Lobbying the Senate

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On May 18, 1983 the Solicitor General introduced Bill C-157, an *Act to establish the Canadian Security Intelligence Service*, based in part on recommendations of the McDonald Commission appointed to look into alleged improprieties of the RCMP in the 1970's. That Commission concluded that the RCMP Security Service was impervious to reform and that a civilianized security and intelligence service had to be created.

The bill immediately aroused concern and, in some quarters, alarm about its provisions as well as its omissions regarding security and intelligence operations. Critics claimed the McDonald Commission's enjoinders that any such agency be guided by adherance to the rule of law and parliamentary accountability were not much reflected in some of the bill's Orwellian provisions, which would have allowed the agency to engage in intrusive surveillance without full warrant, to function without political accountability subject only to weak internal review, and to establish its modus operandi under a vaguely defined mandate that left unanswered important questions about the meaning and scope of national security. The bill was so wide-ranging it could be interpreted to illegitimize lawful advocacy and dissent. It seemed designed to avoid a repetition of the RCMP embarrassments by simply legalizing, for the contemplated security agency, many acts that had formerly been illegal or questionable. Understandably, many groups and individuals, concerned about civil liberties took issue with the Act. Some began to wonder who would protect them from the protectors.

Such concerns were not unanticipated by the government, and a Special Committee of the Senate on the Canadian Security Intelligence Service was appointed in June 1983 to examine the "subject matter of the bill" and to report by November of that year. A national advertisement inviting individuals and organizations to submit briefs appeared on July 16th. The announcement of committee hearings did not, however, immediately allay anxieties since the period of inquiry was quite short, no independent research would be undertaken, and no hearings were being held outside of Ottawa.

Priming for Ottawa

In Vancouver, an ad hoc committee was formed calling itself the Coalition to defeat Bill C-157. I joined it representing the British Columbia Civil Liberties Association. Other members came from trade unions, law associations, various social action groups, as well as unaffiliated individuals who wanted to join a movement that would stop or change the bill. Other such coalitions were formed across Canada, such as the Ottawa-Hull Coalition Against Bill C-157 and a National Day of Protest was arranged for October 15th.

In August the Vancouver Coalition sponsored a panel discussion at the Robson Media Centre to stimulate wider participation in the Coalition's activities. The speakers on the panel included a Member of Parliament, a representative from the BC Law Union, a prisoners' rights activist, a member of the Law Faculty of UBC, an "ordinary citizen" and myself.

My role was to outline what I viewed to be the major predicament of liberal democracy and the responses to that crisis now being taken by governments in Britain, the United States, and Canada. I remarked that inflation of state power comes about through the decay of representative democracy and leads, ultimately, to the growth of a secret or an order-in-council state which governs by executive fiat and then seeks legitimation through the media, the public, and Parliament.

For all three nations the phenomenon is essentially the same; threats to existing institutions and the traditional liberal consensus move leaders to declare an 'exceptional moment' in which sterner measures must be taken and the state must be entrusted with greater powers. A *reinforced* or *exceptional* state bearing authoritarian characteristics arises and is accommodated *within* the constitutional shell of the existing political framework. In Britain and the U.S., the scope and volatility of populist sentiment (marshalled over issues of sexuality, abortion, school indiscipline, crime, and welfare) is such that political parties are able to articulate potent right-wing philosophies and rise to power on the back of 'exceptional state' formations. In Canada, where regional differences block attempts to mobilize popular sentiment around nationalist themes the 'moment' of exceptional state formation must be bureaucratically contrived; i.e., it is remote from public opinion, not constructed upon it. Bill C-157 could be regarded as such a contrivance.[1]

I was concerned that my highly condensed yet sweeping analysis of the forces behind Bill C-157 would be inappropriate for a meeting that had the character of a political rally (even apologizing in advance for giving a professional lecture) but the thunderous ovation was reassuring. I felt motivated to continue my efforts to force the withdrawal of Bill C-157. If people could appreciate the rather complex argument I presented for evaluating the far-ranging consequences of the bill, what I was saying must have had bearing on their real concerns and anxieties; so it deserved saying, and

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surely needed to be said again and again until the responsible authorities listened.

