SIX ACTS AGAINST CIVIL LIBERTIES

Prepared by

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THE COUNCIL FOR CIVIL LIBERTIES

169 Exhibition Street, Melbourne, C.1. (Telephone F5057).

The AIMS OF THE COUNCIL are to assist in the maintenance of the rights of citizens—especially of freedom of speech, press and assembly—and to aid in advancing measures for the recovery and enlargement of these liberties, and for the reform of existing relevant legislation.

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CONTENTS:

"Six Acts Against Civil Liberties" is an official publication of the Executive Committee of the Council for Civil Liberties, 169 Exhibition Street, Melbourne.

The booklet, which is approved by the Legal Panel of the Council, is available at about cost price to organizations placing bulk orders. Booksellers and organizations may obtain copies at 2s. per dozen by application to

R. R. RAWSON, 169 Exhibition Street, Melbourne, C.1. Telephone: F5057.

The sources of the information given in the several sections are the *Acts of the Commonwealth*, the *Commonwealth Gazette*, *Commonwealth Parliamentary Papers* and *Commonwealth Parliamentary Debates*, besides *Commonwealth Law Reports*, *The Argus Law Reports*, newspaper files, etc., over a period of years.

The object of the publication is to give authoritatively and concisely the content and significance of the chief legislation, of an undemocratic character, which has been made by Act, Proclamation or departmental regulation of the Commonwealth since 1920. Almost the whole of such legislation, it is shown, is law to-day.

1.—OUR VANISHING DEMOCRATIC RIGHTS

THE laws of the Commonwealth of Australia to-day include a formidable array of statutes and regulations which menace Australian democracy. Six Acts especially restrict every traditional democratic liberty in this country, as did the notorious Six Acts in Britain in 1819. Australian law as it stands whittles down our freedom of speech, publication and assembly, our freedom of association and movement.

Some of these provisions of the law were enacted by unduly apprehensive Parliaments at the instance of undemocratic Ministries. The Crimes Act (Part 11A) and the Transport Workers Act (Part 11) are in this category.

Two provisions are objectionable because they have lent themselves to abuse by Governments—words of statutes have been twisted to furnish repressive means which were never contemplated by the framers of the legislation. The dictation test paragraph (Section 3 (a)) of the Immigration Act and Section 52 (g) of the Customs Act, from which the Government claims to derive its power to censor political books, fall into this second category.

The War Precautions Act Repeal Act and the Broadcasting Act are in yet a third category. They are statutes which Parliament, heedless or indifferent, has left open to abuse by the Government.

Between them these three types of repressive measure make a dangerous system which can suspend ordinary rights of the citizen whenever the Government so wills.

Australian Governments have made three great drives against Australian democracy since the war of 1914-1918:—

In 1920-21 the War Precautions Act Repeal Act laid the basis of the Crimes Act; an Arbitration Act Amendment Act deprived unions, under the crushing penalty of £1,000 fine, of the right to strike, and laid a basis for the Transport Workers Act; two Proclamations under the Customs Act

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References are made in the present publication to statutes, statutory rules, proclamations and ordinances. These are all forms of legislation. A statute is an Act of Parliament—in the case of a Commonwealth statute it is an act of the King through the Governor-General, and the Senate and House of Representatives. A bill may be read three times in each House of Parliament and debated; when the Governor-General has given the Assent it becomes law as an act or statute.

But laws are made outside Parliament, too. Some statutes give power to a Minister to make regulations, under the Act, which will have the force of law. Such regulations, reference to which is made in the "Commonwealth of Australia Gazette," become law if neither House has vetoed them within a fortnight after their publication. They are known as statutory rules. Again, Cabinet as a whole has, like individual Ministers, certain law-making powers. The Governor-General and Cabinet sitting as the Federal Executive Council may publish ordinances or proclamations in the "Gazette," and these have the force of law. Ordinances usually legislate for Territories of the Commonwealth; some acts give the Governor-General and the Federal Executive Council power to issue proclamations in certain circumstances. A proclamation is technically not legislation, but in some cases it has the effect of bringing into operation legislation which is not operative until the Governor-General, advised by Cabinet, proclaims a state of emergency.

made lawful a system of departmental censorship of political literature.

In 1926-29 the various provisions of the Crimes Act passed into law, and the Government had at hand a statute which was in flat contradiction of the civil rights thought to be an essential feature of citizenship; another Arbitration Act Amendment Act offered unions a bribe (reduction of strike penalty from £1,000 to £100) to expel their elected officers of whom the Government disapproved; two Transport Workers Acts were passed and stringent regulations were gazetted under them—provisions so objectionable that Mr. W. M. Hughes himself said of one of them that it would "disgrace this Parliament."

In 1932-37 the Crimes Act edifice was raised a stage higher (1932) and an attempt made (1935 Amending Bill) to carry it a stage higher still; fresh regulations under the Transport Workers Act penalised the seamen of Australia, when they, like the waterside workers, were subjected to a licensing system; by an amendment of the Immigration Act (1935) and by an increasingly stringent censorship, two successive Lyons Governments set themselves to hinder the free play of ideas.

That is the record in outline. When the outline is filled in a particularly disquieting situation is depicted. For these laws were aimed at one section of the community in particular—the working-class. Cases in point are the fine of £1,000 imposed on the Waterside Workers' Federation of Australia in the Melbourne City Court in 1928, Mr. Bruce's threat as Prime Minister to issue a Crimes Act Proclamation against them, the Devanny prosecution under the Crimes Act (1932), and the writs issued under the Crimes Act against the Communist Party of Australia and the Australian section of the Friends of the Soviet Union, together with the refusal of the Postmaster-General to carry "Soviets To-day" in the mails. The Immigration Act was invoked against Thomas Walsh and Jacob Johnson, Seamen's Union leaders, in 1925, after a strike, and against Egon Erwin Kisch and Gerald Griffin in 1934, when they came to Australia to take part in a conference of bodies which were opposed to war. The Transport Workers Act (still in operation) was enacted as "emergency legislation" in 1928 against the Waterside Workers' Federation, and the fantastic penalties under the 1928 form of the Arbitration Act were designed to permit of Government interference in the domestic affairs of trade unions.

On the other hand, books and broadcasting are certainly not of interest to the working-class exclusively. But working-class politics has been the chief object of the Ministerial censor's attention, as the list of prohibited books makes plain.

Happily Australians were aroused to protest by the third great offensive against their liberties.

But a success here, a protest there, have not shaken seriously a system of laws which must be got rid of if Australia is to be once more a free democracy. It is still within the power of the three million electors of Australia, by demanding from parliamentary candidates a pledge to work for the amendment of the Six Acts, to restore their stolen liberties.

2.—ATTACKS ON THE LIBERTIES OF LABOUR

MR. FRANK ANSTEY said, in 1928, when he sat in the House of Representatives for Bourke: "There is no limit to the power which this Government possesses if it cares to exercise it."[1] The powers to which the member for Bourke referred were contained in the Crimes Act 1926 and the Arbitration Amendment Act 1928 (passed in June; Mr. Anstey's statement was made in September). But it is clear that there was a limit to the Government's powers at this stage. For Parliament was on the eve of rushing through a third measure which would attack the liberties of Australian Labour: the Transport Workers Act. Of this legislation the Prime Minister, Mr. Bruce, said: "This is emergency legislation, necessitated by the extraordinary circumstances of the moment."[2]

But the "emergency legislation," with its sister-Acts, remained on the statute book in 1937, and in a form uglier than its first. And it is instructive to compare the general condition of the workers' liberties in 1928 with their condition in 1937, before examining the particular circumstances in which a system of class legislation was built up.

