

## INSTITUTE OF CURRENT WORLD AFFAIRS

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The Law of Internal Security

American Embassy  
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Dear Mr. Rogers:

With four months to go until election time, the opposition parties in Perú have yet to announce their candidates for the presidency or put forth the policies which they mean to follow if they are successful at the polls this June. Much more important to them are the conditions under which the elections will take place. Whether they operate under the name of the Coalición Nacional, the Christian Democrats, the Revolutionary Union, the Socialist Party or any one of nine or more political groups aligned against the government, they are chiefly concerned with the political liberties which in their opinion must be guaranteed in order to make certain of a free and honest election. Opposition leaders feel that under the present laws promulgated by the Odría regime, the coming election will be a mere farcé; therefore, they are concentrating all the power at their command in an effort to force the government to repeal or amend those laws. In every one of the handbills and manifestos issued so far by the opposition parties, four points are stressed: the repeal of the Law of Internal Security of the Republic; the revision of the electoral statutes; the declaration of a general political amnesty; and the replacement of the present all-military Cabinet with a civil one representing the views of all national political groups. Within the past two weeks the government has obliged its critics by revising its policy of political amnesty and amending the security law, but opposition groups continue their demand for what they term constitutional liberty.

The Law of Internal Security of the Republic, promulgated by Odría's Junta Militar in July, 1949, is the sharpest thorn in the side of the opposition. Although its chief function seems to be that of a whip to restrain the revolution-minded and the radicals, the law - or a certain portion of the law - has been invoked in certain instances (the Supreme Court referred to it in explaining the reasons for its refusal to order that the government give an entry visa to ex-President José Luis Bustamante y Rivero who was deported when Odría overthrew his government in 1948). Lima's LA PRENSA, whose director, Pedro G. Beltran, is recognized as one of the most powerful critics siding with the opposition, published an editorial in its January eighteenth edition which attacked the law in general and Article 31 in particular. What follows is my translation of parts of that editorial.

Perhaps the best way to understand the nature and scope of the security law and to realize the limitless powers which it places

in the hands of the Executive is to read the entire text of Article 31. According to that Article: "In the name of the objectives of this Decree-Law and the desirability of preventing the consummation of the crimes with which it treats, the Ministry of Government and Police is authorized to adopt whatever preventative measures he deems necessary to guarantee the social and political tranquility and the organization and internal peace of the Republic; the corresponding judicial authority cannot intervene except when delinquents have been placed at its disposal."

Article 31, then, denies the right of habeas corpus. We could describe habeas corpus as the right which aids any individual in the defense of his liberties and which requires that he be tried forthwith by a competent judge in the event of the deprivation of those liberties. Contradicting the right of habeas corpus, the security law authorizes the Ministry of Government to imprison Peruvians for an indefinite period of time, to exile them or to adopt any measures which it considers necessary, expressly prohibiting the intervention of judicial authority. This means that a citizen who is a victim of an act of force with respect to his liberty or property is deprived of the elemental right of going to the courts to demand justice.

In the thirteenth century the English extracted from their King the right of habeas corpus. Thenceforth it began to spread through all civilized countries. It can be said that there is civilization where the right of individuals to go to the courts in search of justice has been facilitated. And it can be said that there is no civilization where men find themselves without judicial protection in the face of the arbitrary acts of those who govern them. When the defenders of the security law state that upon its continuance depend public order and national tranquility, they insult us; they insult the entire country - our republican tradition and the men who gave us independence. In order to maintain order and peace in Perú, it is not necessary to revert to the law of the jungle.

As the Constitution which governs us explicitly recognizes the right of habeas corpus and extends the action of habeas corpus to any violation of the guarantees which it consecrates and, as we have seen, the security law denies the right of habeas corpus, the opposition between the Constitution or fundamental law and the so-called law of internal security of the Republic is clear. Moreover, the Constitution establishes the division between the powers of the State - between the Legislative which dictates the laws, the Executive which sees that they are carried out, and the Judicial which applies them to the concrete conflicts between individuals or between in-

dividuals and the State. The security law gives judicial powers to the prefects, authorities appointed by the Executive who, therefore, have no constitutional right to judge anyone. (The law) is also in this respect openly opposed to the Constitution of the State.

From a technical analysis of the problem comes the clear contradiction between the Constitution or fundamental law and the security law. It has been a foolish error on the part of the government - an error which could only be explained in the event that the government is actually trying to take the course of arbitrariness in order to direct the elections - to supply the opposition with this issue. It is evident that anyone who points out that the security law is unconstitutional has the weight of common sense behind him, even though he is a member of the opposition. Against the continuance of the law are aligned not only the groups who are capitalizing on the weariness of a public faced with a regime which has (been in power) for seven years but independent voices such as those which were raised in the Convention of Artists and Writers and the National Congress of Lawyers.

In the sense that it denies the right of habeas corpus and gives judicial powers to the prefects - to mention the two most outstanding pieces of countersense - the security law modifies the Constitution. But the Constitution establishes the procedure by which it can be modified in Article 236: "All constitutional reform must be approved by both houses of one legislature and ratified by both houses of (the following) legislature. Approval and ratification require the majority of votes of the legal number of members of each house. The initiative pertains to the deputies, senators and the President of the Republic with the approval of the Council of Ministers." The security law, however, has not been approved according to constitutional procedure. It was promulgated by the Military Junta and ratified .... along with several hundred decree-laws by the Parliament.

