

# THE OPEN PLURALIST SOCIETY

by Jack Unterhalter

The report of the Spro-cas Political Commission- "South Africa's Political Alternatives"—made recommendations for the open pluralist society. It stated among its conclusions:

"The Commission is committed to the ideal of an open pluralistic society tolerating social and cultural diversity within the bounds of a necessary common consent. It is opposed to the notion of a totalitarian society in which any policy or ideology is unilaterally imposed on the whole society. It follows that it is opposed to the use of government powers to enforce a centrally determined policy in inter-personal social relations, cultural and educational affairs, etc. It is in favour of reasonable freedom of action for all kinds of voluntary associations and secondary groups such as professional groups, trade unions, business groups, cultural groups, churches and universities to manage their own affairs within bounds fixed by law. The Commission regards pluralism in this sense as a necessary counterweight to the power of government and as a necessary base for a free society".

The Commission then discussed in two stages, a model for transition to a new society, referring in essence to a devolution of policy-making, executive and administrative powers from the central government to regional and communal authorities, and emphasising wide popular participation in local and communal matters of all communities and population groups, as also functional representation in statutory bodies and the involvement of all relevant interest groups in corporative bargaining.

Many years ago a considerable literature developed the doctrine of political pluralism, and it may be of interest to see if the doctrine could be of assistance in solving some of South Africa's political problems, and in developing the suggestions made in the report of the Spro-cas Political Commission.

The preface to the discussion is the commonplace of constitutional lawyers that Parliament is sovereign. A. V. Dicey, in his "Introduction to the Study of the Law of the Constitution", quotes this from Blackstone's "Commentaries":

"The power and jurisdiction of parliament says Sir Edward Coke, is so transcendent and absolute, that it cannot be confined, either for causes or persons, within any bounds".

The notion of sovereignty has a long history, as can be seen in the classical statements of Machiavelli, Bodin, Hobbes and Austin. The practical application of the doctrine of Parliamentary sovereignty is seen in the way the Courts interpret statutes enacted by Parliament. The Judges seek the intention of Parliament as expressed in the language of the enactment, and then give effect to the will of Parliament as so expressed. There is no will in the State superior to the

will of Parliament, and what it declares is the supreme law. If it so wishes it may in the exercise of its supreme power, restrain the Courts in their investigations, as was done in Great Britain by the Defence of the Realm Acts, and is done today in South Africa in terms of the Terrorism Act.

One has become accustomed to the concept of the supreme central power of Parliament exercised by the government of the day through its majority in the Legislature. And it is a concept that is easy to accept, because it is consistent with the authority of the king as lawmaker and with the authority of the father as guardian of the household.

But scholars have challenged this thinking. F. W. Maitland, in his introduction to his translation of "Political Theories of the Middle Age—Otto Gierke", said this:

"Some would warn us, that in the future the less we say about a supralegal, suprajural plenitude of power concentrated in a single point at Westminster—concentrated in one single organ of an increasingly complex commonwealth—the better for that commonwealth may be the days that are coming".

Maitland had introduced Otto Gierke to English students in that translation and introduction, Gierke in his studies of legal history having carefully examined German Fellowship—the Genossenschaft. Maitland summarised Gierke's view in saying that the Genossenschaft is no fiction, symbol or piece of State's machinery, no collective name for individuals, but a living organism and a real person, with body and members and a will of its own, willing and acting by the men who are its agents, not being a fictitious person but a group-person and having a group-will.

Maitland was concerned to show that it was not the State that endowed the group with personality, and illustrated this in tracing the development of the English common law trust. In his "Collected Papers", writing of "The Unincorporate Body", he says:

"So we came by our English **Anstalt** or **Stiftung** without troubling the State to concede or deny the mysterious boon of personality. In truth and in deed we made corporations without troubling king and parliament".

J. N. Figgis, in an interesting work, "Churches in the Modern State", said this:

"Does the Church exist by some inward living force with powers of self-development like a person; or is she a mere aggregate . . . . . treated it may be as a person for purposes of convenience, but with no real claim to a mind or will of her own, except so far as the civil power sees good to invest her for the nonce with a fiction of unity? . . . It is, in a word, a real life and personality which those bodies are forced to claim, which we believe that they possess by the nature of the case, and not by the arbitrary grant of the sovereign. To deny this real life is to be false to the facts of social existence".

