

THE ALFRED AND WINIFRED HOERNLÉ
MEMORIAL LECTURE, 1971

FREEDOM AND STATE
SECURITY
in the
South African Plural Society

by

Professor A. S. Mathews

(Head of the Department of Law, University of Natal, Durban)

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A. S. MATHEWS

*Professor and Head of the Department of Law,
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FREEDOM AND STATE SECURITY IN THE SOUTH AFRICAN PLURAL SOCIETY

was delivered by A. S. Mathews, Professor and Head of the Department of Law at the University of Natal, Durban, in Johannesburg on 21 September, 1971. The Alfred and Winifred Hoernlé Memorial Lecture is given once a year under the auspices of the Institute of Race Relations by some person having special knowledge and experience of racial problems in Africa and elsewhere.

FREEDOM AND STATE SECURITY IN THE SOUTH AFRICAN PLURAL* SOCIETY

The attainment of security and the enlargement of freedom are among the rightful concerns of both government and citizens. In a chronological sense, the establishment of stable government comes first since an ordered freedom is not possible until government has been put on its feet. But when weighed against each other as ends or goals freedom is surely the ultimate value. It is an ultimate because it is sought for itself and because of its crucial role in releasing the rich potentialities of individual and social life. Liberty and self-fulfilment stand in an intimate relationship to one another. To understand this, we only have to compare the capacity for self-expression of whites and non-whites in South Africa with reference to the degrees of freedom or non-freedom which they enjoy. Any discussion of security and freedom, or of the success of actual governments in achieving them, ought to take as one of the basic premises the priority¹ of freedom (and the correspondingly more instrumental nature of order) in the scale of human values.

By assigning a priority to freedom, I do not mean to deny the subtle relationship which exists between the interests of state security and liberty. This relationship is paradoxically characterised by inter-dependence and by hostility or contradiction. The attainment of some measure of governmental stability is a necessary basis for a guaranteed freedom; and state security will be fragile if freedom is totally or substantially denied. To this extent the two interests support each other. Their contradictory aspect emerges whenever one value is given an exaggerated significance. Swollen or misdirected policies of security drive deep inroads into liberty, as we observe so clearly in this country. Conversely, the implementation of an over-expansive doctrine of freedom may undermine the foundations of government. The complexity of the relationship is heightened by the way in which the historical and social situation influences the decision as to what balance between security and freedom will bring them into harmonious co-existence. This factor partially explains why Milton and Locke, two of the fathers of free speech, advocated little more than the removal of prior restraints on the

* The word "plural" here connotes a society with deep racial and cultural cleavages. It must be distinguished from the notion of political pluralism discussed later in this lecture.

¹ This priority cannot be "proved". It is put forward as one which reasoned argument tends to support.

expression of opinion.² The institutions of self-government were felt to be insufficiently secure for the repeal of the tyrannical law of criminal libel and the adoption of a broader theory of free speech. An understanding of the dynamics of the relationship between security, liberty and the social conditions of the time is essential to the formulation of rational laws to secure both freedom and order in society.

It has been insufficiently recognised by the advocates of freedom in South Africa that its attainment in a culturally plural society is fraught with difficulties of a daunting kind. The assumption that counter-repression or the violation of minority-group rights can be prevented simply by the enactment of appropriate guarantees entrenched in a rigid constitution is not one which experience elsewhere validates. A constitutional instrument of that kind is only a "parchment barrier" in the absence of its acceptance by the major groups in society. If there were ever sufficient consensus in South Africa to give the necessary legitimacy to a government under a constitution entrenching individual and minority rights, it is being broken down by present policies. If freedom is hard to achieve in a plural society, so is state security. The insupportable assumption made by the security hawks in South Africa is that a stable state can be constructed on a foundation of restrictive laws and naked force. It is power not security which comes out of the barrel of a gun. There has been an almost total failure to perceive the relation between security (in a deeper sense than the power to enforce immediate compliance) and the satisfaction of the legitimate claims of the major groups in society. In brief, social justice is an essential component of an effective security policy.³ The recognition of some of the fallacious assumptions underlying programmes for freedom and for state security in South Africa prompts the conclusion that political progress depends on a substantial re-alignment of attitudes on the part of those who favour change and on the part of those who resist it.

A central question for any student of South African politics and law is whether in a country with such deep cultural and racial cleavages one can reasonably hope and plan for the attainment of both freedom and security — whether, that is, the laws which extend

² See Leonard W. Levy in *Freedom of Speech and Press in Early American History: Legacy of Suppression* (Harper Torchbook, 1963). The restricted doctrine of free speech advocated by Locke and Milton is examined in Chapter III.