In 1937, as in 1928, interstate transport workers could be deprived of the right to strike, on the proclamation of a state of emergency by the Governor-General (i.e., by Cabinet), and offenders were liable to imprisonment and (if born outside Australia) deportation. (The phrase, "the right to strike," may sound strangely in some ears; but it should be realized that on occasion workers may have no alternative course of action available to them.)

In 1928 an alleged offender under the political and labour sections of the Crimes Act was presumed guilty until he could prove himself innocent; this was still the case in 1937, and the accused now bore the additional burden of the requirement that he should answer questions which might incriminate him. Averments (written statements) by the prosecution still sufficed to convict him unless he could rebut them.

In 1928 defendants on a charge of unlawful association could be tried summarily in the police court, or committed for trial (by a judge and jury), as the police magistrate decided. In 1937 a single judge (without a jury) could hear summonses calling upon associations to show cause why they should not be declared unlawful; officers of associations declared unlawful might be disfranchised, though the association was lawful when they took office in it; and (as in 1928) all property belonging to an unlawful association is forfeited to the Crown.

The burden of the Crimes Act on workers and persons of radical views has, therefore, been increased greatly since 1928. So much, briefly, for the first means of repression.

Take the second means: An extraordinary power under an amendment of the Arbitration Act. This power, patently designed to take away unionists' freedom of association by permitting Government intrusion into trade union affairs, was given by Act in 1920—a year of political ferment. The power was

(1) Speech on S. M. Bruce's motion for leave to bring in a Transport Workers Bill, September 20, 1928, Commonwealth Parliamentary Debates, Vol. 119, p. 7010.

(2) The same, p. 7073, speech on his motion for a second reading.

increased in 1928, a year of many strikes by trade unions discontented with an arbitration system which seemed to them to exclude them from their proper share of boom prosperity.

In 1920, Section 3 of an Arbitration Act Amendment Act imposed a penalty of £1,000 on unions whose executives called upon their members "to refuse to offer for, or accept employment." This was bad enough; but a 1928 Amending Act enabled the Government to thrust its way into the very committee rooms of trade unions. The Arbitration Act was amended to provide that if, after a strike, a union removed the executive which had ordered the strike, and expelled its members from the union, the maximum fine payable might be reduced from £1,000 to £100. But—and here interference reached a climax—the next sub-section (4) provided that if, within twelve months of action under sub-section 3, the penitent union restored any of the expelled executive, even to rank-and-file membership of the union, it would incur liability to a penalty of £1,000.[3]

This section was repealed, at the instance of the Scullin Government, in 1930.[4] But the Scullin Government, which had a majority in the House of Representatives but not in the Senate, was blocked by the Upper House in measure after measure; and the Crimes Act, unamended during the Labour Ministry's term, has grown in stature since those days. Moreover, in 1937 a great section of the trade union movement suffered under the system set up by the Transport Workers Act 1928-1929.

Here in brief is the story of the measure. The Beeby award of the Commonwealth Arbitration Court, published to become operative in waterfront employment on September 10, 1928, required men seeking wharf-lumping jobs to attend two "pick-ups" a day, instead of one, as previously. This meant "hanging around all day begging for the opportunity to work," the Leader of the Opposition, Mr. J. H. Scullin, said.[5] It meant, too, the spending of money on fares and mid-day dinner, by job seekers who might be unsuccessful applicants for work. "Four hours are now allowed for 'picking up'," the Waterside Workers' Federation claimed, "where formerly the time was two hours or less; and at most of the ports the Beeby award has spread the 'pick-up' over eight hours a day."[6]

The watersiders refused to wait eight hours a day for the shipowners' call. On Monday, September 10, when the Beeby award came into force, no Melbourne unionist presented himself for employment on the "Karoola," in Brisbane 1,500 waterside workers refused to offer themselves for work, and in other ports unionists showed in a similar way their dissatisfaction with the award. On the Tuesday the Prime Minister, Mr. Bruce, threatened the invoke the Crimes Act and proclaim a "serious industrial disturbance" under its Section 30J. Next day the shipowners' spokesman, who on Monday had said the

(3) See Commonwealth Conciliation and Arbitration Act Amending Acts No. 31 of 1920, Sec. 4 (1), (2), No. 18 of 1928, Sec. 8 (3), (4).

(4) See Act No. 43 of 1930, Section 6, repealing Sections 6-8 of the principal Arbitration Act.

(5) Commonwealth Parliamentary Debates, Vol. 119, p. 7078.

(6) "The Argus," Melbourne, September 11, 1928.

new award must be obeyed **because it was the law,** said that the two "pick-ups" were necessary for economical working. So the law and the masters' profit were now at one, and the employers refused the union's invitation to confer with them on the matter under dispute. On the Saturday the executive of the Waterside Workers' Federation of Australia decided, by 48 votes to 22, to advise their members to resume work under the award; they should be content, for the time being, with the demonstration which they had already given of their view of the award.

But on Monday, a week after the beginning of the trouble, unionists at the ports of Melbourne, Adelaide, Fremantle, Brisbane, Bowen, Townsville, Newcastle and Port Kembla refused to work in terms of the Beeby award, and next day the Attorney-General, Mr. J. G. (later Sir John) Latham, issued four summonses against the Federation under the Arbitration Act 1904-1928, charging the Federation with having incited a strike. On Wednesday the shipowners decided to employ non-union labour[7] ("volunteers"). and two days later 500 volunteers were enrolled in Melbourne. in the shadow of the Bourke Street West police station. On Thursday the Prime Minister had asked the House of Representatives for leave to bring in a Transport Workers Bill, and after the first enrolment of volunteers at the ports, the House sat all night at Canberra, to pass the second reading before 5.15 a.m. on the Saturday.

On that day, 350 volunteers started work, under police protection, on four ships docked at Melbourne; the Waterside Workers' Federation of Australia was fined the maximum of £1,000 at the Melbourne City Court. and at Canberra the Transport Workers Bill passed through committee, report and third reading stages by 5.45 a.m., to come back, unamended, from the Senate late in the afternoon.

On the following Monday, a fortnight after the beginning of trouble, 800 volunteers were enrolled at the port of Melbourne, and the Governor-General gave the Assent which made the Transport Workers Act law. Next day the Executive Council (Cabinet in full dress) published licensing regulations under the new Act, to come into force within 24 hours.

The speed and effectiveness of these proceedings overcame the bewildered watersiders. By early October the union resistance, in most of 50 Australian ports—Melbourne still held out—had been broken by the combined assault of the shipowners, the courts, Parliament and the Government of the Commonwealth. Unionists in Adelaide, Sydney, Fremantle and Newcastle had applied for licences. A month after the award came into operation, 3,728 men were registered at the port of Melbourne for licences, and the work of the port was being done by 2,000 volunteers; unionists were locked out. On October 23 unionists were working only two ships at Melbourne, 2,025 volunteers were working 29 ships.

Victoria Dock compound was fenced with police, who allowed only volunteers to pass within—volunteers carrying "brown tickets."

That is the inglorious story of 1928. We may now consider the chief provisions of the Act by which the waterside

(7) The same, September 11, p. 7; September 13, p. 8.

workers were coerced into submission. It is to be noticed that the licensing regulations, published immediately after the passage of the 1928 Act, were incorporated into the Act by an Amending Bill, which was gagged through the new Parliament early in the first session of 1929. Accordingly it is to the Act of 1928-1929 (No. 3 of 1929) that references are made below. Under this Act, at frequent intervals since, the Bruce and Lyons Governments have made a great extension of the licensing system **without reference to Parliament after March of 1929.**

The story might be summarised: Bruce Government and law and shipowners v. the waterside workers (1928-9), Scullin Government and watersiders v. Senate and shipowners (late 1929-1931), Lyons Government and both Houses, and "Ministerial discretion," the law, the licensing system and the shipowners v. the watersiders and the seamen (1932-to date).

