward's blanket control of the spoken and written word in her comprehensive proclamation of 1553. She was just as determined to put down Protestant proselytes as her predecessors had been to protect them. Like them, she also needed to prevent the 'great inconuenience and daungers' brought about in the past 'thorough the diuersitie of opinions, in questions of religion'. To 'maynteyne the tranquillitie of the realme', she forbade all her subjects 'to moue sedicions, or to styrre vnquietnes in her people by interpretyng the lawes of this realme by theyr braynes and fancies'. She instructed them to live together quietly and in Christian charity, 'leauynge those newe founde deuelishe terms of Papyste or Heretique'. For any disorder and disquiet, the Queen blamed:

> ... euell disposed persons, whiche take vpon them withoute sufficient auctoritie, to preache, and interprete the worde of God, after theyr owne brayne, in churches and other places, both publique and pryuate. *And also by playinge of Interludes*, and pryntynge false fonde bookes, ballettes, rymes and other lewde treatises in the englyshe tonge, concernynge doctryne in matters now in question and controuersye, touchynge the hyghe poyntes and misteries of christen religion, whiche ... are chiefly by the Prynters and Stacioners sette out to sale to her graces subiectes, of an euyll zeale, for lucre and couetous of vyle gayne.

In future, no-one could preach or read in churches or other public or private places (except in the 'scholes of the vniuersities'), or interpret, or teach the scriptures, or print any of the material named, or play any interlude, without 'her graces speciall licence in writynge for the same'. [23]

After Queen Elizabeth succeeded to the throne, Crown and Church were indissolubly linked together, with the monarch as Head of the established Church of England. Adherents of the Catholic faith were once again automatically guilty of sedition because they recognised the Pope's authority in England as superior to the Queen's. In a monarchical government, dissent from the State religion or refusal to accept

government policies both threatened the security of the Crown, and were equally seditious. But like her predecessors, the Queen wanted her subjects to live in charity, and 'to forbear all vain and contentious disputations in matters of Religion'. To this end, she tightened censorship controls, ordering that 'no books be printed unless first expressly licensed by Her Majesty' (or the Privy Council, or Archbishops of Canterbury or York, University Chancellors, or other Church officials). Pamphlets, plays and ballads were not to be printed unless licensed by three of Her Majesty's Commissioners. All her subjects and especially the Wardens' Company of Stationers were to be obedient to the order.[24]

For theatrical performances, the Church and the civic authorities joined together to bracket dramatic activities with public disorder, making no difference between the political or religious content of plays. The Queen's 1559 proclamation forbade interludes to be played openly or privately, unless notified in advance and licensed by the Mayor or other chief officers of a city or town. The officials were instructed not to permit plays:

> ... wherin matters of religion or of the governance of the estate of the commo*n* weale shalbe handled, or treated; beyng no meete matters to be wrytten or treated vpon, but by men of aucthoritie, learning, and wisedome, nor to be handled before any audience but of graue and discrete persons ...

With the objective of avoiding public disorder, the Queen ordered her officers who had the authority to do so 'to see common peas kepte ...' and to arrest and imprison those who offended until they had found and given assurance to be of good behaviour.[25]

In 1567, the Dean of York thought it expedient for keeping the peace that the Creed Play should not be played that year because it was 'Disagreinge from the senceritie of the gospell'.

> Ffor thoghe it was plausible 40 yeares ago, & wold now also of the ignorant sort be well liked: yet now in this happie time of the gospell, I knowe the learned will mislike it and how the state will beare with it I knowe not.[26]

In London, the ongoing concern of the Common Council was always to prevent public disorder, although not by specifically banning religious drama. In a foretaste of the Puritan hatred of the stage, the Council blamed all theatrical presentations and their 'unchaste, uncomelye, and

unshamefaste speeches and doynges' for the 'frayes and quarelles, eavell practizes of incontinencye' among the people who frequented them.[27] It seems that the royal proclamations and orders were only aimed at the common people; Court performances were exempt, and the learned were allowed to write and discuss controversial matters without restraint.

The Rôle of the Master of the Revels in Theatrical Censorship

Censorship of drama was institutionalised by royal prerogative during Queen Elizabeth's reign, instigating a system with the kind of inbuilt obstacles flowing from unspecified authority which would prevent reform in the far distant future. Granting a patent to her Master of Revels, Edmund Tilney, in 1581,[28] the Queen created the monarchic precedent of vesting ill-regulated and autocratic powers of censorship in a member of the royal household, appointed by, and responsible only to the Crown, not Parliament. Tilney 'himselfe or his sufficient deputie or deputies' was authorised to:

> ... warne commaunde and appointe in all places within this our Realme of England ... all and every plaier or plaiers, with their play–makers ... from tyme to tyme and at all tymes to appeare before him with all suche plaies Tragedies Comedies or showes as they shall haue in readines or meane to sett forth and them to presente and recite before our said Servant or his sufficient deputie ... to order and reforme auctorise and put downe as shalbe thought meete or vnmeete vnto himselfe or his said deputie ...

Tilney's power — the freedom to delete and amend the scripts as he thought fit; to appoint a deputy; and even to commit offenders to prison 'without baile or mainprise' — set the pattern for his successors to be given, or to claim, even into the twentieth century, the same unlimited and unregulated authority under the protection of the sovereign, and outside the regulation of parliamentary law, which was to last until 1968.

Acting on the Queen's prerogative, her body of advisers, the Privy Council, set up a Commission in 1589, to oversee theatrical censorship and 'to stryke oute or reforme suche partes and matteres as they shall fynd unfytt and undecent to be handled in playes, both for Divinitie and State'.[29] Edmund Tilney was appointed to the Commission, together with a representative of the Mayor of London and a nominee of the Archbishop of Canterbury, forming a tripartite alliance of the Crown, the Church, and the civic authorities to oversee theatrical censorship (still operating in 1949,

as the two letters from the E. Martin Brown Archive testify). To protect the integrated interests of Church and State, the Privy Council's instructions were designed to remove both religious controversy and political criticism from drama, the twin contentious causes of civil unrest. For the future, they were a template for the imprecise empowerment by the Theatres Act 1843, which enabled the Lord Chamberlain's Office to censor anything thought to be prejudicial to good manners, decorum, or the public peace.

Tilney's term of office established the tradition, idiosyncratically followed by his successors, of unpredictable and irrational censorship of plays to comply with the will of the monarch. Whether or not their actions reflected their genuine personal convictions, censors licensed plays only after they had removed all the language or subject matter likely to offend the present sovereign's sensibilities, regardless of how the excisions might affect the artistic effect, the dramatic action, or the sense of the dialogue. There was of course a financial incentive for the willing obedience of Tilney and his successors to the wishes of the monarch because of the substantial income they derived from the Crown appointment they had schemed or paid to inherit. Sir George Buck and Sir Henry Herbert, the two Masters of the Revels whose careers spanned that part of the seventeenth century when Puritanism was supreme, were not notably addicted to extravagant, but they conformed to the prevailing political ideology for their own advantage. They were after all court officials. Buck concentrated on deleting disrespectful allusions to royal vices and the misbehaviour of the gentry, but he also edited the play-texts to conform to his own pernickety literary tastes and standards. Sir Henry Herbert followed much the same pattern as his predecessor for the licensing of plays:

> ... the designe is, that all prophaneness, oathes, ribaldry, and matters reflecting vpon piety, and the present governement may bee obliterated, before there bee any action in a publique Theatre ... because such things presently fly all over the Kingdome, to the Debauching and poisoning the younger sorte of people, vnles corrected and regulated.

Called 'a dictator in the dramatic world' by J. Quincey Adams, Sir Henry had carte-blanche power over ballads, songs, and poems 'of that nature', and 'Billes for Shews, and stage playes'. 'All Poetts and Printers and other persons concerned' would need a licence to print, and he

claimed he was authorised to 'appoint and order' the press in case alterations were made to a work between submitting it to be approved and it being printed.[30]

Puritanism and the Representation of God

In the Puritan era, William Prynne's *Histriomastix*, written from the further reaches of rabid anti-Catholicism, was perhaps the earliest, and certainly the most thoroughly publicised source of a specific and absolute rejection of the personification of God on the stage. Prynne reviled the character of Pope Pius II (1458–1464) who had caused a play in honour of Corpus Christi to be acted, denouncing:

> What wickednesse, what blasphemie like to this, as thus to Deifie a Player, and to bring the very Throne, the Majesty of God himselfe, yea, the persons of the eternall Father, Sonne, and God of glory on the Stage.

Strenuously condemning those aspects of Catholicism he judged to be inherent in all religious drama, and recalling the tone of James I's 1605 Act, Prynne objected to:

> ... the sacred names of God the Father, Sonne, and holy Ghost (*which ought not to be mentioned but with reverence and holy feare*) being frequently recited on the Stage: (too prophane, too impious a place for such dreadfull holy names to come into) and that in a sacrilegious, blasphemous, ridiculous, impious sporting manner.

Prynne rejected all drama with over 800 pages of 'proof ' by arguments, concurring authorities and resolutions of the Primitive Church, synods and councils, Christian writers and Popish authors, heathen philosophers, historians, poets etc etc, that stage-plays were 'the very Pompes of the Divell'. His summation was that: 'the very penning, acting and beholding of Stage-playes, are infamous, unseemly, unlawfull unto Christians, since Playes themselves are so'.[31] Prynne's book presented at great length the Puritan rejection of all things theatrical, exemplified by the draconian measures taken by the Long Parliament. The Ordinances of 1647 suppressed stage plays, interludes, and all theatrical performances; committed to jail common players or actors; confiscated money paid by spectators; and ordered the demolition of the 'Stage-Galleries, Seates, and Boxes' in premises, to prevent their use for theatrical entertainments.

Whether or not *Histriomastix* truly represented popular opinion at the time, it was certainly not to the taste of Charles I and his Catholic Queen

Henrietta Maria. Proceedings were started in the Star Chamber against Prynne, not because of his anti–Catholicism, but because he had committed the more serious offence of being 'a mover of the people to discontent and sedition'.

> [H]ee hath compiled a booke, called *Histrio Mastix* ... therein he hath presumed to cast aspertion vppon the Kinge, the Queene, and the Common wealth, and indeavoured to infuse an opinnyon into the people that ytt is lawfull to laye violent handes vppon Princes that are either actors, favourers, or spectatores of stage playes.[32]

In his indictment, the Solicitor-General quoted Prynne's condemnation of historical kings and princes for their participation in the depravities he associated with plays and dancing, and claimed that the comments were intended to be taken to apply to King Charles. Consequently, the words used in Prynne's 'proof' that 'an emperour daunceinge, or acteinge a part in playes, or masques, even in his owne private pallace, is infamous, and his resorte to play howses more abhominable' were held to be seditious. Next, Sir John Finche charged Prynne 'with what concernes the Queenes person'. His declarations that dancing: 'even in Queenes themselves ... have been all wayes scandalous and of ill reporte', and that a 'Delight and skill in daunceinge, a badge of lewde lascivyous woemen & strumpettes' were said to be seditious references to Queen Henrietta Maria.[33] Found guilty, Prynne was eventually branded on both cheeks, his ears cut off, and he was imprisoned.[34]

In the long run, Prynne's attitude to the theatre, although not supported by law at the time though perhaps not by the population at large, might be the most enduring dramatic legacy of the Puritans, especially to the nineteenth- and twentieth-century censors. They remained adamant that God should not appear on the stage, that religious plays were Catholic propaganda, and that the commercial theatre was incompatible with serious topics and moral behaviour.