On another front the British Columbia Civil Liberties Association was preparing a brief for submission to the Senate Committee and had accepted an invitation to appear as a witness to the hearings. As the Association's liaison to the Vancouver Coalition, I hosted a meeting at my home where three of our members presented a preliminary draft of the brief to members of the Vancouver Coalition. The brief emphasized ways in which the proposed legislation deviated from the McDonald Commission recommendations, particularly in the lumping of 'subversion' with legitimate dissent, and in the apparent revoking of some of the fundamental rights and freedoms (now presumably guaranteed by the Charter) in the name of "national security" and "reasonableness", criteria which can be readily abused even when threats to country are not discernible. The excessively broad mandate of Bill C-157 persuaded the drafters of the brief to reject altogether the notion of a separate security service under civilian aegis, and to argue, instead, for retaining security and intelligence operations within the RMCP, but under rigorous external scrutiny and in a manner more observant of the rule of law.

Unfortunately, none of the authors of the brief were able to attend the Senate Committee hearings. I was asked to go, along with John Russell, Executive Assistant of the Association.

Before leaving on my eastern pilgrimage, I conferred with a member of the Vancouver Coalition to stop Bill C-157. He pressed the starting portion of the first draft of their brief into my hand. The missive emphasized the allegedly ulterior motives of the government in forming the Special Committee, and characterized the Senators serving on the committee as sequestered silver spoons whose narrow perspective blocked understanding of the consequences of the proposed legislation for politically marginal groups in Canadian society. I felt that such denunciations were not entirely without foundation but reciting them to the Senate Committee would not enhance whatever possibilities for dialogue that might exist.

I also had a preparatory chat with the B.C. Civil Liberties Association Executive Director. He urged me to focus on the discreetly impersonal issue of 'national security' and its civil liberties ramifications. I sensed an imperative to de-politicize my remarks to the Senate Committee; indeed, it was politely suggested that my unexpurgated Robson Square address ought not to constitute the essence of my presentation, since that speech had "not been officially approved by the Board". I nodded compliantly, knowing full well that whatever I finally did chance to say to the Senators would consist, at least in part, of what I thought should be said.

In the Lap of the State

I arrived in Ottawa from Toronto where I had been flogging a book entitled, *State Control: Criminal Justice Politics in Canada*. No discontinuity there! With a few days to re-think some of my own arguments before my Senate Committee appearance, I consulted with two colleagues and a member of the House of Commons Justice Committee.

My first contact was with a fellow sociology professor. He urged me to take a fresh and unorthodox approach which rejected state definitions of effective security and opened the whole question of policing and intelligence to popular debate. His emphasis on democratic policing at the local community level in opposition to, (or as an informed countervailing power to) monolithic state surveillance, appealed to me on ideological grounds, but I saw no future for that sort of argument in the Senate chamber.

A discussion with a criminologist who worked for the government was, on the other hand, depressingly pragmatic. He stressed that the committee's principal concern would be to amend the bill so as to minimize opposition and achieve a consensus. He believed the objective of the committee was to arrive at a workable solution that would pacify the community, the RCMP, and sundry pressures from the United States, particularly those emanating from the CIA. I took note of his advice, parenthetically thankful that I was not yet soddened by the bureaucratic pathos in which he was obviously engulfed. The parliamentarian I spoke to was neither lyrically philosophical nor purely tactical. He knew the particulars of the bill, and was explicit about the ways he believed it to be seriously flawed. As one would expect, he deplored the bill's failure to include parliamentary oversight of the Civilian Security Intelligence Agency in the review process.