Transport Workers' Act 1928-1929 and Statutory Rules under the Act 1929-1936, and Proclamations.

Section 3.—The Governor-General may make regulations having the force of law, under the Act, "in particular for regulating the engagement, service and discharge of transport workers, and the licensing of persons as transport workers, and for regulating or prohibiting the employment of unlicensed persons as transport workers, and for the protection of transport workers."

Section 4.—The following provisions to apply to any port specified by the Minister in a Commonwealth Gazette notice.

Proclamation, June 7, 1929 (Signed J. G. Latham).—Melbourne, Port Adelaide, Fremantle, Brisbane, Bundaberg, Bowen, Innisfail, Goudi, Mourilyan, Townsville, Lucinda and Port Douglas are specified ports under Section 4.

Proclamation, December 16, 1929 (Signed Frank Brennan).—Fremantle is removed from the Latham list.

Section 5.—The departmental head may appoint a licensing officer for each gazetted port.

Sections 6-13.—No person may be employed as a waterside worker unless he possesses a licence (S. 13); he must pay a fee and an annual renewal fee; **Section 12 (1)—The licensing officer may cancel a license when "he is satisfied" that** the licensee

(a) **"has refused or failed to comply with any lawful order or direction given in relation to his employment; . . ."**

(b) or "has, either alone or in company with other persons, exercised or attempted to exercise intimidation or violence" towards any officer under the Act or any waterside worker.

(3)—A waterside worker whose licence has been cancelled as above is ineligible for another licence, during not less than 6 and not more than 12 months.

(4)—He may appeal to a police magistrate.

Section 15. — **Any waterside worker must produce his licence** on demand by any licensing officer or authorised person and any **Commonwealth or State policeman.**

* * *

Statutory Rules.

No. 38 of 1930 (gazetted April 9, 1930).—2.—(1)—The two pick-ups" at the Port of Melbourne are restricted to 2 hours each, on week days.

(Disallowed by the Senate, May 15, 1930.)

No. 76 of 1931 (gazetted June 25, 1931).—Forms TW1 and TW3 should be endorsed "I am" (or "I am not") a member of the Waterside Workers' Federation of Australia," and "I am" (or "I am not") a returned soldier or returned sailor.

(Disallowed by the Senate, July 29, 1931.)

No. 100 of 1931.—A regulation in the terms of No. 76, gazetted August 6, disallowed Oct 16.

No. 126 of 1931.—A regulation in the terms of No. 76, gazetted October 17, disallowed November 12.

No. 141 of 1931.—A regulation in the terms of No. 76, gazetted November 14, disallowed November 26.

No. 145 of 1931.—A regulation in the terms of No. 76, gazetted November 26.

(At this stage the Labour Government, which had tried, in the manner set forth above, to lighten the unionists' lot, was defeated in the House. After a general election Mr. J. A. Lyons formed a U.A.P.-U.C.P. Government.)

Statutory Rules No. 1 of 1932.—No. 145 of 1931 repealed.

(To ensure that these tactics of the Scullin Government in defence of the workers should not be repeated, the Lyons Government introduced an amendment of the law, which was accepted by Parliament.).

1932 Amendment.

Acts Interpretation Act 1904-1935 Amendment inserted by Act No. 24 of 1932.—

Section 10A (1).—"Where either House disallows any regulation no regulation being the same in substance as the regulation so disallowed shall be made within six months."

Statutory Rules No. 29 of 1934 (gazetted March 7, 1934)—

8.— (XI.), (2), (3).—Waterside employment committees may be appointed by the Minister in gazetted ports; each committee to consist of the licensing officer as chairman and four persons to be selected by the Minister and comprising two employers' representatives, one representative of the Waterside Workers Federation and one representative of "other licensed transport workers."

(4).—The Minister may remove any member from office at any time.

9.—(11), (2).—The chairman may summon meetings of the committee "at such times as he thinks fit or as the Minister directs." A quorum consists of three members, including the port licensing officer.

10-15.—Licences may be endorsed "First Preference," "Second Preference," "Preference Cancelled"; the licensing officer may substitute any endorsement for any other, provided that a waterside worker may be degraded only after a decision of the committee that he has been inefficient or guilty of misconduct in his employment. Preference of employment to be given according to endorsement.

Statutory Rules Nos. 125 of 1935 (gazetted December 10, 1935—after a strike of seamen).—Applies the licensing system to seamen.

No. 20 of 1936 (gazetted February 18, 1936).—Applies the employment committee system to seamen.

Thus the waterside workers and the seamen were dealt with, after years of struggle between their unions and the Commonwealth Government: a struggle that in the case of the watersiders was intense especially in and after 1928, and in the case of the seamen had existed in an aggravated form since the events of 1925. What is the position to-day?

The Transport Workers Act is operative in nine ports, including Melbourne, Adelaide and Brisbane. Mr. A. E. Turley, the general secretary of the Waterside Workers' Federation of Australia, made the following statement of the position, in a communication to the Council for Civil Liberties dated July 7, 1937:—

"As a result of our so-called strike of 1928, our Lucinda Point branch was annihilated and since then no members of my Federation have been employed in that port. Practically all of the cargoes handled there are (handled) by farmers, cane-growers, etc. . . .

"The only port in the Commonwealth, out of 45 where we have branches established, in which the regulations under the Transport Workers Act operate (i.e., the full licensing regulations), is Melbourne. In this port . . . it is compulsory not only for each man employed to possess a licence as a transport worker, but the men employed are graded into three sections, viz., First Preference, Second Preference, and those holding only an ordinary licence permitting them to work in the industry."

What, finally, is the objection to measures like this Transport Workers Act, from the democratic point of view? It is not, in this case, that the Government has flouted the will of the people as expressed by their elected representatives. On the contrary.

It is true that between the first Act (October, 1928) and the second Act (March, 1929), the Bruce Government imposed its will on the watersiders by laws made in a department and

not in Parliament. But the Prime Minister of the day stated the simple truth when he said in the House of Representatives, moving the second reading of the 1929 Bill, that he was now about to carry out his election promise to embody the September regulations in an Act.

However, in this case we have seen an extraordinarily free use of the power of legislation by regulation, and if we cannot in logic lay all of the blame for this abuse upon the Ministers whom the electorate placed in Parliament, we can state directly that practices under the Transport Workers' Act are contrary to the very basis of the democratic idea, and that unless the electorate learns to recognize at sight the veiled object of such measures, this democracy will continue to be helpless in any situation which a Government cares to style a "national emergency." The basis of the objection to the Transport Workers Act is that it legislates as if the citizens of this democracy were recognized by the Act's framers as belonging to different classes, of which one class is preferred to another class. Specifically, the Government has intervened in industrial relations, not to arbitrate between parties in industry, but to take the side of one party, the owners, against another party, the workers. The Government has made a system, a permanent system, of discrimination against a class of society.

Secondly, this discrimination takes the form, under the Transport Workers Act system, of a direct interference with citizens' right to associate freely in trade unions. And this is the fundamental practical objection to the system under the Act, as the factor mentioned in the previous paragraph is the democracy's fundamental objection in theory.

To Mr. Hughes, who was in 1937 the Minister for Health and Repatriation in the second Lyons Ministry, we are indebted for a sufficient commentary upon the unjust nature of Section 12 of the Act, which is an incontestable instance of class legislation:

> **"To include such a provision in a Commonwealth statute will disgrace this Parliament. . . . It is unnecessary, it is subversive of freedom. If a man refuses to work in a manner prescribed by an award, he can be punished; if he refuses to obey a legitimate lawful command he can be dismissed. But this paragraph goes far beyond these just and necessary disciplinary regulations. For under it a man loses not only one job, but all chance of work for six months. . . . It is a direct incentive to men to fling away this hollow pretence of arbitration and resort to whatever means they have at their disposal to obtain even-handed justice."[8]**

It should be recorded that the Government proposed, a few months before the 1937 Federal election, to amend Section 12, sub-section (3). The Assistant Minister for Commerce, Senator Brennan, was to bring in a Bill accordingly; if the amendment becomes law, the licensing officer will lose his power to deprive an offending worker of his licence (and his livelihood) for from 6 to 12 months; after the amendment the officer will have power to deprive the worker of his livelihood for from 1 to 12 months![9]

(8) Commonwealth Parliamentary Debates, Vol. 120, pp. 326 and following pages.

