

minute, when the first member of the Fourth Waikato Militia stepped off the boat, it ought to be possible to cast a very accurate horoscope for the city. Would it show up such folly as that of the Founders' Society, the City Council and 'various organisations' (dozens of them, I should think) discovering that the projected birthday party presented them with the problem of 'avoiding opening up old wounds with re-enactments of how the city began.'

It doesn't seem to be the case that the Fourth Waikato Militia actually did the 'rebellious Maoris' (sic!) much harm, having had the good sense, or the good luck, or the plain incompetence, to arrive after the battle was over and the Maoris beaten. Who was going to be embarrassed by a re-enactment of this? Maybe the descendants of the Fourth Waikato Militia, for arriving too late? Maybe the descendants of whoever it was that did beat the Maoris, for not having waited for the Fourth Waikato Militia? Maybe the descendants of those who came too late to have any part at all in this singular event?

No, it's obviously the Maoris who are expected to resent being reminded that they were beaten, even though the occasion was to honour those who didn't beat them. Are they so touchy? Not the young, and not so young, militants, for sure. They so tirelessly remind us that their ancestors were first beaten and then robbed, and that pakehas should be ashamed of themselves on that account, that they could hardly object when the Founders' Society agrees with them. Perhaps the descendants of the kupapas who fought alongside such as the Fourth Waikato Militia, if there are any about, will be upset at being reminded that their ancestors were not virtuous enough to know a losing side when they saw one? That's probably it, and it's a credit to the sensitivity of the Founders' Society etc that they don't want any part in that.

Where *will* it all end? There's a memorial to Von Tempsky somewhere near Hawera that should clearly be blown up. There's an inscription inside St Mary's, New Plymouth, to the 'Friendly Maories' that must go - for that matter, St. Mary's, building, graveyard, memorial tablets and all, had better go. The Wanganui Museum would do well to remove the showcase containing the sword presented to Major Kemp, for his services to the British Crown in time of war. There's even a distinctly ambiguous statue to Te Awe Awe in the Square at Palmerston North - not exactly a thing of beauty, like St Mary's, so we might get an aesthetic spin-off from its removal.

Well, why not? Why not forget that the revered Apirana Ngata's foster-father was Major Ropata, who beat the hell out of that nationalist patriot Te Kooti, and lived to the end of his days on a government pension? If you need answers, you're not up to the question. Apparently Hamilton's Cr Betty Mowbray does need answers. If she didn't she could hardly say 'Things tend to go back to antagonism in the area and that is probably best forgotten.' Is that Hamilton, New Zealand? It sounds more like an argument for not turning out the Orangemen on St Patricks Day in Belfast, N. Ireland. But the Fourth Waikato Militia missed the fight, and it wasn't the Battle of the Boyne, and even if it had been, we still ought not to pretend it didn't happen.

Someone once wrote a poem about the activities of a different lot of city fathers who relegated a nude statue to the lumber-room. It had the refrain 'Oh God! Oh Montreal!' Something like that. Hamilton, if indeed these

things really went on there\*, will find the past as hard to abolish as Montreal, we may be sure, found sex. There's an old adage: those who ignore the past will find themselves the victims of it. In this case, the victims of a monstrous pretence that has grown to be less true the more often it has been repeated, that there's nothing wrong with race relations in this country. If anyone wants to get rid of a bit of the past, not by suppressing it but by correcting it, this ancient and delusive opinion would be a good place to begin.

\* They are reported, in a sober manner, in the *Evening Standard*, 23 August 1979, p.3. At one point the item reads 'the Maoris were feated' - I take this to be a misprint for 'defeated.' But it might be for "feted" and in that case the story would take on a different complexion.

W. H. Oliver

## TRIBULATIONS OF THE TRIBUNAL

THERE are two ways in which books can be referred to the Indecent Publications Tribunal. One is through the Customs Department, the other through the courts. In the first case Customs Officials, inspecting imported material, decide that a book may be unacceptable to the New Zealand public and usually avail themselves of the opportunity (open to anyone) of appearing before the Tribunal through a lawyer who puts their case. A book that is referred by the court has been on sale, sometimes for months or years, before some person (more often than not a member of the Society for the Protection of Community Standards) complains to the police about alleged indecency. The magistrate who hears the case is then required to refer the book to the Tribunal. Submissions may be made on behalf of publishers organisations or other individuals. With rare exceptions, the lawyers who appear in this way represent the publishers or the Society for the Protection of Community Standards.