Censorship in the Restoration and Eighteenth Century

In the short term, a fairly predictable reaction from extreme Puritanism produced the licentiousness of Restoration drama. Thomas Killigrew, in his official capacity as Master of the Revels, himself contributed to the reputation of unrestrained indecency and frivolity attached to the stage, although in the anti-Catholic era of the 1678 Popish Plot, he still thought it expedient to maintain censorship of religious references. But after the

decadence of Charles II's court, and James II's conversion to Catholicism during his brief reign, William III's distrust of both the theatre and Catholicism resulted in stricter control 'to prevent the Profaneness of the Stage'. Charles Killigrew, who had succeeded to the office of Master of the Revels after his father's death, was instructed not to license any plays 'contrary to Religion and good manners'. He willingly carried out this Order by the Lord Chamberlain, dated 4th June 1697, and complained that actors 'in Contempt of the Said Order ... often neglect to leave out such prophane expressions, as he has struck out'. To enforce the Order, the Lord Chamberlain wrote to the companies of actors at Lincoln's Inn Fields and Drury Lane not to 'presume to act anything in any new play, which the Master of the Revells shall think to be left out, as you shall answer it att your utmost perill'.[35]

After the Restoration, the rôle of the Master of the Revels lost its importance and gradually became subsumed under the Lord Chamberlain, and in the Theatres Act of 1737 the office was abolished entirely. Power of censorship was thereafter granted directly to the Lord Chamberlain.

The Lords Chamberlain of the late seventeenth and early eighteenth centuries autonomously extended their control from the licensing of plays and playhouses to theatre management, by actions described in the early twentieth century as 'a flagrant abuse of power ... outrageous interference ... [and] calm assumption of omnipotence'.[36] When the first Act of Parliament on theatrical censorship was introduced in 1737,[37] there were hopes amongst some Members of Parliament that the Act would clarify, rationalise, and reform the Lord Chamberlain's authority over the stage. This did not coincide with the government's intentions. In a passionate speech to the House of Lords against the proposed Bill, Lord Chesterfield defended the continuance of the already existing laws for punishing blasphemous, seditious, or immoral words or representations on the stage, stating that dramatists and actors should only be restrained by 'the known Laws of their Country', not subject 'to the arbitrary Will and Pleasure of any one Man'. Such power given to the Lord Chamberlain was, he said, inconsistent with the Constitution, and was 'a higher, a more absolute Power than we trust even to the King himself'. The Lord Chamberlain would be 'chief Gauger, Supervisor, Commissioner, Judge and Jury', and without wishing to give offence to the present Lord Chamberlain, it was suggested that as His Majesty's officer, he would protect the interests of the Court first and foremost — a presumption justified by the actions of successive censors.

Lord Chesterfield's efforts failed to prevent the passage of what he called a Bill 'of a very extraordinary nature', and it was hurried through the House of Commons with unseemly haste by the Prime Minister, Sir Robert Walpole, later accused of 'greasing its progress in a disreputable manner'.[38] At the time, the Bill was aimed particularly at controlling political criticism by playwrights, but the loose drafting of the legislation preserved the autocracy of the Lord Chamberlain. He was given statutory undefined authority to license plays, and the topics to be censored were entirely at his discretion. Other provisions of the Act were intended to control wandering companies of players and the management of theatres, but the Act made no mention of a ban on performances of religious drama, or that any such ban should be implemented by the Lord Chamberlain.[39]

One administrative action following the legally recognised status of the Lord Chamberlain was destined to have far–reaching effects on future governmental attempts to control censors' actions. Perhaps remembering the provision in Edmund Tilney's patent allowing him to appoint a deputy, the Duke of Grafton, then Lord Chamberlain, appointed and swore in a Licenser of plays and theatres, as well as a deputy for the Licenser, although he was neither statutorily required nor permitted to do so by the 1737 Act. Unfortunately, he set an unauthorised and unlawful precedent for all later Lords Chamberlain to appoint Examiners of Plays and deputies who would be personally responsible only to their superiors. Censorship was removed another step further from the supervision of Parliament, and allowed the eighteenth–century Licenser and his successors to exercise their personal dislikes, biases, and peculiar foibles, free from interference.

An Official Inquiry into Statutory Control of the Theatre: The 1832 Report on Dramatic Literature

Almost a century after the 1737 Act, a number of theatre owners petitioned Parliament to repeal the uncertain and badly administered law affecting the theatre. In response, a Select Committee of 24 members of the House of Commons was appointed in 1832. Without any power to legislate or enforce their recommendations, the Committee was nevertheless asked to examine complaints about the considerable decline 'in the Literature of the Stage and the taste of the Public for Theatrical Performances'[40] because of the theatre licensing system. In 1660, a Royal Warrant granted Sir William Davenant and Thomas Killigrew power to form two companies of actors and provide two theatres. No other companies or theatres would be allowed in the City of London. This

authority gave the two men exclusive rights to present tragedies, comedies, plays, and operas — 'legitimate drama', and limited the number of London theatres to the two, which became the patent theatres of Drury Lane and Covent Garden. In evidence given to the Committee, it was claimed that dramatists suffered a loss of revenue by the restriction of their work to the two patent theatres. Owners of other places of entertainment were denied the financial rewards of staging 'legitimate drama' because of this monopoly (iii).

Originally, censorship of the subject matter of plays was not intended to be a direct issue for the 1832 Committee, but the slant of the questions suggests that some members had another agenda besides the inquiry into the licensing of theatres. In the event, witnesses' answers to these particular questions provide revealing information in the first official published record about the source, extent, and use of the Lord Chamberlain's powers.

John Payne Collier, who had temporarily acted as an Examiner of Plays, explained to the Committee the origins and purpose of theatrical censorship. He said of Edmund Tilney that 'he read the plays; he erased such parts as he objected to; or, if he objected to them entirely, he forbade them' (245). Sir John Astley, appointed Master of the Revels in 1622, 'dismissed companies and refused to allow them to act; he licensed plays or rejected them; and he committed performers [to prison], on his own responsibility' (248). Collier told the Committee that a Master of the Revels was appointed by patent under the Great Seal, and although not responsible to the Lord Chamberlain, sometimes took instructions from the Privy Council. Collier confirmed that 'the power dwelt in the Crown, and ... the Crown exercised it according to its will, either by the Lord Chamberlain or the Master of the Revels' (249–250).

There followed a surprising statement that 'the authority of the Lord Chamberlain is only recognised in the Act of 1737; it is not given to him by that statute'. Collier said that he had in his possession a document showing that in the opinion of the Attorney-General (the government's legal adviser), 'the Lord Chamberlain had exercised the power over plays and players since time immemorial' (260). The Lord Chamberlain's empowerment rests on shaky ground if the Attorney-General had to fall back on that old chestnut 'time immemorial' — in English law dating from before the reign of Richard I. There is no doubt that the office of Chamberlain (later Lord Chamberlain) had existed in the twelfth century,

but at that time his duties were historically unlikely to include the licensing of theatres and stage plays.

When asked how the control exercised by the Privy Council and the Master of the Revels over theatrical affairs devolved into the hands of the Lord Chamberlain, Collier seems to have contradicted himself about when the Lord Chamberlain's powers started. He said that the Master of the Revels was originally appointed to superintend performances in the King's palace, and

> ... the superintendence of the King's palace belonged to the Lord Chamberlain, from that circumstance and from its being considered that the Master of the Revels was a sort of household office, he and his department seem by degrees to have come under the jurisdiction of the Lord Chamberlain, beginning with the year 1624, when the Lord Chamberlain first exercised authority, and coming down to the year 1737 when the Lord Chamberlain's authority was completely established (264).

Earlier in the Committee's enquiries, the serving Comptroller of the department of the Lord Chamberlain, Thomas Baucott Mash, was asked his opinion of where the Lord Chamberlain derived his chief powers to grant licenses. He replied, inaccurately and in opposition to the view of the Attorney-General (above), that they were granted by the Act of Parliament 10 Geo. 2. Pressed repeatedly to expand or clarify his answer, Mr Mash unwisely, if truthfully, declared that 'the Lord Chamberlain must be considered to have, and is supposed to have, the King's authority in all cases' (32). Even worse in the eyes of a Parliamentary Committee, he said that 'The Lord Chamberlain is the servant of the King, and it is not to be supposed that he would go by that Act [the 1737 Act], and authorise any entertainment of the stage contrary to the King's wish' (49). The Committee wanted a cast-iron statement from Mr Mash on the source of the Lord Chamberlain's powers, and he gave as his opinion that 'they are the powers that he derives from the King' (52). The Committee had finally extracted confirmation that the Comptroller of the Lord Chamberlain's Office believed that the powers were not granted by Parliament but by the King; if so, the Lord Chamberlain's actions were indisputably outside the law of the land.

The solemn oath formulated in the reign of George IV (1820–1830) and taken by every Examiner of Plays when he was appointed, although not required nor authorised by law, made it unarguably clear where an

Examiner's allegiance lay. He was required to swear on the Bible that he would 'be obedient to the Lord Chamberlain of His Majesty's household', and to 'know nothing that may be in anywise hurtful or prejudicial to His Majesty's Royal Person, State, Crown or Dignity ... but hinder it in all your power, and reveal the same to the Lord Chamberlain or one of His Majesty's most honourable Privy Council'.[41] In the oath, and presumably particularly galling to the Select Committee, the King's wishes were considered paramount, disregarding parliamentary supremacy.

Turning to the financial rewards of the office, when the incumbent Examiner, Sir George Colman, was grilled about the fees paid to him by dramatists, he said that in 1829 he had licensed 111 plays, receiving an income of £232 2s above his actual salary. He could not state any law authorising him to take fees; it was, he said 'a prescriptive right' (62, 63). William Dunn, the Treasurer and Secretary to the Committee of the Drury Lane theatre, had already given evidence that the theatre's patent had been signed in 1792 by the Prince Regent, Lord Salisbury, and Mr Sheridan, and had cost the enormous sum of £20,000 (508–513). In addition, £100 yearly paid to the Lord Chamberlain, and reduced from an earlier donation of £300, was not for the theatre licence, but 'a gift of Mr Sheridan's ... a voluntary payment as the Chamberlain's office did not do anything for it' (534–9, 544, 545) — an interesting definition of 'voluntary' taking into consideration the Lord Chamberlain's powers over theatres and theatrical performances. The financial arrangements of the Lord Chamberlain's Office would be another contentious issue for Parliament. Control of censorship meant control of the revenue from the office; the Committee perhaps thought it was a form of taxation better paid into the government's coffers than to members of the King's household.

Colman's evidence to the 1832 Committee was a personal explanation of what kind of language and subjects he would censor and for what reasons, as well as demonstrating the double standards readily adopted by an examiner of plays in order to comply with contemporary *mores*. Colman's predecessor, John Larpent (1778–1824), was a rigid, even bigoted Methodist, whose appointment was called 'an astounding piece of administrative stupidity or worse'. 'Allowed to whittle a nation's drama uncontrolled',[42] he had cut from every play submitted to him any reference to religion or politics, the one no doubt on account of his own principles, the other following official guidelines.

