

THE POLICE AND THE STATE

"Relating the circumstances of events on the Sunday and the urgent application as they affected him, Major Spengler (head of the Police Special Branch) said that he had been 'so overcome by the honourable judge's statement, "Do you know that this is not a police State yet?"' that he resolved to say no more at that stage."

--Report in *The Star*, August 3, 1954.

IN a certain, limited sense, Judge Blackwell was correct: it is not a police state, yet. We can well understand Major Spengler's dumbfounded amazement, for the distinction is fine, and is becoming finer every day. Nonetheless private persons do still have some rights and safeguards in relation to the police.

If a person is accused of theft, or murder, or bribery, or illicit dealings, or any similar offence, he has the right to a fair and public trial before being punished. The police may not keep him under arrest for more than two days without bringing him before a magistrate and stating exactly what he is supposed to have done that is unlawful. At his trial he has the right to question the police witnesses, to answer his accusers and to call witnesses of his own to testify to his innocence. The court proceedings must follow strict rules, and the accused person has the right to employ a lawyer to state his case and to see that the rules are observed. The accused is not obliged to give evidence at all. If he thinks he has not been given just treatment in his trial, he may appeal against the judgment to a higher court, and again, up to the highest court in the land.

Again, there are many rules which are designed to protect the private citizen against arbitrary interference or arrest by the police. A man's home or other private premises are supposed to be inviolable, and the police may not enter such premises, ordinarily, without a warrant. A policeman may not arrest a private individual without good grounds, and he may not assault him at all. As we saw in the recent case of Mr. Kirchner against Sergeant Arlow and Mr. Swart, substantial damages may be claimed and awarded against the police where these rules are broken.

Imperfect Justice

It is, of course, notorious that these citizenship rights are constantly and habitually violated in our country. Africans know only too well the Sergeant Arlow type of bully. They know too well the midnight banging at the door that heralds the arrival of warrantless police to search for passes, home-brew or rent-receipts; the lawless police assaults in the pick-up van, awaiting trial, in prison after conviction. Day after day thousands and thousands of people, charged

with pass and other trivial offences go through a travesty of court proceedings, a sausage-machine to fill the farm jails. Day after day judgments are given which reflect vicious colour prejudice on the part of the European magistrates. There will never be real justice or fairness in South Africa until all our people have won the right to be voters and legislators, participants in making and administering the laws, magistrates, judges and jurymen.

Until then, we fear, we shall hear again and again in our courts of law of degrading and horrible perversions of justice: like that of the white farmer and his son. John and Matthys Snyman, who flogged an African convict Mpikwa with a hosepipe, beat him again and again until he fell down, beat him again on the ground until he was dead, went on viciously flogging the body of the dead man after he was past all punishment. And were found, by an all-white jury, not guilty of murder or even assault with the intent to do grievous bodily harm, but only of common assault — for which the father was sentenced to 18 months and his son to six months in jail.

Yet, despite all these glaring imperfections no-one in South Africa hitherto seriously challenged the basic conception that the citizen should be entitled to the rule of law. That none should be punished without being tried on a specific charge, before an independent tribunal in open Court, with the rights ~~of~~ legal defence and appeal: these and other root-concepts, each of them landmarks in the long, unfinished struggle of mankind against tyranny, may have been disregarded and dishonoured, but they were not publicly repudiated.

Moreover, notwithstanding the inevitable weaknesses and prejudices arising from their own background, the senior Judges of South Africa have on many occasions shown themselves to be as fair and impartial as men whose work it is to apply unfair laws can possibly be. In a host of judgments ranging from the High Court of Parliament case to the Ngweyela verdict, they have earned a reputation for courage and integrity which is one of the few redeeming features of South African society.

The Minister of the Police

But the Rule of Law, resting on the precarious foundation of Non-European servitude and oppression, has never stood very securely in South Africa. Smuts openly flouted it when he chose — usually when the gold-mining interests thought themselves threatened. Advocate Pirow struck it a crippling blow when he jockeyed through the Riotous Assemblies Act, conferring dictatorial powers upon himself as Minister of Justice.

It was, however, left to a later incumbent in that high-sounding office, another “officer of the Supreme Court” to carry forward

the task of systematically and deliberately destroying the rule of law. We refer, obviously, to Mr. C. R. Swart, that queer product of the "master race" who apparently thought it appropriate to his position to have himself photographed for the newspapers brandishing a cat-o-nine tails.

Mr. Swart has repeatedly made it perfectly clear that he has no respect at all for the legal traditions of the bench and the bar. He is not a Minister of Justice at all. He is a Minister of the Police. Whenever the judiciary frustrates him and his policemen by reiterating some age-old liberty inscribed in the common law—such as that a man cannot be condemned without a hearing, or that the C.I.D. cannot enter a meeting without a warrant — Adv. Swart indulges in some public hysterics and rushes to Parliament for a new law to legalise the illegality. To him, civil liberty or any treasured safeguards that protect the common man from arbitrary despotism, are so many "loopholes" that have to be stopped up. What, in Swart's view, is a "loophole" in the Suppression of Communism Act? A means where a man condemned by the Minister has a chance of getting a hearing in a court of law. From the policeman's viewpoint, no doubt, law courts with all their cumbersome procedures and demands for strict evidence, and their terrifying possibilities of a merciless cross-examination by some ogreish barrister with piercing eyes and beetling brows, are nothing but an unmitigated nuisance. We believe we may sum up Minister Swart's mentality by saying that he shares the police viewpoint to the full.