Possible classifications are: not indecent; indecent; indecent in the hands of readers under 16, 18 or 21; indecent except in special circumstances e.g. in the hands of those professionally concerned with sexual abnormalities or in the hands of professional advisers of the young. How does the Tribunal come to its decision? The short answer is by administering the Indecent Publications Act (1963) which lays down 'Matters to be Taken into Consideration' when 'determining the character' of a book. There are six. They are: (a) The dominant effect of the book or sound recording as a whole: (b) The literary or artistic merit, or the medical, legal, political, social, or scientific character or importance of the book or sound recording: (c) The persons, classes of persons, or age groups to or amongst whom the book or sound recording is or is intended or is likely to be published, heard, distributed, sold, exhibited, played, given, sent, or delivered: (d) The price at which the book or sound recording sells or is intended to be sold; (e) Whether any person is likely to be corrupted by reading the book or hearing the sound recording and whether other persons are likely to benefit therefrom: (f) Whether the book or the sound recording displays an honest purpose and an honest thread of thought or whether its

content is merely camouflage designed to render acceptable any indecent parts of the book or sound recording. (Section 11)

In the sixteen years of its existence the Tribunal has proved itself a moderate and rational body, keeping pace with a movement in public opinion towards greater tolerance of sexual explicitness, while screening New Zealand bookshops from the more unsavoury products of the English and American pornography industry. 'Corruption' has almost always been identified with some sort of sexual advertisement; only very occasionally has violence for instance raised an alarm that has stirred either the Customs Department or the general public to take action. The only book exhibiting extreme violence that I remember coming before the Tribunal in recent years is William Burroughs' *The Wild Boys*, which was considered in 1975. It is a story of marauding gangs committing acts of homosexual violence; placed in the future it was considered by the Tribunal to have a serious moral purpose but to be sensational, perhaps disturbingly so, for the young and so was passed for restricted circulation (under 18). At about the same time an edition of the writings of de Sade was considered; here too sex was mixed with physical abuse, often violent. The decision noted that 'the Publication now before the Tribunal is a two-volume paperback edition described as the *Complete Works of de Sade*. It is clear that it is not complete in that it omits some of the writings of de Sade and the writings included are very much abbreviated'. (The book had in fact been reduced in part to long numbered lists of physical acts involving every extremity and orifice.)

There are at present before the Tribunal several magazines in the 'bondage genre', which means they are made up of sequences of photographs or cartoons showing women, naked or seductively dressed, gagged and tied in helpless and humiliating positions. The rape fantasies which this material exists to induce have also, of course, a violent aspect. Indeed it could be argued that many of the books and magazines (and occasional sound recordings) submitted have an underlying message, and a subliminal effect, which has quite as much to do with violence as with sex. The exploitation of human beings solely for physical gratification is surely a domain where the two must often meet.

However that may be, there have recently been submitted a number of books and magazines which do not offend in this way — material that raises questions not of indecency in the usual sense but of legality. Some of these have been concerned with aspects of homosexuality; a decision gazetted in May of this year said of a magazine called 'In Touch for Men' that 'the homosexual emphasis and the approval of homosexual activity, which is criminal in New Zealand, affect the whole consideration of this magazine.' And in October 1978 the Tribunal published a long and detailed decision on a group of nine books about the cultivation, sale and use of drugs. One of its comments was this: 'While this group marks a new departure for the Tribunal which up to now has dealt almost entirely with matters of sex, the principles to be applied under the Act are the same. The questions to be answered, having taken into account all the matters in Section 11 of the Act, are whether these books or any of them are indecent in that they describe, depict or otherwise deal with matters of crime in a manner that is injurious to the public good, or whether they are indecent in the ordinary meaning of that word as being an affront to commonly accepted standards

of decency. In either case the Tribunal must decide what are commonly accepted standards and what is injurious to the public good. We are entitled to take into account the present public concern about the use and abuse of drugs and the steps presently being taken to increase penalties and to facilitate the detection of crimes relating to drugs in a Bill recently introduced into the House of Representatives'. Eight of the nine were found indecent; the ninth, judged 'part satire, part information and part propaganda in support of a change in the law', not indecent.

