

Methodist Church, have a long way to go. When people stand aside and pity or execrate the Liberal Party, let them remember that their own crisis is no less grave. What could be graver than the crisis of the Dutch Reformed Church, which, though a Christian Church, affirms the colour bar, not merely within society but within the church. The Prime Minister levels the charge of hypocrisy against the Methodists. The truth is that the charge can be levelled against all humanity, and not least against the Prime Minister himself. The important thing is not whether people and organisations are hypocritical, but whether they know they are and try to be less so. The Liberal crisis is merely the white spot that indicates the presence of a monstrous suppuration throughout the whole body politic. This is not primarily a crisis of law and order caused by saboteurs, it is primarily a crisis of freedom caused by apartheid.

A CHALLENGE

I quote from the Christian Recorder of today. "If this noble spirit of liberal thinking and liberal living passes from the South African scene, we have harmed the future, almost beyond repair. We will have educated and shaped a generation, perhaps two, without any knowledge of the liberal spirit in their education and growth. That means that in 10 or 15 years' time, we will have a crop of adults who have no knowledge of the proper relation between freedom and responsibility, so important for the happiness of a nation and its people." These are important words. The editorial goes on, "we look to the churches to maintain that high religion which causes the liberal spirit to flower." Well, that is a challenge, because sometimes churches try to maintain the high religion, but they don't want the liberal spirit to flower." I am reminded of the saying of Samuel Butler, who said it was the greatest wish of English parents that their children would learn Christian principles, and their greatest fear that they would live by them. We don't need lip service to the liberal spirit; we need people who will live by it.

That's what we need, men and women who will live by the liberal spirit. The days are dark, and I think Dr. Verwoerd and Mr. Vorster will make them yet darker. But I think it is a good sign that the Prime Minister is provoked into insolence by the presence of nonconformity. It shows—whatever the omens

may appear to be—that liberalism is a powerful force, much more powerful than its proponents. Never forget that. The ideas don't die, and they live in you. And while they live in you, there's hope for our people and our country.

REPUBLICA CORRUPTISSIMA

THE STRANGLEHOLD OF THE LAW

BY A LAWYER

The increasing regulation of life by law is a phenomenon which all Western countries have experienced this century. The "laissez faire" policy of government has been exchanged for one which demands a higher degree of State intervention and regulation in the interest of general welfare.

In South Africa the increased regulation of life, especially in its economic aspects, is reflected in laws dealing with wages, work conditions, financial institutions and factories, to take only a few random examples. What distinguishes our country from the many other Western countries with which it shares these developments is that legislative intervention in this country is not restricted to the economic sector of life but has encroached into other spheres.

A SINISTER DEVELOPMENT

In the economic sphere an increased measure of State control is obviously desirable, but in other departments of life legal regulation is a sinister development. The extent of the invasion of law into non-economic areas of life in South Africa is alarming, and the following matters are subject, in a varying degree, to legal regulation :

1. What people may read, write or say. The control goes far beyond suppression of pornographic material.
2. Marriage and sexual relations—between whom these may take place.
3. What people may and may not be neighbours.
4. With whom people may associate—both socially and politically.

5. What work people may do and what work they may not do.
6. With whom we may be educated—at primary, secondary and university levels.
7. When people may live with their families and when not.
8. What areas and places people may visit—and in which areas people may work or live.
9. What people may not own land.

Thus to a greater or lesser extent, and certainly to an extent unknown in Western democracies, the law regulates the mind and the expression of its thoughts in words, family relations, matters of conscience, the use of skills and abilities, and movement and association. In the economic sector, also, regulation goes much further than it does in Western democracies. This kind of situation was described by Tacitus in the following terms: *Corruptissima republica, plurimae leges*—when the State is most corrupt, the laws are most numerous.

“CHOP OFF HIS HEAD”

It does seem that the legislature has developed the habit of meeting nearly all situations by passing a law just as the Queen, in Alice in Wonderland, met all situations by the injunction “Chop off his head”. The Queen’s subjects were, of course, always in a state of fear, and this is one of the dangers of overburdening the subjects with laws. The larger section of our people today fear the law and its authority rests upon fear. The “Barrets of Wimpole Street” may not be a great play, but it has at least one great lesson: The authority which induces respect is much greater than the authority which induces fear. May this lesson not be “writ large” and apply to the State?

