

The Unlawful Organisations Bill

By B. L. S. FRANKLIN

WHATEVER VIEWS MAY BE HELD ON THE DANGERS OF COMMUNISM and the necessity for anti-Communist legislation, there can be no doubt that the Unlawful Organisations Bill is one of the most dangerous pieces of legislation ever laid before the Union Parliament. It is the duty of every member of the public to be fully aware of its implications.

The chief objections to the Bill are that it threatens in the most drastic degree the fundamental liberty of the individual, subverts the rule of Law, and arms a Cabinet Minister with breath-taking powers of arbitrary discretion. It must be emphasised that the effect of the Bill is to vest in the Minister of Justice dictatorial powers to confiscate property, to restrict freedom of movement, freedom of speech and freedom of assembly, to deprive individuals of any public office and to debar them for life from holding any such office, without any appeal whatsoever by the victim to a Court of law.

Only in one instance does the Bill pay lip-service to the rule of law: it provides that no action to test the validity of a proclamation banning any organisation may be brought in a Court of law after three months from the date of the proclamation. But the discretion to ban organisations is vested in the Governor-General who acts on the advice of the Cabinet as a whole, and by law a statutory discretion can only be challenged if it can be proved that the person in whom it is vested was actuated by some indirect or improper motive. In practice, therefore, there is no protection whatsoever against the exercise either of the

Governor-General's discretion to ban any organisation or of any of the Minister's absolute discretionary powers conferred by the Bill.

OUSTING THE JURISDICTION OF THE COURTS

THE DANGERS OF THIS TENDENCY TO INVEST THE EXECUTIVE WITH JUDICIAL POWERS and to oust the control of the regular Courts, thus making the Executive judge in its own cause, were emphasised from the Bench many years ago by a former Chief Justice of the Union in the following words: "There is, one fears, a growing tendency in modern legislation to clothe with finality the decisions of public officials in matters which seriously affect the rights of the public . . . The effect is in such cases practically to oust the jurisdiction of the Courts. Such legislation, unless carefully safeguarded, may endanger important private rights and become a serious menace to the liberty of the subject." A brief glance at the far-reaching effects of the Unlawful Organisations Bill will illustrate the urgency of this warning.

Section 2, which confers an absolute discretion on the Governor-General to ban various organisations, is the key section of the Bill, for it is from the banning or proposed banning of an organisation that all the other evil features flow. The first point to be noted in regard to this section is that the Governor-General may ban an organisation without any notice to the organisation concerned, without assigning any reason for his action and, of course, without the organisation having

had a prior opportunity of putting its case before a Court of law or any real opportunity of subsequently challenging the ban in a Court of law. The second point is that the Section embodies five different categories under which the Governor-General must decide that an organisation falls before banning it, and these categories are described in the widest and vaguest possible terms. So wide and vague are the descriptions of the various categories that innumerable organisations which have no political pretensions whatever might well be banned. Thus Trade Unions, Welfare Organisations of various types, even Churches such as the Catholic Church, could possibly fall under the provisions of Section 2 as it stands.

Nor is there any attempt, difficult though such an attempt might be, to define the term "Communism" in the first category of potential unlawful organisations described in the Section. Consequently a particular organisation might well find itself banned on the ground that one of its purposes is "to propagate the principles or promote the spread of Communism", without ever being informed on what grounds the decision was based or what the Governor-General meant by the term "Communism". The net is widened still further by the dangerously vague provision that any organisation which "engages in activities which are calculated to further the achievement" of any of the purposes mentioned under the various categories may be banned.

THE "LIQUIDATOR"

SOME OF THE PROVISIONS OF THE BILL dealing with the effects of a proclamation banning an organisation are open to grave objection. All the property of such an organisation vests in a person designated by the Minister as a "liquidator". This official, amongst other duties, is to compile a list (shades of "The Mikado") of all present and past members and active supporters of the organisation.

Anyone whose name appears on that list may be ordered by the Minister never to become a member of either House of Parliament or of a Provincial Council or to hold any public office, or if he be such a member or hold such an office, he may be deprived by the Minister of his membership or of his office for life.

A person whose name appears on the list and who *ipso facto* becomes liable to these penalties at the discretion of the Minister, is to be given an opportunity of showing, not to a Court but to the "liquidator", that he should not be on the list; but if he fails to have his name deleted he has no redress against any of these grave deprivations of his rights and liberties. Carried to its logical conclusion, this means that if, say, the Leader of the Opposition had in his student days been an "active supporter" for three months of an organisation which is banned in August, 1950, he could be compelled by the Minister of Justice to resign his seat and never again to become a Member of either House.

POWERS OF "AUTHORISED OFFICER"

TWO FURTHER PROVISIONS OF THE BILL call for special comment. The first is Section 7, which provides that if the Minister has reason to suspect that any organisation ought to be declared unlawful or any publication ought to be banned, he may appoint an "authorised officer" to carry out investigations into the activities of the organisation or the circumstances connected with the publication.

This official has power to enter any premises whatsoever without notice and without the production of a search warrant; to require the production of any document on the premises or in the possession of any person and to seize such documents; to submit to questioning any person on the premises, or whom he suspects to be a present or past member of the organisation, and to force them, on pain of a fine of £200 or imprisonment

for one year or both, to disclose the names of all persons who are or have been office bearers, members or active supporters of the organisation concerned. He may be directed by the Minister to compile a list of all such persons, with the same results attaching to the "liquidator's" list. Such powers are uncomfortably reminiscent of the methods of totalitarian states.

EVEN MORE DRASTIC IN ITS POSSIBLE EFFECTS is the discretionary power vested in the Minister under Section 10 to dictate the movements of any person whom he considers to be, *inter alia*, "likely in any area to advocate, advise, defend or encourage" the achievement of any purpose mentioned in the vague Section 2 referred to above. As the Section stands it is possible for the Minister in the exercise of his discretion to prohibit such a person for life from being within any area specified in the notice of prohibition. If the victim fails to comply with the prohibition within

the time specified in the notice (which must be not less than one week), in addition to liability to imprisonment for three years he may be forcibly removed from the area in question. When one remembers that for practical purposes recourse to the Courts of law for relief against possible arbitrary or high-handed Ministerial action is impossible, the dangers inherent in this and other sections of the Bill scarcely need emphasising.

AT THE TIME OF WRITING the fate of the draft Bill is as yet undecided. It is rumoured that the Minister of Justice may be prepared to accept any amendments which could make the measure more workable. It is to be hoped that if any amendments are accepted, they will be directed towards the elimination of absolute Ministerial powers and the preservation of the authority of the Courts as the final and strongest defence of the civil liberties.

The Future of Europe

By H. O. SIMON

IF THE ESTABLISHMENT OF ORGANS AND ORGANISATIONS were the panacea for the malaise of Europe it would be safe and secure. The only danger might arise from the administration of an overdose of this drug.

Apart from European participation in such world-wide associations as the United Nations and its many agencies, and without taking into account its eastern half, the more restricted groupings of the Benelux and Angloscan type, and the numerous and often useful voluntary societies, we have still the Atlantic Treaty with its Council and committees to which a secretariat and a High Command are to be added; Western Union with a per-

manent office and General Staff; Council of Europe with a Council of Ministers and a Consultative Assembly; Organisation of European Economic Co-operation; and the Economic Commission for Europe with half a dozen committees. All of them are working for the integration of Europe, one of these undefined and non-descript enrichments of the Thesaurus of Political Words and Phrases, which replace rather than express clear conceptions and ideas. As Mephistopheles tells the freshman:

"Just when conceptions of ideas are lacking,

A word will crop up in the nick of time."

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