Therefore, juridically speaking, the Constitution has not been modified by the security law. Its mandates are still in effect and they must be respected and applied by the government and by the judges. Constitutional mandates must necessarily prevail over those of the security law. Therefore, when the members of the Supreme Court employ the security law in their tiresome considerations to excuse the violation of human rights and civil guarantees which was perpetrated on the person of Dr. José Luis Bustamante y Rivero, the country

feels that it is witnessing an act of chicanery. It feels that it is being abandoned in the face of the abuses of the powerful. The degree of submission to which the Judicial Power has sunk inspires repugnance although, thanks be to God, there are a few exceptions of independence and firm judgement.

The reaction against the security law has been so large and so energetic that these Houses of Parliament, which have been distinguished by their docility with respect to the Palace of Government, which have never summoned a Minister to (their hearings) and which have beaten the record in the field of congratulations and votes of applause given to the Executive Power, approved a bill modifying the security law. Senator Julio de la Piedra, until recently the Secretary-General of the Partido Restaurador and today a member of the Supreme Council of that party, initiated the bill. The modificatory bill, although it toned down some of the measures contained in the original law did not satisfy (public opinion), which demanded and still demands the repeal of such a drastic instrument of repression. But - as though to reveal to the country the intentions of officialdom with respect to the security law - Sr. de la Piedra's bill has not been promulgated. Among other reasons for this state of affairs is the fact that it is not in the interests of officialdom to call an extraordinary session of Congress, as it is well known that if the Chief of State does not promulgate a law, that duty reverts to the President of the Congress.

How can one think that there is any purpose in going through with an orderly and democratic election while the security law is in force? In what country in the world are elections described as free and democratic when those elections are held under the dominion of a law which authorizes the Ministry of Government to adopt the means which it considers necessary (and which) prevents the judicial authority from intervening? And how can one talk about party conventions and candidates unless he is referring to a convention which plays ball with officialdom and a candidate who is resigned to accepting orders (from the bureaucrats) and who will certainly be given efficient aid by the law of internal security of the Republic?

I have translated the editorial almost in its entirety because it is as good a condensation of opposition opinion on the matter as can be found. Pedro Beltran's paper is solidly behind the Coalición Nacional and is giving a good deal of column space to the speeches of Pedro Rosselló, the CN leader. Director Beltran, with whom I have talked, is reckoned as one of the most powerful men in the opposition. He is determined to give as much aid as possible to the campaign to liberalize the political atmosphere in the country before the elections, and his editorials carry considerable weight in

Lima and elsewhere. He himself is a capable and energetic intellectual who is respected and at times feared by the pro-government people.

Just recently the sub-prefect of Sicuani unwittingly gave LA PRENSA another issue in its fight against the security law. He arrested a LA PRENSA reporter on the charge of being a political agent and detained him for twelve hours. The paper showed some restraint in its handling of the story, but the arbitrary act of arrest and detention was enough to spur the indignation of many of the readers.

On the same day that the LA PRENSA editorial attacking the security law was published, President Odría promulgated a modificatory law (No.12552) which was initiated by Senator de la Piedra last November. The new law deprives the prefects of judicial powers and re-establishes the right of habeas corpus (Article 24 of the new law states: "detained persons must be placed at the disposition of a competent judge within twenty-four hours".) The following day LA NACION, the official government paper, commented that the promulgation of Law No. 12552 "renders baseless the malevolent and insidious campaign in which the 'opposition' and particularly its thunderous mouthpiece 'LA PRENSA' have been engaging." Although it is perhaps true that the restoration of habeas corpus knocked some wind out of opposition sails, the original demand for the complete repeal of the security law has not yet been met. Opposition opinion still finds instances of arbitrariness in the modificatory law, and it is unlikely that the security law will cease to be a burning issue in the months to come.

Lima businessmen, who are naturally more concerned with the continuance of the country's present prosperity and economic stability, are apt to either favor the security law or else maintain a neutral position with respect to it. Recently I talked with two men who are partners in one of the largest importing concerns here. They are squarely behind the government's economic policies and believe that it is necessary to carry a big stick in order to safeguard those policies. In their opinion, the security law is as good a stick as can be found. They argue that the law restrains radical groups and malcontents from destroying the internal peace and quiet and disposes of them neatly and quickly if they engage in any activities which threaten the public order which is so necessary for the continuance of the current regime's projects. In the last seven years, they told me, the standard of living in Lima and other large cities has risen steadily and rapidly. Artisans and other workers are making up to ten times as much in 1956 as they did in 1949. For that reason alone, said the two men, many members of the burgeoning middle class in Lima and elsewhere are in favor of the Odría government - security law or no security law. But the businessmen's biggest argument in favor of restrictive measures such as the Law of Internal Security of the Republic is that the country is not yet ready for complete freedom, that it needs to be braked by the central government. I have heard that statement made in almost every Peruvian city I have visited; it is usually voiced by the heads of business houses and the leaders of the upper class. The statement alone is enough to infuriate men like Pedro Beltran who believe that democracy is a natural right and not one to be given to a country when its rulers feel that all is in readiness.

The battle over the security law, the argument over whether democracy is a God-given or State-given blessing, is a familiar one in those areas of the world where colonies and dependencies are demanding their liberty. Defenders of the security law and the political philosophy behind it have only to look at the recent developments in the Sudan to find proof of their arguments, whereas the enemies of restrictive government can point to the history of the U.S. and other democracies as a basis for their position. The important point, however, is that the present opposition group in Perú is so aroused over what it considers to be dictatorial measures taken by the government that it confines itself almost entirely to a campaign designed to force the Odría regime to retract those measures. This is the reason why no candidates and no detailed platforms have been put forth by the opposition. They consider it a waste of time to do so until the security law is repealed, the electoral statutes revised and a general amnesty declared.

Sincerely,

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