The legal regulation described above takes no account of the so-called security laws of the Republic. Of these one of the most pervasive is the mis-named Suppression of Communism Act, 1950. Under this law the punishments of banning or house arrest (to mention only some) are imposed upon people without a hearing and without the opportunity to challenge the order in any way.

EVEN GOD HIMSELF . . .

In the early eighteenth century an English judge said: “Even God Himself did not pass sentence upon Adam before he was called upon to make his defence. ‘Adam,’ says God, ‘where are thou? Hast thou not eaten of the tree that thou shouldst not eat?’”

Thus a right assumed to be basic in eighteenth century England is denied in twentieth century South Africa—not, it should be noted, by a “security” law but by a law permanently on the statute book. The Suppression of Communism Act has been followed by many other “security” laws too numerous to describe here. The worst is, of course, the 90-day clause of the General Law Amendment Act, 1963. According to the Supreme Court, a detainee under this law is in the “protection” of the Minister of Justice and the Department of Prisons and the courts have no jurisdiction in respect of him. Thus the detainee is in the protection of the very person against whom he has a complaint. It would be hard to find a better instance of one person being constituted accuser, prosecutor, judge and executioner. The power vested in the Minister and his officials by law is absolute and represents a total denial of the principles of the Rule of Law. The Rule of Law demands that the powers of officials and the rights of the subject defined by clear precise rules administered by the ordinary courts. The 90-day clause is the very definition of arbitrary power.

NECESSARY

It has often been claimed that laws of the kind just described are necessary for our security. Everyone agrees that these are times when, in the interests of peace and order, fundamental freedoms have to be limited; but on the circumstances in which limitation is permissible and the extent to which freedoms may be curbed, there is much less agreement. It does seem to be recognised that in times of war it is often necessary to curb the freedom of the individual drastically. However, even in war there must be some limitations on what the executive may do. **It is worth noting that during the last war, although many people were put into internment camps, it was not found necessary or desirable to detain any of them in solitary confinement.** Internees enjoyed the company of each other, were allowed visits, recreation, reading and writing material and other amenities.

In peace-time, “prima-facie”, the suspension or destruction of the rights of individuals is not justified. Every Government which has departed from the rule of law will claim, of course, that circumstances justify the suspension of liberties. This question cannot be decided by simply accepting or rejecting that claim. The whole question must be rationalised by the formulation of rules and principles.

These rules or principles should deal with the following important questions :

- (a) The meaning of an emergency or crisis which will justify the restriction of our freedoms.
- (b) What measures are justified in an emergency or crisis.
- (c) How the exercise of emergency powers should be regulated or controlled.

A FEW GUIDING RULES

It is not possible to deal with such difficult questions exhaustively, but a few guiding rules suggested by experience in South Africa and elsewhere may be offered.

1. A Government which produces unrest by the enforcement of unreasonable or inhuman policies is not entitled to describe a situation of disorder resulting from that enforcement as an emergency.
2. Generally, an emergency means open disorder or lawlessness. When peaceful conditions prevail, emergency powers are not justified.
3. Emergency powers should not be introduced unless the ordinary laws have proved inadequate. Moreover, the inadequacy should not be due to the enforcement of inhuman policies. Very often, it is the Government which makes ordinary laws inadequate, not the people. It is apartheid which has put such an enormous strain on ordinary laws.
4. The word emergency normally denotes some **temporary** crisis. We are bound to be suspicious of emergencies which go on for years. The Emergency Proclamation in the Transkei is now 3½ years old. "There is nothing as permanent as the temporary".
5. Emergency measures must not be incorporated into the permanent legislation of the country—their duration must be limited **ab initio**. They should be emergency laws in **form** as well as content. The Suppression of Communism Act is a permanent law which makes possible the permanent subjection of the right of democratic opposition.

6. Emergency measures should never be barbaric or inhuman. There is something radically wrong with a Government which cannot enforce peace and order except by inhuman and barbaric measures.

DISORDER — AN ANALOGY

A deeper question must now be discussed. In discussing emergency powers we are apt to assume that they prevent disorder. This is true only in a very limited sense. They are really designed to meet disorder when it has arisen. Much confusion has been caused in this country by the belief that drastic security laws can prevent disorder. An analogy may explain the point: Some years ago, a law was introduced making armed robbery punishable by death. The purpose of this law was to "prevent" armed hold-ups, which were becoming alarmingly frequent. A person may now be hanged for demanding money from someone at pistol point. There are no reliable statistics, but it is very obvious from the newspapers that armed robbery has increased, not diminished, since the law was passed.

