

express their opinion in a democracy in any way they can.

But does this libertarian conception of all media owners as individuals with rights neither greater nor smaller than everyone else make sense today? Those who control major media have such very large megaphones.

It is nonsense to suggest that there is no alternative to the free exercise by owners of their property rights in media, however vast, other than 'for the government to own and control all print media'.

Mr Hattam is partly right: such a result would be disastrous and impractical.

The issue is at what point, and in what way, a society, through parliament, can act not to silence such owners, but to reduce their volume, or at least stop it getting louder. We thought, as Norris did, that in Victoria that point had been reached.

Some with an eye to the history of the fight for freedom of the press in Britain - and in other countries still - will prefer concentration by private interests to any form of legislation by parliament. It is a potent argument and it need not be put in such a way as to imply that those who think differently today are somehow lining up on the side of tyrants who would repress freedom of expression.

The working party agreed that special legislation should be eschewed in relation to newspaper content, but not in relation to ownership and control.

The challenge to those who would defend freedom of the press is to acknowledge the modern and not just the traditional threats to it. One threat is concentration of media power in too few hands. As the US Supreme Court Justice Hugo Black observed "freedom of the press from governmental interference...does not sanction repression of that freedom by private interests".

Minimising risk

hat said, the working party was acutely aware of the risks of recommending that politicians

T legislate in this sensitive area. It attached to its recommendations the same principles that Norris pinned to his:

- "the means to be employed to allow the press to function as it should must not themselves threaten its freedom;
- any legislation to regulate ownership and control must be so drawn as to not interfere with the content of the press, or with the liberty of persons to publish. Any concept of licensing the press or regulating its content must be eschewed; and
- if the relevant legislation is to satisfy (such conditions)...it must not constitute the executive government the repository of the authority to grant or withhold favours."

We attempted to draw the recommended legislation in this way and welcome informed debate about whether we succeeded.

Race Mathews MLA is a former Cain Cabinet Minister, Creighton Burns is the former editor of The Age, Sally Walker is a senior lecturer

in law at the University of Melbourne and Paul Chadwick is Victorian co-ordinator of the Communications Law Centre. (Copies of the report and draft legislation can be sought from Ms Kathy Ettershank, Policy and Research, Attorney-General's Dept, 220 Queen Street, Melbourne, 3000.)

Suppression orders

Ross Duncan discusses the novel approach of the South Australian State Bank Royal Commission to extraterritorial suppression orders

The South Australian judiciary's predilection for making suppression orders is notorious. But while Sections 69 and 69a of the *Evidence Act 1929* (SA) have become the bane of every local court reporter's existence, it has long been thought that these suppression provisions did not limit media coverage outside the State.

Now, however, a ruling by the South Australian State Bank Royal Commission, recently upheld in the Supreme Court, restricts publication of the Commission proceedings throughout Australia, and suggests that Sections 69 and 69a might also have extraterritorial effect.

In May this year, Royal Commissioner Jacobs made a preliminary ruling under section 16a of the *Royal Commissions Act, 1917* (SA) suppressing publication of any evidence tending to reveal the identity and financial affairs of clients and other persons past or present who had dealings with the State Bank. While acknowledging that the proceedings should as far as possible be conducted in public and without restriction on publication, the Commissioner said he made the order to satisfy Clause 9 of the Terms of Reference - to avoid prejudicing the Bank's ongoing operations and to protect the confidential Bank/Customer relationship.

Extraterritorial effect

Without more, this order would have gagged the local media but would not have applied outside the state where the details could have been freely reported. At least, that was the traditional view. However, the Commissioner, having stated that the Bank had clients beyond the State, went on to declare that:

"...for the purpose of giving full effect to the order ... the prohibition extends to any verbal, written, telephonic, electronic or telegraphic transmission of evidence ..."

As a result, publication outside South

Australia is effectively prevented since reporters covering the proceedings cannot communicate by a phone call, fax or otherwise the suppressed information to their colleagues inter-state. The ruling is carefully worded in that it does not attempt to affect directly the conduct of persons outside the jurisdiction but achieves that objective by prohibiting any means of communicating the information by persons within the jurisdiction.

For the national media it also sets an unfortunate precedent which the Australian Broadcasting Corporation sought to have overturned by the South Australian Supreme Court. From the outset, however, the ABC faced one major obstacle. Section 9 of the *Royal Commissions Act 1917* (SA) provides that:

"9. No decision, determination, certificate, or other act or proceedings of the commission, or anything done or the omission of anything, or anything proposed to be done or omitted to be done, by the commission, shall, in any manner whatsoever, be questioned or reviewed, or be restrained or removed by prohibition, injunction, certiorari, or otherwise whatsoever."

Justice Matheson rejected the ABC's argument that, because of the rule of statutory interpretation that where particular words in a statute are followed by general words, the general words are limited to ambit to the particular words, the section ruled out the declaration which the ABC had sought. He said the terms of section 9 which were "very wide indeed, and certainly as far as any particular Royal Commission is concerned, they are extremely wide" ousted the Court's jurisdiction.

