

July 14/66

## ALAN PATON IN THE DURBAN PARLIAMENT.

Mr. Speaker, I move that Civil Liberties and the Rule of Law are the foundations of civilisation. I could have said of Western Civilisation, or of Christian Civilisation, and I certainly would have no quarrel with any member of this house who used this concept of civilisation. It is true that civil liberties and the rule of law are the foundations of anything that could be called a Christian civilisation. But I go further and believe that they are the foundations of any kind of human life that can be called civilised.

What do we mean by civilisation? Civilisation is a state of human culture in which the barbaric and <sup>the</sup> cruel have been brought to heel, in which superstition has given way to knowledge, in which the club and the spear have given way to the law and the court and

the judge. When we say "So-and-so is a civilised man" we mean that his life will be characterised by reason and social responsibility rather than by irrationality and arrogance. Thomas Hobbes in his famous book "Leviathan" wrote that man's life was nasty, mean, brutish, and short. Civilisation is that which ~~makes~~ works to make man's life less nasty, less mean, less brutish, less short.

Such a condition of affairs can only be achieved under strong authority. No one believes that those requirements of law and order which characterise a civilised country can be maintained other than by authority, and this is the authority of the State. And the power of the State is in fact the power of the people, because it is the people's parliament that in effect wields the power.

The State is in human terms the creation and instrument of man. In Christian theology, following St. Paul, the powers that be are ordained by God. This is not usually taken to mean that God has chosen one party and rejected another. One remembers the story of the woman, who when America was involved in its terrible Civil War, said to Abraham Lincoln, "Mr. President, do you think God is on our side?" to which he replied, "Madam, the question that troubles me is whether we are on God's side". Whichever view we take of it, the State is an instrument whereby a society of law and order, that is, a civilised society is maintained in which man can live a decent and purposeful and reasonably happy life.

How much power should be given to the State? Should Parli-

ament give to the Government absolute power over its citizens? Should Parliament give to the Government the power to issue decrees independently of Parliament, the kind of power that was given to Hitler? The whole history of man's political struggle is his fight to see that he and his liberties should not be subject to the arbitrary rule of an Emperor or a King or a Dictator. Authority he will accept, but that authority must not concern itself solely with ruling him; it must also be actively concerned for his life and liberty, and must not be used to dragoon him into a degrading subservience to itself. As Lord Acton said, the supreme purpose of the State is to make it possible for man to lead the good life.

This whole problem of State power is made possible of

solution by what is known as the rule of law. Parliament makes the laws, but a man's guilt or innocence before the law is not determined by Parliament, but by courts of law whose officers have no duty higher than their duty to the law, the duty to administer the law without fear or favour. It is in the courts that the liberty of the accused person is found, for if the court finds him innocent he will go free, and if the court finds him guilty he will be punished only according to the law. What is more, not only is he prosecuted in this court, but he can also be defended, and it will be for the judicial officer, after he has heard both prosecution and defence, to determine his guilt or innocence. This is indeed a lofty concept of justice, one of the noblest ever conceived of by man, and it is

a concept fundamental to what we call the civilised life.

This noble concept of justice was not easily arrived at. Men suffered and died for it. Magna Carta in 1215, the Statutes of Westminster (1275) - and let us not forget that it was a later Statute of Westminster that acknowledged South Africa's claim to sovereign independence. Then there was the Habeas Corpus Act of 1679, which finally ended the right of the monarch to hold any of his subjects in custody without preferring a criminal charge. After the American colonies had declared their independence, they adopted the famous Bill of Rights in 1791, thus guaranteeing to the individual citizen immunity against detention without charge, or violation of the person, his property, and his reputation. In South Africa

Parliament is sovereign, but in the United States it is virtually the constitution that is sovereign, and it can only be changed under the most exacting conditions.

This evolution of the system of justice, this guaranteeing of the rule of law, this guaranteeing that the law itself would have regard to certain basic civil liberties, all this is essential to the evolution of civilisation. And it is this civilisation that we in South Africa have inherited.

It is a well-known, and I am sure generally conceded fact, that many of the liberties which man in his struggle for freedom has regarded as essential to his humanity and his integrity, have been abrogated. It is now possible in the Republic for a South African

to be banished to some other part of the country, to be restricted in his freedom to leave his home at certain hours or his district at others, it is possible for a writer to be forbidden to write, it looks as though it is possible - and I make this statement with great misgivings - that a restricted person may literally have no one to his house, or engage in any conversation or sit round a fire with any other person, or write a letter to any other person which dealt with any subject of any social significance, or which dealt with any book which dealt with any such subject. And this heavy punishment - which may last up to five years, and which may be renewed for 5 or 10 or 15 or 20 years - is inflicted not by any court for any offence, but by the Minister of Justice for reasons which he is not obliged

to disclose.

