

MEMORANDUM SUBMITTED BY NEW AGE ON THE UNDESIR-  
ABLE PUBLICATIONS BILL INTRODUCED BY THE MINISTER  
OF THE INTERIOR DURING THE 1961 SESSION OF  
PARLIAMENT AND REFERRED TO A SELECT COMMITTEE  
FOR CONSIDERATION AFTER THE FIRST READING.

The present Bill is a great improvement on the Publica-  
tions and Entertainments Bill introduced by the Deputy Minister  
of the Interior during the 1960 session of Parliament in that  
the principle of pre publication censorship of publications  
has been dropped. Moreover the whole scope of the Bill has  
been narrowed so that the Bill will not constitute so drastic  
an invasion of the freedom of the press as the previous Bill.

For this we have an active public opinion to thank.  
The public outcry from all sections of the population against  
the previous Bill was so strong that the Government was compelled  
to take it into account. At one stage it was even announced  
that the Bill had been scrapped completely, and that the  
Government would merely seek to apply existing laws in order to  
bring about the changes it desired. The new Bill, however,  
was introduced following a deputation from the Dutch Reformed  
Church demanding some form of extended control over internal  
publications.

It is a great pity that the Government - which showed  
in the matter of supply of liquor to Africans that it is  
prepared and powerful enough to ignore the opinion of the DRC  
when it chooses to - should have on this occasion capitulated  
to the pressure of a group representing clearly a small  
minority of public opinion on the question of censorship.

For there should be no doubt that the present Bill, for  
all that it represents an apparent concession, is nevertheless  
still a grave threat to the freedom of the press.

Section 2 of the Bill proposes to make it an offence for  
any person to "print, publish, manufacture, make, produce,  
distribute, display, exhibit, sell or offer or keep for sale any  
publication or object that is undesirable".

A publication or object (which includes any printed or  
written matter, drawing, painting, carving or gramophone record)  
shall be deemed to be undesirable if it or any part of it

- (a) is indecent or obscene or is offensive or harmful to  
the public morals;
- (b) is blasphemous or is offensive to the religious con-  
victions or feelings of any section of the inhabitants  
of the Republic;
- (c) brings any section of the inhabitants of the Republic  
into ridicule or contempt;
- (d) is harmful to the relations between any sections of the  
inhabitants of the Republic;
- (e) is prejudicial to the safety of the State, the general  
welfare or the peace and good order;
- (f) discloses certain details from judicial proceedings  
which are indecent or obscene, or which go beyond  
certain defined limits in cases for divorce or judicial  
separation.

Any person who commits an offence under this section will be liable to a fine of R400 or imprisonment for 12 months or both. But an important concession here is that the provisions of this section shall not apply to the printing or pleadings or evidence in court, law reports, or to the printing or publishing "of any matter in a publication of a technical, scientific or professional nature bona fide intended for the advancement of or use in any particular profession or branch of science"; nor to any bona fide religious publication.

A further apparent safeguard is that no prosecution under this section shall be instituted except on the recommendation of the Censorship Board and on the authority of the attorney general; and further that if the Board is of the opinion, after examining an object, that it is not undesirable, no prosecution shall be instituted.

In other words, no prosecution may be instituted unless both Board and Attorney General are in agreement. Even if the Board considers an object undesirable, the Attorney General may decide not to prosecute, and if the Board does not consider an object undesirable, then the Attorney General may not prosecute.

These may appear to be effective safeguards against frivolous prosecutions. However, since both the Board and the Attorneys General are appointed by the Government, there is no guarantee that prosecutions may not be instituted for political purposes on the instructions of the Minister of the Interior.

Section 3 of the Bill defines what the Minister intends to be understood by the expressions "indecent or obscene", "offensive to the public morals", "harmful to the public morals". These definitions suffer by virtue of their vagueness, as for instance section 3(d) which states that if the question arises in a court of law as to whether any matter is indecent or obscene or offensive or harmful to the public morals, that matter "shall be deemed to be indecent or obscene or to be offensive or harmful to the public morals if, in the opinion of the court, it is in any .... manner improperly subversive of morality". Since neither "improperly", "subversive" nor "morality" is in any way defined, it is obvious that this leaves it wide open to a court to come to almost any conclusion on any matter at issue.

However, the most dangerous sections of the Bill are those contained in section 2, sub-sections 2(c), (d) and (e). These class as "undesirable" any publication or object which brings any section of the inhabitants of the Republic into ridicule or contempt; which is harmful to the relations between any sections of the inhabitants of the Republic; or which is prejudicial to the safety of the State, the general welfare or the peace and good order. The meanings of these concepts are not in any way defined, and it is obvious that as they stand these clauses can be invoked for the purpose of suppressing unpopular political opinions.

Moreover, we have it on the highest authority that this is precisely what the Government hopes to achieve in the near future. In a radio address on October 7, 1960, the Prime Minister Dr. Verwoerd declared that "a political non-conformist press will not be tolerated in the Republic".

On August 12, 1961, the Minister of Foreign Affairs Mr. Eric Louw, referring to a press report that the managing

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director of an Athens newspaper and two of his assistants had been sent to jail for causing "alarm and despondency", added: "I wonder if the time has not come for us in this country to follow the Greeks' example".

On September 2, 1961, Mr. Blaar Coetzee, Nat. M.P. for Vereeniging, said: "On October 18th a mandate will be sought to take the English Press by the throat".