(9) "Sun News-Pictorial," Melbourne, June, 1937.

3.—ABUSE OF THE DICTATION TEST

THE Commonwealth Government's refusal to permit Mrs. M. M. Freer to land, in 1936, and the attempts to exclude Egon Erwin Kisch and Gerald Griffin in 1934, are notorious cases of the Lyons Government's attempts to rob individuals, British and foreign, of their freedom of movement. Earlier, in 1925, the Bruce Government's attempt to deport as undesirable immigrants two men who had lived in Australia for 32 and 15 years respectively, drew the attention of the courts and the people to what must be recognized as one of the most dangerous of the Commonwealth Government's abuses of power. In the 1934-5, as in the earlier cases, the Government of the day used to exclude its political opponents, a power granted originally by Parliament for purposes utterly different in character. Mrs. Freer's case, not one of partisan politics, was apparently one in which an embarrassed Ministry had to contemplate with dismay a situation in which it had been placed by the irresponsible action of a single Minister. Mr. Paterson used against Mrs. Freer Immigration Act powers which the Government preferred to hold in reserve for its political opponents.

But all five cases have this in common: action was taken, **at Ministerial discretion,** to exclude white persons who were neither diseased nor criminal. And this action was taken under an Act of 1901 by which the Minister was given a general power of excluding immigrants whose entry would be a breach of the policy of a White Australia.

The dictation test—or, as it was called in 1901, the **education** test—has been used in a manner far from the intention of the framers of the Immigration Act of 1901; and each case mentioned is a shabby and contemptible abuse of the trust which people and Parliament must confide in its Government of the day. The Government which originally asked for, and was given, the power to exclude immigrants, understood that it and its successors in office would be administering a trust, and Australia's first Prime Minister expressed in the House his hope that any Minister who abused this trust would be flung from office. This was made manifest in the debates in the House of Representatives in 1901, on the Government's Immigration Restriction Bill.

What the Prime Minister, Mr. (later Sir Edmund) Barton sought was the power to exclude Asiatics from this country. He did not ask, however, for a direct statutory prohibition of such immigration, for the reason that the Imperial Government desired that offence should not be given to the Indian subjects of the Crown or to the Japanese. Accordingly Mr. Barton proposed to place in the Bill an education-test clause borrowed from the 1897 Immigration Restriction Act (Section 3) of the Colony of Natal; such an expedient, to be employed at Ministerial discretion, would serve to keep Australia "White."

Scarcely anybody dreamed that any Minister would dare to abuse his discretionary power so as to exclude a British subject or an educated European. In fact, Barton's original draft of the clause prescribed that an immigrant might be subjected

to a simple test in English dictation, and the Prime Minister only agreed to substitute the word "European" when members had expressed their apprehension lest a test in English be used to exclude Europeans. In the debates on the Bill the Prime Minister said, "I may say at once that there is no desire on the part of the Government to keep out educated or reputable Europeans. . . ."

"To put an illustration: If a Swede were asked to write a passage at dictation, I should not dream of instructing the officer to subject the immigrant to a test in Italian. That would be unfair, and is not what this House has in its mind in passing this legislation."[1] The member for North Melbourne (Mr. H. B. Higgins) expressed his doubt whether the Parliament ought to trust Ministers and officials "not to apply the Italian language, for instance, to a Swede." Mr. Barton replied, "I think the honourable and learned member can trust us to do that."

But the honourable and learned member was finally proved to have been right in his scepticism. The then member for North Melbourne (Mr. H. B. Higgins, afterwards Mr. Justice Higgins, of the High Court of Australia and President of the Commonwealth Court of Conciliation and Arbitration) did well to suggest that the people put not their trust in Cabinets. However, when in the 1901 debates another member moved an amendment that the immigrant select the language in which his literacy was to be tested, the Prime Minister said indignantly, "I do not think I ought to consent to an amendment which really has at the bottom of it a supposition that there might be cases in which an officer and the Minister would conspire to defraud an immigrant out of his choice of language. That is not the way in which any such Act can be administered. Any Minister who attempted anything of that kind would, I hope, be thrown out at once. . . ."

The member for Indi said of the dictation test paragraph, "If it had not been for the danger of coloured races invading us, we should never have heard of this particular paragraph." (The then Member for Indi was afterwards Sir Isaac Isaacs, Chief Justice of the High Court of Australia, and later Governor-General of the Commonwealth). But the sceptics were to be justified in their scepticism. The most far-seeing man in the House of Representatives during those momentous debates was Sir William McMillan, who had been the schoolfellow of H. B. Higgins in Dublin, and, like him, had little faith in Ministerial discretion. "It seems to me absurd and illogical," he told Parliament, "that we should by this test state that we do not want to keep out any European, while at the same time we do not allow a European to say to the officer of Customs, 'My language is so-and-so, and I want the test applied in that language.'

"Surely that is a very reasonable thing. What I dislike about leaving it an open question is that there is an element of suspicion and distrust. Why do we not clearly say that we intend to give the immigrant the right to tell the Custom-house officer what his language is and what the test should be?

(1) For this quotation, and other extracts from the debates on the Bill, see Commonwealth Parliamentary Debates, Vol. iv., pp. 5351 and following pages, and p. 4849.

"It is because there is evidently underlying it . . . the fact that we hold in reserve the power to keep out even European immigrants if it suits us by placing before them a test which we know they cannot carry out."

He was right. In after years the Minister would subject Mrs. Freer, a British subject, to a test in the Italian language; Gerald Griffin, a British subject, to a test in Dutch; Egon Kisch, a citizen of Czechoslovakia, to a test in Gaelic.

A digest is given below of the powers which Australian Governments have manipulated, and to which they have added, for the purpose of excluding free men and women:—

Immigration Act 1901-1930 (No. 56 of 1930). Section 3. Paragraph (a) is derived from the Natal Act No. 1 of 1897, Section 3.

The immigration into the Commonwealth of the persons described in any of the following paragraphs of this section (hereinafter called "prohibited immigrants") is prohibited, namely:—

(a) Any person who fails to pass the dictation test: that is to say, who, when an officer or person duly authorized in writing by an officer dictates to him not less than fifty words in any prescribed language, fails to write them out in that language in the presence of the officer or authorized person. . . . ("Prescribed language" was substituted in 1905 for "European language" in order to avoid overt discrimination against Asiatics.)

(Paragraphs (b) to (gc) specify certain classes of criminals, diseased persons, etc., as prohibited immigrants.)

(gd—inserted in 1920) any person who advocates the overthrow by force or violence of the established government of the Commonwealth. . . (etc.).

(gh—inserted by Act No. 7 of 1925) any person declared by the Minister to be in his opinion, from information received from the Government of the United Kingdom or of any other part of the British Dominions or from any foreign Government through official or diplomatic channels, undesirable as an inhabitant of, or visitor to, the Commonwealth.

(Paragraph (gd) was added in the course of the "Red" scare of 1920, and (gh) was added in the year of the British and Australian seamen's strikes, in 1925. Section 5 of the Principal Act was amended in 1935, after the breakdown, through a technical error, of the Lyons Government's proceedings to exclude Herr Kisch. The amendment, it will be seen, enhances the Minister's powers in respect of prohibited immigrants.)