These and some other similar classifications occurred without any notable public response; certainly no protests were made. However in recent weeks there has been a great deal of discussion, much of it highly indignant, in response to a similar decision. In September the Tribunal gave a restricted classification to the Australian sex manual for young people, *Make it Happy*, on the grounds that its free circulation among readers under 16 would in New Zealand constitute a criminal offence.

The Contraception Sterilisation and Abortion Act makes it illegal for any person to 'direct or persuade' a child under 16 to use contraceptives or to 'sell, give or supply instruction' in their use, unless specifically authorised (the Act gives a list of those who have this authority; it includes parents, doctors, pharmacists and professional counsellors). Penalties include imprisonment.

The person who has protested most vigorously is Mr Harold White, President of the Booksellers' Association. The Tribunal, says Mr White, has exceeded its powers; questions of artistic merit, honesty of purpose, moral or literary integrity are its legitimate concern, but questions of legality connected with any other section of the law are not. The Tribunal is not required to police any Act on its own.

One must sympathise with booksellers over the difficult matter of selling books which carry an age restriction, particularly since the passing of the Contraception Sterilisation and Abortion Act in 1977. A Wellington magistrate recently ruled that it is an offence to leave a restricted book where it is visible to those in whose hands it is indecent (the case concerned Alex Comfort's *Joy of Sex* which the London Bookshop had prominently displayed). The logical consequences of this ruling are ridiculous. Parents having such books on their shelves may be liable to prosecution if they are seen by their own children's friends; booksellers run the same risk if they employ assistants under 18 or indeed under 21. The C S and A Act certainly represents a bizarre episode in our legal history. But to return to Mr White's objection. The interpretation of the word indecent which the Tribunal has accepted for ten years was made on the basic submissions made to it in 1968 by R. C. Savage, later Solicitor General. 'Because Counsel for the Crown has at this hearing spoken at some length on the process by which, in his view, we should arrive at our decision, it is proper that we should address ourselves to this point; what we have to say is of general application and may be taken to govern all the conclusions at which we arrive. Mr Savage contended that the question of indecency is first to be determined in the light of the ordinary dictionary definition of the word; but then in terms of the enlarged definition of section 2, which extends the meaning to include "describing, depicting, expressing, or otherwise dealing with matter of sex, horror, crime, cruelty or violence in a manner that is injurious to the public good"; but with the proviso that the determination was to be

made by an objective assessment of the standard of the community.

As to the ordinary dictionary meaning of the word "indecent" counsel claimed that the word means unacceptable by the current standard of the community.'

This statement is part of a long and important classification known as the 'Waverly' ruling (the name is that of a publishing company) which makes it clear that crime is as much the concern of the Tribunal as sex or violence have ever been. This is why the decision on the drug books which I have quoted says 'the principles ... are the same', and why the decision on *Make it Happy* perfectly legitimately speaks of 'topics which are illegal in New Zealand.' In publishing these rulings the Tribunal is in fact merely administering its own law, since that empowers it to examine *all* questions of criminal breach.

Mr White and others who would like to see *Make it Happy* freely available in New Zealand should direct their attention not to whether the Tribunal is administering the right law, since legality absolutely is its business, but to the question of whether the law makers in this troubled country are accurately reflecting the wishes of the people.

Lauris Edmond

## CENTRE COURT

ON Friday the 28th September 1979, the Attorney-General made an unprecedented appearance on behalf of the Crown at the sentencing of four men in the Supreme Court at Rotorua. Why was his appearance necessary?

Invariably the Crown is represented in criminal proceedings in the Supreme Court by a Crown Prosecutor. In each Supreme Court centre a barrister in private practice of suitable standing and experience is appointed by Warrant of the Governor General to be Crown Solicitor at that centre. He is required among other things to conduct criminal prosecution work in the Supreme Court. When doing so he is referred to as the Crown Prosecutor. Rotorua is a Supreme Court Centre. It has a duly appointed Crown Solicitor, Mr L. H. Moore. There is no suggestion that he was unavailable at the time, or that the particular case was beyond his abilities.