³ This statement cannot be elevated to the status of a universal law. The functioning of the government can be maintained by brute force, as the example of fascist and totalitarian states demonstrates. The point is that security cannot depend simply on force if self-government is practised to a meaningful degree. I am assuming that South Africans favour a self-governing and not a totalitarian system.

freedom and the laws which further security can be so judiciously blended that neither set will be destructive of the other. Before coming to that question it is necessary to be clear about both freedom and security. I propose, therefore, to define each in ideal terms before asking whether acceptable policies of both freedom and security are realistic probabilities, or even possibilities, in South Africa.

Freedom has rarely meant freedom for all in the society. Certainly no government since Union has advocated anything even approaching a general freedom.⁴ History seems to teach that freedom for the *other* man is the hardest won, and most easily lost, of all political principles. Even the early American libertarians, who fought a war in the name of freedom, suppressed "illiberal" views both before and after the revolution. Their attitude to freedom of speech was at best equivocal.⁵ Therefore, the first point to stress about the ideal form of freedom is that it does not mean freedom for whites, the rich or like-thinking groups in society. Secondly, the freedom that I am discussing is limited in this paper to the political and civil liberties of man. Other kinds of freedom are, no doubt, of much importance, but they fall outside the scope of this lecture. It follows that the focus in this lecture will be on the possibility of all people in the land enjoying civil and political liberty.

No theory of freedom can be satisfactory or complete unless it incorporates the notion of a protected area within which a man may do as he wishes. This proposition assumes that there is, or should be, a dimension of a man's life which is free from external interference or control whether by other individuals, groups or the government. It is a tenet of the Western tradition of civilization that the individual should have the largest measure of freedom in respect of matters of conscience, belief and thought. Intellectual freedom is paramount. But individual liberty also means a measure of freedom of action. There is clearly a realm of private action, as well of thought, in which the individual is not accountable for what he does. Because a man's actions may more easily and directly injure others, there is a greater justification for external restrictions and control, especially by the state. Nevertheless, as hard as it may be to draw the line between permissible and impermissible forms of individual conduct, there must be some scope for uncoerced behaviour if human dignity is to have any meaning at all. The relation between this aspect of liberty and manhood was well perceived by Professor Hoernlé when he wrote:—

⁴ This appears to be true of all the Republics and Colonies, including the Cape Colony.

⁵ Leonard W. Levy, *op. cit.*, chapters 4 and 5.

“From this point of view, it is part of the Liberal Spirit to respect the manhood of men; and self-mastery is the essence of manhood — self-mastery in the double sense of inward self-control or moral character, and of outward power to mould one’s own life by responsible choices within a social system providing a wide range of choices.”⁶

The idea of self-mastery is meaningless unless there is a sacred area in which a man may think or do as he wishes.

In the present time of concern for social justice, the importance of individual freedom is frequently overlooked or subordinated to the goal of equality and group liberation. Some programmes for social reform rest upon the assumptions that individual freedom must necessarily be sacrificed in the achievement of the greater freedom of all. Fortunately, there have been writers like Kafka, Koestler and Pasternak who, communicating through the medium of the artistic imagination, have given vivid expression to the condition of individual life where the interests of the collective are supreme. What makes “The Trial”, “Darkness at Noon” and “Dr. Zhivago” so compelling is the *cri de coeur* from men who have lost the area of personal autonomy — who, as Ivanov says in “Darkness at Noon”, may be disposed of as experimentation rabbits or sacrificial lambs. The moral is being ignored in our time even by some radical reform movements which, in the pursuit of admirable social goals, would trample down the fragile barriers which still stand between the individual and the group forces that constantly threaten him. The claim of the individual to enjoy a limited but necessary personal inviolability will have to be asserted, in the future as in the past, against reactionaries who deny that claim in order to preserve the *status quo*, and against reformers who would sacrifice it in the cause of social change.

Freedom, in the sense that I am now using the expression (individual freedom or “freedom from”) is frequently expressed in legal-constitutional language as the right to liberty of the person, of expression and of movement. Liberty of the person is guaranteed when a man is free from arbitrary arrest, from arbitrary search and seizure and from arbitrary invasion of the home. When personal freedom is linked with the right to free expression and movement, it makes possible the further important rights of meeting and association. The transcription of freedom into the legal language of rights draws attention to an important feature of Western liberal-democracies — namely, the legal, sometimes constitutional, status which individual

⁶ R. F. Alfred Hoernlé in *South African Native Policy and the Liberal Spirit* (Wits. Univ. Press, 1945) pp. 150-1.

liberty enjoys in such societies.⁷ This is basically what we mean when we say that the Rule of Law is observed in a country. Where the Rule of Law prevails the fundamental freedoms of the individual have legal as well as social backing. If it is possible to express a complex phenomenon like the Rule of Law in a single sentence, I would say that it stands for the principle that the basic freedoms of the individual may be claimed as a matter of law subject only to a limited and precisely defined⁸ class of exceptions. They are enforceable not just against other persons or groups in society but against the state itself. The principle of enforceability of basic rights against the state is an aspect of constitutionalism. By constitutionalism one means government subject to the limitation of rules. The dependence of individual freedom on constitutionalism is so great that the one virtually entails the other. The corollary to the emphasis on individual liberty in this paper is the principle of government subject to law.