Colman continued Larpent's strict moral approach to censorship, but certainly not from personal conviction. He was, in his own words, 'a

careless immoral author', who had used oaths in plays he had written before becoming Examiner which he now believed should have been scratched out (860). While freely admitting that he had no real power to license or prohibit anything, Colman recommended managers 'to omit all oaths, as well as all religious expressions and allusions' (848, 850). Harking back to Puritan principles, the stipulations of George III's patents, and in line with the strongly held views of popular non–conformist movements, Colman said that Scripture was too sacred for the stage, except in very solemn scenes, and 'to bring things so sacred upon the Stage becomes profane' (857). He refused to allow a dramatist to use the term 'angel' for a woman, because an angel was a character in Scripture and must not be profaned by association with the stage (852). Colman's sensibilities were a strange and personally uncharacteristic echo of the sanctions in James I's 1605 Act against 'jestingly or profanely' using the name of God. Apart from religious references in a play, any passage 'palpably exceptionable', which he defined as 'political and personal allusions, downright grossness and indecency, or anything that would be profane', should be excluded (851). All this from a self-confessed 'careless and immoral author'. In general, he would not wholly exclude 'incest, adultery, murder, patricide, &c' unless it was 'so shocking as to justify exclusion' (963, 964), although he took a strong position on political allusions. He would recommend to a theatre manager that anything inflammatory against the Tories while a Tory administration was in power, and conversely under the Whigs anything derogatory to the Whigs, had better not be allowed 'as you will have a row in your theatre' (967, 968). Once again the public order threat was invoked to prevent unwelcome political comment on the government of the day.

Evidence given by witnesses to the 1832 Committee proved that the claims made by playwrights, theatre managers, and Parliament over the years (and currently argued here), were correct. First, there was no statutory authority for the censorship of any specific dramatic topic, including religious subjects; the 'assumption of omnipotence' had been taken for granted, and acted upon from Edmund Tilney onwards. Secondly, it was confirmed that the responsibility and loyalty of the Lords Chamberlain and their Licensers or Examiners lay to the King personally not to Parliament, and the censorship of dramatic subjects depended on interpreting the wishes of a monarch rather than adhering to rules laid down in any Act of Parliament. Lastly, it revealed how lucrative the system was; fees provided an income which an Examiner of Plays,

protected by his position as an officer of the Crown, would perhaps strive to maintain by rigorous censorship.

The 1832 Committee had consciously strayed beyond its mandate in asking certain questions. The answers justified the advice given in the published conclusions to the Lord Chamberlain that the office of censor was held at his discretion; it would be his duty to remove the unauthorised Licenser, 'should there be any just ground for dissatisfaction as to the exercise of his functions'. It was also suggested that the system of fees paid to the censor be revised, with some abatement of the tariff for licences (iv-v). But without the power to change the law, the Committee could only make recommendations, and none of them were implemented by Parliament. When the Theatres Act 1843 was eventually passed, it included few of the suggestions of the 1832 Committee. The worst omission was that the grounds for censorship of plays were still left to the personal interpretation and judgement of the Lord Chamberlain's Office (see A6 and B6).

Instead of taking the Committee's advice, those who subsequently drafted the 1843 Act looked back to the wording of the royal patent issued by George III to Drury Lane Theatre in 1812 (reproduced in the 1832 *Report*, Appendix 3). The patent placed restrictions on the subject matter of the plays to be performed in that theatre, and may have been the standard form of words for all such patents. Identical to the Drury Lane patent was the one granted to the Liverpool Theatre (1832 *Report*, Appendix 6), banning representations 'as any way concerning the civil policy or the constitutions of Our Government' in order to support 'Our sacred authority, and the preservation of order and good government'. Any new, or old, or revived play, 'containing any passages or expressions offensive to piety and good manners' had to be corrected and purged by the theatre governors before being acted under the patent. In spite of the theatre patents being fundamentally commercial contracts rather than royal proclamations or law, the phrases used in them would reappear in the Theatres Act 1843, which gave the Lord Chamberlain authority to forbid any play in order to preserve 'good manners, decorum, or the public peace' (s.14).

Another condition attached to the royal patent of 1812 also has a familiar ring. The King thought fit to declare:

> ... that henceforth no representations be admitted on the stage by virtue or under cover of these Our letters patent, whereby the Christian religion in general, or the Church of England, may in any

> manner suffer reproach, strictly inhibiting every degree of abuse or misrepresentation of sacred characters, tending to expose religion itself, and to bring it into contempt, and that no such character be otherwise introduced or placed in any other light than such as may enhance the just esteem of those who truly answer the end of their sacred function.

Although not adopted into the 1843 Theatres Act, the standardised wording of a royal patent may have been regarded by later Lords Chamberlain as sufficient authority or precedent to refuse licences to any plays with any religious content, even though the patent was only against the 'abuse or misrepresentation of sacred characters'. Like the 1605 Act, it did not forbid the sincere and reverent treatment of religious material, nor would such treatment offend against the law of blasphemy.

Administrative Repercussions of the Theatres Act 1843

A fertile source of information about how the Lord Chamberlain's Office subsequently interpreted the provisions of the 1843 Act is a report by another Select Committee in 1909: the Joint Select Committee of the House of Lords and the House of Commons.[43] Comprising five members of the House of Lords (including a law lord) and five members of the House of Commons, the Committee's Orders of Reference were to inquire into how the 1843 Act operated with regard to stage plays and the licensing of theatres. With the usual incapacity to amend or introduce legislation, the Select Committee was set up following a deputation to the Prime Minister in November 1907, representing seventy-one dramatic authors objecting in general to the censorship of plays. A month earlier, they had pre-empted their deputation with a severely critical letter published in *The Times*, signed by probably all of the leading dramatists of the day, publicly announcing their dissatisfaction. They protested that the office of censor was instituted:

> ... for political, and not for the so-called moral ends for which it is perverted — an office autocratic in procedure, opposed to the spirit of the Constitution, contrary to common justice and to common sense.

These twentieth-century authors were well aware of the censorial manipulation of the 1843 Act for the interests of the Establishment. Collectively they strongly objected to the power of a single unnamed official 'who judges without a public hearing, and against whose dictum

there is no appeal ... neither responsible to Parliament nor amenable to law';[44] an accurate assessment of why the Lord Chamberlain's censorship decisions could not be challenged. Individually, dramatists of the status of George Bernard Shaw were prepared to go even further. He told the Committee that he wanted the censorship abolished, but wanted drama brought under the law, because he said 'there is no law. There is not even any usage' (in law, 'habitual practice'). He thought that the control of the theatre existing at that time was 'past the very pitch of despotism and of the most tyrannical and impossible character, and almost any lawful control that you could get would be less so' (884, 897, 891). Shaw had been a notable victim of dramatic censorship. In his Preface to *Mrs Warren's Profession* (1894), he blamed the Lord Chamberlain's 'despotic and even super-monarchical power' over the theatre for injuring his career prospects; he had stigmatised the play as 'immoral and otherwise improper for the stage', and prevented its performance. Shaw was against censorship in any form because plays on serious social issues were banned, while licentious fictions were hallmarked with the approval of the Royal Household: due, he believed, to 'the staggering absurdity in appointing an ordinary clerk [the current Examiner of Plays, G.A. Redford] to see that the leaders of European literature do not corrupt the morals of the nation'. However harsh the opinions expressed by Shaw, in his Preface and as a witness, they were validated by other evidence subsequently heard by the Committee, and published in the 1909 *Report*. Again, an official inquiry was damning to the censorship system, showing up its illegality, obscurity, lack of accountability, resistance to reform, and especially the personal prejudices (and sometimes breath-taking ignorance and incompetence) of the Examiner of Plays.

When the current incumbent, G.A. Redford, was asked in 1909 to state his suitability and qualifications for the office, he told the Committee that there was no form of examination before an Examiner was appointed, nor any enquiry 'as to scholastic or University career' (380–2). Redford himself had been a bank manager and had 'dabbled a little' in literary pursuits before his appointment (386). His experience consisted of acting as assistant and deputy to the previous Examiner of Plays, E.F.S. Pigott, for some years 'Quite unofficially, as a friend' (388).

On his appointment, Redford said he was informed verbally to follow the terms on the licence issued for a play rather than those in the statute (1649–1656). A play should not:

> ... contain anything immoral or otherwise improper for the Stage ... No profanity or impropriety of language ... No indecency of dress, dance, or gesture ... No offensive personalities or representations of living persons to be permitted on the Stage, nor anything calculated to produce riot or breach of the peace.[45]

Nothing, it should be noted, explicitly banning religious subject matter.

When pressed to say what had been 'established in the past by successive Lords Chamberlains' about what would not be allowed, he agreed that it was 'indecency or passages that may be offensive to religious sentiment', or offensive to foreign sovereigns (196–8), or it could be matters affecting any living character (201–204). By comparison, theatrical censorship in other European countries, whether the power was vested in a censor, a local government official, or the police, generally prohibited plays only in the interests of public order or decency. Religious content was not an issue, and some countries, for example Belgium, France, Holland, and Sweden, had no state censorship of plays (1909 *Report*, Appendix K).

Attempting to discover the general principles applied to the licensing of plays in England, a series of questions produced more revealing evidence about unchallengeable censorial decisions, and the impenetrable way in which the office was administered. The Examiner admitted that he allowed much more latitude to foreign, especially French, plays than to English plays, because 'it is a foreign language' (430–1). He could also read French plays quite easily (647); German plays were read by his wife who gave Mr Redford a running translation of them (642–3), and he would get a translation of Italian plays (647). For Sicilian plays (a mysterious phenomenon of Edwardian theatre), the Examiner relied on a précis furnished by the Sicilians and given to him by the theatre manager, without checking its validity or accuracy, although he would not rely on an author's or manager's précis for an English play (648–652).

In the case of Restoration plays, Redford confirmed that it was not necessary for them to be licensed because of their date (pre–1843), despite them being, 'the most indecent plays that have ever been written ... indecent in character and indecent in words' (244–6). But he did not allow the 'Ober Ammergau play' because religious feeling would have been outraged at seeing the Crucifixion enacted on a public stage in a theatre (253–254). This continued to be the most sensitive issue in religious drama, even for the production of the York Cycle in 1951 when the Archbishop of York expressed his concerns about representing the Passion on stage.[46]

Roughly 7000 plays were submitted to Mr Redford during his fourteen years of office, of which he finally rejected 30. He could not be pinned down as to their subject matter, whether scriptural, moral, or political, but he thought they were mainly moral (595–7, 613). George Bernard Shaw's opinion was that Mr Redford had 'licensed a great many plays which he would not have licensed if he had understood them' and that the Examiner was 'not sufficiently an expert in moral questions to know always when a play is moral and when it is immoral' (897). During Redford's term of office almost no scriptural plays were rejected, although this need not be significant; very few may have been actually submitted to him. Perhaps authors decided, as John Elliott thought, that there was not much hope for staging a drama when it was known that the principal characters could not even be mentioned by name.[47]

Defending his policy on religious drama, Redford said specifically that it had always been 'the custom and precedent', and 'the rule' that scriptural plays were ineligible for licence in Great Britain, but he could not say by whom or when the rule was made, nor had it ever been clearly laid down for the information of authors. The rule was in existence before his time and it was 'very generally understood in the theatrical profession' (526-32) — possibly through George III's patents? Asked to explain 'Under what authority or language in the licence or in the Act, would you deal with scriptural plays?' the Examiner evasively replied: 'I have dealt with them of course on precedent and custom' (590). With regard to theatre licences, he imagined that the conditions written on the back of the licence banning profanity, impropriety of language, and indecency of dress or gesture were covered by statute (which they were not). There was nothing about 'scriptural' there either, so Redford must have been taking it as an unwritten law (and therefore legally non-existent) that scriptural subjects were also banned (634–5).

