

# THE VICTORIAN CUSTOMS DEPARTMENT AND RESPECTABLE LIMITS OF TASTE: EMILE ZOLA AND COLONIAL CENSORSHIP

BRIAN HUBBER

By and large, this paper simply follows a paper trail which documents the Victorian government's concern with the availability of "pernicious" literature. The trail leads through various departments of the public service as the Chief Secretary, Alfred Deakin, sought to find ways to prevent English translations of Emile Zola's novels being imported. Eventually Deakin's enquiries led up a *cul-de-sac*: his legal officers, while admitting the doubtful nature of Zola's novels, did not think the courts would find them obscene. Not to be thwarted, the newly installed Minister of Trade and Customs, James Patterson, a stalwart churchman and conservative politician, ignored the niceties of the legal and literary debate by simply confiscating a number of French novels and then, with the acquiescence of a compliant bookseller, burnt them. The story of this episode's public aspect is told by Peter Coleman in *Obscenity Blasphemy Seditious* (Brisbane, 1961; Sydney, 1974) which, despite its patchy treatment, is still the only extensive account of the history of literary censorship in Australia.<sup>1</sup> The present paper, then, is something of a footnote to Coleman, but it also provides an insight into the summary nature of government.

For a long time Australian writers claimed that our modern society was typically open and robust, but in recent years this interpretation has been heavily modified.<sup>2</sup> Contemporary Australians can now admit that their society has its faults, one of which is its closed and suspicious nature. It is difficult to understand how this situation occurred in a culture which has been saturated with print, and in which there is very little evidence of overt censorship. However, I think the paper trail on which we are about to embark will show that "openness" and "closedness" are really states of mind. The participants in this episode invariably took the line of least resistance, and in such a passive atmosphere it was inevitable that subversive views were suppressed.

The file with which this paper is chiefly concerned is found in the Chief Secretary's Inward Correspondence.<sup>3</sup> It consists of twelve leaves of manuscript which will be discussed in chronological order. Departmental memos and administrative directions make up a large part of the file, but, as I am concerned with the official arguments and responses, I will abstract extensively.

It is not known precisely why the Chief Secretary, Alfred Deakin, first made enquiries about Zola. I suspect that the reason was the Vizetelly prosecution being conducted in England at the time.<sup>4</sup> The first enquiry is not recorded: apparently Deakin had made a verbal enquiry of Mr H.M. Chomley, the Chief Commissioner of Police, some time in the first week of November 1888. Leaf 2 is a memo from Chomley to the Under-Secretary (8 November 1888) which replied to that enquiry. It was Chomley's opinion that to prohibit the sale of obscene books the Crown must operate under Act No. 544.<sup>5</sup> He went on to describe the requirements and provisions of this Act. Deakin annotated this memo with a request that the Police search for *The Soil (La Terre)*, one of the works for which Vizetelly was being prosecuted. If found, a copy should be purchased. It was necessary that this be done, because, if a prosecution was to be successful, the informant was required to prove the purchase. The file was sent to the Police Department (8 November 1888).

Leaf 3 is a memo from Chomley to the Chief Secretary which reported on the police search for *The Soil* (26 November 1888).

Very careful search has been made throughout the city, but it cannot be found that "La Terre" is on sale anywhere in Melbourne. One establishment was found (45 Johnston St., Fitzroy) the proprietors of which advertises [sic] that all Zola's works are kept on hand *for hire* [original emphasis]; but she (Mrs Lacey) states that "La Terre" is not in her stock. There seems good reason to believe that the booksellers of Melbourne who generally trade in questionable literature have not yet received any copies of the work in question.

To digress for a moment, the reference to Mrs Lacey and her Zola circulating library is interesting as it provides a glimpse of the underside of the Melbourne booktrade. Melbourne directories indicate that one Thomas Lacey, a carpenter, lived at 45 Johnston Street, Fitzroy at about

this time. Mrs Lacey is not mentioned in the trade section of the directories, so it is assumed that she was a "penny entrepreneur" taking advantage of the vogue for Zola. The extent of this unrespectable side of the trade is not known, but an article in the *Age* of 3 October 1872 hinted that a widespread trade in the more sordid type of book was centred on Collingwood, next door to Fitzroy. Returning to the file, Deakin annotated Chomley's memo with a request that the Police search out the worst of Zola's books that was on sale. The file was sent to the Police Department (27 November).