One of the freedoms I have mentioned incidentally in discussing individual liberty is the freedom of association. Apart from being a very important aspect of an individual's rights, freedom of association is obviously crucial to the successful operation of a democracy. Democracy clearly implies the right to associate with others and to organise opposition parties and other political associations.⁹ I wish to suggest that freedom of association has a much deeper meaning and significance for those who are concerned with the construction of a free society. Where the right of association exists, diverse groups and organisations will be formed and many will ultimately flourish. The growth of a varied and vigorous group life in the society is vital for several reasons. First, and most obviously, it contributes to a richness and variety in the social life — a condition which may be described as the essence of civilization. Secondly, this kind of diversity seems necessary for the continual generation of new ideas.¹⁰ Perhaps we may even say that it represents the mind of man on the march. The third reason for placing a heavy emphasis on the right of association and the group life which it encourages, is that a rich and

⁷ For this reason individual freedom is sometimes referred to as juristic liberty: See Neumann, *The Democratic and the Authoritarian State* (Free Press, New York, 1966) p. 165.

⁸ If the exceptions are not precisely defined, they will not be limited. As Pound has remarked, there is a relation between liberty and hard-and-fast rules. One of the greatest threats to individual liberty in eighteenth century England and America was the ill-defined crime of seditious libel.

⁹ All the individual freedoms may be looked upon as necessary to the successful operation of self-government as well as constituting legitimate claims of the citizen.

¹⁰ See the remarks of S. M. Lipset in *Political Man* (Mercury Books, 1966) p. 67.

diverse pluralism appears to be one of the necessary social foundations for a free society. A government of necessity operates in a vacuum where there are no or few non-governmental groups which may check it, or provide limits to the exercise of power. Where there is a vacuum of that kind, the government will expand to fill it with fatal consequences to the possibility of freedom. I am well aware that this theory of political pluralism is currently in disfavour. In a general re-assessment of political pluralism, a writer has recently said that the theory "has lost most of its explicit apologists and only lingers quietly as a submerged inarticulate ingredient of Western liberalism."¹¹ I suggest, perhaps rather boldly, that the contemporary fashion which rejects the importance of pluralism is (like most fashions) too indiscriminating and uncompromising. Pluralism may not be all that its adherents have claimed it to be; but it incorporates a residuum of truth which we would do well to recognise. If the theory is freed from the exaggerated claims which are sometimes made for it, its residual validity will be more apparent. The existence of a condition of political pluralism in a society is not a guarantee that there will be freedom for all in that society or that the government will not act oppressively towards one or more groups within society. It is equally not a guarantee that the government will not combine with one or more groups to subjugate others. Galbraith has argued that such a combination of oligarchies has become evident in Western capitalist societies.¹² What pluralism does offer is the hope and possibility (or even probability?) that monolithic power, whether of the state alone or in combination with powerful groups, will be so tamed that everyone will be given a reasonable chance in the society. In a state in which there is both pluralism (in the sense of a plethora of groups and associations) and freedom of association, there is a likelihood that semi-autonomous organisations will arise to assert their interests and so limit state authority.¹³ There will be no such likelihood if there is no freedom of association and therefore no possibility of an area of autonomy for groups as well as individuals.¹⁴ The absence of even a limited autonomy for groups other than the government is one of the major differences between the Russian society and the "free" societies of the West, as Raymond Aron observes in the following concise description:—

¹¹ Henry S. Kariel in the *International Encyclopaedia of the Social Sciences*, (1968 ed.) Vol. 12 p. 168.

¹² John Kenneth Galbraith in *The New Industrial State* (Reith Lectures, 1966).

¹³ As happened in the case of trade unions.

¹⁴ I am well aware of the dangers that such groups, when inadequately checked by government, pose for other groups and for individual freedom. Government group power and individual right have to be kept in a constant equilibrium in the free society.

"Soviet society is no more homogeneous than is Western society, but no industrial or political organisation can exist independently of the state in the Soviet Union. Every organisation — professional, industrial, political — is the expression of the state and of the party and is therefore imbued with official ideology."¹⁵

I think that this comparison supports the argument that too little freedom for non-governmental groups in a country has a more dangerous potentiality than too much freedom. Though pluralism in Western countries can lead to dangerous alliances, there is within pluralist societies a self-correcting tendency which cannot exist where there are no significant forces other than the state to compel adjustment.