In the face of the Examiner's misguided certainty that religious material was forbidden by law, the Committee asked him why he had recently abrogated or modified the rules in the case of the opera *Samson and Delilah*. He admitted to having 'stretched the line' for *Samson and Delilah* in spite of its scriptural characters, allowing it to be presented although it had been prohibited for a long time previously (536–541). A less than sympathetic questioner then took issue with Redford over two modern plays: *Bethlehem* and *Eager Heart*, which had both been submitted for licensing, admittedly eight or nine years apart. They were very similar in content and treatment, and both introduced on stage 'Our Lady, St. Joseph, and the

Holy Child'. The first play had been refused, the other accepted, and the Committee wanted to establish how the Examiner differentiated between them. Redford said that *Eager Heart* was a 'slight little thing ... an imitation of the miracle play', but apart from the formula that 'every case was judged on its merits', he offered no satisfactory explanation for allowing it. He claimed he could not remember that Our Lady, St Joseph and the Holy Child also appeared in *Eager Heart*, but if they did, it was 'perfectly inoffensive' — not that he thought *Bethlehem* was offensive of course. Closely questioned on how he judged the merits of a play, and the 'unwritten law' which informed his ruling on which plays might or might not be licensed, Redford blamed pressure of work for an imperfect memory about the content of the plays and the reasons why they had been banned or permitted (542–51).

During his evidence, Redford shed an intriguing light on the circumstances of William Poel's production of *Everyman* in 1909. Quite correctly he said it came under the same head as Shakespeare plays; because of its date it was not legally necessary for it to be licensed. Then, surprisingly, he said that even if *Everyman* had been a new play, he would have licensed it because he did not call it a scriptural play (222–31). Reminded that in *Everyman* the Deity was personified on the stage, he was asked what if that should happen in a modern play? When Redford replied that every case was judged on its merits, he was reminded of his statement that plays on scriptural subjects were not considered on their merits: if they contained scriptural characters they were banned. He confirmed that this was the rule, unless the parties wished to have the plays adjudicated on, 'then, of course, the thing would be read and an opinion given' (256–7). Unfortunately for the enlightenment of present-day researchers, this line of questioning was not pursued any further. Later, asked by a member of the Committee who had seen *Everyman* several times, whether the Examiner recollected that the play actually 'introduces on the stage God Almighty Himself who speaks,' Redford astonishingly replied 'I think not' (556). Nothing more was said on this matter: the Committee members were presumably and understandably struck dumb.

An even more confused picture of how censorship was administered, due to the bizarre anomalies in the licensing of places for public performances, had been revealed during the earlier evidence of Mr W.P. Byrne, Assistant Under-Secretary of State for the Home Department. He explained that music-halls were dealt with under the different restrictions and freedoms of the Disorderly Houses Act 1751,[48] not the Theatres Act

1843. They were not allowed to produce 'stage-plays', interpreted widely enough by the Courts to cover short dramatic performances commonly called 'sketches'. On the other hand, there was hardly a music-hall in the country that did not produce stage plays, and the law did not 'take any cognisance of the habitual breach of the law' (41–48). Since music-hall managers did not apply for play licences because they were not allowed to produce stage plays, there was no direct censorship of anything presented in a music-hall. Mr Redford's contribution to the legal muddle was: 'the music-halls ignore us, and we ignore them' (463). Did this mean that religious subject matter would be acceptable if it was presented on a music-hall stage?

When asked about the general principles governing the licensing of plays for the theatre, the Examiner's answers reinforced the serious doubts about the legality of censorship as a whole. One questioner suggested to him:

> ... you have no means of judging and you have not attempted to judge, whether the rules under which you act are merely precedents which might possibly be unauthorised and at any rate are not authorised by the Act of Parliament ... [Theatres Act 1843]

Redford agreed that he had no means of judging, and for all he knew it might be completely contrary to the statute to set the rules up at all (623-4). Again, as in the 1823 inquiry, careful questioning had elicited the censor's own verification that there was no law to empower him to forbid any particular subject matter in a play.

The Examiner continually displayed his peculiar interpretation of the purpose of theatrical censorship, his tenuous grasp of play content, and his selective recall of why he reached his decisions. He frequently quoted 'custom and precedent', spuriously claiming English common law and case law as authorities for his actions. But legally, a custom must be in general usage by the people; it must be certain, reasonable, agreed by both parties, and, to become law, its existence must be recognised by the legislature or the courts. Forced acceptance of an imposed practice does not convert it into a lawful 'custom'. Precedent arises from an adjudged case or cases or judicial decisions, cited as authority for a verdict in similar cases subsequently brought before the courts. Mr Byrne, the Assistant Under-Secretary of State, himself gave evidence that neither custom nor precedent had been established in the area of theatrical censorship. He said that no formal construction had ever been put on the words in the 1843 Act: 'for

the preservation of good manners, decorum, or of the public peace' in a court of law; no authoritative decision had ever been given; and the Act contained 'no general statement of policy' (10–16).

Legally then, neither custom nor precedent existed for a ban on religious drama because the Lord Chamberlain's censorship rules had never been tested in a court of law, and Redford's interpretation of 'custom and precedent', simply meant that censors followed the policy of the Lord Chamberlain's Office. Unwittingly, his evidence confirmed that the principles, rules, and unwritten law under which he said he operated were neither definitive nor immutable. Most important of all, they were not supported by common law, case law, or statute law; an enacted law cannot be interpreted, abrogated or modified by a private citizen according to his personal fancy, in the way that Examiners of Plays operated censorship 'rules'. Given the choice, George Bernard Shaw said that rather than dealing with Mr Redford, he would prefer the risk of an adverse decision by a bench of magistrates anywhere in the country. He would at least have 'a judge with some sense of the law and public responsibility', whereas the present censor was 'a gentleman who has no legal qualification, and who sometimes has not even the faculty of apprehending what law means' (942).

The evidence given by Mr Byrne, Colonel Sir Douglas Dawson (the Comptroller of the Lord Chamberlain's Office), and Mr Redford convinced the Committee of the inconsistency and arbitrary nature of theatrical censorship, as well as revealing the ambivalent base on which the Lord Chamberlain's forbidding power rested. In the area of religious drama, it must have become obvious to all those present at the enquiry, including the three official witnesses, that the indiscriminate bans on religious plays and on the representation of God on the stage were handed down, or initiated from within the office of the Lord Chamberlain. The bans, unjustified by law, were based only on the untested, and therefore unproven, premise that scriptural subjects portrayed in the theatre would inevitably result in a breach of the peace.

The conclusion of the 1832 Committee was replicated in the 1909 *Report* (388, 392, 393): that the office of Examiner itself had never been authorised by statute, and that the Examiner was '*ex officio* in the household of the King', responsible only to the Lord Chamberlain and beyond the control of Parliament. He was, in the words of the eminent dramatic critic William Archer:

> … a magistrate whose decisions on points of law cannot be revised because he is not administering any law; he is administering practically his personal prejudice and the vague traditions of his office … we have here a whole class of citizens and artists [playwrights and actors] who are practically placed outside the law, outside any written law of the land (657).

Because there were no statutory powers to delegate the duties of censor to an Examiner or a deputy, all Examiners were acting unlawfully when they licensed or rejected plays for whatever reason without referring them to the Lord Chamberlain for his approval. Certainly Redford's decisions, when he was unappointed and simply deputising for Mr Pigott 'as a friend', were outside the law.

Some of the Committee's findings published in the Report section of the enquiry were to be expected; some were surprising and/or contradictory. In spite of all the evidence they had heard, the Committee recommended that the office of Examiner of Plays should be continued with closer supervision and with more transparent decision-making (xii). The 'departmental rule' banning plays containing scriptural characters should be abandoned, but, in words still open to subjective interpretation, it was agreed that plays likely to 'do violence to the sentiment of reverence' ought not to be licensed. It would remain the Lord Chamberlain's decision to ban any play submitted to him which he considered to be indecent, to contain offensive personalities, to represent living persons 'in an invidious manner', to conduce to crime or vice, to offend foreign powers, or calculated to cause a breach of the peace (xi).

Prepared to maintain some distance between the commercial stage and religion, the Committee decided that those plays 'in which Persons held to be divine are represented' should not be licensed for performance in ordinary theatres (xiii). While this statement may have encouraged the Lord Chamberlain's Office to continue the ban on representations of God on the stage, the recommendation never became law, so the ban was still not backed by law. Interestingly, the Committee recognised the power of performance over the written word. Although plays containing words spoken by God could be printed and published, the spirit of the sixteenth century still survived when it was decided that the same words, and other ideas or situations presented on the stage through the human personality of actors, would combine with the emotions of an audience to have powerful, deleterious, and cumulative effects. On those grounds, the 1909 *Report* concluded 'that the law which prevents or punishes indecency,

blasphemy, and libel in printed publications would not be adequate for the control of the drama',[49] and that 'theatrical performances should be regulated by special laws' (xxvi). With these conclusions, the Committee appeared to be in favour of stricter stage censorship backed by statute law — perhaps a ploy to introduce legislation to remove the Lord Chamberlain's licensing powers, without appearing to criticise his past actions.

The 1909 Committee had the most difficulty over witnesses' requests for some method of appeal against a ban or refusal of a play licence by the Lord Chamberlain. According to the Speaker of the House of Commons, the Lord Chamberlain was accountable only to the House of Lords because he belonged to the same 'class of great officials of State' as Judges, the Lord Chancellor, or the Speaker, whose conduct could only be reviewed after due notice and by a special motion in the House of Commons. The Lord Chamberlain had 'no idea of appearing' before the Select Committee (1572), and could not even be asked questions in Parliament because, if his conduct could not be reviewed, then logically there was 'no propriety in asking questions with regard to his conduct or his administration' (4801–4802). Under the circumstances, the Committee could do nothing except recommend that the Lord Chamberlain should remain the Licenser of Plays, and hope in vain that the 'administration of the functions entrusted to him by statute' should be open to review by the House of Commons (xi). As before, the Committee had no power to compel changes in the law, and no legislation was actually introduced or enacted to give effect to any of the criticisms made of the current law, or to any of the proposals to amend it.