On the verso of Leaf 3 is a memo from Mr D.S. Chambers, the acting Chief Commissioner of Police, to the Chief Secretary (15 December) which reported on the Police search.

In reply to the question put by the Hon: the Chief Secretary, I beg to state that in degree of lewd imagery, &c, the "Rush for the Spoil" is the worst of Zola's works; but the book is not - so far as the police can learn - now on sale in Melbourne. "The Soil" (La Terre) is not on sale here. Of the obtainable books "*Therese Raquin*" [sic] is certainly the worst. A copy has been secured by purchase from the book stall at Flinders street rail station: and this I now submit. Although the vendors give out that they have all Zola's works on sale, they have in fact but few, and those now left on hand are comparatively of harmless character.

The file was returned to the Chief Secretary's office (18 December) and it is apparent that at this stage a lengthy editorial from the *Daily Telegraph* (8 December) was attached, thus showing that the government was directly influenced by the press, especially the evangelical press which was well organised and supported by powerful members of colonial society.<sup>6</sup> Not surprisingly, Deakin decided to prosecute and the file was returned to the Police Department (19 December).

Leaf 5 is a lengthy memo from Chambers to the Crown Solicitor with a request that Counsel be instructed in any ensuing action (20 December).

It is the desire of the Hon: the Chief Secretary that the vendors of the more objectionable of Emile Zola's works be prosecuted.

The police have made enquiry through the city and find that, with the exception of the Railway bookstalls which are leased by Mrs

Baird, no bookselling establishment in Melbourne supplies the works in question.

Competent judges are of the opinion that of Zola's works "The Rush for the Spoil" is the worst in character. "The Soil" is little less objectionable. Neither of these works can now be obtained at any bookseller's [sic] in Melbourne.

Next in objectionable degree is said to be "Therese Raquin" [sic], and a copy of this book was purchased by Sergeant Considine at Baird's bookstall, Flinders Street Station, on the 14th instant. I enclose the volume in question.

As the prosecution will probably be one of exceptional difficulty to conduct, I beg to request that the Crown Solicitor will be good enough to instruct Counsel to appear in the case.

It is desirable that the case be brought on as quickly as practicable. If desired, Sergeant Considine shall be instructed to wait upon the Crown Solicitor and receive any necessary instructions &c.

This memo raises two points of interest. The first is the concept of "objectionable degree". The Police were clearly ranking Zola's works by the degree of "lewd imagery". Most objectionable was *The Rush for the Spoil* (*La Curée*) and next was *The Soil* (*La Terre*). The most objectionable of Zola's works available in Melbourne was *Thérèse Raquin*, a copy of which was purchased at Mrs Baird's railway bookstall. This work became the object of intense scrutiny. Chambers referred to "competent judges" who had passed opinion on the obscenity in Zola's novels. There is no indication of the identity of these judges but it should be noted that on a later occasion customs officers did seek advice from a more relevant department. The *Age* of 21 September 1889 (p.9) reported the confiscation of a number of "Boulevard Novels" - Guy de Maupassant's *The Ladies Man* and *A Woman's Life*, Adolphe Belot's *A Woman of Fire*, Sirver's and Leverdier's *Nana's Daughter*, and Daudet's *Sappho*. These were sent to the Minister of Education, Dr Pearson, for his opinion. Pearson considered that all of these novels, with the exception of *Sappho*, had an immoral tendency and therefore should not be imported. Incidentally, the "Boulevard Novels" was a Vizetelly series. So it appears that Customs and the Police did occasionally consult outside their departments, but the identity of the "competent judges" in the present case is not known.

The second point to note is the popularity of Zola among railway commuters who were generally the white-collar metropolitan office

workers. Railways, of course, were a feature of Melbourne's sprawling suburbs, and commuters formed a large and lucrative readership. William Baird held the leases for bookstalls at Flinders Street and Spencer Street stations from 1875, and obviously did a thriving trade. Mr T.C. Gillam operated the stall at the new Princes Bridge station.

