

The privilege which allows a Member of Parliament to say, inside the House of Commons, whatever he thinks ought to be said, protected from an action of libel, is granted in the public interest. It exists so that the nation's elected representatives should be free to speak when they think that the public good is thwarted by the restrictions on such openness outside Parliament.

Like any other privilege it can be abused, and it seems to be the opinion of some that Mr Geoffrey Dickens did abuse it when he refused to accept that the Director of Public Prosecutions had used his discretion well in refraining from taking proceedings against Sir Peter Hayman for sending pornographic material (of a paedophilic kind) through the mail, which is illegal under the Post Office Act.

It has even been suggested that Mr Dickens's revelations of the problems of his own love-life somehow diminish his right to pass the "moral judgment" implicit in the naming of Sir Peter Hayman. That is easily disposed of. If every man who has left his wife (or vice versa) or whose style of announcing the fact is risible, were to disqualify himself from making moral judgments on other and graver matters, we should find an alarmingly high proportion of the nation inhibited from asserting that murder is wrong and from taking any action open to them to back up that moral judgment.

So the real question is whether the underlying issue in the Hayman case was sufficiently grave and important for Mr Dickens to exercise his right to prefer his own judgment to that of the DPP and of

the Attorney General, and whether the public interest justified the naming of Sir Peter Hayman notwithstanding all other considerations.

There is no dispute by Sir Peter Hayman's solicitor, Sir David Napley, that his client was involved in passing pornography illegally through the mail. Sir David's justification of the DPP's decision not to prosecute was on the quite different grounds that a customary factor taken into account when deciding whether to prosecute was "whether the indirect punishment and hardship which a defendant may suffer is likely to be so disproportionate to the severity of the alleged offence and to any penalty imposed by a court that it would be unjust to prosecute".

"This", Sir David asserted, "was overwhelmingly the situation in Sir Peter's case, and manifestly justifies the director's decision." On the contrary. Far from justifying the DPP's decision, the excuse condemns it. If a man is to be excused the due processes of law, other things being equal, because he is well known, then we are indeed in a two nations society.

It may be said that the DPP does not act precisely on the criterion as phrased by Sir David Napley, but rather on a broader and looser concept of the public interest—but we are still entitled to ask how this is interpreted, particularly since we knew that special treatment was accorded to Sir Peter Hayman in that he alone was allowed to keep his pseudonym ("Henderson") throughout the police proceedings, and unlike the other men who were warned by the police in this case, was not required to appear in court.

But all this is of secondary importance to the fundamental question, which is whether this was a sufficiently trivial case to justify the clemency of non-prosecution, whether granted to a diplomat or a dustman. Of course, we understand the special suffering of prominent people when they fall into ignominy, and most of us might agree that they should be spared it, by the DPP's discretion where the offence really is trivial or merely pathetic. But the offence here is anything but merely trivial or pathetic.

Some may argue that passing pornography through the post, though illegal, is not a very serious offence. But this was not pornography involving what might be called consenting adults but requiring the abuse of children. The issue is not whether a paedophile should or should not be punished for his inclination, but whether he can be allowed to indulge a taste which often requires the exploitation of real children to cater for it, and who are trapped, sometimes by poverty in other countries, into doing what pleases the paedophiles.

Some years ago I was shown material of this kind at Scotland Yard that was the subject of a case before the courts. It was a case about which I had been making inquiries principally because of the curious and incomprehensible reluctance of the DPP's office at that time to call an "expert" witness for the prosecution to counter the "expert" witnesses customarily called by the defence to argue that even the most bestial pornography could have "therapeutic" value. Dr John Court had come from Australia on a private initiative prepared to give evidence, but it was only