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### **Prosecution of *The Romans in Britain***

John Coleby's article expresses the justifiable anger that is widely felt about Mrs Whitehouse's prosecution of Michael Bogdanov. Unfortunately Coleby's worthy indignation has produced much that is wide of the mark, and little that can be called constructive. It is quite untrue for example that the Theatres Act 1968 is now, as he says, not worth the paper it is printed on.

First it should be said that the Theatres Act cannot be expected to give actors a licence to commit genuine crime. If a 'snuff film' were transferred to the stage the Act could not dispense with a murder charge. If a child under sixteen were indecently handled in a play, the Act could not waive the rule that nullifies a child's consent and makes the indecency a criminal offence wherever it takes place. And so on.

Next, it is far from certain that the prosecution of Michael Bogdanov would have succeeded if it had been allowed to continue. The jury would probably have thrown it out. If they had not, the conviction would almost certainly have been quashed on appeal as bad in law. Stage plays of this kind are obviously not within the mischief at which section 13 (indecently between men) of the Sexual Offences Act 1956 is directed. Certainly Mrs Whitehouse is wrong in claiming that the abortive proceedings somehow established that the law is in her favour on this point. As a legal precedent they established nothing.

The law can be criticised for having allowed matters to get as far as they did. If an application was made at the beginning of the trial to quash the indictment in my view it should have been granted. Probably the magistrate was wrong even to issue a summons. The theory of the law is that a defendant is protected in such cases by being able to bring a civil action for damages for malicious prosecution, but I doubt if Michael Bogdanov wants to set off down that road.

The position could be put beyond argument for the future by amending section 2(4) of the Theatres Act 1968 so that *in relation to simulated acts only* it disapplies section 13 of the Sexual Offences Act 1956 in addition to disapplying, as it already does, section 4 (indecent exhibitions) of the Vagrancy Act 1824. This would be a simple operation.

The ballot for private Members' Bills is held in the House of Commons each November. A constructive move for John Coleby would be to seek to persuade an MP successful in the next ballot to introduce a one-clause Bill amending the Theatres Act on these lines. It would be unlikely to be opposed. Alternatively a sympathetic peer such as Lord Willis or Lord Houghton could be asked to introduce such a Bill in the Lords.