A review of theatrical censorship had already been attempted in three inquiries since the passing of the 1843 Theatres Act and prior to the 1909 *Report*. They were principally concerned with the licensing of buildings and of plays, although the 1892 Committee had also looked at the effects of censorship on British drama (665–7), and all three inquiries found in favour of retaining the censorship system. The members of the 1909 Committee were not so convinced. They noted that almost all the theatre managers asked for retention of pre-production censorship of plays for their own certainty and protection. On the other hand, the dramatists of the day, again almost without exception, and supported by other men of letters and even the Bishop of Southwark to some extent, asked for either the abolition of censorship, or a system for appealing against adverse decisions (vii).

When the nominee of the Archbishop of Canterbury, the Bishop of Southwark, spoke on the subject of religious drama, he would presumably be the official voice of the Church of England. In a disquisitional answer to the 1909 Committee on what subjects should be permitted on the stage, the Bishop considered it irreverent to bring 'anything like very sacred matter into the general context of a theatre', but it was the environment at fault, not the treatment of the subject. Words, acts and appearances attributed to 'the Central Figure of the New Testament ... and persons like the Apostles St John or St Paul', and having these figures 'coming upon the stage and making fancy speeches in their character' would be 'felt as irreverent by great numbers of the community'. Although he thought the 'Ammergau Passion Play' most beautiful in its original setting, it was justifiably banned from an ordinary theatre, and in words reminiscent of Puritan attitudes, he said that if *Everyman* and *Eager Heart*, both of which he had seen with great edification, had been performed for money, and in an ordinary theatre, by 'persons about whose character there was no particular knowledge', they would have been offensive (5422).

According to the Bishop in 1909, the Church was prepared to tolerate religious plays if they took place in an appropriate setting, but professional performers should not take part in them. Even in 1925, when Martin Browne produced the *Coventry Mystery Play of the Nativity* in a church at Christmas, 'the vicar would not allow Henzie [Martin Browne's wife] to play in it because she was a professional actress, of the devil's brood'.[50] Whether this was an exact quotation, or Martin Browne's verbalisation of the vicar's prejudices, it did represent the atavistic attitude of the Establishment. Devotional topics were not suitable for the commercial theatre where they would be presented by actors, who, by definition, were likely to be unpredictable, unsafe, and unmanageable 'rogues, vagabonds, sturdy beggars, and vagrants' (12 Ann. St. 22, c.23).

Twentieth-century Attitudes and Developments

Sectarian extremists had always shared the aversion of the established Church to performances of religious drama in a secular environment, and continued to voice their antagonism into the twentieth century. When Dorothy L. Sayers was commissioned to write a series of plays for the radio on the Life of Our Lord, to be broadcast in the winter of 1941–1942, she agreed, subject to certain conditions. She asked to be allowed to introduce the character of Our Lord and to use the same kind of realism as she had in an earlier radio play, *He That Should Come* (1938), stipulating that the

new plays must be in modern speech. At a press conference ten days before the first play was due to be broadcast, she outlined some dramatic difficulties involved in writing the plays, and by request, read excerpts of dialogue from the plays. A storm broke as a result of the newspaper coverage; a few of the journalists' reports were sensational, and at least one misrepresented what had actually been said.

On the strength of the distorted reports, and without yet having been able to read or hear the plays, some people condemned them as 'irreverent', 'blasphemous', 'vulgar', and so on. The first broadcast had to go ahead, but the members of the BBC Central Religious Advisory Committee, comprising all Christian denominations, were sent copies of the next two plays before they were broadcast, and they almost unanimously approved of the texts. The only proviso was that the then Archbishop of York (William Temple), as Chairman of the Committee, should read each play before the broadcast and ask for alterations if he wished. Listeners to the broadcasts were overwhelmingly supportive of the broadcast plays, although the few objectors made up for lack of numbers with the extent of their virulence. The main objection was to the 'impersonation' of Christ, and the actor playing Christ was accused of blasphemy by 'personifying the Godhead'.[51]

Of course, when the Theatres Act 1843 was drafted, drama was exclusively a theatrical event, and the Act only referred to 'Stage Plays'. A twentieth-century radio performance, obviously not mentioned in the specific wording of the Act, could not fall under the Lord Chamberlain's licensing powers, and there was no authority in law for him to interfere in the broadcast of a play. However, the BBC was at that time a public body incorporated under royal charter, and although politically neutral and independent, the Corporation was responsible to Parliament. Given the relationship of the BBC to the Establishment, it was probably thought prudent to consult the Lord Chamberlain before the plays were written. He replied that he had no objection to the broadcasts provided an audience was not present, since all that was involved was the reading, before the microphone, of words attributed to Our Lord. Asking the Lord Chamberlain's permission, when it was unnecessary and could not be justified by the laws of the realm, illustrates again how entrenched was the acceptance of his power to ban any presentation of religious drama.

Now, when there is almost no restraint on what can be printed or publicly performed, it is difficult to understand how theatrical censorship, particularly of religious drama, could be maintained for so long. And, in

the present litigious climate, it seems equally strange that censors' rulings were not challenged, when they were both irrationally administered and factually unlawful. It has been shown that the non–governmental status of the Lord Chamberlain accounted for Parliament's inability to curtail his powers, and that the imprecise legislation allowed him to ban any play, if, in his personal judgement, it was in the interests of good manners, decorum, or the public peace. Even so, his decisions ought to have been open to some kind of private legal action by a playwright, producer, or theatre manager. And if it was not thought politic to confront a Lord Chamberlain, why was action not taken against any of the Examiners of Plays, who interpreted the Theatres Act as they chose without any statutory authority to do so?

Mr Redford's executive decisions have not been singled out for castigation as especially questionable, they are simply the most comprehensively examined and documented. Over the years, what is known of the careers of most of the Examiners of Plays is an unedifying record of unbridled power going to their successive heads. From its earliest inception, the office of deputy censor to the Lord Chamberlain was variously a vehicle for exercising idiosyncratic artistic judgement, promoting sectarian intolerance, and imposing a brand of cultural fascism which associated the stage, plays, and players with immoral, indecent, and subversive subject matter and behaviour. And the deputies' actions were all, strictly speaking, illegal. S.13 of the 1843 Act only laid down that the fee for examining a play had to be paid to the Lord Chamberlain 'or to some Officer deputed by him to receive the same' (1497–1500). It did not provide for that Officer to act as a substitute censor, so that ultimate responsibility for the illegal licenses issued by an Examiner of Plays had to lie with the Lord Chamberlain. Answerable only to the monarch, the Lord Chamberlain would see his duty as protecting the interests, rights, and privileges of the Crown, whatever they might be at any given time.

Until the balance of power between Crown and Parliament altered, and the antagonism of some sections of the public towards the observances and doctrines of other religious denominations became less virulent, the powers under the 1843 Act remained. The only solution to making censorship decisions accountable, eventually acted upon in 1968, was to start again with the rules clearly defined by statute law. When the 1843 Act was repealed in 1968, the new Act laid down that in future:

> ... none of the powers which were exercisable thereunder [the 1843 Act] by the Lord Chamberlain of her Majesty's Household shall be

> exercisable by or on behalf of Her Majesty by virtue of Her royal prerogative.[52]

The answer to why the ban was relaxed for the 1951 production of the York Cycle in advance of legislation can only be surmised,[53] although evidence given to the Joint Committee on Theatre Censorship in 1967 gives some indication of the trend of public and official attitudes in the years leading up to the introduction of the 1968 Act.[54] The three attempts made since 1909 to deal with theatre censorship had failed; only a Private Member's Bill in 1949, intended to repeal those sections of the 1843 Act that provided for the submission of plays to the Lord Chamberlain, received significant parliamentary backing (vii). In the event, Parliament was prorogued before the third reading of the Bill, automatically voiding it, but its progress through the House of Commons until then indicated support for the reformation of the censorship system.

Despite Parliament's failure to implement any of the recommendations in the 1909 *Report*, successive Lords Chamberlain were said to have looked to the Committee's criticisms for guidance in the licensing of plays (vi). Judging by some of the twentieth–century rulings, this is a questionable statement. However, in 1967 the current Lord Chamberlain, Lord Cobbold, declared himself in favour of a change in the law to amend or restrict his powers. He thought it was wrong for the stage to be treated differently from films, or radio or television broadcasting, and in words recalling Lord Chesterfield's speech against the Theatres Act 1737, Lord Cobbold said he did not believe:

> ... that one individual should be given such wide powers as were permitted under the 1843 Act; [or] that the licensing of plays should be carried out by an individual who was also Head of the Queen's Household. Although the two functions were quite distinct they might be misunderstood, especially abroad (179).

Lord Cobbold agreed with the Solicitor–General, Sir Dingle Foot, that he and his predecessors had been 'operating an almost unique kind of censorship' with practically no terms of reference whatsoever, apart from 'a phrase about the "maintenance of good order"' which he could not quote exactly (206).

Perhaps in defence of past censorial rulings, notes submitted in 1967 by the Lord Chamberlain's Office on the provisions of the 1843 Act and its administration made no claim to an 'authoritative interpretative administration of the law' (Appendix 22, 1a). There was no provision in

the Act for appeal from a decision by the Lord Chamberlain (1e), so that his powers had never been tested in the Courts (1g). As a result, no binding precedent for or against any of his rulings had ever been established. While s.12 limited the Lord Chamberlain's authority to post-1843 plays or new translations of pre-1843 plays, s.14 placed no such limitation on him, 'empowering interference with any stage play acted anywhere and whether "for hire" or not' (1g). In support of this conclusion, the Law Officers[55] maintained that s.14 gave the Lord Chamberlain power 'to forbid any play whether it be new or old and notwithstanding that it may have been already approved'.[56]

Taking into consideration the vague and unreliable wording of the 1843 Act, it was inevitable that contradictory decisions would be given and ambiguities arise, even over the usually accepted meaning of terms or descriptions, for example 'Private Theatre Club', if a case should ever be brought to court under the Act. And this is precisely what happened. In *R. v English Stage Company & others* (1966), it was held by the magistrate that in the context of s.16 of the 1843 Act, 'theatre' retained its normal dictionary meaning of 'a place where a spectacle is displayed', bringing a private members' club within the authority of the censor (1f). The Memorandum submitted by the Law Officers to the 1967 Joint Committee agreed that the Act of 1843 was not easy to interpret. Until May 1966, it was 'generally assumed that the Lord Chamberlain's licence was unnecessary where a play was presented in a *bona fide* theatre club'. However, the Law Officers were 'inclined to think that the magistrate [in the case above] was right as a matter of law ... even though the performance may take place in a club, a school, or even in a private home'.[57]

Apart from officially admitting that the Act of 1843 was not easy to interpret, the Law Officers' Memorandum went on to assert that contrary to received wisdom, the magistrate's new ruling on s.16 of the Act gave the Lord Chamberlain powers over any premises, public or private, used for any kind of 'spectacle'. This retrospectively confounded the general belief of the theatrical profession that the Lord Chamberlain's powers did not extend to private premises — for example *Everyman* in 1909, as well as Mr Williamson's legal opinion that the performance of Dorothy Sayers' *The Just Vengeance* in Lichfield Cathedral might have been exempt from licensing because it was private and non-commercial (see **1c** in Mr Wiliamson's letter above). Even the Lord Chamberlain's Office had subscribed to the exemption of private premises from licensing as late as

1958. When Bernard Miles was attempting to set up a production of the *Wakefield Mystery Plays*, he was told that if he opened the Mermaid Theatre as a private theatre for members who subscribed to it as if it were a club, then the plays could be performed.[58]

In contrast to the rearguard defensive action still being carried on by the censors, the members of the 1967 Joint Committee on Theatre Censorship viewed their brief as a matter of promoting artistic freedom. In all other forms of creative art the artist was able to place his work before the public uncensored; only the author of a play could be stopped from presenting his work on the stage by a censor with absolute power (viii). At the same time, Parliament accepted the obligation to respect the freedom of other people not to be caused intolerable offence by the content and presentation of dramatic material. But the Committee believed that the freedom not to be offended was already protected by the laws relating to slander and libel, blasphemy and obscenity, and to language likely to cause a breach of the peace, without the need for a separate theatre licensing system (ix).