Immigration Act 1901-1930, Section 5.

(1) Any immigrant who—

(a) evades or has, since the commencement of the Immigration Restriction Act 1901, evaded an officer, . . . may, if at any time thereafter he is found within the Commonwealth, be required to pass the dictation test, and shall, if he fails to do so, be deemed to be a prohibited immigrant, offending against this Act.

1935 Amendment: Section 5 amended by Sub-section (6), under which a prohibited immigrant under Section 5 may be imprisoned for six months and/or deported on a Ministerial order.

That such extensive powers have not been kept in the realm of theory has already been made clear. The cases of Walsh and Johnson[2] (see **The Case Against the Crimes Act**, published by the Council for Civil Liberties, p. 5) were cases of two union leaders who were to be deported, under the Immigration Act, upon the recommendation of a Board set up for the purpose by the Bruce Government in 1925. But the High Court held that they were not "immigrants" in the sense of the Immigration Act. Then came the cases of Kisch and Griffin, which may be recalled briefly.

Kisch, a Czechoslovakian writer of European reputation,

(2) See ex parte Walsh and Johnson in re Yates, 37 C.L.R., 36.

and Griffin, an Irishman resident in New Zealand, tried to enter this country to attend an All-Australian Congress against War, arranged to be held at Port Melbourne on November 10-12, 1934. "Australia is disgraced," said Walter Murdoch, Professor of English literature in the University of Western Australia, when Kisch was forbidden, on November 6, to land at Fremantle. The Attorney-General, Mr. Menzies, said next day, according to "The Argus," Melbourne, that Kisch "had not been allowed to enter Great Britain because of his subversive views and his association and affiliation with Communist organizations. 'The Commonwealth feels under no obligation to receive persons of his type'." Similar considerations, in respect of his politics, applied to Gerald Griffin, Mr. Menzies said.

Griffin, who was the national secretary of the New Zealand Movement Against War and Fascism, had reached Sydney in the "Monawai" a few days earlier. He had been given a dictation test in Dutch, had failed to pass it, and had been sent back forthwith in the "Marama."[3]

On November 12 Kisch's case came to court when a writ was served on the captain of the vessel in which he travelled. Cabinet at the same time confirmed the action of the Perth Collector of Customs in preventing Kisch from landing. (The Collector, Mr. H. Bird, stated that he had simply acted under instructions). Two days later Kisch jumped ashore at Melbourne. He was arrested, and placed in hospital with a fractured leg. On November 16 the court ordered his release and he was subjected to, and failed in, a dictation test in Gaelic. He was charged accordingly with being a prohibited immigrant, and was convicted and sentenced to six months' imprisonment and deportation. On December 19 the High Court held that Gaelic was not a European language within the meaning of the Immigration Act, and Kisch was freed.

Mrs. M. M. Freer was the next victim of the offensive Section 3 (a). She was subjected at Fremantle, in October, 1936, to a dictation test in Italian, a language she did not know, and failed; she was classed accordingly as a prohibited immigrant. She went to New Zealand, and later made a second attempt to enter Australia. In the High Court Mr. Justice Evatt, having heard an application for a writ of habeas corpus in her case, held that the action taken against her had conformed with the law. His judgment included this passage indicative of the danger of the abuse of power by government:[4]

"Mr. Bavin, for the applicant, has argued the case very fully. But, although I am unable to agree with his argument, I would refer to the statement of Lord Selborne that the ingenuity and zeal of counsel are never displaced when exercised for the defence of the personal liberty of the subject. . . .

"The (dictation) test . . . was merely a convenient and polite device . . . for the purpose of enabling the Executive Government of Australia to prevent the immigration of persons deemed unsuitable because of their Asiatic or non-European race. . . . But the blanket words of the Section do not require

(3) These facts are from reports published in "The Argus," Melbourne, November 7-December 19, 1934.

(4) See "Argus" Law Reports, March 2, 1937.

the adoption of such a policy. . . . If, in any particular case, there has been an abuse of the power entrusted by statute to the Government, responsibility for that rests with the Minister or with the Government. . . . The Legislature has refrained from giving this Court or any tribunal authority to review a decision of the Minister. . . . It must not be thought for an instant that, in refusing the present application, the Court is in any way endorsing or confirming the justice of any executive decision to exclude. . . . Further, . . . the personal character or reputation of the applicant . . . remain quite unaffected by the decision of the Court."

* * * * * *

Protests were made from all sides against the exclusion, and Cabinet intimated in May, 1937, that no further ban would be placed on Mrs. Freer should she again attempt to land in Australia.[5] No reason was given why the ban should then be lifted, as no reason, other than an opinion of the Minister, that Mrs. Freer might "break up an Australian home," had been given for the original imposition of the ban. There seems good reason to believe that the exclusion of Mrs. Freer was little more than a striking instance of Ministerial high-handedness. The Minister may have acted in an odd belief that no publicity would attend the exclusion of a young woman of British nationality, or attacks made on her character, under privilege of Parliament.

But there was an outcry in this case, as there had been in the Kisch and Griffin cases, and here again the Commonwealth Government made of itself an international spectacle. Kisch and Griffin both landed, and addressed meetings, while public opinion closed like a protective wall about them; the Ministry itself, with a general election a few months ahead, ordained at length that Mrs. Freer might land. (She landed at Sydney, unimpeded, on July 12, 1937.)

However, though the High Court and the people of Australia have in all of these major cases of victimisation rescued the victims of government, a dangerously wide discretionary power of government remains unqualified in Section 3 (a). The power has been added to—unnecessarily, as far as the protection of the community is concerned—by Section 3 (gh). The legitimate purposes of this clause are amply covered by the extremely wide clause (gd) of the same section.

* * * * * *

(5) See "The Argus," Melbourne, June 3, 1937, for a statement by the Acting Prime Minister (Dr. Page) after a Cabinet meeting in Melbourne on June 2. His reported statement included the words, "Having regard to all the circumstances, including the fact that Mrs. Freer has now been resident in New Zealand for more than six months, the Cabinet has decided . . . that should Mrs. Freer now come to Australia no steps will be taken to prohibit her landing."

While "Six Acts Against Civil Liberties" was being prepared for publication, the Commonwealth Government published an Unlawful Assemblies Ordinance, forbidding meetings near Parliament House, Canberra.

No comment is called for here; the ordinance, the greater of which is reproduced below, speaks for itself. But it should be stated that after the publication of the ordinance in the "Commonwealth of Australia Gazette" on July 22, 1937, Cabinet decided to modify its provisions. The modification, which was announced on August 5, consisted in the elimination of a clause empowering the Attorney-General to declare any part of Canberra a "proclaimed place," and the restriction of the ordinance's application to an area within 100 yards of Parliament House.

THE TERRITORY FOR THE SEAT OF GOVERNMENT.

No. 9 of 1937.

AN ORDINANCE

In relation to Unlawful Assemblies.

BE it ordained by the Deputy of the Governor-General in and over the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Seat of Government Acceptance Act* 1909 and the *Seat of Government (Administration) Act* 1910-1933, as follows:—

* * * * *

Unlawful assemblies.

3.—(1.) It shall not be lawful for any number of persons exceeding twenty to meet or be assembled in the open air in any part of the proclaimed place for any unlawful purpose, and any person (not being an officer of the Commonwealth acting in the discharge of the duties of his office) who is present at any such meeting or assembly shall be guilty of an offence.

Penalty: One hundred pounds or imprisonment for six months.

Arrest.

(2.) For the purposes of the last preceding subsection persons shall be deemed to have met, or to be assembled, for an unlawful purpose, if they, or any of them, while assembled, do anything unlawful, or make known their grievances, or discuss public affairs or matters of public interest, or consider, prepare or present any petition, memorial, complaint, remonstrance, declaration or other address to His Majesty, or to the Governor-General, or to both Houses or either House of the Parliament, or to any Minister or Officer of the Commonwealth, for the repeal or enactment of any law, or for the alteration of matters of State.