The Attorney-General wears a number of hats. He is the principal law officer of the Crown. He is the head of the Bar, that apolitical group of persons who practise the profession of barrister. He is in the present Government the Minister of Justice and a member of the Cabinet. He is also a politician, a National Party member who has to get elected from time to time.

The persons before the Court, three men and a 16 year old boy faced serious charges including aggravated wounding, threatening to kill, injuring with intent to cause grievous bodily harm, burglary, and possession of an offensive weapon. Two policemen were attacked, one of them being seriously injured. A sledge hammer and motorcycle chain were used in the attack. All four pleaded guilty in the Magistrate's Court waiving their right to the taking of depositions. The Attorney-General took no part in the preliminary proceedings.

It is clear that there was nothing legally significant in the case that would require the presence in Court of the Crown's principal law officer. His appearance was criticised in various quarters, and the Attorney-General explained himself thus: 'It should be explained that the case in question involved a serious assault on police

officers... There has been widespread public concern about assaults on law enforcement officers acting in the course of their duties. In such circumstances I believe it is proper for the senior law officer of the Crown to appear and make submissions reflecting the community's concern. Any suggestion that the Court would be unduly influenced because the counsel appearing was the Attorney-General is just nonsense.'

Accepting that there has been widespread public concern (a proposition doubtful on many counts) why could not the Rotorua Crown Solicitor have appeared and said as much? In terms of the end result of the sentencing process surely there would have been no difference. The absence of a legal reason to appear makes it obvious that the political role of the Minister was quite brazenly acted out on the judicial stage. Another quote from Mr McLay leaves little doubt about this: 'Prior to entering politics I was a practising court lawyer. I think it is desirable that a Minister with a direct working experience within the area of his own portfolio should occasionally be seen to be working at the "coal face".'

This statement shows an alarmingly ignorant appreciation of the independent roles of the Courts and the legislature. It is about time that Mr McLay in particular, and politicians in general were told that the judicial 'coal face' is not theirs to mine.

Mr McLay indicates he will make further appearances at the bar. So far the judicial system has got along quite well without the senior law officer having to trouble himself with barristerial duties. As far as the criminal law is concerned, people still go to prison and the crime rate continues to increase. The tenor of his submissions at Rotorua was nothing new. The Chief Justice dealt out a total of seventeen years imprisonment and a borstal term to the four defendants. As the Attorney-General would have it, Mr Moore would have got the same result.

Further appearances by the Attorney-General in cases of a similar nature cannot be justified unless they are to mark a deliberate decision by the government to use the Courts for a political end. Such a decision would be in keeping with the philosophy behind the National Development Bill that sees a Minister's decision preferable in the scheme of things to the deliberations of a judicial body.

For a short time at the beginning of New Zealand's constitutional history, the Attorney-General was not a political appointee. He was the principal law officer of the

Crown but his tenure of office did not depend on political success. In the light of the present incumbent's action at Rotorua and his stated intentions, the office should again be an independent one.

M. J. Behrens

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# DAUGHTERS AND LOVERS

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'Oh, I know all about my mother and me,' you may say 'All that business with my mother was over years ago.' You don't and it wasn't.

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THERE are few women, I suspect, who are not intrigued by the subject of mother-daughter relations. Their eagerness to have the subject aired in the public forum is demonstrated by the fact that Nancy Friday's book, *My Mother My Self* (Fontana 1979, 475pp)\* has been a best seller in the United States since publication in 1977, and is rapidly becoming one here.

Feminist literature of the past decade has pointed the finger at this and that cause of our lack of fulfillment as women. Is it biological? — we must menstruate, submit to monthly mood cycles, physically bear children ... Is it social? — we still have no real place in the economic and political ordering of our society ... Or is it men, as the first raucous voices of feminism proclaimed, after all! — they keep us in our subservient place, restrict opportunities, and perpetuate a war between the sexes...