On the verso of leaf 5 is a memo from the Attorney-General's secretary (24 December) which indicates that legal opinion was very wary about prosecuting booksellers who sold novels by Zola. "The Attorney-General thinks it improper to proceed without having a *very good* case [original emphasis]. It is therefore deemed the better course to obtain the views of Counsel - for choice - Mr Smyth." The file was forwarded to Mr C.A. Smyth on 27 December: his report follows.

Re: M. Zola's works

I have inflicted on myself the pain of reading the book sent by the Crown Solicitor "Therese Raquin" [sic]. It is certainly a most unwholesome and objectionable book but with the exception of the passages I have marked at pp.46-8.9 it would I think not be held to be obscene within the meaning of the Act. These passages are very filthy and indecent.

As the Attorney General thinks it would be improper to proceed without "a very strong case" I cannot recommend a prosecution so far as this book is concerned.

A prosecution means a very serious affair and would require to have all the objectionable passages alleged to be obscene set out (Reg. v. Bradleigh [sic] & Besant 3QBD).

As however there are other works of M. Zola's which are said to be really obscene and there is reason to suppose they are kept for sale at the place where this was bought the officer might perhaps be in the position of making the complaint on oath required by the 1st sects of the "Obscene Books Statute" No 354 [sic] on which to obtain a special search warrant and if such other books be found summon the vendor to show cause why they should not be destroyed and himself fined under that Statute.

The passages I have marked in this would be shewn to the Police Magistrate as a basis for the warrant.

C.A. Smyth

8 January 1889

There are several points to note from this memo. Firstly, this opinion was officially received and was filed amongst other "legal opinions" in the Police Department; therefore it became an official reference point. Secondly, Smyth balked at declaring the work "obscene". To be obscene, according to legal opinion, a work had to "deliberately deprave and corrupt", but Smyth appeared to accept that any alleged filth and indecency were integral to the author's intention of detailing the reality of life.<sup>7</sup> Thirdly, Smyth is fully aware that trial for obscenity was often counterproductive: the need to set out all the obscene parts had the effect of creating tremendous interest in the work, as happened in the case *Reg. vs Bradlaugh and Besant* (1877) - the celebrated trial of the birth control reformers.<sup>8</sup> Fourthly, Smyth recommended further vigilance for *really* obscene works, thus compounding his failure to define "obscenity" by passing the responsibility on to the police. Finally, it is interesting to note that his reference to the *Obscene Books Statute* (no. 354) is incorrect; this is the second time a public official made this mistake so it's no wonder a prosecution never got off the ground.

Smyth's report was annotated by Deakin as follows (16 January):

Better perhaps to keep a suspension & buy [books from] time to time - if possible that upon which the English conviction was obtained - meanwhile forward a copy of this report to the Customs and ask if the minister could prevent fresh importation of such works.

Although apparently innocuous, this memo represents the first step in a fundamental shift in strategy. Deakin was not satisfied with the action to date: legal opinion was that *Thérèse Raquin* was not obscene, the Attorney-General was loath to prosecute unless a very good case could be mounted, and the police were unable to locate the more objectionable of Zola's works which could form the basis of a prosecution. He therefore began to investigate the possibility that Customs could prevent the importation of "obscene" works.

Leaf 6 records a flurry of file movements. It was first sent to the Chief Commissioner of Police for his information (17 January). Chomley appended the following note: "The Police will do what they can to purchase some of Zola's more objectionable works. Meanwhile I hold over in the office the copy of Therese Raquin [sic]."

At this point it is necessary to give a retrospective commendation to the police for their vigilance over Colonies' morality. More than four

years after Deakin's instructions, a policeman purchased a copy of *The Soil* at a bookshop kept by Mrs Clare in Dorcas Street, South Melbourne, where other volumes by the same author were on sale. The book was also available for sale or hire from the South Melbourne Book Arcade. I'll discuss this incident in a postscript.

The file was then sent to Customs where the acting secretary of the department appended the following memo (28 January).

The powers possessed by this Department are common to all other British territory & so far as can be ascertained the Minister is not aware of any confiscation having taken place of the books referred to. If the Dept. seized these books it might have to defend its action in the Supreme Court & Mr Walker fears, especially in view of Mr Smyth's opinion, that no defence would be successful. The Minister however will give instructions that all future importations of these works be stopped & submitted for consideration.