* * * * *

4.—CENSORSHIP

Books

THE Commonwealth's power of book censorship is derived, directly and indirectly, from the Customs Act of 1901. It is exercised through the Department of Trade and Customs, which may prohibit the importation of certain works. Two classes of publications have been banned—the "literary" and the "political." Here a distinction must be noted. Where books have been excluded from Australia as "indecent" (though there may be sharp differences of opinion as to what constitutes indecency), the Government has been administering the provisions of an Act of Parliament, for the Act of 1901 lists as prohibited imports "blasphemous, indecent or obscene works." In banning "seditious" works a government is administering merely its own policy, for the power to exclude these is derived solely from a later section, which confers on the Minister for Customs a general power to prohibit the entry into Australia of goods not specified in the lists of prohibited imports. Thus the first Parliament, while specifically providing for the exclusion of indecent publications, gave no indication of a desire to exclude political works. It seems certain that it did not contemplate that the reserve power it gave would be made use of by future governments to set up a partisan political censorship of political literature; and for twenty years the power was not so abused.

The Customs Act of 1901-1936 states:—

Section 52 (C)—"The following are prohibited imports . . . blasphemous, indecent or obscene works or articles."

Section 52 (G) adds, "all goods the importation of which may be prohibited by regulation." (1)

It is under this latter section that political works are excluded. Schedule 2 of Statutory Rule No. 152 of 1934[2] lists "goods the importation of which is prohibited except with the consent of the Minister" (for Customs). Item 14 is

Literature wherein is advocated:
(a) the overthrow by force or violence of the established government of the Commonwealth, or of any State, or of any other civilized country;
(b) the overthrow by force or violence of all forms of law;
(c) the abolition of organized government;
(d) the assassination of public officials;
(e) the unlawful destruction of property, and literature wherein a seditious intention (as defined by Section 24A of the Crimes Act 1914-1932) is expressed or a seditious enterprise advocated.

The history of this regulation is interesting. Political literature figured among prohibited imports for the first time (war measures apart) in 1921, when the Hughes Ministry advertised seditious works as prohibited imports. Its proclamation[3] listed paragraphs (a) to (d) given above; (e) read "the

(1) The Customs Act Amendment Act, No. 7 of 1934, substitutes "regulation" for the original "proclamation." Following a decision of the High Court (in a Customs case unconnected with books) the amended Act requires the Minister to use his powers of "conditional legislation" under Section 52 (G) by regulation.

(2) See Commonwealth Gazette, 13 12 34.

(3) See Commonwealth Gazette, 3/2 21.

unlawful destruction of property." In June of the same year the Government, by another proclamation,[4] added

> **(f) "literature wherein a seditious intention is expressed or a seditious enterprise advocated."**

This paragraph became known as the "dragnet clause," for it enabled the Administration to exclude works which could not be considered to fall within any of the forbidden classes of the earlier proclamation. Section 24A[5], Part II., of the Commonwealth Crimes Act, defines seditious intentions as intentions

> **(a) to bring the Sovereign into hatred or contempt;**
> **(b) to excite disaffection against the Sovereign or the Government or Constitution of the United Kingdom or against either House of the Parliament of the United Kingdom;**
> **(c) to excite disaffection against the Government or Constitution of any of the King's Dominions;**
> **(d) to excite disaffection against the Government or Constitution of the Commonwealth or against either House of the Parliaments of the Commonwealth;**
> **(e) to excite disaffection against the connection of the King's Dominions under the Crown;**
> **(f) to excite His Majesty's subjects to attempt to procure the alteration, otherwise than by lawful means, of any matter in the Commonwealth established by law of the Commonwealth; or**
> **(g) to promote feelings of ill-will and hostility between different classes of His Majesty's subjects so as to endanger the peace, order or good government of the Commonwealth.**
>
> **By Section 24B (1) a seditious enterprise is an enterprise undertaken in order to carry out a seditious intention.**

The list is comprehensive. In every radical and working-class movement, and therefore in its literature, such subjects as monarchy, imperialism and the inequality of wealth are constantly under discussion. Much of the information and many of the ideas contained in this literature would be distasteful to authority. The machinery which could prevent such information and ideas reaching Australian readers was now complete. It even exceeded this requirement, for the terms of the "dragnet" clause would make possible the stifling of very mild political criticism.

The Scullin Government did not seek such wide powers, and in 1929 it revoked[6] paragraph (f). But the Lyons Government, by its proclamation[7] of July, 1932, restored the "dragnet" clause, the provisions of which remain in force to-day.

So much for the sources of censorship power. We must next examine the extent to which it has been used, the methods of the present Administration, and, particularly, its use of the power, so dubiously acquired, of exercising a censorship over political and sociological works from abroad.

Censorship under the Lyons Government roused widespread protest, and provoked newspapers from Rockhampton to Perth, from the "Labour Daily" to the Melbourne "Argus" to scathing comment. Month after month cartoons, letters, interviews, reports and articles filled their columns, and the history of the censorship can be told largely in extracts from the Press. A remarkable feature of the campaign against censorship has been the way in which the responsible

(4) See Commonwealth Gazette, 23/6/21.
(5) Inserted by No. 54 of 1920.
(6) See its proclamation, Commonwealth Gazette, 19/12/29.
(7) See Commonwealth Gazette, 4/8/32.

Minister, by a series of mis-statements and evasions, has supplied his opponents with ammunition.

It was at the end of 1934 that public discontent—widespread among those who are normally the Government's supporters—came to a head. Works by Aldous Huxley and Daniel Defoe—works by Lenin and Stalin—figured on the banned list, and the political index was lengthening. In November a Book Censorship Abolition League was formed in Melbourne. Representative people made public their criticisms of the Government's policy, and censorship became front-page news.

The Melbourne "Herald" of February 5 had reported the result of research by the Secretary of the Book Censorship Abolition League. She found that Defoe's "Moll Flanders," Aldous Huxley's "Brave New World," and (in cheap editions) "The Golden Asse" (Apuleius) and Boccaccio's "Decameron" were among famous works banned as indecent. Up to December, 1933, from a date unstated, 66 political works had been banned. **In 13 months, between December, 1933, and January, 1935, 91 political works had been added to the list.**[8] The Minister once explained this by saying that there were more books being published now.

At any rate, some books were read by members of a Board, more by Customs officials; late in 1935 Senator Brennan admitted having examined one—the newly banned "Communism," by Ralph Fox.

The first authoritative statement on censorship methods was made by Sir Robert Garran (Chairman of the Book Censorship Advisory Board, which consisted, with him, of Dr. L. H. Allen, M.A., Ph.D., and Professor J. M. Haydon, M.A.). Speaking at Melbourne University on March 26, 1935, he said: "The law now bans works which have a 'seditious intention or purpose,' but the Censorship Board has nothing to do with the application of this law. I know nothing of the practice of the Customs Department regarding political books. . . . The Censorship Board acts only when a book is referred to it by the Customs officials. When our advice is sought it is not always taken."—(Melbourne "Star," 26/3/35.)

Sir Robert Garran's description of his canons of criticism, too, is unique among the statements of censors. His Board considered that "any writer with a real message making a sincere study of life must be given the utmost freedom of expression."—("Argus," 27/3/35.)

The Collector of Customs at Sydney (Mr. Mitchell) was asked:

"Do you think it fair that some publications should be allowed into Australia in expensive editions, while cheap editions of the same work are banned?" and replied:

"The object is to allow such volumes to be available to the student and cultured reader, and at the same time prevent them from falling into the hands of the bulk of the population."—(Sydney "Sun," 1/9/35.)