Figgis stressed the importance of small associations, pointing to the fact that these mould the life of men more intimately than does the great collectivity we call the State.

M.P. Follett, in "The New State", said:

"There is no individual and there is no society. Individuals are created by reciprocal interplay . . . I am not in relation to society but to concrete groups . . . The group idea comes not from mechanical aggregation but the subtle process of the intermingling of all the different ideas of the group".

Many others supported the criticisms of the sovereignty doctrine, among them Ernest Barker, who wrote of the State as a controller of groups ("The Discredited State" – in "Church, State and Study"). F. W. Coker, in his examination of pluralism, said that the varying doctrines are alike in their common opposition to the traditional theory of State sovereignty, showing the influence of earlier discussions of the States's relation to economic and professional groups and to the broader ethical and philosophical ideas as to the value of variety and freedom in self-expression. He adds that English pluralist doctrine is a plea for the rights and interests of groups which form no part of the official government of the community. There were many other writers besides, notably Harold J. Laski.

In summary then political pluralism is a theory that rejects the notion of a central sovereign power as the source of law. It states that the vital law-giving forces are groups formed in society to further the basic interests of that society, that those groups have personalities, and that true citizenship is realised in membership of such groups.

What may we derive from this for today, and here? I would suggest that we must reconsider the notion of the group, but not in the context of the ethnic group and the transition from this to separate development and the Bantu homeland. A dangerous polarisation is coming about in our country, and the course of wisdom is to stop that. It may be stopped if there is an encouragement of the formation of groups that would have lives of their own, from which an enriched social experience and political contribution would flow. In a word, if people of all races were permitted to associate together in natural groups to further their interests in such groups, there would come about understanding, tolerance and confidence to replace the hatred and the great fears that are undermining our society.

If men, irrespective of race, were associated together in trade unions, the will of that non-racial group would make for a great understanding between the different workers thus brought together, and this understanding would show itself in all the other activities of people living in our society. If there were complete integration

within Church groups, the will and personalities of those groups would likewise be enriched and strengthened, and what the Church gave to its members through such association would buttress in society all the values which the Church represents.

Again, if children of all races were taught together, and played together, there would be created a fellowship that would, in their adult lives, become a comity. Often the friendships of childhood are the most enduring. And the fellowship of the university would have an enriched personality if members of all races were its scholars.

Test the concept for neighbourhood groups, sports groups, drama, art and music groups, business groups, recreation groups. In each there will be an enhanced contribution if all may participate, and for each participant there will be a significance in taking part in legislating for his group.

An example of this form of legislation is the industrial agreement providing for wages and conditions of employment in terms of the Industrial Conciliation Act. It is negotiated at an industrial council by representatives of trade unions and employers' organisations of a particular industry and when concluded it is approved by the Minister of Labour. Thus the role of the State is to co-ordinate, and to protect other groups, lest the parties to the industrial agreement conspire to exploit their monopoly and thereby disadvantage those other groups.

If the principle were applied to all other interest groups in society, it would be these groups that would legislate and administer, and the State would act to prevent conflict. But the source of the law would be within the groups, not within a central Parliament, and there would be the right to membership of the group by all concerned with that group.

I would say then, that in these dangerous days in Southern Africa we, to meet the threats to our community and to establish a just society, should re-read the doctrine of a pluralist society to which I have referred above. We should travel away from the concept of the supralegal, suprajural plenitude of power concentrated in one single point at Cape Town. We should bring together men and women, irrespective of race, in all kinds of groups, economic, social, sporting and artistic, and devise a structure of government such that the sources of law would be in these groups, and such that the function of the State would be the co-ordination of the groups, and only that. From this would come a new status of citizen for all peoples, and this would give new meaning to Aristotle's old definition of the citizen:

"He who has the power to take part in the deliberative or judicial administration of any State".□