There was far less questioning, or evidence given, about the censorship of religious material in plays, than there had been in the 1832 and 1909 Reports, but there was still a certain reluctance in some official quarters to abandon censorship entirely. Appendix 22 noted that the advice of the 1909 Committee was remembered and acted upon by the Lord Chamberlain's Office, not to license plays which might 'do violence to the sentiment of religious reverence' (3a). Then, in Lord Cobbold's evidence, he said that he thought there was still a large body of opinion in the country which would be greatly offended by certain things presented on the stage (260). 'A special protection' would be required to prevent people's susceptibilities being offended, although he conceded that there was nothing in the law of the land, apart from the blasphemy laws, which required 'certain categories of publication or presentment' to be especially careful about the religious views presented in them (350). A professional, dissenting view of the religious tolerance of audiences was offered by the Direction of the Royal Shakespeare Company. It was argued that religion as 'a branch of the state' was a social anachronism, with only a minority of the population now truly subscribing to a doctrine to which 'our public institutions — the BBC, Parliament, the law courts, and schools — continue to pay lip service'. The Lord Chamberlain was criticised for his rigidity in disallowing 'even the least offensive, the most constructive or enquiring, reference to Jesus Christ'.[59]

Referring to the 'absolute ban upon the impersonation of Christ or the Deity upon the stage', the Memorandum from the Lord Chamberlain's Office noted (erroneously, as this article has shown) that it had been maintained until 1966. The ban had been 'discussed from time to time with the Ecclesiastical authorities' who had always advised in favour of retention, but 'after thorough and wide consultation in the last few months', the absolute ban was rescinded (Appendix 22, 4h). The Archbishop of Canterbury explained the change in attitude of the Church. In 1909, the Bishop of Southwark's evidence had reflected the thinking of the Church at that time, and the Lord Chamberlain's ban on the portrayal of the Deity on the stage was a real protection to sections of the audience who might be offended. Now, he said, people's feelings could not be protected by theatre censorship alone because of the freedom of the 'more popular media of television and cinema' (Appendix 6).

Concomitant with the exceptional censorship associated with the established religion was 'the protection given for several centuries to the Sovereign and the Royal Family, whereby their personation on the stage has been completely forbidden and no offensive references have been made to them' (Appendix 19). According to Lord Cobbold, this was as much a matter of discretion as was the protection of religious susceptibilities; 'the rule that a Head of State must not be represented on the stage is nothing to do with the law' (351). Theoretically, a literary attack on the Sovereign might still invite a charge of sedition just as the seldom-used Blasphemy law could be operated for attacks on religion. In practice, post-1968, the freedom to dramatise — or satirise — religious observances and beliefs would apply equally to members of the Royal Family.

But this was all in the future. Before the 1967 *Report* was published and the new Theatres Act became law in 1968, contradictory signals were still being received by the public. In 1963 the Lord Chamberlain's Office had made it a condition for granting a licence for a comedy revue to insist that a mock priest in one of the sketches must not wear a crucifix on his snorkel.[60] In 1961, a controversial Rock 'n' Roll Passion play *A Man Dies* was televised in Holy Week, despite a protest in Parliament that certain wording in the play would cause grave offence to millions of people. (In 1966 this play was approved of by the Archbishop of Canterbury as a 'thoughtful reverent' drama.)[61] Also in 1961 (and again in 1963), Bernard Miles was able to produce the same version of the *Wakefield Mystery Plays* which he thought would not be licensed by the Lord Chamberlain in 1959.[62] A pre-production article in *The Guardian* of 4th April 1961

explained the historical background of the plays, and commented that 'Christ and God himself will appear on the stage', although 'not normally permitted by the Lord Chamberlain'. Reference was made to the pre-1843 Wakefield plays falling outside the Lord Chamberlain's jurisdiction provided they were given in their original form, 'but as they have not been translated they require no licence'. Not true that they were being performed with the original words, but perhaps intended to forestall objections from the censor or other interested parties by publicly, if falsely, announcing legal authority for the production.

In the twentieth century, public attitudes to religion and morality had changed, and the advent of cinema, radio, and television had radically altered the picture. The Lord Chamberlain had no power of censorship over these more recent media. Besides this, Lord Cobbold, in his evidence to the 1967 Joint Committee, accepted that his position as Head of the Queen's Household was incompatible with theatrical censorship. Most importantly, the Lord Chamberlain's Office accepted that his powers of censorship had never been fully tested in the courts. The 1968 Act finally removed took away the Lord Chamberlain's powers of censorship for good.

The 1951 Festival of Britain

In spite of the ban on religious drama still operative in 1949, certain factors contributed favourably to the proposed production of the York Cycle. It is possible that there was a fortunate coincidence of the right people in the right place at the right time, with goodwill and co–operation evident on all sides. There was also a radically different political and social climate from that of pre-World War II Britain, and the 1951 Festival was both a celebration of the centenary of the Great Exhibition of 1851 and of Britain's post-war recovery and development. As far as the major personalities involved in the production of the York plays were concerned, and without predicating the facts of the case, it may be pertinent that the Lord Chamberlain, Lord Scarborough, was a Yorkshireman by birth, and Lord Lieutenant of the county, as well as also, fortuitously, Chairman of the Festival of Britain Committee. Keith Thomson's grandfather was a former Archbishop of York, and Martin Browne, intended for the priesthood as a young man, had become a trusted and respected producer of religious drama, starting with his appointment by George Bell, the Bishop of Chichester, as Director for Religious Drama in the diocese.

In 1951, performances in the open air against the ruins of St Mary's Abbey, and with a mainly amateur cast, environmentally distanced the

plays from the contamination of a commercial theatre, the ambience so disliked by some members of the Church and lay non-conformists. But Martin Browne was still concerned about reactions to the representation of God on the stage, still believing that it could be taken as a blasphemous act. He asked the amateur actor who played God the Father, and the professional actor who played Jesus, to appear anonymously: 'This was to allay the fear that the appearance of the deity in visual form would be a blasphemy'.[63] For the Church, the Dean of York, Eric Milner White, was a keen supporter of the York Cycle project from the beginning, and the reservations of the Archbishop of York, Cyril Garbett, seemed to be confined to the Passion scenes. On 5th April 1950, he had sent a letter to the Festival Board, copies of which were circulated to members. Although the contents of the letter were not entered in the minutes, it was noted that Martin Browne be asked 'to edit that part of the script of the plays dealing with the Passion, bearing in mind the content of the Archbishop's letter'. Next day, the Town Clerk of York received a letter from Keith Thomson, asking that the City Council and the Press should not be told about the Archbishop's letter;[64] perhaps wishing to limit the extent to which details of official discussions and decisions were made public.

On 3rd May, it was recorded in the Festival Board Minute Book that the script had been revised, and when printed, copies would be circulated to Society members. On 6th June, 'There was a discussion on the Miracle Plays as edited by Dr J.S. Purvis', when it was decided that some of the cuts made should be restored. Keith Thomson and E. Martin Browne were to confer, and in due course also consult the Archbishop of York. The Lord Chamberlain had originally confirmed that the York plays did not require a licence, but Martin Browne knew that the alterations made by Canon Purvis removed the texts from the protection of the 1843 Act for plays written before that date. There is no record that Lord Scarborough, the Lord Chamberlain, officially acknowledged the changes to the scripts or required the new version to be submitted for licensing.

The remaining problem was the danger of complaints by outside bodies against public performance of the plays. According to the Festival minutes there was a single objection, from the Lord's Day Observance Society, complaining about Sunday performances (minuted on the 9th May 1951). The Committee dealt with it by the simple expedient of agreeing, on 20th June 1951, to take no action on the correspondence.[65] There was a greater risk that if a strict sectarian body such as the Protestant Truth Society threatened violence (a possibility considered by Mr Williamson of Bird and

Bird in A7 above), it would allow, or even compel, the Lord Chamberlain to invoke s.14 of the Act and forbid the plays in order to prevent a breach of the peace. Lord Scarborough himself suggested that Martin Browne should consult the Chief Constable. When he did so, he reported that the Chief Constable 'settled the question with a smile: "The peace will not be breached"'.[66]

Whatever the Archbishop was unhappy about originally must have been resolved. He wrote to Martin Browne after he had seen a performance of the plays, thanking him for producing them 'with great beauty and reverence'. It was not only Martin Browne's 'technical skill and ability', but also his 'faith and the reverence which naturally comes from it. As you know I had my doubts about the production of the play; these were removed last night'.[67]

A Postscript

In the wake of the September 11th terrorist attacks in the USA, the British government announced that legislation would be introduced to make the incitement to religious hatred a criminal offence. In a letter to *The Times* on 17th October 2001, Rowan Atkinson, the well-known actor/comedian, expressed his fear on behalf of the theatrical profession that such legislation could prevent comedians and satirists making any kind of joking comments or performing sketches about religion. In England, such comedy traditionally has not been directed at Islam, but a general ban against comedy references to all faiths, denominations or sects, could open the way to extensive new theatrical censorship of any political, cultural, and social subject matter; in short, of all drama.

A play inciting racial hatred can already be banned under the Public Order Act 1986 s.20 (I), but a more far-reaching law against religious hatred could mean a statutory prohibition, not a dubious 'departmental rule' banning religious drama and the presentation of God on the stage. And it must be remembered that the Theatres Act 1968, which ended the Lord Chamberlain's powers, did not entirely remove all theatrical censorship. S.6 (i) protects the power to maintain public order, enabling action to be taken if:

> a public performance of a play involving the use of threatening, abusive or insulting words or behaviour ... with intent to provoke a breach of the peace, or the performance taken as a whole was likely to occasion a breach of the peace.

The fear of civil unrest, from whatever cause, has always been, and remains the most enduring reason for state control of public gatherings of all kinds.

Rowan Atkinson's letter to *The Times* provoked an impassioned correspondence over the next few days from religious leaders and ordinary citizens mostly in support of, but some in opposition to his views. With a depressing feeling of *déja vu*, phrases used in the letters, such as 'blasphemous abuse', and 'Talebanisation of faith' (*sic*), were a reminder that prejudice, ignorance, and religious intolerance might reinstate strict theatrical censorship, even in the twenty-first century. If the proposal to take humour out of religion were to be translated into legislation, it would revive, after 400 years, the 1605 Act of James I, forbidding anyone to 'jestingly or profanely speak or use the holy name of God, or of Christ Jesus, or of the Holy Ghost, or of the Trinity'. It would also enable the government again to decide what may or may not be allowed to amuse or entertain us; even mystery plays might be subject once more to control, this time with the validation and all the legitimate power of statute law.