The presence within a society of groups which enjoy a substantial measure of legal or constitutional protection is in itself no guarantee that government will be checked or limited. The government will not be circumscribed to a significant degree unless the groups have attained an advanced level of self-consciousness and organisation. The groups must know their own interests and be willing to act in furthering them. It is of special importance that a point of development be reached at which there will be a clear recognition by non-governmental groups that they have interests different from, and sometimes in conflict with, the interests of the state. A study of our own history will reveal that governments may be brought to office, and maintained in power, by non-political groups which identify their own interests with those of a rising political party or with the government of the day. The strength of the present government is certainly due in large measure to the support of social, cultural and religious organisations which up to the present have made little or no distinction between their goals and those of the Nationalist government. In a paper¹⁶ submitted to the Political Commission of Sprocas, Mr. André du Toit has referred to this phenomenon as the socio-cultural dimension of politics and has stressed its role in the growth of nationalist power. But we are now reaching the point where some of these supporting organisations are beginning to perceive that their interests are not the same as those of the ruling party. This appears to be inevitable as industrialization and urbanization take place since no single government or party can serve the plethora of group interests that arise in a complex, modern society. The change is

¹⁵ Raymond Aron in *Democracy and Totalitarianism* (Weidenfeld & Nicolson, London, 1965) p. 180. The relation between active and autonomous groups and free institutions in Great Britain is underlined by S. E. Finer in *Comparative Government* (Allen Lane, 1970) pp. 131 and 152-8.

¹⁶ *Effective Participation in Government* by A. B. du Toit (unpublished paper).

probably also due to the more pragmatic, and correspondingly less ideological, attitudes that develop in an advanced society. If there is still some associational freedom at the moment of time when non-political groups become self-conscious and self-assertive, the process of restriction on the control of political power can begin and gather force. In this phase, one of the social bases for free political institutions begins to evolve.

The possibility of the taming of white Nationalist power in South Africa and of a new direction in national policy depends upon the force with which non-governmental interest groups assert their own claims and demands. There is a need for more vigorous action on the part of groups traditionally aligned with the government as well as those which have never identified fully with Nationalist policy. The stirrings among Nationalist businessmen, trade unionists, journalists and students are an encouraging sign of independence, though the movement is still feeble and confined. The record of non-nationalist groups and associations is better but still far short of a desirable level of activity and independence. Some of the English-language universities have fought for, and to a large measure, secured, the conditions necessary for independent academic teaching and research. This may be contrasted with the ineffective role of the legal professions which have too easily surrendered the time-honoured and fundamental principles of law and justice which underlie a decent system of legal administration. Effective pressures for change will come not from individual action, though that is important, not from party political activity, though that must go on, but from revitalized organisations and associations such as the universities, the professions, the trade unions and others. The task for committed young people today is clear — to work within their professions, their churches, their businesses and sports associations for a more aggressive pursuit of the special interests of each group and for vindication of these interests against encroaching governmental control.

The high importance of transforming the role of powerful, or potentially powerful, organisations and associations may be illustrated by a consideration of the South African legal profession (including the judiciary) in relation both to its present, and possible future, performance.¹⁷ At the present time the legal profession is in a passive or submissive phase; it is certainly not playing a significant or determinative role in legal development. The reason for this is *not* that the legal profession, and especially the judiciary, is by its very

¹⁷ I have chosen the legal profession because it is one of the two associations which falls directly within the sphere of my own knowledge and experience. My observations relating to the legal profession may be generalized and applied, *mutatis mutandis*, to other organisations.

nature incapable of influencing and shaping legal policy. Many lawyers brought up in our tradition argue that in a country which has a sovereign parliament and no bill of rights, the courts are necessarily the instruments of parliament's will, their function being merely to apply the enacted law and not to make it. This argument is both untrue and historically inaccurate. Its historical invalidity is well brought out in a recent comparative study of English and American judges in which the author observes:—

“It would seem that English judges do not want to remember that in the past they were themselves among the constitution makers. They determined the powers of the Crown and the executive under the Constitution and the laws of England—whether for example the King's Secretary of State could ransack the premises of a subject for evidence of *lèse-majesté*. English lawyers know all this, but to many of them it is history.”¹⁸

A large number of South African lawyers, too, wish to banish the vision of an active and influential judiciary to the dead past. The truth is that the function which the courts assume in society (whether or not the courts have special constitutional authority to determine policy) depends very greatly on the view which the courts have of themselves, in short, upon the prevailing legal philosophy. If South African lawyers are currently in a straight-jacket it is one which they have helped to fashion for themselves.

The prevailing legal philosophy is the philosophy of positivism. Positivism in this context may be summed up as the view that what law is, is wholly determined by external political authority. From that view lawyers deduce their purely instrumental function of facilitating the expression of the sovereign's will.¹⁹ Positivist lawyers frequently accept so subservient a role for themselves that one can almost imagine them welcoming a law which decrees that the function of the judiciary is to sit on the sidelines and applaud the actions of parliament and the executive! Legal positivism is, and should be, opposed by the view that a legal system has certain internal requirements which are independent of the wishes of political authority. There are certain principles governing the operation of the judicial arm of government without which it would be functioning not as a judiciary but as something else. This surely is the meaning of the revolt of certain judges against the gross interference with their

¹⁸ Louis L. Jaffe in *English and American Judges as Lawmakers* (Oxford, 1969) p. 4.

