DEMOCRACY VS SECRECY

by Julian Riekert

Access to information regarding Security Law detainees and the Second Police Amendment Bill of 1980.

Since 1945 there have been at least two clearly discernible trends in public administration in most western countries. These are the rapid and disproportionate growth of the bureaucracy and a co-extensive growth of secretiveness within those bureaucracies. South Africa proves to be no exception to the general rule. At Union in 1910 she had 12 departments of state, in 1940 she had 24 and by 1979 this number had swelled to 44. The American experience has shown that the trend toward secrecy seems to be self-generated, although external factors may play an influential rôle. Once a bureaucratic practice of secrecy has been established there is a tendency for the individuals charged with the classification of information to over-, rather than under-classify. Once the society concerned, rightly or wrongly, perceives itself to be under threat of some external or internal interference, this tendency becomes grossly exaggerated. The mania for secrecy during the McCarthy era is proof of this, if any is needed. The recently uncovered excesses of the CIA may also be ascribed to similar motivation.[2]

Unfortunately, but inevitably, this tendency toward clandestine government is not limited to routine administration. It tends to reach its apogee in those areas of the executive branch of government which are traditionally regarded as "sensitive", viz. military and related areas. In those areas legislation enforcing secrecy is the rule, rather than the exception and for obvious reasons. The problems here arise out of the need to balance individual liberty against the state's legitimate interest in preserving the confidentiality of certain types of information.

In non-military areas there has recently been considerable progress toward open government in several western countries. There would seem to be a growing recognition of the individual citizen's right of access to governmental files.[3] This trend has left South Africa untouched.

The dissemination of information gleaned from public files is proscribed by the Official Secrets Act, 16 of 1956 (which is based upon the provenly deficient United Kingdom legislation), by the Public Service Act, 54 of 1957 and by informal departmental practices. The argument that the citizen, as the source of governmental power, has a right of access to governmental records is not one that commends itself to South Africa's rulers. Indeed, secrecy practices extend into such areas as mental health and prison administration.

In the military and quasi-military spheres the position is even worse. It is clear from numerous public utterances that the National Party government perceives itself to be facing a "total onslaught", paradoxically emanating from abroad, rather than from South Africa itself. One finds, as indeed one expects to find, that more and more areas of activity are coming to be regarded as areas of strategic importance. Thus current legislation drastically curtails the free exchange of information in the areas of defence reporting, nuclear research, fuel supplies and even trade commodities—to name but a few. It is also clear from public statements that the governmental perception of the rôle of the South African Police is undergoing a rapid metamorphosis from that of a civilian force to a quasi- or para-military one. Given that fact, the contents of the Second Police Amendment Bill ought to have been predictable, even if their scope was breathtaking in its implications.

The Bill as originally drafted provided that any disclosure of information on police "anti-terror" action including the publication of the names of persons arrested under Section 22(1) of the General Law Amendment Act, 62 of 1966 and Section 6(1) of the Terrorism Act, 83 of 1967,[4] would expose the person responsible to a penalty of a fine of R15 000 or eight years' imprisonment or both such fine and imprisonment. The publication of the original Bill elicited a swift response from both the public and from Opposition spokesmen. Mr Ray Swart, M.P., described it as "a rubbing-out Bill to remove people from society without anyone but the police knowing." He went on to add that the Bill was a classic example of Government over-reaction. It was "a tough measure which will cut across the rights of individuals and is comparable to the measures taken in totalitarian states such as Nazi Germany and Russia, which means that people can virtually be erased from society. If a father is taken away and the children of the household come to the mother and say "What happened to Dad?" she is prohibited from giving information."[5] Mr L. le Grange, the Minister of Police, expressed surprise at the generally unfavourable reaction and added that the true purpose of the Bill was not to permit of secret indefinite detention but to make it possible for the police to "perform some very sensitive operations and duties without particulars thereof being made known."[6] When the continuing protest proved the deficiency of his explanation, Mr le Grange announced that the Bill would be amended.