This statement illustrates the anti-democratic bias of those administering the censorship. Other evidence of this bias is

(8) The Melbourne "Sun" of February 5 quoted Mr. White as saying, "Only about two books a month are banned, and in nearly every case because of sheer indecency."

provided by an assurance of the Minister for Customs that he would suggest to the Ministry that a limited number of political books should be made available to "genuine students" and "others who would not be affected injuriously by such works." —(Launceston "Examiner," 17/9/35). But the best evidence of the character of the censorship comes from an examination of the list of banned political works. Under the heading, "Reactionary Attempt to Stifle Thought," the "Church Standard" (an organ of the Church of England) of September 20, 1935, exposed the principle at work. "We are carefully deprived of important documents relating to the theory and progress of Communism. . . . There is no ban upon the admittance of works favourable to Fascism, but one of the most incisive criticisms[9] of Fascism is forbidden entry into the country." The attempted exclusion of two radicals and the prompt attention given to a protest made by the German Consul-General[10] are other expressions of the political sympathies shown in the book censorship policy.

The policy has been carried out in the most inconvenient and secretive way. Customs officials have been blamed for the practice of serving surprised importers with "notices of seizure," informing them that books (which, in most cases, circulated freely in England) were "forfeited to His Majesty." But the Minister has condemned the suggestion that a list of banned books should be available to enquirers. Booksellers, it was said, might obtain information by making, one by one, specific enquiries about specific books.[11]

Importers of banned books have also been told that they can appeal to the Courts. Practical objections to this course include the "dragnet" clause, the expense and the delay. The theoretical objection is, of course, that books should not be tried after, instead of before, conviction.

. . . . . .

During the first half of 1935 the Prime Minister repeatedly stated to interviewers, to Parliament, and in response to the resolutions that were pouring in that he would re-consider his Government's book censorship, and perhaps he did so, for the rate of "political" banning dropped sharply. But the numbers of important political and sociological works already on the list remained there. Among the Government's critics were University professors and lecturers who had prescribed banned books for their students, trade unions that wished to study working-class movements, members of the Minister's own party,[12] and leading English newspapers, such as the Manchester Guardian." No leader of thought in the community supported the Administration's censorship. The few persons who announced their agreement with its policy repeated constantly that most of those who sympathized with the Minister were inarticulate.

(9) "Fascism and the Social Revolution" (R. Palme Dutt).

(10) See the section, Censorship—The Theatre.

(11) A letter from the Department of Trade and Customs, Canberra, of 21/4/37, states, in answer to a bookseller's enquiry, that this procedure still obtains.

(12) But when, at the instance of Mr. Holloway (Labour, Victoria) the House divided on the question on 27/3/35, voting was on party lines, and the adjournment motion was defeated 34 : 22. See Commonwealth Parliamentary Debates, Vol. 146, pp. 326, et seq.

In September, 1935, Mr. White held, in Melbourne, a conference which was attended by representative opponents of censorship. That the Minister for Customs was not interested in reform was obvious to those present. He was accompanied at the conference by the Acting Attorney-General (Senator Brennan), and it was at about this time that he finally threw all responsibility for the banning of political works on the Attorney-General's Department.

Attempts to get the Prime Minister to deal with the matter himself had failed. At the end of 1935 representations were made to the Attorney-General (Mr. R. G. Menzies), who had recently returned from abroad. Inconspicuously, Stalin's "Leninism," and "The Revolution of 1905" and two other works of Lenin were removed from the list and the daily edition of the "Moscow News" was admitted. But the Government still refused to make an official statement of what its future policy would be. Pressed by the Leader of the Opposition and others, Mr. White said on March 3, 1936, that "the Federal Cabinet had decided that the Customs Act governing book censorship would not be amended." But political books, it had been shown, might be admitted without any amendment of the Act.

On May 8, 1936, the Prime Minister promised an "early statement" of the Government's intentions. On May 23—after 18 months of evasion—the statement was given: "**The Commonwealth Government does not feel that it would be wise to repeal the provisions under which the censorship of political books is operated.** . . . It seems to the Government inadvisable to repeal that regulation. The Minister has, and will have, the approval of the Government in interpreting the regulation in a spirit consonant with the British principle of freedom of the Press."

This statement, though ambiguous, clearly represented a victory, for the time being, of public opinion over Mr. White's opinion, for it implied the imposition on him of a course of action which he had frequently declared unnecessary and harmful. As it was later to do in the Freer case, the Government had done what it could to save its Minister's face and had offered to a host of critics a temporary concession in practice while conceding nothing in principle. The arbitrary power remained and still remains to-day.

The critics were not silenced, and early in 1937, with the general election drawing nearer, the granting of further concessions was announced. The Federal Ministry "yielded to strong representations" to submit to the Book Censorship Board certain literary works which it had not previously been asked to consider. ("Argus," March 27th, 1937.) "Brave New World" (Huxley) and "Farewell to Arms" (Hemingway) were released.

In June Mr. White announced an elaboration of his system of book censorship. The Book Censorship Board would be retained, and, in addition, an Appeal Censor would be appointed. The members of the Board would be Dr. Allen, Professor Haydon and Mr. Kenneth Binns, of the Commonwealth National Library, and Sir Robert Garran, its former Chairman, would become Appeal Censor. "**The work of the new board**

would be confined to imported literature considered 'blasphemous, indecent or obscene.' Seditious literature would be dealt with as before by the Attorney-General's Department."—("Argus," 16/6/37.) Except for formal endorsement of the Board's decisions Ministerial control of literary works would be eliminated in future.—("Sun," Melbourne, 17/6/37.)

This last-minute concession should bring about a great improvement in the censorship of non-political books, though the reform may be deprived of some of its value—no announcement is to be made concerning books dealt with by the Board, and access to a list is still to be denied.

Political works, too, have been expunged from a list which is still secret. Those removed in recent months include "Fascism and the Social Revolution" (Palme Dutt), "The Condition of the Working Class in Britain" (Hutt), "The Colonial Policy of British Imperialism" (Fox), and several others. With the election only a month or two away, and without Ministerial comment, most of the more important books have been released.

It cannot be supposed that the recent liberalism owes anything to a change of heart in the Ministry. It is due to a persistent public agitation which has achieved much. It still remains to consolidate the gains won. Nothing has been done to remove the danger of an illiberal policy being pursued at any future time. Industrial disputes or rumours of war would serve as pretexts to bring the "dragnet" into operation again. Those who believe that the need for free political discussion becomes greater as social and economic problems become more complex will not be satisfied until the liberty to study all that has been written on these problems is theirs of right.

* * * * * *

Broadcasting

IT is probably not appreciated by the general public that the Federal Government is in a position to exercise a very strict censorship of broadcasting, and that this power has been used to prevent free criticism of the Government's policy. Because the National Stations are under the control of the Australian Broadcasting Commission, many people perhaps think that the Commission has complete control of broadcasting, and that there can be no political interference with the management. Nothing is further from the facts; in reality, the Government of the day is in a position to make the Commission broadcast anything the Government wants, and to prevent the Commission broadcasting anything the Government does not want.