¹⁹ Students of interpretation of statutes will know that Parliament's “will” is often far from clear and that it may have to be interpreted in the light of the “surrounding circumstances” which in themselves allow the courts considerable latitude.

procedures authorised by the BOSS legislation. This incident shows how important it is that lawyers should assert against the legislature and the executive their view of what law is and what it ought to be. This they cannot do if they assume that principles inherent in judicial operations are valid only if sanctioned by Parliament. The Appellate Division came close to this point when it decreed in the Defence and Aid Case²⁰ that the right of a party to be heard — a principle right at the heart of the judicial process — is available only if Parliament intended that it should operate. There is ample precedent for the view that the rules of natural justice, including the right to be heard, apply unless Parliament has specifically set them aside.

South African courts have in the past taken up a more positive stance against executive encroachments upon individual freedom and upon the rules of natural justice. In doing this they have not acted politically but have merely enforced certain rights and procedures so deeply ingrained in our common law that they are part of our *legal heritage*.²¹ In 1916 Judge Wessels said that “[i]f the liberty of the subject is to be suppressed, it is to be suppressed by the legislature and not by the court.”²² In announcing this policy of non-collaboration with the other branches of government in the destruction of liberty, the court was adopting the traditional role of the judiciary in democratic societies — the role of the protection of individual and minority liberties. The courts would be doing nothing new if they maintained that attitude today. Professor Louis L. Jaffe has pointed to the crucial nature of the court’s function as protector of the tradition of freedom and fair hearing embedded in the common law:—

“If the judges are complaisant towards governmental power, Government will, of course, take what it is given. If the judiciary is prepared to provide leadership, its voice will be listened to with respect and gratitude. Because the individual citizen is dwarfed by the state and because the legislature may be relatively subservient to the executive, the judiciary is the most immediately available resource against the abuse of executive power.”²³

Unless the prevailing philosophy of positivism and non-activism is overthrown, the courts will be unable to fulfill these time-honoured

²⁰ *South African Defence and Aid Fund v. Minister of Justice*, 1967(1) S.A. 263 (A.D.) at p. 270.

²¹ For a useful résumé of the rights and procedures which have been incorporated into the Roman-Dutch legal tradition, readers may refer to *The Judicial Process, Positivism and Civil Liberty*, by John Dugard in (1971) 88 S.A.L.J. p. 181 at p. 197.

²² *R. v. Bunting*, 1916 T.P.D. 578 at p. 584.

²³ *Op. cit.*, p. 19.

functions. I wish to stress that in recommending activism, I do not propose that the judiciary should nail its colours to a political philosophy and apply that philosophy in its judgments. Activism must be put to the service of principles of law and judicial administration. Though these principles may have been derived from political philosophies, their reflection in the system of justice is the work of lawyers with a concern for constructing a civilized system of legal administration.

It seems necessary to spell out more specifically how courts in our system of government could follow a more interventionist role without carrying out a usurpation of authority. First, the court might continue to protect the important substantive and procedural rights of the individual unless directly forbidden to do so by Parliament in the clearest language. The court has neglected this opportunity in a number of recent cases.²⁴ Second, the court's power to control its own proceedings is more extensive than is generally realized. The reason why some judges revolted against the BOSS law is that it authorised the executive to interfere directly in the judicial process.²⁵ The delicate balance between the rights of the prosecution and the accused in our adversary system has also been disturbed by the system of interrogation of *incommunicado* witnesses. The court's power here is that it is the judge of the credibility and reliability of witnesses. It may also bring into the light evidence of maltreatment of accused persons or witnesses and call for appropriate action against the interrogating officers. We have not yet had a vigorous assertion of this power. Third, the courts should frankly recognise the policy issues implicit in the adjudication of conflicting legal claims. Where positivism is dominant, the courts tend to conceal policy issues behind the legal forms and to express their findings in seemingly objective legal terminology. A judgment in a controversial case constitutes a policy decision (as well as a legal one) even if the process of reasoning is expressed entirely in the language and concepts of the law.²⁶ When policy issues are brought into the light, they can become the subject of more rational consideration and adjudication than when they have an unacknowledged influence on the court. Finally, the court is able by reason of the qualifications of its members, and its own prestige and status, to offer leadership in the field of legal administration.

²⁴ For example, in *Rossouw v. Sachs*, 1964(2) S.A. 551 (A.D.) and *South African Defence and Aid Fund v. Minister of Justice*, *supra*.

²⁵ The court's power to control its proceedings clearly influenced the judgment of Lord Reid in *Conway v. Rimmer*, (1968) 1 All E.R. 874 at pp. 887-8.

²⁶ John Dugard, *op. cit.*, has demonstrated convincingly how unacknowledged policy considerations have influenced our courts.