Such punishment in some cases is endless. While it proceeds new punishments are continually being added to it. I know a man who was banned for no known offence. He was Mr. Walter Hain, an architect working for a firm of architects, and his firm kept him on, but was finally obliged to dismiss him when it was made known to his employers that they would receive no government or provincial contracts if they continued to employ him. He struggled for a while on his own, but eventually he had to leave South Africa to start life in a new country. His offence was that he favoured the extension of the franchise to all adult persons.

Mr. Selby Msimang, 79 years of age, one of the most respected leaders of African political thought for 50 years, was

banned for furthering the aims of communism, a political doctrine to which he is strongly opposed. He is getting old, and on one occasion failed to report at the exact time laid down in the banning order. For this he was sentenced to one year's imprisonment, all suspended but four days, and those four days he spent in solitary confinement.

I think tonight of a woman who was a faithful member of your own society, Mrs. Jean Hill. She is a devoted Christian, and her Christian obedience made her perform two tasks - one was to see that persons charged with political offences should not in these difficult times be left to stand in the courts defenceless - the other was to see that the wives and children of these persons should not suffer hunger and thirst and want. She was charged with no

offence, but her liberty has been heavily restricted for a period of five years. I mention, Mr. Speaker, the fact that the Minister in another place has said there is no need for any citizen to provide such defence, because it is provided for already. I say here tonight that I have no knowledge of such a system of defence, except the Legal Aid Bureaux, which are totally incapable of discharging a task of this nature. And I say here tonight that ~~thousands~~<sup>hundreds</sup> of persons are daily charged, found guilty, and sentenced, without any defence save that which the presiding officer himself, and sometimes even the prosecution, may provide. I say here tonight that the Minister in another place made a statement which is at variance with the facts. I could put it more strongly, in the kind of forthright language that the Minister himself employs, and I have only one reason for not doing so, and that is that I am not a Minister myself. It seems to me that if a person is liable to be imprisoned for a period of 5 or 10 or 15 or 20 years, or even for life, it is of the very essence of a civilised society that he should be adequately defended. For it is not only he who is being defended, but the values of civilisation itself.

It has been alleged that the banned D & A., by defending political prisoners, was encouraging sabotage. By the same token the State, which provides pro Deo defence in all cases which might end in a sentence of death, such as murder and rape, are encouraging such offences. And I presume that the Quakers, who do not hesitate to offer medical aid in times of war, are thereby encouraging war.

It is a trumpety argument.

I wish to draw the attention of the house to another abrogation of civil liberties and the rule of law. I refer to Section 17 of the G.L. ACT of 1963, which authorised any commissioned officer of the police to arrest and detain for periods of 90 days any person who such officer suspected of having committed, or being about to commit, certain offences. Such detainee could be held until in the view of the Commissioner of the S.A.P. he had satisfactorily answered all questions. No person other than the police, and the magistrate, once a week, could see him. Most serious of all no court could order his release, even if there were reasons to believe that he was going mad or dying. For such a person the rule of law

had come to an end. Not only for him, but for the courts, and all its judges and officers. Not only for them, but for all of us, Mr. Speaker, all of us in this chamber and in this country. This law was no doubt designed to extort evidence, and it did, but the price was paid in debts, mental derangements, destruction of personality, and a decay of the moral conscience of our country. I realise that these remarks may be unpalatable to some. That is because for so many South Africans today, the crime of cruelty is not the offence, the real crime is to denounce cruelty. I leave to you the question, if there is cruelty in your country, what is the greater patriotism, to denounce it or to keep silent about it?

For the moment the 90-days detention has been set aside,

but it has been replaced by a 180-days detention of witnesses likely to be tampered with or intimidated or to escape. What the consequences of this will be it is too early to say, but I ~~express~~ express my fears, and the fears of many, when I say that I contemplate with the greatest anxiety the prolonged interrogation of a person in solitary confinement, which seems to be becoming a more and more common feature of our criminal system. (Read extract from SUNDAY EXPRESS). Such a passage I read with shame.

I shall conclude, Mr. Speaker, with one question. Is it not perhaps justifiable to defend civilisation by the use of such cruel methods, which are likely to cause great and perhaps lasting damage to the personality? In my mind it is not. We like to think

we are the defenders of Christian civilisation. Is there any person here who believes that Christ would have countenanced such methods? The way to preserve a civilisation is by the firm application of the law, not by the setting aside of civil liberties and the rule of law.