The day before we were to testify, I decided to sit in on some hearings to test the ambiance of the setting, and adjust to the mode of questioning. I wended my way through several corridors of Parliament's East Block, guided through the labyrinth by improvised cardboard signs propped on rickety chairs. I wound up in front of the Men's Room. So far this did not have the trappings of a stately occasion!

The committee room itself was long and rectangular, with the chairman, committee clerks, research staff and witnesses seated at the far end at a large table strewn with microphones and notepads. About ten senators sat at tables perpendicular to the head table. A small table at the end opposite the chairman looked as though it were reserved for journalists. The chairs for the public were about half full. I had the disturbing impression that the room was filled with police. In fact, members of the RCMP were testifying that very afternoon, so my crude surmise turned out to be correct. I sat down and began to fiddle with an earjack to experience the novelty of simultaneous translation. The thing was not working properly, which was not particularly distressing since my French, I regret to say, is limited to restaurant menus. The mood of the chamber was businesslike, without being overly formal. Questioning was explicit, but not confrontative. The topic at issue — the possible loss of pension benefits in the transition from the RCMP to a Civilian Security Service — was technical and of little interest to me except as it indicated the probable continuity between the outgoing police security service and the presumably civilianized one. I left after a half hour, thinking my time would be put to better use in reading transcripts of earlier proceedings.

On the eve of our appearance, John Russell and I decided to retire to our suburban motel to iron out any wrinkles in our presentation and discuss anticipated questions. (A convention of Jehovah's witnesses had tied up all the downtown hotel space and even a quick baptism would not have purchased us a broom closet in the centre of town). Our drab motel room contained a kitchen table on which I could spread my wares including a typewriter, since I had not yet actually written my presentation. Erratic bath-

room plumbing and a lumpy mattress helped keep me working. There were nothing but fast-food franchises nearby, so John and I dined on Chinese take-out while we planned delivery of our joint brief. He retired to his room, and I began writing the final draft of my presentation. Exhaustion enabled me to sleep a few hours on a bed that would have been a challenge to Gandhi. I awoke at 6:00 a.m. and retyped my remarks. John read over my speech, regurgitating his coffee in a couple of places, so I made minor changes in the interest of solidarity. We then headed off for downtown Ottawa, determined to give a good account of ourselves and also to find a convenient parking spot.

Facing the Senators

We arrived shortly before our scheduled 3:30 p.m. appearance, catching the last few minutes of questioning of the preceding witnesses who represented the Coalition for Gay Rights in Ontario. They appeared somewhat defensive and answered questions in a tentative manner. Senator Michael Pitfield was in the chair. When the Senators had finished their questioning he smiled relievedly, ordered a short recess, then introduced us. We were given about 20 minutes for our formal presentations, copies of which were distributed to the Senators. They examined them while John began with a few words about the British Columbia Civil Liberties Association and its record in defending civil rights, mentioning, perhaps unfelicitously, that the Association was the only civil liberties group in Canada to immediately oppose invocation of the *War Measures Act* in 1970 and that the Association was a member of the Vancouver Coalition against Bill C-157.

I then offered my remarks, the gist of which was to warn of the drift into authoritarian politics. I attempted to point out that sponsorship of Bill C-157 was incompatible with our claim to be a liberal democracy since the proposed legislation would legalize coercion on an unprecedented scale and ignore many of the crucial restraints on state power recommended even by the McDonald Commission.

By the end of my presentation, my mouth was bone-dry and I was wracked with emotion. I wondered how I could be so touched by my own sincerity. Or was it the effect of the greasy take-out the night before? Still, I kept them listening, even if I had been a bit preachy. John then summarized our major points of disagreement with the legislation — focussing on civil liberties infringements — and defended our recommendation that Bill C-157 be withdrawn and appropriately re-drafted and that the security service stay within the orbit of the RCMP; though subject to increased statutory review and controls. Included in his comments was a telling anecdote about the first meeting of the Vancouver Coalition against Bill C-157, which almost did not get off the ground because people were afraid to leave their names in order to be contacted.