The current passive role of the legal profession is a direct result of professional attitudes and legal training. The task for young lawyers and law teachers is to change those attitudes by creative thinking, writing and teaching in the law schools and on the professional councils. The stance which the legal profession (including the judges) adopts towards the preservation of freedom under the law is critical. It is mainly for this reason that I have chosen the legal profession to exemplify my argument that freedom depends in part upon growth in the society of non-governmental groups dedicated to their own special interests — in short, upon a vigorous pluralism. Though by virtue of their direct involvement in an arm of government lawyers have a great opportunity and power to limit the legislature and executive, and so help to create the conditions for an ordered freedom, other groups can contribute in different, if more limited, ways to the broadening of freedom.

Whereas there are many groups in our society which can modify the present political power structure by more positive action, the prospects for the limitation of the powers of a future majority government are gloomy.²⁷ In this respect present policies are calamitous because by ensuring that government is not now circumscribed by black or multi-racial organisations they are also freeing any new government from the restraints that pluralism can impose. The denial of political and civil rights to Africans, Indians and Coloureds, the virtual suppression of multi-racial organisational activity under various laws and the exclusion of persons other than whites from proper participation in the social and economic life will damage the prospect of constructing a free and stable society in two ways. In the first place, such black groups as now exist, or later come into existence, will be forced to identify entirely with black political organisations, just as Afrikaner non-political groups have identified (and still largely continue to identify) with the Nationalist Party. This identification becomes a necessary condition of attaining power for an excluded group; but it has fatal consequences for freedom, as Afrikaner Nationalism has shown. Secondly, to the extent that present laws and policies inhibit the growth of non-governmental institutional life they are undermining the stability produced by the cross-cutting interests that arise under pluralism. This has been very clearly expressed by Lipset:—

“The available evidence suggests that the chances for stable democracy are enhanced to the extent that groups and individuals have a number of cross-cutting, politically relevant affiliations.

²⁷ I am assuming that checks are needed even upon majority governments and that the transfer of control to a more representative government will not of itself ensure that power is not misused.

To the degree that a significant proportion of the population is pulled among conflicting forces, its members have an interest in reducing the intensity of political conflict.”²⁸

In a country with racial cleavages it is terribly important that group life should also cut across racial lines so that people have interests as workers, artists, doctors, etc. which transcend their interests as members of a particular race. Conflict is inevitable if the members of society are compelled to further their interests through distinct and separate race groups. The price of suppressing organisational life and, to the extent that it is not suppressed, of forcing it to accommodate to racial divisions in the society, will be exacted sooner or later and may be too high to pay.

The ideal form of freedom which I set out to define has thus far been limited to the individual's right to a measure of freedom of thought and action, i.e. his right to have marked off a “private spiritual area from which government should be excluded.”²⁹ Freedom has a second aspect which political scientists sometimes refer to as positive freedom (“freedom to” as distinct from “freedom from”). A man is free in this second sense when he can influence “the aims and methods of political power”. The Western democracies give expression to this principle of self-government by institutionalizing it in the form of representative government. I shall take it for granted that though systems of representative government frequently have serious shortcomings and are constantly in need of reform, they are an essential part of what we mean by freedom today. The acceptance of representative government does not carry with it the corollary that the majority has absolute power and may do as it wishes. Democracy, carried to its logical conclusion, includes the right of the majority to abrogate the freedom of the individual and of minorities, and cannot be acceptable in this extreme sense. In a free society the rights of the individual and the rights of the majority qualify each other; neither can be accorded absolute protection.³⁰ The acceptance of representative institutions also does not imply that human aspirations can be adequately satisfied by a system of formal political equality. A man's civil and political rights will be meaningless if he is destitute of economic and social advantages.

²⁸ S. M. Lipset, *Political Man*, *supra*, at pp. 88-9.

²⁹ Archibald Cox in *The Warren Court — Constitutional Decision as an Instrument of Reform* (Harvard Univ. Press, 1968) p. 8.

³⁰ The conflict between the two forms of freedom is lucidly discussed by Isaiah Berlin in *Two Concepts of Liberty* (Oxford, 1966). In a “free” society the claims of liberty and democracy are balanced. The fanatical assertion of either destroys freedom.

This means that my ideal concept of freedom implies a measure of economic and social equality.³¹ Where there are deep inequalities, the disadvantaged will be politically impotent and the society will have a latent instability on account of the divorce between real and formal power.