The Customs Department had powers under the *Customs Act* (1883) by which it could prevent the importation of obscene articles, and it was not loath to use those powers: only two years before, in 1887, a consignment of Zola novels had been confiscated. It appears, then, that it was the minister, Mr Walker, who was wary about implementing the powers provided in the act. It would have been politically risky, as an act of confiscation might have led to a defeat in the courts. However, it is clear that the mechanism of suppression was in place; it only needed a more zealous minister to put it in motion. By April of that year James Patterson, just such a zealot, was appointed, probably as a result of pressure from evangelical enthusiasts in the government.<sup>9</sup>

Deakin was satisfied that Customs should monitor importations, and this information was transmitted to the department (8 February). If the file is any indication very little was done for several months, till 14 May when the Chief Commissioner of Police was asked if further information was available. On leaf 7 is the following report by Chomley (29 May).

In returning these papers I beg to state that matters have undergone no material change since January last. I have caused careful enquiry to be made for a copy of "La Terre", but state that they have parted with all their copies; and aver they will obtain no more. In this course they admit they are influenced by the last

prosecution of Vizetelly in England. I understand that a shipment of Zola's less objectionable books have [sic] recently passed at the Custom House.

Apparently the issue was resurrected when reports about Vizetelly's second trial for publishing obscene works appeared in the colonial press. An undated cutting concerning Vizetelly is attached to leaf 7. The police, of course, were ever vigilant, but still could not locate a copy of *La Terre*. It is interesting to note that the Vizetelly prosecution - and, I assume, the police vigilance - made booksellers nervous, which resulted in a degree of self-censorship, but this measure is misleading because it may only take one prosecution, e.g. Vizetelly, to cause a greater degree of self-censorship.

Chomley's reference to the "passing" of Zola novels through Customs made Deakin inquisitive and so the file was sent to Customs for a report (31 May). Le Plastrier, the secretary to the department, replied as follows (7 June).

The work referred to "La Terre" [sic] was not included in the list of Zola's works lately detained. The correspondence attached will afford full particulars.

There are two points about this memorandum which require elaboration. Firstly, it is not clear whether the confiscation to which Le Plastrier referred was that of books imported by E.W. Cole and which created such controversy late in June 1889.<sup>10</sup> My guess is that it was not and that, from the time Patterson was appointed minister, Customs confiscated a number of consignments. Certainly, throughout July 1889 there were several editorials concerning the right of Customs to censor imported literature. The second point about Le Plastrier's memorandum concerns the reference to attached correspondence which afforded full particulars of the confiscation. This correspondence is no longer extant owing to the most improbable of reasons - bureaucratic efficiency. On the final leaf of the file, leaf 12, is a shorthand note which, translated, reads: "Customs File 89/2924 returned 20/9/1889 had become mixed up with these papers." Apparently when the file was reviewed about three months after the last action the Customs papers were discovered and returned. Colonial Customs papers cannot now be located. It is believed they were destroyed when the Commonwealth Customs Department shifted from Melbourne to Canberra in the late 1920s.<sup>11</sup>



Despite Patterson's enthusiasm for protecting colonial morals there was still some reticence to prosecute, so Deakin made enquiries with the Chief Commissioner of Police about the legal position in other states (6 June): "There is said to be a prohibition in SA against *all* Zola's works - Does their law differ from ours?" Chomley reported back that he had written to a Mr Peterwald and was awaiting a reply (14 June). The file was then sent to Customs for their information. Le Plastrier's reply was strikingly forthright and energetic, probably reflecting the zeal of Patterson himself (14 June).

Memorandum,

Re : *Zola's Works*

In returning these papers with thanks, to the Under-Secretary the Minister desires me to say that every assistance will be rendered by this Department in putting a stop to the sale and importation of such works.

The file was returned again to the Police Commissioner (20 June) for his report. Leaf 12 contains Chomley's report (21 June).

I beg to state that Mr Peterwald informs me there is no prohibition in So Australia against all Zola's books; and he further tells me that he "proposes taking action against person offering for sale *the most objectionable* of the works in question", under sub sec: 6 of the 63 section of the So Australian Act, No 15 of 33 Vict: I enclose a copy of the sub sec: in question.