A one-hour interrogation followed in which the Senators began by expressing astonishment that we would prefer RCMP management of the security service to a civilianized agency under direct government control. The Senators revealed near-unanimity in their belief that a security service was absolutely essential; that it should not be controlled by the RCMP, and that the mandate of such an agency should include the policing of domestic subversion, as well as espionage and terrorism. Our argument that official action against individuals and groups should not be undertaken unless and until specific laws had been broken, was regarded by the Senators as impractical since it would prevent, for example, use of conspiracy laws that would otherwise enable state authorities to abort domestic subversion.

In the course of our answers to questions posed by various Senators, I tried to make four important points. First, the sole bulwark against police or state arrogation of power is the law. Bill C-157 suggested that the solution to a failure in authority is the assertion of more authority — and it located authority within officials rather than in legal guarantees. But we must be more critical of the assumption that the state is, perforce, morally superior to its police component. The para-military disposition of the police no doubt inclines it in authoritarian directions, but there is no reason to view the state as inherently more democratic or motivated by a more benign agenda.

Secondly, it is a fundamental principle of liberal-democracy that basic assumptions about the conditions of governance must always be open to question, and that the building of support for alternative views must be allowed. Under the proposed legislation, it was likely that the line between subversion and dissent could be erased and that a wide variety of legitimate groups at far ends of the political spectrum would suffer the effects. The alacrity with which the Senators took up their concern with feasible implementation of conspiracy laws, for example, suggested to me potential disregard for the distinction between subversion and legitimate dissent.

Thirdly, what *is* the appropriate degree of security befitting a nation such as ours and what calculus do we exercise in balancing our internal freedoms against whatever we deem to be our international responsiblities? These are moot questions that ought to be put to national debate, not decided prematurely and privately by a small number of administrative minions and ratified by Parliament. Such a debate has not yet occurred, and no legislation regarding a security service should become law until a national referendum is held and public opinion is counted.

Finally, even assuming that the security of Canada is at risk, and that the need for a security service is indisputable, specific provisions of Bill C-157 regarding internal agency operations were not sufficiently extensive and exacting so as to warrant much faith in what would result from its implementation. Significant modifications were needed to increase its acceptability to persons and groups watchful of the erosion of civil liberties.

Second Thoughts

I left the East Block with my wife Gloria and a few friends who had come along for the occasion. We went to the Chateau Laurier for a drink and post mortem. There Gloria, kind as Mother Theresa to the rest of the world but my most merciless critic, told me I had looked too serious and had browbeaten the Senators. John lamented his failure to dazzle Senator Pitfield with a definitive interpretation of conspiracy law. I regretted missing an opportunity to inform Senator Riley (whose line of questioning I thought had distinct McCarthyite overtones)[2] that while the views I espoused may have been

strongly expressed, they were not radical, but merely the ones that all of us were expected to profess in a liberal-democracy. Caught up in the individual euphoria of release from cross-examination I was not yet ready to evaluate the process as a whole.

The next morning I boarded the plane for Vancouver after some anticipatory skimming of the *Citizen* and the *Globe and Mail*. Some good ink on the testimony of the Gay Coalition, but nothing on us. Had we said nothing quotable or important? Fortunately, a short account of my presentation turned up in the *Vancouver Sun* that afternoon, so my ego was bruised but salvaged.

Back home, I soon got to work on a promised addendum to elaborate our views on domestic subversion and our objections to civilianization of the security intelligence agency. I sent my comments to John who was to supplement them with his observations, but, steeped as he was in fund-raising projects to pull the Association out of a financial crisis, the addendum was put aside, and shortly afterwards, rendered obsolete with the tabling of the Senate Committee's report.

