

2. Retreat of the Rule of Law.

When the majority judgment in the Omar case (reviewed on page 16) was handed down in July, the Appeal Court sounded a general retreat in the face of emergency rule in South Africa. The judgment, delivered by acting Chief Justice Rabie, appears to accord with the view expressed by him in a recent interview that it is naive to think that the situation in South Africa could be quelled by bringing people to court. The message is clear – there is no real place for the rule of law under emergency government.

Judgments like this undermine the credibility of the law and the courts in South Africa. Emergency rule in this country is now a permanent institution. There is no alternation between ordinary rule and emergency rule as in democratic societies, only an oscillation between undeclared emergencies and declared emergencies. It follows that the citizen in South Africa can never look forward to a time when basic rights will be fully protected by the law and the courts. Under current emergency powers, as interpreted by the Appeal Court in the Omar case, his position has worsened from substantial non-protection to almost complete non-protection. The reti-

cence of the judges might have some point and purpose if it is intended to enable the executive authorities to create the conditions in which basic rights will flourish. It seems indefensible when the best that can be hoped for is a return to undeclared emergency law, including bannings and indefinite detention. In this light the Omar judgment stands out as a serious abdication.

'Normal' security law in South Africa is a charter for lawless official conduct. Under emergency law that lawlessness becomes almost absolute and the citizen is little better than a 'sacrificial rabbit'. Judges, by reason of their implied commitment to a reign of law should never submit to brute power; rather they should tame and control it wherever they can. They have a responsibility too for setting appropriate standards for official behaviour and providing institutional leadership in the creation and extension of the rule of law state. The majority judgment in Omar suggests that they are declining this task and that their role in the future may at best be one of irrelevance. □

3. THE UNIVERSITIES AND THE PRESS

It is not only the rights of the individual which are facing new assaults. The universities and newspapermen seem suddenly to be at graver risk than ever before.

Universities have been presented with a series of demands from the government to curb the political activities of their staff and students. As might be expected the political activity which is the reason for the demands is anti-government activity. Detail of what is being asked for is not yet public knowledge as we write but the threat seems to be that universities which do not control their members as the Government would like them to do will have to pay for it – literally. Their subsidies will be reduced, and in some cases they may be fined. Hard-pressed financially by cuts forced on them in recent years by a depressed economy, the universities are now being put on the financial rack. It is a devilishly cynical weapon to try to force the voice of dissent into silence, in the places where it should be most clearly heard.

Some students (if they are not agents provocateur) are making it as difficult as possible for their universities to fight back. Painstaking repairs have had to be made to the fragile fabric of university life at UCT since the O'Brien

affair. That has now been shattered by the break up by students of two meetings to be addressed by speakers of whom they disapproved, on the very eve of their Principal's meeting with the Minister to discuss the new threats.

In the newspaper world Mr Tony Heard, editor of the Cape Times, the man who published an interview with Oliver Tambo in defiance of the censorship laws and who has received international recognition for his stand against apartheid, has been sacked. He has not been sacked by a Government-supporting newspaper company but by one ostensibly opposed to it. His one consolation may be that he joins Laurence Gandar, Raymond Louw and Allister Sparks on that honourable scrap-heap that this particular company seems to reserve for its bravest and most distinguished editors.

Perhaps we will hear in this case, as we did in that of the Rand Daily Mail, that its editorial policies are losing the Cape Times money. If we do, that will unfortunately only add to the all-too-common current view that in a capitalist enterprise, where questions of principle and profit clash, profit always wins. □