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While this article was in its earliest draft, the Obituary Editor of *The Times* e-mailed Meg Twycross. He told her that Keith Thomson had died the week before and asked for any information about his connections with drama productions. At the time, unsuccessful efforts had been made to trace Keith Thomson's whereabouts, and it was doubly sad to be told of his recent death and to have missed the opportunity to record his personal memories and recollections of the 1951 production.

Keith Thomson's letter (Document A) is reproduced by kind permission of Mrs Mary Thomson.

Quotations from the Lord Chamberlain's letter to Keith Thomson are reproduced by gracious permission of Her Majesty The Queen.

Mr P.B. Williamson's letter (Document B) is reproduced by kind permission of Bird and Bird, Solicitors, London.

Extracts from the *Report of the Joint Committee on the Censorship of the Theatre, 1967* are quoted by permission of Her Majesty's Stationery Office.

NOTES

Conventional abbreviations are used for reports of law cases:

AC: Law Reports, Appeal Cases, House of Lords and Privy Council 1890–(current).
Cox CC: *E W Cox's Criminal Law Cases*, 1843–1941, 31 vols.
ER: English Reports.
HL: House of Lords.
LT: *Law Times Reports*, 1859–1947, 177 vols.
JP: *Justice of the Peace*, 1837–(current).
Str.: *Strange's Reports*, 1716–1747, 2 vols (ER vol 93).
Vent.: *Ventris' Reports*, 1668–1691, fol. 2 vols (vol. 1, King's Bench; vol. 2, Common Pleas) (ER vol. 86).

Statutes referred to in the text or notes can usually be found in the appropriate volumes of *Statutes at Large* covering the year of the King or Queen's reign in which the statute was promulgated, e.g. the Act of 1737 (10 Geo. 2, c.28) is published in *Statutes at Large 1736–1741 9 George 2 to 15 George 2* (Cambridge, 1765). Earlier statutes are given in full in *Statutes of the Realm* (Dawsons, London, 1963; reprint of 1817 edition).

1. The Theatres Act 1968 (c. 54), s.1 did away with the Lord Chamberlain's censorship powers. The Act applied to the whole of Great Britain except that the section on defamation excluded Scotland. *The Public General Acts and Church Assembly Measures 1968 49–77 Eliz. II* (HMSO, London, 1969).

   For detailed histories of stage censorship beyond the scope of this article, see: Richard Dutton *Mastering the Revels* (Macmillan, London, 1991) on the evolution of the role of the Master of the Revels in censoring plays and regulating the drama; John R. Elliott Jr *Playing God: Medieval Mysteries on the Modern Stage* (Studies in Early English Drama 2: University of Toronto Press, Toronto, 1989) on the censorship of religious drama and its effects on the English theatre; Frank Fowell and Frank Palmer *Censorship in England* (Frank Palmer, London, 1913) for a robust account of censors and their actions, and Jonas A. Barish *The Antitheatrical Prejudice* (University of California Press, Berkeley/Los Angeles/London, 1981) for a chronological and cultural exploration of the nature of theatricality and of theatrical polemicists. A succinct review of the control over theatres and stage plays can also be found in the *Report from the Joint Select Committee of the House of Lords and the House of Commons on the Stage Plays* (*Censorship*); *together with the Proceedings of the Committee, Minutes of Evidence, and Appendices* (HMSO, London, 1909).

2. E. Martin Browne with Henzie Browne *Two in One* (Cambridge University Press, 1981) 183. According to Martin Browne, it was his proposal that York should produce its own cycle of Mystery Plays for the 1951 Festival of Britain. John Elliott wrote that 'The first suggestion came in the summer of 1949, from the Reverend J.S. Purvis ... ' (*Playing God* 75), although the Reverend Purvis himself makes no such claim. In his foreword to *The York Cycle of Mystery Plays* (his edition of the Cycle prepared for the 1951 production), Canon Purvis says: 'The City of York decided to revive ... the performance of the Cycle ... A version was prepared by the present writer ... ': *The York Cycle of Mystery Plays* edited Reverend J.S. Purvis (S.P.C.K., London, 1957) 7.
3. E. Martin Browne with Henzie Browne *Two in One* 191.
4. Helen Bennett's MA dissertation *Norah Lambourne's Designs for the York Mystery Plays in 1951, 1954, and* 1957: the 'Censorship Lifting' section. For a list of principal productions of mystery plays in England from 1901 to 1968, when stage censorship was lifted, see Elliott *Playing* God 145–147.
5. Earlier acts repealed by the Theatres Act 1843 included the Act of 1605 (3 Jac. 1, c. 21); part of 10 Geo. 2, c. 19 ; 10 Geo. 2, c. 28; 28 Geo. 3, c. 30. 10 Geo. 2, c. 28 was the original authority for all new plays to be licensed from the date of the Statute (24 June 1737).
6. It has been suggested that the language of the soldiers in the York *Resurrection* might be blasphemous but Mr Williamson's conclusions, based on judges' rulings and precedent cases, would apply: that ribald or profane words are not enough; there has to be an attack on Christianity as a religion. For the rules at the time of Mr Williamson's letter, see the summing-up of Phillimore, J. in *R v Boulter* (1908) 72 JP 188, that even denying the truth of the Christian religion or the scriptures was not enough to constitute blasphemy.
7. Early plans for the 1951 Festival were successively: performances of Shakespeare's *Midsummer Night's Dream* or one of the Histories in the Museum Gardens; performances of *Everyman* or *Faustus* in the Minster, and an open-air Pageant of York, probably in King's Manor; the possibility of performing *The Just Vengeance*, and 'room for a Pageant and possibly for an adaptation of a York Morality Play', with a marginal MS note in Keith Thomson's hand: *Corpus Christi* (Box A, YDV 1817/1, 1851/1, 1951 Festival, York City Archives). The York Festival Minute Book sheds no light on when, how, or by whom the proposal to perform the York Cycle was made.
8. *Report from the Joint Select Committee of the House of Lords and the House of Commons on the Stage Plays (Censorship); together with the Proceedings of the Committee, Minutes of Evidence, and Appendices* (HMSO, London, 1909) hereinafter referred to as *1909 Report*. Evidence given to the Committee by Mr W.P. Byrne, Assistant Under-Secretary of State for the Home Department, is somewhat abstruse, and seems to imply that a licence for the place of

performance would no be needed, but a pageant would be a stage play and should be licensed (questions 81-82).

9. 6 & 7 Vict. c. 68, s.3, s.5, s.9 (Theatres Act 1843). Powers to license theatres were transferred to County Councils by 51 & 52 Vict. c. 41 (Local Government Act, 1888). They could then delegate their powers to Justices of the Peace, or Borough Councils, if they so wished.

10. A letter from the Chief Constable of York to the Town Clerk dated 13 November 1950 lists the places likely to be used for different events in York during the 1951 Festival of Britain, and whether they needed Stage Play Licences. In the case of the Museum Gardens, where the York Cycle was to be staged, his opinion was that it would be necessary 'To apply for a temporary Stage Play Licence as it may well be considered a "place". As you are aware Stage Play Licences are granted by the Watch Committee ... ' YDV 1851/1 1951 Festival. Thanks to Margaret Rogerson for this reference, (see her forthcoming book: *Playing a Part in History: the Mystery Plays in York, 1951–2002*.

    In the same letter the Chief Constable wrote: 'No Sunday performance would, of course, be possible ... ', although two Sunday afternoon performances did take place. They were fully booked, along with the two Friday evening performances, by 4 April 1951: York Festival Minute Book 4/10/1948-14/1/1953 183.

11. Quotations are taken from: Philip Butterworth 'Discipline, Dignity and Beauty: The Wakefield Mystery Plays, Bretton Hall, 1958' in *Porci ante Margaritam: Essays in honour of Meg Twycross* edited Sarah Carpenter, Pamela King, and Peter Meredith *Leeds Studies in English New Series 32* (2001) 78. I am grateful to Philip Butterworth for supplying me with the background to Bernard Miles' eventual production of the *Wakefield Mystery Plays* in 1961, including Martial Rose's recollections of discussions and letters between himself and Bernard Miles in 1958 and 1960 about the difficulties of presenting the plays. Martial Rose's translation of the *Wakefield Mystery Plays* was used in the Bretton Hall production of 20 of the plays in 1957/1958, and was the version intended to be used by Bernard Miles in 1959.

12. 1909 *Report* xiii. To reduce the number of footnotes, Roman numerals in brackets after a quotation signify page number(s) of the Report. All references to questions and answers in the 1909 *Report* will be given in the text in Arabic numerals in brackets, and will refer to the question number(s), not pages, in the evidence.

13. Butterworth 'Discipline, Dignity and Beauty' note 45 reproduces the Lord Chamberlain's letter. In spite of the unyielding impression given by the letter, the 1961 production did take place. Philip Butterworth believes that Bernard Miles may have assured the Lord Chamberlain's Office that the plays were not

being 'modernised' nor 'adapted', but that a simple 'transcription' was being used.

14. *Report of the Joint Committee on the Censorship of the Theatre together with the Proceedings of the Committee, Minutes of Evidence, Appendices and Index* (HMSO, London, 1967), Appendix 22 1(c).
15. Butterworth 'Discipline, Dignity and Beauty' 62.
16. *Taylor's Case*, 1 Vent. 293 *per* Lord Hale. In 1676 the King's Bench laid down that the speaking of blasphemous words was criminal, both as an offence against religion and as an offence against the state. During the earlier half of the seventeenth century, the court of High Commission exercised jurisdiction with the courts of common law over heresies of all kinds, but the court was abolished in 1641 and not reinstated with other ecclesiastical courts at the Restoration. Sir W.S. Holdsworth *A History of English Law* 17 vols (Methuen, London, 1922-1966) 8 403, 406).
17. *The English Reports, vol lxxxii, King's Bench Division* (William Green and Sons, Edinburgh; Stevens and Sons, London, 1908) 975.
18. *R v Ramsay and Foote* (1883) 15 Cox CC 231 at 232 *per* Coleridge LCJ, and *R v Bradlaugh* (1883) 15 Cox CC 217. The rulings were confirmed by *Bowman v Secular Society Ltd* [1917] AC 406 at 445, 446, HL, *per* Lord Parker of Waddington, who stated that 'there must be an element of vilification, ridicule or irreverence as would be likely to exasperate the feelings of others and so lead to a breach of the peace.' Even denying the truth of the Christian religion or the Scriptures was not enough (*R v Boulter* (1908) 72 JP 188). All these cases are examples of judicial precedent where the judge has formulated and applied a legal principle which is either binding or persuasive on a judge's future decision in similar cases.
19. Elliott *Playing God* 44–45.
20. J.O. Halliwell-Phillipps *Letters of the Kings of England* 2 vols (Henry Colburn, London, 1846) *2* 354 (footnoted as a translation from the Latin MS, Collection of York Documents, Rawlinson's Collection in the Bodleian Library). In *Records of Early English Drama: York* edited Alexandra F. Johnston and Margaret Rogerson 2 vols (Manchester UP, 1979) *2* 649–650, the letter is said to be 'now lost', but there may be some doubt about its authenticity. Linguistically, the first recorded use of *Papianus* or *Papicola* 'Papist' (either of which would presumably have been used in the Latin version of the letter), is c. 1620 and c. 1600 respectively, over 60 years later than the suggested date of the letter, although variations of the word 'papist' in English are recorded as early as 1521 (*OED*).
21. 34 & 35 Hen. 8, c.1 (1542–1543) sections 7, 1, 3, 8: *Statutes of the Realm* (1817 reprinted Dawsons, London, 1963) *3* 894–895. This act was repealed by 1 Edw. 6, c.12 s.3.

