

The Last Word ...

Whose Ox is Gored?

Ken Owen

At issue is the suppression of news in South Africa. Ken Owen, editor of *Business Day*, states in this article: "There is a vast difference between a system that limits expression by law, subject to the judgement of the courts, and one which seeks to impose a vaguely defined set of restraints that go beyond the law".

He argues that South Africa has been moving from the former system to the latter, casting law aside. But calls for censorship of the news, couched as "greater responsibility", or "better judgement", even "patriotism", emanate from all quarters.

All depending on whose ox is gored, writes Mr Owen.

For a business newspaper, the fact that a foreign company is bidding for a major contract is clearly news of interest to its readers. The fact that the company subsequently withdraws from the contract, citing publicity and political pressure as the reasons, is equally news.

Publication of the first item may persuade readers to invest, to submit competing bids, to offer sub-contracts – it may even persuade a pessimistic businessman not to emigrate. It may also expose the foreign company to pressure, cause it to withdraw, cast the business community into a depression, and persuade the pessimistic fellow to emigrate after all.

Clearly then, the newspaper owes it to its readers to publish the news as it arrives; equally clearly, publication exposes the newspaper to criticism and



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pressure when it turns out badly. This simple example, based on an actual case, demonstrates the dilemma that faces South African newspapers as the stress on the society generates demands for the suppression of news.

As the sanctions campaign against South Africa spreads from country to country, Business Day (presumably not alone) is coming under fierce, often emotional, pressure to censor the news. The word censorship is not used – usually critics demand

"greater responsibility" or "better judgment", even "patriotism" – but the intent is clear: the national interest must be put above the interests of the newspaper's readers.

There is a case to be made for censorship of news of strategic importance; it happens in every war. Israel, while not at war, has a full-blown system of censorship. Britain's Official Secrets Act, selectively applied, is a terrible weapon in the hands of the government and can be used to prosecute newspapers for disclosure of the most harmless document. The system of D-notices by which the British government can prevent publication of any item of defence information goes beyond anything the South African Press would accept.

However, there is a vast difference between a system that limits free expression by law, subject to the judgment of the courts, and one which seeks to impose a vaguely defined set of restraints that go beyond the law.

South Africa has been moving lately from the former system to the latter, and the public demands for editorial "responsibility" and "restraint" suggests that government can rely on public opinion for support.

It depends, of course, whose ox is gored. The greatest pressure on me in the past year to suppress news and views has come not from government but from Wits university, both faculty and students, on the grounds that publication of unpleasant material is likely to provoke government action against the university; but I doubt if many of the university community would agree to the suppression of trade information on the grounds that it may provoke action by the sanctions lobby.

This goes beyond irony. It alienates the issue: How to define "responsibility"? Is it owed to readers? – surely the man who plans to emigrate has a right to truthful reporting to help him make up his mind, just as the potential investor has a right to truthful reporting to help him identify opportunity. Or must the Press lie by suppressio veri? To whom should it then lie? And what purpose is served if the practice of lying deprives the newspaper of all credibility, so that it is not believed even when it tells the truth (as South African newspapers are generally not believed)?

The restriction of the Press by clear law is not pleasant, but it is tolerable. For one thing, the Press exists in order to serve society, and any democratic society has the right to limit free expression if it chooses to do so. The matter is more vexed in undemocratic society, but even then, the existence of clear legal

restraints does give readers a guide to what may be believed, and what must be suspected.

Moreover, the society – newspapers included – learn to live with the law, as British society lives with its draconian Official Secrets Act. In South Africa, the Defence Act effectively prohibits publication of virtually anything concerning the military – technically, it is an offence to report a traffic accident in which a military vehicle is involved. In 1975, the Act effectively concealed from South Africans the invasion of Angola.

Yet, with the passage of time, newspapers have learned that they can report foreign accounts of the actions of the SADF, the readers have learned that the SADF's denials are to be treated sceptically, and the SADF has presumably learned that its own credibility is undermined by word-of-mouth when it censors the news too harshly.

Similarly the Prisons Act – for a long time the most impervious Press law in South Africa – has proved to damage not the newspapers but the public image of the prisons authorities, and perhaps the prisoners themselves. In recent years, the prisons department officials have shown a commendable readiness, despite the law, to expose the prisons to public view. It's not a perfect system, but it has become tolerable.

The most harmful law, in my view, is the Police act. What happens in police cells is concealed from us, yet it has done South Africa more damage – through the internationally publicised death of Steve Biko and other detainees – than any other single set of circumstances.

Indeed, many of the most damaging information ever disseminated about South Africa – Sharville 1960, Langa 1960 and Langa 1985, Soweto 1976, Crossroads, – emanate from actions of the kind covered by the Police Act. The effect of the law is not to prevent publication but to ensure that the worst elements of the police force will continue to provide material for publication.

All of this, however, is familiar ground. In the past year, we have gone into new, more treacherous territory. We have gone beyond the law.

New Nation was closed because it published material which, in the opinion of the Minister of Home Affairs, fostered a climate of revolution. Other publications, including some of the most useful windows on the left, have been warned that they may suffer the same fate. Yet, other newspapers can with impunity publish what is forbidden to New Nation, and have in fact done so.

The Minister has appointed a panel, whose

membership is not known, to advise him. To guide newspapers which wish to avoid the danger of closure he has published a reading list of books on revolution, including some classics and one banned volume, and books on the theory of communication. The list is out of date, and represents, one supposes, the undergraduate convictions of a generation of officials who were at university in the fifties and sixties and who, by the efflux of time, have risen to positions of some influence in the bureaucracy.

In a way, the system is a confession of failure. It supplants earlier attempts to forbid the publication, not simply of news, but of views and information deemed to be "subversive". The task defeated the effort of government's legal draftsmen, so government finally gave the Minister the right to make up his mind *ex post facto*. If he decides that any series of assertions, especially if they are repeated, is "subversive" or "revolutionary", he can censor them or close the publication.

The law has been cast aside. A Press which operates within a framework of clear law has room to manoeuvre. For the government the law is an instrument of control, but for the editors it is a shield against the demands for "responsible" behaviour, defined according to whose ox is gored.

Lord Charles Somerset defined the issue clearly when he summoned Thomas Pringle to receive a warning not dissimilar to those which the Minister of Home Affairs has been issuing: "So, sir, you are one of those who dare to insult me and oppose my government".

This, in a sense, brings us full circle. Pringle, in a passage for which modern editors will easily find a more recent application, tells us that Somerset "launched into a long tirade of abuse; scolding, upbraiding, and taunting me, with all the domineering arrogance of mien and sneering insolence of expression of which he was so great a master".

Plus ça change, plus c'est le même chose.