In retrospect, my experience as a witness was educative. Measured by the vigorous questioning of the Senators who served on this committee, it is erroneous and undeserved mockery to think of these public servants as tottering toward oblivion. For the most part, they were well-informed, shrewd interrogators who understood their mission even if, as appointees, their political sensibilities were not necessarily attuned to vanguard social and minority political opinion.

I do not think, however, that the investigative process does all that it could to promote critical dialogue between citizens and their legislators. There was too much holding to preconceived positions which is reinforced by the nature of the proceedings. Ideally, witnesses should submit concise briefs well in advance of their scheduled appearance. The oral presentations should not be a mere reading of the brief. Senators should be encouraged to enter into a genuine dialogue with the witness based on their own analysis of the submitted brief. A post-hearing addendum from witnesses should be required, perhaps linked to reimbursement of their expenses.

In sum, I believe hearings should be more demanding and more productive. I doubt that witnesses would be intimidated or squelched by forceful exchanges, so long as they know the rules of the game and feel assured that the purpose of the inquiry is to reveal the truth. Let us diminish the 'performance' aspect of the encounter, and maximize critical dialogue on the basis of unfettered debate. A more 'gloves off' approach would help meet this objective.

Postscript

On November 3, 1983, the Special Committee tabled its report.[3] The old birds surprised me! Although agreeing to the need for a distinct security intelligence service, they urged that the agency operate under a more specific mandate; that there be tougher standards for obtaining judicial warrants authorizing the use of intrusive techniques; that wider powers be accorded the proposed review committee; and that ministerial responsibility be increased. Most important, the committee recommended clarification of the definition of 'subversion', so that peaceful and lawful agitation for political or constitutional change could not be considered threats to the security of Canada. The committee rejected the idea of a permanent Parliamentary Review Committee, although it did recommend a five-year review by a special parliamentary committee. All in all, it could not be said that the Senate Special Committee was unresponsive or unsympathetic to the many criticisms, including our own, that had been leveled against the proposed legislation.

Bill C-157 died when the 1st session of the 32nd Parliament ended on November 30. Shortly before, Solicitor General Robert Kaplan said that a revised Bill presented during the 2nd session would "respond to sensible suggestions" made by the Senate Committee.[4]

On January 18, 1984 he introduced Bill C-9. While similar in many respects to C-157 it contains numerous amendments and additions. Indeed it adopts over forty recommendations of the Senate Committee. The mandate of the Civilian Security Intelligence Service has been tightened; ministerial responsibility is clear; power and immunities of the CSIS agents are more restricted and further provisions for external review of the agency have been imposed.

The new Bill appears to be much less offensive although it raises continuing concern about procedures for conducting intrusive investigations and accountability to the public and Parliament. When the opposition parties announced they would not support the Bill in its present form, Mr. Kaplan proposed establishment of a special committee of ten MPs to study the Bill.[5] The legislation may not be adopted before the end of the present Parliament but creation of a new security agency seems assured in the long term regardless of which of the two major parties forms the next government.

Whatever the outcome, our experience served as a reminder that all of us must maintain the struggle to uphold and expand democracy in Canada. If we submit to retrenchments of our liberties and freedoms — even those delivered in the name of social order — then we will get all the Bills C-157 we deserve.

Notes

[1]For a fuller exposition of this issue, see R.S. Ratner and John L. McMullan, "Social Control and the Rise of the 'Exceptional State' in Britain, the United States, and Canada," *Crime and Social Justice*, no. 19, Summer 1983, pp. 31-43.

[2]See *Proceedings of the Special Committee of the Senate on the Canadian Security Intelligence Service*, issue no. 13, September 28, 1983, p. 36.

[3]Report of the Special Committee of the Senate on the Canadian Security Intelligence Service; *Delicate Balance: A Security Intelligence Service in a Democratic Society*, November, 1983, Minister of Supply and Services Canada.

[4]*Globe and Mail*, October 14, 1983.

[5]*Globe and Mail*, February 13, 1984.