22. W.C. Hazlitt *The English Drama and Stage under the Tudor and Stuart Princes 1543–1664* (The Roxburghe Library, London, 1869) 8–14
23. Hazlitt *English Drama* 15–18.
24. Robert Pawlet *A Collection of Articles, Injunctions, Canons, Orders, Ordinances, and Constitutions Ecclesiastical; With other Publick Records of the Church of England* (London, 3rd impression with additions, 1675) 50–51.
25. Hazlitt *English Drama* 19–20.
26. *REED: York 1* 353.
27. Order of the Common Council of London in restraint of Dramatic Exhibitions, Dec. 6, 1574, printed in Hazlitt *English Drama* 27. For letters to and from the Privy Council, to and from the Lord Mayor of London, decrees of the Star Chamber, injunctions, orders, etc, complaining about actors, unlicensed theatres, the dangers of public entertainments, and their desecration of the Sabbath see E.K. Chambers *The Elizabethan Stage* 4 vols (Clarendon Press, Oxford, 1923, reprinted Oxford University Press, 1945; with corrections 1951) *4* appendix D.
28. PRO C66/1606.
29. Fowell and Palmer *Censorship* 25–7, 28–9.
30. *The Dramatic Records of Sir Henry Herbert, Master of the Revels 1623–1673* edited J.Q. Adams (New York, 1917) 125 . See Dutton *Mastering the Revels* 194–248 and Fowell and Palmer *Censorship in England* 33–46, 63–79, and 86–93 for more detailed reviews of the activities and careers of Sir George Buck and Sir Henry Herbert..
31. William Prynne *Histriomastix* (Garland Publishing, New York and London, 1974, reprint of the 1633 edition by E.A and W.I. for Michael Sparke, London) 112–113, 108, Title-page, 831.
32. *Documents relating to the Proceedings against William Prynne in 1634 and 1637* edited Samuel Rawson Gardiner (Camden Society NS 18, London,1877) 1–2.
33. *Proceedings against William Prynne* 9, 11 quoting *Histriomastix* 856, 236, Index 'Dancing'.
34. *Proceedings against William Prynne* 87.
35. PRO LCS/152. Notices sent to Charles Killigrew and the companies of 'Comedians' dated 18th February 1698.
36. Fowell and Palmer *Censorship* 121.
37. 10 Geo. 2, c.28 (Theatres Act 1737).
38. Fowell and Palmer *Censorship* 135. Lord Chesterfield's speech is given in full in Fowell and Palmer *Censorship* 357–358.

39. The long name of 10 Geo. 2, c.28 stated that the Act was to explain and amend 12 Ann. St.2, c.23 relating to 'rogues, sturdy beggars, and vagrants', and to punish them more effectually 'and sending them whither they ought to be sent, *as relates to common players of interludes*'.

40. *Report from the Select Committee of the House of Commons on Dramatic Literature, with the Minutes of Evidence* (HMSO, London, 1832), iii, hereinafter referred to as the 1832 *Report*. Used by both Houses to investigate certain matters, Select Committees were either tied to a government department to monitor its workings, or set up *ad hoc* to inquire into specific subjects of public concern.

    To reduce the number of footnotes, all further references to questions and answers in the 1832 *Report* will be given in the text in Arabic numerals in brackets following the quotation, and will refer to the question number(s) in the evidence given. Roman numerals in brackets after a quotation signify page number(s) of the Report.

41. Fowell and Palmer *Censorship* 354.

42. Fowell and Palmer *Censorship* 161, 162. For an account of some of the plays Larpent censored, and his reasons for doing so, see 155–162.

43. See notes 8 and 13.

44. 1909 *Report*, Appendix A.

45. The standard form of a play license is printed in the 1832 *Report*, Appendix 10.

46. York Festival Minute Book 4/10/1948–14/1/1953 5/4/1950, p 82. The letter from the Archbishop was circulated to the Board, but no copy exists in the records. Martin Browne was asked to edit the script 'bearing in mind the content of the Archbishop's letter'.

47. Elliott *Playing God* 9. Although John Elliott was referring to sixteenth-century censors, the comment was just as true of all succeeding Masters of Revels and Examiners of Plays.

48. 25 Geo. II, c.36. Patrons of music-halls, 'the lower sort of people', could come and go, consume intoxicating liquor and smoke during performances, which they could not do in 'theatres' (35, 60).

49. For example, it was perfectly possible to publish, without any objections, editions such as *A Selection of Old Plays* edited Robert Dodsley 12 vols (London, 1744), *York Plays* edited Lucy Toulmin Smith (Clarendon Press, Oxford, 1885), and *The Towneley Plays* edited George England with side notes and introduction by Alfred W. Pollard *EETS ES 71* (1897).

50. E. Martin Browne with Henzie Browne *Two in One* 35.

51. Dorothy L. Sayers *The Man Born to be King* (Victor Gollancz, London, 1944; 1st published 1943) written for broadcasting, commissioned and presented by the British Broadcasting Corporation, Dec. 1941–Oct. 1942. The quotations

are taken from the foreword to the published play by J.W. Welch (Director of Religious Broadcasting for the BBC).

52. Theatres Act 1968 (c.54) s.1.

Plays need no longer be submitted for licensing, instead, a copy of the script of any new play has to be delivered to the Trustees of the British Museum (para 54).

Premises to which the public are admitted as spectators, if not private, have to be licensed, but the licensing authority is specifically prohibited from imposing 'any term, condition or restriction as to the nature of plays which may be performed under licences granted by the authority, or as to the manner of such a performance, but it is an offence to give a performance which is obscene' (para 15). S.3 (i) para 50 defines obscenity in a performance when: 'if taken as a whole, its effect is such as to tend to deprave and corrupt persons who are likely ... to attend it'. Other possible offences against public decency or morality, or involving contempt of court, or an incitement to crime, or contraventions of the laws against sedition or blasphemy, fall within the scope of the criminal law: *Halsburys Laws of England* 45 *(2) 4th reissue*, edited Lord Mackay of Clashfern (Butterworth, London, 1999).

53. A letter from the Lord Chamberlain's secretary to John Elliott in 1971 stated that the rule against representations of the Deity had been relaxed 'by 1950' to allow the performance of a medieval mystery play 'which had been modernised only to the extent of word for word substitution of modern for archaic English'. The letter also said that Martin Browne had told the Lord Chamberlain on 18 October 1950, 'that the York Festival would consist of the Cycle of Mystery Plays in their traditional form abridged for presentation in a single performance. This was accepted as sufficient justification for the avoidance of the need to submit [the plays for licensing]' (Elliott *Playing God* 75, note 7). According to John Elliott, 'an informal meeting was arranged at the Archbishop's Palace between Thomson, Archbishop Cyril Garbett of York and the Archbishop of Canterbury' [Geoffrey Fisher], at which it was decided to allow the production of the plays. The archbishops approved, provided that the plays were performed on sacred ground as a religious rather than a theatrical event, and with E. Martin Browne as director.

Without doubting that the meeting between the archbishops and Keith Thomson actually took place, no reference is available to authenticate what was said by the participants. The York Festival Minute Book has no record of the meeting or its decisions, although there are several vaguely worded entries which might indirectly refer to such a meeting.

According to information received from the Victoria and Albert Museum (Archive of Art and Design), records of the Arts Council that relate to the Festival of Britain are not public records.

54. *Report of the Joint Committee on the Censorship of the Theatre together with the Proceedings of the Committee, Minutes of Evidence, Appendices and Index* (HMSO, London, 1967) vii. As before, to reduce the number of footnotes, all further references to questions and answers in the 1967 *Report* will be given in the text in Arabic numerals in brackets following the quotation, and will refer to the question number(s) in the evidence given. Roman numerals in brackets after a quotation signify page number(s) of the Report. Exceptionally, written statements printed in the Report will be noted separately by page number.
55. The Law Officers, the Attorney-General and his deputy, the Solicitor-General, are both appointed by the Prime Minister. They must be practising barristers, and Members of Parliament who support the government. The Attorney-General advises the government on points of law, and represents the Crown in court.
56. Memorandum submitted by the Law Officers, 1967 *Report* 54.
57. 1967 *Report* 53.
58. Martial Rose's recollections, *per* Philip Butterworth, of the difficulties encountered by Bernard Miles prior to the proposed 1959 production of the *Wakefield Mystery Plays*.
59. 1967 *Report* 69.
60. The British Library has been unable to trace the number of the license issued in October 1967 by the Lord Chamberlain's Office.
61. 1967 *Report* Appendix 6. Memorandum dated 16 December 1966.
62. Butterworth 'Discipline, Dignity and Beauty' 62.
63. E. Martin Browne with Henzie Browne *Two in One* 188.
64. Box A YDV 1817/1, 1815/1, 6.4.1950.
65. The letters comprising the correspondence between the Lord's Day Observance Society and the Secretary to the Festival Board were submitted to the Board on 20/6/1951. Box A YDV 1817/1 and 1851/1 9.
66. E. Martin Browne with Henzie Browne *Two in One* 191-192.
67. York Mystery Plays 1951 (E. Martin Browne Archive, Lancaster University).

APPENDIX A

6 & 7 Vict. c.68 (The Theatres Act 1843), *Statutes at Large 1843* 6 *Victoria to 7 Victoria* (London, Her Majesty's Printers, 1843)

S.2 of the Act required all places of public resort for the public performances of plays to be licensed, either by the Lord Chamberlain in certain areas, or by the Justices of the Peace.

S.12 enacted 'That One copy of every new Stage Play, and of every new Act, Scene, or other Part added to any old Stage Play, and of every new Prologue or Epilogue, and of every new Part added to an old Prologue or Epilogue, intended to be produced and acted for Hire at any Theatre in *Great Britain* shall be sent to the Lord Chamberlain ... before the first acting or presenting thereof ... '

S.14 'That it shall be lawful for the Lord Chamberlain for the time being, whenever he shall be of the opinion that it is fitting for the Preservation of good Manners, Decorum, or of the public Peace so to do, to forbid the acting or presenting any Stage Play, or any Act, Scene, or Part thereof, or any Prologue or Epilogue, or any Part thereof, anywhere in *Great Britain*, or in such theatres as he shall specify, and either absolutely or for such Time as he shall think fit.'

S.16 'That in every Case in which any Money or other Reward shall be taken or charged directly or indirectly, or in which the purchase of any Article is made a Condition for the Admission of any Person into any Theatre to see any Stage Play, and also in every Case in which any Stage Play shall be acted or presented in any House, Room, or Place in which distilled or fermented Exciseable Liquor shall be sold, every Actor therein shall be deemed to be acting for Hire'.