The preceding outline of the free society has prepared the ground for a description of ideal state security policies. A major assumption of the philosophy of self-government with its freedoms and open processes of rule is that violence and subversion are unnecessary, apart from being undesirable, because the system allows change to take place by peaceful and constitutional means. Therefore the security laws of the free society can (and should according to its philosophy) be limited to laws for the detection and punishment of those individuals and groups which seek to change the government or its policies by violent action. Subject to this qualification, the subjects may freely advocate any kind of policy whatever and organise for the advancement of their goals. Theoretically, this freedom extends to any group which pursues its aims non-violently, even to a communist organisation which plans to replace democratic institutions with an iron despotism. The arguments for allowing freedom to the enemies of democracy are that a freedom which extends only to those who believe in it is no freedom at all and that, in any event, in an open contest the superior arguments favouring democratic institutions will prevail.³² Thus civil and political rights are the property of all and the state intervenes only when opposition groups commit, or conspire to commit, violent or illegal *acts*. In the United States after the First World War, and again after the Second World War, many persons were punished simply for belonging to revolutionary organisations without clear proof that violent acts had been committed or were imminent. Towards the end of the 'Fifties the American Supreme Court, by a stricter application of the "clear and present danger test",³³ limited punishment to incitement to illegal action ("fighting talk"). In 1969 the same court declared that the advocacy of any doctrine or policy was punishable only if it was directed towards "inciting or producing imminent lawless action"

³¹ Equality is a goal of the free society which has to be balanced against other goals such as freedom.

³² This is probably true if all the major groups in the society enjoy substantial social justice. Walter Gellhorn has said: "Communist ideas have made little headway in countries that have maintained a measure of social mobility, that have developed an equitable economy, and that have been willing to cope with problems rather than simply deny their existence". See *American Rights* (Macmillan, New York, 1960) p. 95.

³³ The test was first judicially formulated by Justice Holmes in *Schenck v. United States*, 249 U.S. 47 (1915).

or was “likely to incite or produce such action.”³⁴ In retrospect the charge that the American courts have been too soft on the communists seems to have little substance. The history of anti-communist legislation in the United States illuminates very clearly the danger to freedom in punitive programmes directed against heretical organisations. At the same time, it must be recognised that social conditions in America permitted the courts to take a tolerant attitude towards extreme political organisations.

While the approach of the Supreme Court in the United States is admirably libertarian, it is not one which all Western democracies have adopted. The West German Constitution, for example, has a provision³⁵ authorizing the dissolution of organisations which “seek to impair or destroy the free democratic basic order”. Raymond Aron has argued that power to act against the enemies of democracy is not inconsistent with democratic principles provided that the government is required to act within a framework of legal rules administered by independent courts. In West Germany, the administration of the provision for dissolution of anti-democratic groups falls under the control of the Federal Supreme Court. The point made by Aron is vital — in times of peace state security policies must conform to the requirements of the Rule of Law.

Against the background of the preceding broad statements on state security policies in a free society, we can proceed to spell out the requirements of a rational security programme in more specific terms. In doing so, it will be useful to distinguish between short-term and long-term responses to security threats. Short-term security policies are those which are directed against actual subversion and insurgency and are expressed in legislation prohibiting espionage, subversion and rioting. Long-term security policies aim at *preventing* revolutionary activity against the state by creating social conditions in which revolution will be unnecessary and unlikely. The first set of measures are intended to deal with symptoms and the second with causes. All governments need to be alert to the requirements of security in both senses. Determination of the most desirable blend of short and long-term measures must depend upon a realistic assessment of the political and social conditions of the time and place.

The short-term measures which any modern state will (and should) enact if the government is responsible, are laws specifically directed

³⁴ *Brandenburg v. Ohio*, 395 U.S. 444 (1969) at p. 447.

³⁵ Article 21(2).

against espionage, sabotage, rioting³⁶ and any incitement or conspiracy to bring these about. If the society is to maintain free institutions, legislation will be directed against harmful actions and not against speech and association except where these are so closely connected with harmful action as to be part of it. The requirement that security laws be *specifically* directed against harmful conduct is a crucial one. If such laws are drawn in broad and sweeping terms, they facilitate the suppression of individual rights and they obstruct the free operation of institutions of open government. When the broad and ill-defined crime of seditious libel was being vigorously enforced in England, the individual's right of expression was submerged even after the law was liberalized to allow truth as a defence.³⁷ What was not then appreciated is that sweeping statutes also interfere with the processes of representative government and produce a serious distortion in their operation. Thus the limitation of security laws to harmful conduct is as necessary for the maintenance of healthy self-government as it is for protection of individual liberty. As a writer on American constitutional law has shown, it is the recognition by the United States Supreme Court of the dependence of representative government on the fundamental freedoms that explains its activism in the sphere of political and civil rights and its "hands-off" policy in relation to social and economic matters:

"Where the channels of debate and representative self-government are open, it is fair to say to one claiming under the due process clause that a law is so unjust as to be unconstitutional, 'You must seek correction through the political process, for the judiciary to intervene would be a denial of self-government'. This is no answer however, when the statute under attack closes the political process to particular ideas or particular groups, or otherwise distorts its operation. Then the correction must come from outside and no violence is done to the principles of representative government if the Court supplies the remedy."³⁸

The observations in the passage just quoted make it clear, I hope, that in a society which wishes to call itself free, security legislation must be directed at the real evils of subversion, sabotage and spying and must not abolish or seriously limit the civil or political rights of the citizen. Provided that the laws are so directed, I can see nothing unreasonable in their vigorous enforcement, nor in the maintenance of a secret police system to find out who are conspiring to breach

³⁶ Or other forms of violence.