Speaking at the Nationalist Party Congress in Natal in September, 1961, the Minister of Bantu Education, Mr. W.A. Marce, said it was clear that there were serious objections to the role of the press - readers were being indoctrinated in favour of liberalism.

On August 10, 1961, Dr. C. de Wet, Nat. M.P. for Vanderbijlpark, said severe action should be taken against the "English language press" which was guilty of "crime and sabotage" against the Republic.

At the same time, no Nationalist politician has ever attacked the English Press for licentiousness or pornography.

It is true that none of these gentlemen have been noted in the past for their impartial approach to political problems; nor, fortunately, do they enjoy any status as judicial officers. Nevertheless, in the climate of public opinion created by remarks such as these which are constantly emanating from Nationalist sources, it is not inconceivable that the judicial officers appointed by the Government may well agree with them when it comes to the question of what constitutes an undesirable publication or object in terms of the present Bill. The danger is increased when one considers the possibility of an "expert" opinion on these matters being placed before a court by the Board of Censors, consisting of 15 paid Government officials, only four of whom may constitute a quorum, with the result that the opinion of only three men may decide the issue of whether or not an editor or publisher goes to jail for publishing "undesirable" matter.

Is it undesirable to advocate "integration", "Universal suffrage", "abolition of the colour bar", "mixed marriage", "inter-racial gatherings", "admission of Non-Whites to Whites-only universities", "abolition of Group Areas and the Pass Laws"? We have no doubt whatsoever that all members of the governing party would say "yes". When this Bill becomes law, we wonder how many judicial officers will be prepared to say "no".

The danger of persons being convicted under this section is all the greater in the light of the provisions of section 3(2), which reads: "It shall .. be no defence that the matter in question was printed, published, manufactured, made, produced, distributed, displayed, exhibited, sold or offered or kept for sale with a contrary intention". In other words, an editor may publish a picture of a Black man and a White woman in friendly relationship to illustrate the possibilities of fraternisation across the colour lines, thereby hoping to promote goodwill between the races in South Africa. But in terms of this Bill, his intention could be disregarded and he could be convicted for publishing something held by the court to be "undesirable".

In our views these sections of the Bill are a grave threat to the freedom of the press. And they are so not merely because the judicial process itself may go astray owing to the vagueness of the definitions, but because editors and publishers will be severely inhibited and will

be themselves inclined to eliminate harmless and even beneficial material for fear of a possible prosecution.

No case apart from the needs of political expediency has ever been made out to demonstrate that the press should be hamstrung in this fashion. The Government's own Commission of Inquiry into the Press found the incidence of undesirability in the press to be "trifling" (vide the memorandum submitted by New Age to the Select Committee on the Publications and Entertainments Bill in 1960). One can only conclude that the whole purpose of these sections of the new Bill, therefore, is to intimidate the political opposition to the Nationalist Government under the guise of suppressing pornography.

We wish to register our strongest objection to these sections of the new Bill and, in the interest of preserving the fullest freedom of expression, to request that they be eliminated from the Bill before it is presented to the House for its second reading. We feel that the press is already overburdened with restrictions under the various laws (for details of which we again refer the Select Committee to our previous memorandum) and that far from extending the powers of the authorities to interfere with the freedom of the press, these powers should be reduced to the absolute minimum.

We would in fact ask for the whole Bill to be dropped as unnecessary were it not that section 10 contains a slight improvement in connection with the control of the importation of goods under the Customs Act. At present the Minister has the power to ban the importation of goods, including books, magazines, periodicals, pictures etc. on the grounds that they are "indecent, obscene or on any ground objectionable". The Minister has made use of his powers to ban nearly 7,000 books during the last 10 years, and to make South Africa ridiculous in the eyes of the civilised world by depriving its citizens, not merely of pornography as he claims, but of some of the finest cultural and scientific works produced by the artists and scientists of our own and other countries.

In terms of the new Bill, the Minister is to surrender his powers to the Board of Censors, but a decision of the Board will be subject to an appeal firstly to the Supreme Court and ultimately to the Appeal Court. We disapprove of the whole basis on which external censorship has been based by the present and previous governments; but at least the new Bill will make it possible for future bannings to be reviewed in the courts, and will possibly enable the South African people to free themselves to some extent from the arbitrary decrees of State bureaucrats and enjoy wider access to overseas publications than has been available to them in the past.

In conclusion we wish to refer the Select Committee once again to Article 19 of the United Nations Charter of Human Rights, which states: "Everyone has the right of freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

South Africa is already dangerously isolated from the main currents of world thinking, especially on racial questions,

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and present indications are that our isolation is to increase rather than decrease in the immediate future. Yet, if we are to survive, this trend must be reversed and our isolation brought to an end. Policies based on force and terror will fail to achieve their object. Only those policies which are based on the consent of the majority of the people - all 16 million of them - can succeed.

To achieve a solution to our problems in South Africa, we need, not the suppression of the other man's point of view, but a means of harmonising the views of all the inhabitants of our country, Black, White and Brown, so that we can live together in peace and not in an atmosphere of constant friction and hatred. To bring about a healthier relationship between the various sections of our multi-racial community, we need a freer exchange of ideas, more tolerance, more willingness to live and let live, greater consideration for the other man's point of view.

These should be the aims of a good government, not merely in the sphere of the press, but in all spheres.

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