Leaf 11 contains the extract of the South Australia Act 33 Vict: No 15 sec: 63, ss: 6. A marginal note indicates that the equivalent Victorian law was the "*Police Offences Statute* sec: 36 ch: IV." Coleman has shown that, having confiscated several consignments, Customs was in a quandary. Should they destroy the books or return them to England? Should they prosecute Cole? It is not surprising that Deakin was keen to find a legal pretext for prosecution. The *Police Offences Statute* did not provide a pretext because the works had never been put on sale. As it turned out, the problem evaporated when a bargain was struck with Cole. The books were destroyed, and Cole was not prosecuted. Subsequently, Cole wrote to the *Age* disclaiming responsibility - a shop assistant had ordered the books without his knowledge - and promising that it would not happen

again. It was unfortunate that, although the battlelines were drawn, the protagonists did not engage.

In conclusion, what are we to make of this whole affair? In my view the government was not entirely upright in its treatment of this issue. Deakin, having been pressured by the press, rightly sought legal opinion about the nature of some of Zola's novels which were then on sale in Melbourne. Legal opinion held that the courts would not find the works to be obscene. I think the matter should have rested there, but Deakin worked on the basis that Zola's novels were in fact obscene, even if the courts would not agree. He was therefore quite happy for Patterson to use the *Customs Act*, and, as we have seen, the *Customs Act* was very convenient. Customs officers were able to act arbitrarily in the knowledge that the onus of taking legal action rested with the bookseller, who was unlikely to do so given the inconvenience, cost and bad publicity, not to mention the possibility of receiving an unfavourable verdict. The practice of evoking the *Customs Act* proved to be so convenient that successive State and Federal Ministers for Customs were the *de facto* censors. It was an arbitrary system in which bureaucrats and politicians avoided having to think too much about what they were doing.<sup>12</sup>

A postscript to this affair occurred more than three years later when the police were finally able to obtain copies of *La Terre*.<sup>13</sup> Chomley forwarded the book to the Crown Solicitor with a request for instructions about possible action against the vendor (26 February 1892). Mr Guinness of the Crown Solicitor's Office replied with the following memorandum (28 March).

In places this book is undoubtedly obscene. I think however that it is of doubtful expediency in giving publicity, which a prosecution means, to works of this class, more especially in view of the fact that many of the objectionable passages have a parallel in books accepted as English Classics and if the police once make a stand it will be hard to know where to draw the line. On the whole I think less harm will be done by refraining from action. If action is however decided upon the latter course suggested in Mr C.A. Smyth's opinion attached can be acted upon and the passages marked in red would justify the issue of a special search warrant if the police have reason to believe that other copies of this work are for sale at Mrs Clarke's [sic].

No further action was taken. Clearly, little had changed. The Crown Solicitor was still wary of prosecuting vendors because the action would attract publicity, and might also open a Pandora's box. The alleged obscenity of Zola's works was therefore not tested in the colonial courts, and the Customs Department continued to exercise a summary judgement.