The **Australian Broadcasting Commission Act (No. 14 of 1932)** lays down (Clause 20):

> **(i.) that the Commission shall transmit free of charge from all national broadcasting stations, or from such of them as are specified by the Minister, any matter the transmission of which is directed by the Minister as being in the public interest.**

This is reasonable enough; every Government should have this power. But by another clause (51, (i)) the Minister for Posts and Telegraphs

> **may by notice in writing prohibit the Commission from broadcasting any matter of any class or character specified in the notice, or may require the Commission to refrain from broadcasting any such matter.**

In addition to this, Clause 53 of the Broadcasting Act of 1932 stipulates that

> **the Governor-General may, whenever any emergency has arisen, authorise the Minister to exercise during the emergency complete control over the matter to be broadcast from the national stations.**

The "B Class" stations are also under strict control of the Postmaster-General. With regard to them a statutory regulation (No. 59 of 1930) lays down that

> **(1) all matter, including advertisement, shall be subject to such censorship as the Postmaster-General shall determine; (2) the Broadcasting Station Licensee shall before broadcasting any matter which is of a controversial nature or likely to cause offence to any section of the community, direct the attention of the Postmaster-General or of any authorised officer, to the matter.**

The Federal Government, therefore, possesses very full power to control broadcasting, and to stifle any criticism of its own policy if it should think fit, while making full use of the air to put its own case. There was a good example of this during the trade dispute with Japan in 1936. The Government on several occasions put its case over the air, but after one talk had been given criticising the Government's policy, no more criticism of the Government's policy was permitted. When the same Government excluded Mrs. Freer from Australia late in 1936, no criticism of the Government's action was permitted over the air. Possibly a state of emergency was held to exist in both these cases, for the Prime Minister on several occasions during the trade dispute with Japan in 1936 appealed to the country not to criticise the Government, since negotiations were in a delicate stage—a rather naive kind of confidence trick, in which the Broadcasting Commission was apparently required to take part.

It is clear, then, from these facts that censorship exists in broadcasting as in other fields; and, moreover, it can be, and has been used, to gain an unfair political advantage for the party in power, a very unsatisfactory position in any country which considers itself democratic.

* * * * * *

Newspapers

CENSORSHIP of newspapers is exercised in three ways under Commonwealth statutes and statutory rules. Section 30E of the Crimes Act, Section 29, sub-sections (1) and (4) of the Post and Telegraph Act, and two sets of regulations under the War Precautions Act Repeal Act, prescribe the several methods available to Government.

Crimes Act 1914-1932. Part 11A.

> **Section 30E.—(1) No book, periodical, pamphlet, handbill, poster issued by or on behalf or in the interests of any unlawful association shall—**
>
> **(a) if posted in Australia, be transmitted through the post; or**
>
> **(b) in the case of a newspaper, be registered as a newspaper under the provisions of the Post and Telegraph Act 1901-1923.**
>
> **(Section inserted in 1926.)**

Sections 30F and 30FA, the former inserted in 1926 and the latter in 1932, extend this power to ban.

Post and Telegraph Act, 1901-1923. Part 1.

> **Section 29.—(1) (A newspaper may be registered for transmission through the post, and the Deputy Postmaster-General in any State may remove from the register any newspaper which he deems to contain indecent or obscene matter.)**
>
> **(4) (Any such matter may be destroyed on the order of the Postmaster-General.)**

Statutory Rules No. 27 of 1932 (under the War Precautions Act Repeal Act 1920-1928. Gazetted November 9, 1932).

2.— (1) Fine of £100 or six months' imprisonment for "publishing in a foreign language any newspaper or periodical" without the Prime Minister's permission.

4a.—(The publisher of a foreign language newspaper must forward to the Prime Minister's Department on demand any copy or copies specified.)

Statutory Rules No. 13 of 1934 (under the same Act. Gazetted January 25, 1934).

3.—(1) (The Prime Minister may give his consent to a foreign language publication subject to conditions made at his discretion, and his consent may be withdrawn by notice in the Gazette.)

7.—(Where the Minister is satisfied that a newspaper is being published in contravention of the regulations, he may authorize officers to enter any premises, "if need be by force," and seize copies, type and plant.)

* * * * * *

Films

FILM censorship is chiefly a Commonwealth matter,[1] and control over the films we see, as over the books we read, is exercised by the Customs Department. Familiar features are the setting up by regulation of an authority responsible only to the Minister, the secrecy of its operations and sweeping provision for the exclusion of any film distasteful to the Administration.

Statutory Rule No. 24 of 1932, made under the Customs Act, is the basis of the censorship. It provides Section 5 (1) for a Censorship Board, consisting of a Chief Censor assisted by two others and an Appeal Censor. Section 14 states that any film which, in the opinion of the Board, is:—

(a) blasphemous, indecent or obscene;
(b) likely to be injurious to morality;
(c) likely to be injurious to the people of any friendly nation;
(d) likely to be injurious to the people of the British Empire;
(e) depicts any matter the exhibition of which is undesirable in the public interest,

shall be a prohibited import.

By Section 9 the Appeal Censor may allow or disallow an appeal with or without conditions, and not more than four bona fide representatives of the importer may be present at any screening.

Early in October, 1936, it was announced that the Commonwealth Censor (Mr. Cresswell O'Reilly) had decided on the exclusion of Eisenstein's famous picture of the Russian revolution, "Ten Days That Shook the World," apparently on the ground that its exhibition would not be in the public interest. An appeal by the importers, the Friends of the Soviet Union, and strong protests by trades union organizations and members of the public, were followed, on November 4th, by the release of the film without "cuts" by the Commonwealth Appeal Censor (Brigadier-General McKay).

This result was satisfactory, but the incident had revealed several disquieting features of the system. A delegate to a teachers' conference described ("Herald," January 7, 1937), an interview with Mr. Cresswell O'Reilly. She had asked for a list of all the films that had been banned. The request was refused and she was told that such a list was "not even submitted to the Minister."

Since the screenings are private and the lists secret and the Censors' powers wide, it seems that a political censorship of films may be exercised without the knowledge of the public.

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The Theatre

CENSORSHIP of the theatre is a State affair and is exercised, rarely, under various Theatres and Public Halls Act. Last year the Commonwealth interfered. The Workers' Theatre Group in Victoria was arranging to stage a performance of Clifford Odets's play, "Till the Day I Die." Applying to the managers of a hall, it was informed that the play was banned by order of the Chief Secretary, and if it were performed the hall would lose its license. Reference to the Chief Secretary confirmed this information.

A file produced at the request of Mr. W. Slater, M.L.A., contained a letter written by the Prime Minister (Mr. Lyons) to the Premier of Victoria, informing him that **"the Consul-General for Germany formally protested to the Commonwealth Government against the performance of this play,** on the ground that it is, in its entirety, an insult and a caricature of the German Nation and its Government, and requested that proper action be taken to prevent further performance of the play."

The play, which deals with Nazi persecution of Communists and Jews, was, after many difficulties had been surmounted, produced in the Brunswick Town Hall (an unlicensed hall) in February, 1937. The serious aspect of the matter lies in the willingness of the Prime Minister to pay heed to the amazing request of the Consul-General that German censorship be extended to Australia.

. . . . . .

The Commonwealth Government, then, has moved in five fields of censorship. It has powers of censorship over books, films, newspapers, and broadcasting; and, in the instance described above, it in effect prompted a State Government to use its powers of censorship of the theatre. The Commonwealth's own powers have been used—and abused—extensively in the censorship of books, and to a lesser extent—so far—in the censorship of films, newspapers and broadcast speech.

But if none of these powers had ever been used, the fact that the Government of our democracy had them at all would still excite the apprehension of every democratically minded Australian. As it is, the histories given in the present publication show all too clearly that, in censorship and in other ways, Australian Governments have attacked the very principle of democracy which they purport to uphold.

It follows that a solemn duty is laid on every citizen to press his elected representative in the Commonwealth Parliament to move for the abolition of these repressive measures under which Australian Governments have attacked Australian liberties.

(1) The States deal with local films and may provide additional censorship for others. Last year Mr. O'Reilly was able, as Victorian State Censor, to re-impose in this State his (lifted) ban on "Ten Days that Shook the Word." Representations to the Chief Secretary (Mr. Bailey) of Victoria were made by the C.C.L. The film was, eventually, released on appeal, and early this year Mr. Bailey assured the Council's representatives that in future decisions of the Commonwealth Appeal Censor would be followed in Victoria.

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