The amended Bill lacked the section imposing a total ban on the dissemination of any information about a detainee, including his name. This provision was referred by Mr le Grange to the Rabie Commission which is currently inquiring into the security laws. However the amended Bill, while no longer prohibiting the dissemination of information

concerning police "anti-terror" activities, prohibits publication of such information in any media. As several observers have pointed out, the wording of the legislation is sufficiently broad to encompass almost the same range as the original version, since it prohibits the publishing of any information *"about the constitution, movements or deployment or* **methods** *of the police engaged in combatting terrorist activities."* (emphasis supplied)[6] Thus while one may be entitled to publish the information that a particular person has been detained under either of the relevant detention clauses, one may not, presumably, publish the information that he has been ill-treated, subjected to solitary confinement or tortured, since this would be a comment upon the methods of the police. It would be up to the courts to define the bounds of legitimate comment. It is also not clear what the word "publish" means in the context of the Bill. In a legal context it can mean the disclosure of information to any third party. When these inadequacies of the Bill were brought to Mr le Grange's notice he replied that the interests of the State "are far more important than those of the individual or the Press and that is why this Bill is justified."[7] He also stated that it was wrong for the Opposition to say that a detained suspected terrorist would "disappear into a twilight world" because of a ban on press coverage. "They know very will that the Terrorism Act demands that such a person must be allowed to contact his family at the earliest possible opportunity", he added. What the Minister ought to know very well is that the Terrorism Act far from "demanding" that a detainee's family be notified of his detention, expressly provides that *"no person,* other than the Minister or an officer in the service of the State acting in the performance of his official duties, shall have access to any detainee, or *shall be entitled to any official information relating to* or obtained from *any detainee."*[8] (emphasis supplied).

The freedom of the press, which the Minister holds in such low esteem, was stated by the Virginia Bill of Rights to be "one of the great bulwarks of liberty, and can never be restrained but by despotic governments." Judged by that standard the Second Police Amendment Bill of 1980 can be seen to be what it is—another step in the long process of the emasculation of the South African press and a further proof of the scant regard of this Government for the concept of individual liberty. □

SOME REMARKS ON LAND REFORM IN SOUTH AFRICA.
by Norman Bromberger

1. Introduction

A satisfactory discussion of the question of land reform in South Africa would be worth having. It seems to be taken for granted on all sides that the present constitutional arrangements and the present distribution of political power in the country must and will change—though of course there is disagreement over what the new arrangements should be. Whatever the details however of the political dispensations that will emerge here, both in the shorter and longer runs, they must involve an increase in the power of those whose share of income and wealth is at present small. That fact seems to me a guarantee that the question (or questions) of land reform will come to have a higher priority on the agenda of social action than they do now. Hence the value of a thorough, forward-looking discussion of the issues.

I am afraid that what follows will not amount to the thorough or satisfactory discussion I am asking for. It will make some of the points that need to be made but by no means all, and will not attempt to work through the experience with land reform of Kenya and, more recently, of Angola, Mozambique and Ethiopia. It will not tackle the problems involved in the 'reform' of tribal or customary land-tenure systems since these problems, though related to those arising from land reform and redistribution, are distinct and deserve separate treatment.

The main problem area that will receive attention here is that of the potential efficiency of small-scale agriculture. A reflex of orthodox thinking among the present rulers of South Africa is that the subdivision of large farms and their allocation to small-scale, largely Black, cultivators or 'peasants' would have disastrous consequences for the production of food and agricultural raw materials. It seems worth showing that the question is far more open than the orthodox conclusion allows.

2. Definition

We need to be quite clear what we are going to understand by 'land reform' in what follows. We do not need to decide what is the correct definition but we do need to note that there are divergent usages and settle on one of them.

2.1 A way to start is to make a rough inventory of measures which are sometimes included as examples of land reform:

(a) in landlord-tenant systems the conditions of tenancy may be altered in the tenants' favour—by setting ceilings to rents, by substituting fixed rentals for sharecropping arrangements (in terms of which the rental rises with the size of the crop), by granting security against eviction, and by giving tenants first option to purchase;

(b) land may be expropriated from larger landholders of various types—landlords, large-estate farmers, larger peasants, operators of labour-tenant systems—and either distributed to smaller cultivators and labourers on an individual basis or farmed under some sort of collective arrangement;

(c) peasants and others may be the beneficiaries of land-settlement schemes on virgin lands or newly-reclaimed lands;

(d) fragmented and scattered smallholdings may be consolidated into continuous individual holdings;

(e) where tenure is in terms of customary (and unwritten) law and may often be subject to some form of group re-