*Footscray Institute of Technology*

## Notes

1. Recently there has been a flurry of interest in specific areas of censorship in Australia: for example, see Robert Pullan's *Guilty Secrets: free speech in Australia*, North Ryde, N.S.W., 1984, which treats the libel laws; John Hilvert's *Blue Pencil Warriors: censorship and propaganda in World War II*, St Lucia, Qld, 1984; Ross Fitzgerald's "Censorship in Queensland 1954-83", *Australian Journal of Politics and History*, 30, 1984, pp.348-62; *Intellectual Suppression: Australian case studies, analysis and responses*, North Ryde, N.S.W., 1986; and Margaret Lundie's M.Lib. thesis "Librarians and Intellectual Freedom in Australia; a study with particular emphasis on their activities and attitudes since the end of the Second World War", University of New South Wales, 1979. To these might be added various workshops and seminars: for example, a session was devoted to censorship at the 1982 LAA Conference in Adelaide, and at the ANZAAS Conference of 1985, and in August 1985 Ray Lawler, Michael Gurr and Monica Maughan spoke on the topic of "Censorship in the Theatre: anything goes or does it?" Censorship is an area of frequent polemic: only recently in N.S.W. the Council of Churches called on the new Greiner government to ban certain texts including Albee's *Who's Afraid of Virginia Woolf?* and Tom Kenneally's *The Chant of Jimmy Blacksmith* from the HSC curriculum. Given that Peter Coleman's work, published in 1961 and only cursorily revised in 1974, remains the only historical analysis of censorship in Australia, and given that a great deal of work has been done on the issue in recent years, there is a need for a new overview.
2. I don't intend to provide an extended review of the literature relating to this topic but I would point to works such as C.E.W. Bean's *On the Wool Track* (1909) and his later war histories as examples of mythologisation. The classic text is *The Australian Legend* (1958), in which Russell Ward claims that the "national mystique", the way Australians see themselves, derives from the people of the bush interior. Ward has spent the last three decades defending his thesis against both those who say "Yes, Australians *are* like that!" and those who say "No, Australians have never been like that." Ward simply avoids argument and points out that he was describing what people think about themselves; his was not a sociological study. See, for example, "The Australian Legend Revisited", *Historical Studies*, 18,n° 71, October 1978, pp.171-90. Therefore, the first group, the ones who seriously believe that *Crocodile Dundee* represents a national - albeit stylised - type, are evidence for Ward's argument; and others, who point out that the majority of Australian people have lived in the city rather than the bush, are simply irrelevant. Despite what we like to think about ourselves, the truth is somewhat different. Recent historical research which has concentrated on the urban sphere emphasises that sphere's oppressive and debilitating nature. See,

for example, R.W. Connell and T.H. Irving, *Class Structure in Australian History: documents, narrative and argument*, Melbourne, 1980 and Graeme Davison et al. (ed.), *Outcasts of Melbourne: essays in Social history*, Sydney, 1985.

3. Victorian Public Record Office, VPRS 3993, 89/665.
4. For the Vizetelly prosecutions see William C. Frierson, "The English Controversy over Realism in Fiction 1885-1895", *Publications of the Modern Language Association*, 43, 1928, pp.553-50; and Clarence R. Decker, "Zola's Literary Reputation in England", *PMLA*, 49, 1934, pp.1140-53.
5. *An Act for more effectually preventing the sale of Obscene Books Picture Prints and other articles* (1876) 40. Vict. No. 544. This act was introduced in order to close a loophole in the *Customs Act* but was apparently never used. It was repealed by the *Police Offences Act* (1890).
6. For the sympathies of the Melbourne *Daily Telegraph* see Peter Coleman, op. cit., pp.4-5. James Balfour was a prominent Presbyterian civic leader who exercised considerable influence by means of the *Daily Telegraph*: see Andrew Lemon's *Young Man from Home: James Balfour 1830-1913*, Melbourne, 1982, pp.85-7.
7. The legal definition of obscenity in force at this time was as follows:  
The test of obscenity is whether the tendency of the matter charged obscene is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort might fall.  
*Law Reports* 3Q.B.D., 1867-8, p.371.  
This definition does not take intention into account and therefore it became increasingly inadequate. In 1877 when Bradlaugh and Besant were prosecuted for selling birth control literature they were found guilty but only a nominal punishment was passed down because it was thought the defendants acted with good intentions.
8. Donald Thomas, *A Long Time Burning: the history of literary censorship in England*, London, 1969, pp.264-6.
9. For Patterson see Peter Coleman, op. cit., p.4 and the *Australian Dictionary of Biography*, volume 5: *1851-1890 K-Q*, Melbourne, 1974.
10. For the action against Cole see Coleman, op. cit. pp.3-6.
11. Perhaps all hope should not be abandoned: after all, only recently it was reported that colonial Patents Office records, which were also thought to have been destroyed, were found in the Australian Archives in Canberra. The Patents Office handled copyright registrations and so a large number of "lost" plays have been recovered.
12. Although the system of censorship has been radically altered since the late sixties, the *Customs Act* still empowers its officers to seize goods on the grounds that they are obscene. If it is thought that these powers will never be

invoked, I would point to Britain where, only a few years ago, gay bookshops were being hounded by Customs officers using similar powers.

13. Victorian Public Record Office, VPRS 2351.