Nancy Friday suggests that the answer is to be found *before* most of this, in the inner sanctum of family. Her thesis is that the powerhouse for most of the biological, social and sexual tensions experienced by women is located in the formative years, and specifically in the relationship between mother and daughter. The example and role encouragements of a mother, she says, load a girl with profoundly contradictory duties and desires — in particular, the duty to mother and the desire to be sexual: 'Saying one thing about sex and motherhood, feeling contrary emotions about both at the same time, mother presents an enigmatic picture to her daughter. The first lie — the denial that a woman's sexuality may be in conflict with her role as a mother — is so upsetting to traditional ideas of femininity that it cannot be talked about.'

For a woman, her first caretaker or nurturing agent is the same person as her image of the sexually and mentally active type which she will (at least for a time) become. For boys, at least in our society, this is not so. The concept of motherhood is highly charged with connotations of self-abnegation, charity, passivity and above all consistency — which is the same thing as lack of passion. Friday claims that it is virtually impossible to be this kind of a mother and at the same time a model of a stimulated and stimulating person who accepts personal responsibility for her destiny.

Given this culturally induced separation between motherhood and womanhood, most women choose to become that figure to whom society gives the greatest approbation: the mother. She follows the safe, known, repeated process and denies the dangerous, revolutionary — i.e. sexual — side of her nature.

Our culture throws up two women for our consideration as archetypes: Mary the Madonna and Eve the Temptress. In their separation is the idea that a woman as both procreator and sexual being is far too threatening and powerful a force. There are very few

mothers who give their daughters the impression of a woman with an important and vital sexual relationship with her husband. Instead, we are presented with a model of a woman, who, in denying her sexual nature, relinquishes one of the strongest individuating forces. From this weakened position she seeks what Friday calls 'symbiosis' — first with her own mother, then with her husband, and finally with her daughter.

The term 'symbiosis' was borrowed from biology initially to describe the mutually needing relationship between mother and child. This is biologically necessary in the first few months of a baby's life; but the shadow falls as the child begins to grow out of such total dependence, to separate herself from her mother. For a woman who has herself been bred to be dependent, to fear loneliness as the worst of all possible evils, to regard any kind of letting go as a betrayal, these emerging signs of her daughter's separateness and otherness are regarded with anger and fear. Having sacrificed her own womanhood to mother us, she demands in repayment nothing short of our whole self; 'mother' becomes 'smother'. 'Do as I want, do as I tell you to do,' she tells us, 'because I love you.' This emotional blackmail means that if we do not take the path she has chosen for us, if we try to build a separate identity, she will no longer love us and we will lose her. Despite the fact that the rebellion of daughter against mother is far less documented and far more a taboo idea than that of son against father (a friend, searching even for a vocabulary to describe it, finally suggested that it had something to do with 'Electral boundaries') this crucial phase of a girl's life is no less traumatic. For we risk losing, by rebellion, the woman who has meant literally the difference between life and death in our infant years.

With capitulation the common solution, the pattern of dependency in mothers and daughters is repeated from one generation to the next in the most vicious circle. As the old saw has it, 'A son's a son till he takes a wife; a daughter's a daughter all her life.'

What does Friday's book have to say to women living in New Zealand? It is written from a particularly American point of view, in that it takes seriously the third phrase in the Declaration of Independence, about the right to the pursuit of happiness. Happiness does exist somewhere — maybe over the rainbow, but somewhere — and all we have to do is be smart and inventive enough to attain it. Women in New Zealand are not so prone to ask themselves if they are happy or fulfilled, or to believe that the pursuit has a goal. They do not adopt and explore different lifestyles with quite the same fervour as American women. Most simply get on with living in a pattern set by their mothers and grandmothers. True, pioneer women here were extremely influential in their roles as wives and mothers; this was recognised in the early achievement of suffrage. Yet the welfare state attached strings to the prestige it gave to women: the family as a statistical unit needed codified roles which could be depended upon when drafting legislation. The small size of the country, its geographical and ideological isolation, the lack of many non-Anglo-Saxon domestic patterns — all added to make our society turn in upon itself and emphasise the attractive values of security and conservatism at all cost.

Sex itself is still very much a taboo subject in New Zealand, except in its political and social aspects: Patricia Bartlett gets media coverage, but the illegitimacy rate does not. Sex is an unruly, volatile passion, and every effort is

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\* Our review copy was supplied by G. H. Bennett's Book Store, Palmerston North