Nowhere is this viewpoint better-illustrated (we shall say nothing at this stage about the incredible Public Safety Act) than in the terms and operation of Swart's per creation — the Suppression of Communism Act.

The Suppression Act

Let us briefly turn our minds back to the circumstances in which the Act was introduced. It has never been denied that the Minister's chief adviser in framing this abominable law was a policeman—the British spy, Sillitoe. In order to bolster the case for the introduction of so limitless a tyranny, Swart had to present a picture of a country on the verge of riot and insurrection. Where did he get his fanciful material about well-poisoners and power-station saboteurs? From the police — letting themselves really go, once their evidence had to be submitted to the scrutiny not of a trained judge but of the gullible Mr. Swart, only too eager to believe it.

The Act clothed the Minister with dictatorial powers, unheard of in peacetime in any country claiming to be democratic. He told an apprehensive Parliament — yes, even our all-white legislature was a bit apprehensive — that he "would be reasonable in the exercise of his powers." How reasonable has he been?

We have no space in this article to relate the harrowing story of the scores of trade unionists, Congressmen, peace workers, democrats, who have been forced by the Minister's ukase to leave the organisation which they have devoted a lifetime to building, to leave their occupation and livelihood and, often in their middle years, to start life afresh. By now, South Africa and the world know of President Luthuli, virtually a prisoner on his farm, of Walter Sisulu charged with drinking tea with his fellow men, of Lengisi and Gwentshe banished from their homes and their families in East London to a remote Siberia in the Transvaal platteland. Not one of these charged with any offence before any Court; none was told what he was accused of or given any chance to reply. The Minister has expelled three elected members from Parliament. He has closed down one newspaper — *The Guardian* — and seems well on his way to banning another — *Advance*. Hardly a week goes by without reports of more bannings, more police raids on the homes and offices of private persons suspected of "dangerous thoughts," more threats of treason and sedition trials and hints of gigantic conspiracies from the Minister and his limelight-loving police chief, Brigadier Rademeyer.

How does the Minister select his victims for banning? The public might be forgiven for thinking that he sat down with a pin, closed his eyes, and jabbed it into his blacklist "Communists" Congressmen and trade unionists, as some people are said to pick their fancy for the races, for Mr. Swart disdains to give reasons for his actions. What really happens was revealed a year ago by the same Brigadier Rademeyer in an interview with the *Rand Daily Mail*. The Minister, he said, only banned people after "careful investigations" by the police.

"A person is only banned," he announced, "if he is a person with influence and could use his influence detrimentally."

—*Rand Daily Mail*, September 23, 1953.

What a nice Minister is this Mister Swart. He doesn't bother a cop, like a judge does, with all sorts of demands for evidence and proof. You just give him the paper and he signs. And there's no appeal and no questions asked.

Mr. Swart has far from exhausted the possibilities of vindictive action under his favourite law: law that is not much good in the Courts — for no-one has yet been prosecuted successfully under it for actually propagating Communism — but very good for enabling the Minister to harry and intimidate his opponents outside the Courts. He has appointed a Mr. Terblanche as an "authorised officer." We may be forgiven for not knowing very much about this Mr. Terblanche, who hardly seems as yet to have made a very deep mark in South African history. Nor is it very clear what this particular officer is authorised to do. But it seems to be a great deal. One morning, at 8 a.m. sharp, members of the political staff of the

C.I.D., armed with his authority, descended simultaneously on the offices of *Advance* and the homes of its staff members and others in Cape Town, Johannesburg and Durban. A few weeks later the signature of the same Terblanche appears on documents authorising raids to investigate the Society for Peace and Friendship with the Soviet Union. Mr. Terblanche is also sending police to raid and investigate members of the Women's Federation. We do not know what else he is supposed to be investigating, or whom he will descend on next; but we do know that such procedures are utterly fantastic and intolerable.

The Pretorian Guards

Where is it all going to end?

Tsarist Russia, Hitler's Germany, Mussolini's Italy . . . history abounds in examples of police states; how they worked and how they ended. But there is another example we should like, at this time, to recall.

In the later days of the ancient Roman Empire, an armed body of palace guards, known, interestingly enough, as the Pretorian Guards, came to dominate the life of the State. They made and unmade — usually by assassination — the emperors. They sold the imperial office at the highest bidder. They terrorised the populace, and every man was afraid to speak out his mind lest he should fall into their bad books.

What brought them into power was in the first place the apathy and passivity of the citizens. It took a mighty explosion, involving the destruction of the empire itself, to dislodge them.

South Africa is not quite a police state — yet. But it is coming nearer and nearer to it every day. If we wish to save ourselves the unhappy fate of Rome at the mercy of the lawless and all-powerful palace guards, we must gird ourselves and organise ourselves now to struggle against the imposition of a police dictatorship here.

Let us never learn to become accustomed to these acts of tyranny and to tolerate them. Let us cry out and resist each new imposition, each departure from the rule of law. Let us so work for the Freedom Charter that it will become the shield of our liberties, like Magna Charter in Britain years ago, and open up the road to a true democracy in our country, basing our liberties not on shadows but on the broad and effective expression of the will of the people.