The main reason for this is that the problem has been conceived only in terms of policing. Social deviation cannot be controlled purely by police measures. Attention must be directed to the underlying social evils. The moral of this analogy is that we expect our emergency laws (pure police measures) to achieve what the law against armed robbery has conspicuously failed to achieve. The error is exactly the same—inattention to the underlying social situation.

LAW, ORDER AND JUSTICE

How can the State prevent disorder and preserve its own security? This question may be answered in broad terms. The reason why our liberties have to be permanently restricted in the interests of security is that the Government has recognised only the first two of the three parts of the trinity—law, order and justice. **There is much emphasis upon law and order but little upon justice.** The trinity—law, order and justice—is as old as civilisation, and it is just because it is a trinity that it is fatal to ignore one of its parts. To be more specific, it is important to secure order through the law and without order there can be no justice; but it is equally important to secure justice through the law because without justice there can be no order. Here is a simple but fundamental

truth—the inter-relation of order and justice. It is a truth that was recognised many hundreds of years ago by the Greek historian Thucydides. In the Peloponnesian War he makes Diodotus speak these words: "And we should recognise that the proper basis of our security is in good administration rather than in fear of legal penalties."

Order and justice are like two sides of a triangle connected by a third called law. Remove any side and the stability of the others is removed also. It is the lack of attention to justice in South Africa which has made it necessary to reduce drastically individual freedom.

What do we mean by justice? This is too big a subject to discuss here, but it may be said briefly that attention to justice would imply the elimination of the enormous inequality between different classes of people in the Republic. Gross and artificial political and economic inequality is not compatible with justice, and it is in this inequality that disorder has its roots.

So far as justice is concerned apartheid is a great Sahara. The "security" laws of this country have been enacted to save apartheid from inevitable failure. Apartheid is a hydra-headed monster and one of its faces represents oppressive laws. To get rid of these laws we must get rid of the whole growth.

HARD TIMES, GETTING HARDER — PARTY REPORT

In the three months since the last Liberal Opinion appeared Liberals and liberty have taken some hard knocks in South Africa. More threaten.

The campaign of intimidation and arbitrary action directed against Liberal Party members has gained great impetus since the beginning of July. On July 4th Republic-wide Security Police raids were directed at a great many South Africans, a great many of them Liberals. During July and early August between 20 and 30 Party members disappeared into the silent terrors which lie behind the 90-day detention clause. Some of them, after being held for weeks, have been released without there being any suggestion that they had ever committed any offence. Others now

face charges under the Sabotage Act. These matters are before the Courts, and this is not the time to comment on them. It is the time to comment on some other aspects of recent Government activity, especially, but not only, as they have affected and still threaten Liberals and the Liberal Party very closely.

SAME OLD GRIND . . .

Apart from members who have been detained, many have been interrogated by the police. Four leading Party members have been banned and confined, each of them for five years. They are Peter Brown, National Chairman; Walter Hain, Pretoria Chairman and National Committee member; Dempsey Noel, Pietermaritzburg member of the National Committee, and Ann Tobias, Cape Vice-Chairman, and latest in a long series of courageous CONTACT editors to be banned. The banning of Peter Brown was followed by a systematic police attempt to wreck the Party in Natal. One part-time Party worker was raided 12 times in a month, many members have been threatened with detention, banning or banishment. Every effort has been made to terrorise the families of active members. Police have visited ordinary members, one at a time, and told them that, now that Peter Brown has been banned, they needn't expect to hold any more meetings in their areas and, if they do hold them, they can expect trouble.

The response of Party members at all levels to these assaults has been quite magnificent. No doubt the Government hoped to deliver a knock-out blow. It used the prevailing white South African mood of July to ban Peter Brown, and it then set out to try to frighten the Party into inactivity and collapse. It could hardly have failed more dismally.

Protest meetings against the Brown ban in Pietermaritzburg and the Natal country areas have been very well supported and the National Conference of October 10/11 was attended by almost twice as many delegates and observers as the 1963 Conference. The public meeting which preceded the Conference was packed out.

. . . SAME OLD STORY

These direct Government attacks on the Party and its members are serious enough, but there are other things threatened, or already happening, which should be frighteningly familiar to anyone even remotely aware of the story of Hitler's Germany. During September a strange coincidence took place. Chief