He held, in effect, that while the term 'publication' did not encompass one to one communications, it did catch any communication with a "public aspect" to it. "In the case of a reporter ringing his editor and saying 'here is what happened this

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'American Psycho': missing the point

Rosemary Sorensen argues that Bret Easton Ellis' controversial new book is a misunderstood scapegoat

The publication of Bret Easton Ellis's *American Psycho* has confirmed, if such confirmation were needed, the fears of even the most pessimistic social commentators. Not only is contemporary society stupid and crass but it doesn't have the mechanisms to judge stupidity and crassness.

American Psycho is bleak and nasty. It is frightening and loud in its insinuations. It is black in its humour - and all the funnier for that, since the laughter induced by horror is the kind that cuts deepest, if we're awake enough to feel the knife. And it is also one of the most effective indictments available of the idiocies which are not only tolerated in western society but in fact constructed by it.

It would be no wonder if professional people whose shallow ideologies and self-seeking systems of belief are directly and brilliantly attacked in this book would be keen to swoop down and stamp it to death. If the book is right, however, these people are too busy consuming to get around to reading a book such as this. When I discussed *American Psycho* on a television program with lawyer Jocelyn Scutt she said that the ghastly, stupid, shallow, ugly, consumerist, crass, greedy, ill-educated creeps that people the pages of Ellis's satire on American yuppies are 'normal'. What worried Scutt was that Ellis places a psychopathic murderer among these charmers and they don't even notice. The fact that this is the point of the book tends to be lost among the reaction towards the descriptions of this man's crazy psychopathic fantasies, which are very nasty indeed. The point of the book is reinforced by the fact that people persist in not noticing what is before their eyes. The 'normal' ones don't even notice that this very 'sick' man is amongst them. He fits in!

Convenient scapegoat

Why can't we read this kind of book appropriately? Why do people with lots of education, influence, wit and wisdom come out with perfectly stupid comments such as 'I have chosen not to read this book as political statement'? Why do the very same people not publicly denounce the harmful vulgarity of so much advertising and popular culture?

American Psycho is a convenient scapegoat. Ban the heinous pornography, they say, and go home to their television and video and magazines all bursting with garrulous sell-

outs. Even those who claim that, while they don't particularly want to read about rats up vaginas and other fantastic perversions they would defend the book according to the right for free speech, are missing the point.

By all means, let us work towards something called freedom - although the way we use language (and the legal profession is perfectly well-adapted to this) should alert us to our atrophied state in relation to anything remotely like creative or imaginative freedom. If, on the other hand, there is even the slightest suspicion that some representation, whether of real or imagined worlds, will result in cruelty being inflicted on even a single human being, then let's legislate against it - trouble is, we'd have to ban most television, most film, most magazine advertising and a whole lot of other discourses if this were acted on because these are more likely to contribute to perversion than the rudely aggressive satire of *American Psycho*.

Analytical gap

And when a journal called *Communications Law Bulletin* suggests that an article should "concentrate on the legal/social issues raised by the novel's publication rather than any literary merit the book might or might not have", then, again, the point of the book is reinforced.

Until we accept that all discourses are connected, that the legal system is marked by and responsible to the systems set up by corporations, educational institutions, family networks, religious groups, as well as the many cultural systems, including that of literature, then the scenario of perversion, cruelty and ignorance operating successfully within an arrogantly incompetent society must be taken as belonging not to a pornographic code but to a representation of the status quo.

The division of the debate around the publication of *American Psycho* into 'literary' and 'social/legal' attenuates the possibility of positive outcomes from a hugely negative book. And, again, vindicates that negativity. It's not the novel's publication that challenges social stability, moral rectitude, health, wealth and the American way: it's the inability of the society to even read it with any kind of ability to judge what is being said.

Given this colossal and widening analytical gap, it is not surprising that our publishers are not up to taking their place in an open process by which a society can

construct an adequate system of ethics. When a publisher runs so scared after publishing a hot potato like *American Psycho* as to claim that it has no books for review, to claim to be unable to give out press information, to clam up in the hope that the backwash will pass over them, then there is good reason to believe, along with Bret Easton Ellis, that we may well be technologically and materially whiz-bang but we're morally and intellectually bankrupt. Pan in Australia decided to close most of their eyes and just peek a little until the storm passed over and the cheques were cashed. Sounds to me like the preferred formula for success in the 1990s.

Rosemary Sorensen is the editor of Australian Book Review and wrote this piece on behalf of the Australian Book Publishers Association

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morning' it is easy to draw the conclusion that there is a publication" he said.

He added that Section 16a has an extraterritorial operation although the *Royal Commission Act* does not expressly indicate an intention that it should have, and hinted that, contrary to popular thinking, Sections 69 and 69a of the *Evidence Act* may also have extraterritorial effect.

"My conclusion that Section 16a and the *Royal Commissioner's ruling* have an extraterritorial operation is inconsistent with the view that has commonly been held that orders made under Section 69 and 69a of the *Evidence Act* can only operate within the borders of South Australia. There may be some basis for distinguishing the legislation not presently apparent to me, but if my decision here enables orders under that Act to give the protection their judicial authors desire in the cases considered appropriate by Parliament, it may not be such a bad thing," he said.

Justice Matheson's comments on Sections 69 and 69a in this case were clearly made in passing and therefore are not binding on other Courts but suggest that media outside South Australia may in future need to be more cautious when reporting Court proceedings which are subject to suppression orders under that State's *Evidence Act*.

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