³⁷ Leonard Levy, *op. cit.*

³⁸ Archibald Cox, *op. cit.*, pp. 9-10.

them. Punishment will be imposed for actual breaches except in times of emergency when the normal laws are partially or wholly suspended.

Though short-term security laws may reasonably incorporate authority to suspend normal rights and procedures during an emergency, emergency powers must be exercised exceptionally, and not as a general rule, if freedom is to retain any meaning at all. The permanent emergency is utterly irreconcilable with the maintenance of individual freedom and effective representative government. The true emergency, or "constitutional dictatorship", is always "temporary and self-destructive".³⁹ There is a fundamental qualitative distinction between those countries in which the government has legislated a permanent emergency into existence and those in which the resort to exceptional powers is temporary. The emergency declared in the Canadian province of Quebec on 16 October, 1970, to deal with the terrorist activities of the Quebec Liberation Front, is a good example of a limited resort to crisis rule.⁴⁰ This may be contrasted with the tendency in some countries (for example, South Africa) to make emergency government part of the regular law of the land.

The long-term response to threats to state security is one which attempts to build security into the social foundations of the country. This response is based on the recognition that dangers to security usually come from the excluded and oppressed groups in society or from the exploitation by individuals or organisations of inequalities and social injustices. A sensible government will not limit its counter-insurgency measures to symptoms but will try to get at root causes. Professor Lucian W. Pye has said that the correct long-term response requires the government to make "vigorous efforts to reduce social and economic disabilities and sincere attempts to build dynamic, and even revolutionary institutions for political participation".⁴¹ The need for the creation of responsive institutions cannot be over-emphasized since there is a changing balance of values and pressures in every society. The alleviation of today's social problems may not meet those that arise tomorrow. Political stability will be promoted

³⁹ Clinton L. Rossiter in *Constitutional Dictatorship: Crisis Government in the Modern Democracies* (Princeton Univ. Press, 1948) p. 8.

⁴⁰ The powers assumed during the emergency in Quebec were extensive, as John J. McGonagle points out in his article entitled *Emergency Detention Acts: Peacetime Suspension of Civil Rights — With a Postscript on the Recent Canadian Crisis*, 20 *Catholic Univ. L. R.* 203 (1970) at pp. 233-6. The emergency was lifted in April, 1970 approximately six months after its original proclamation.

⁴¹ Lucian W. Pye, *Aspects of Political Development* (Little, Brown & Co., Boston, 1966) p. 128.

if there are open processes through which claim news and interests can be articulated and accommodated.

Up to this point discussion has centred upon freedom and state security in ideal terms. Against the backdrop of ideal policies the South African realities show up very badly. Without constructing a catalogue of horrors, I shall briefly comment upon and analyse the shortcomings of the South African political and security system. So far as freedom is concerned, this is either non-existent or severely limited depending on whether the problem is being looked at from the standpoint of a white South African or of a member of one of the non-white groups. Even for a white individual freedom no longer exists as a right, though it may in practice be enjoyed as a precarious privilege. Any South African, whether white or not, may at any moment be deprived of his personal freedom, and of freedom of expression or association, by arbitrary ministerial action.⁴² For black South Africans these deprivations are additional to the daily invasions of individual freedom authorized by laws applicable to the African people. The implementation of the pass laws, urban areas legislation and Bantu Administration laws leaves little over of individual freedom; and what is left is swallowed up by security laws. Freedom in the first form that I have outlined — individual freedom — has suffered an almost total eclipse. Even the *feeling* for freedom in this special sense has vanished except among fringe groups in the society. One cannot today imagine the solid citizens of our country making the vigorous, if eccentric, protest against the invasion of liberty that was made by the Sons of Liberty in New York in 1766 against the imprisonment of an author named McDougall for seditious libel. Leonard Levy has given the following account of their protest:—

“On the forty-fifth day of the year . . . forty-five Liberty Boys dined in honor of McDougall on forty-five pounds of beef from a forty-five-month-old bull, drank forty-five toasts to liberty of the press and its defenders, and after dinner marched to the city jail to salute McDougall with forty-five cheers. On one particularly festive liberty day, forty-five songs were sung to him by forty-five virgins, every one of whom, reported a damned Tory, was forty-five years old.”⁴³

The difficulties of repeating a protest of this kind today may readily be imagined. Inebriation would almost certainly overtake the contemporary protestor before he had drunk the 180 toasts that

⁴² He may arbitrarily lose other rights as well, such as the right to travel or follow a chosen career.

⁴³ *Op. cit.*, pp. 81-2. The significance of 45 was that it was the number of the *North Briton* which earned Wilkes his conviction for seditious libel.

would be appropriate for a South African detainee. Moreover, the difficulty of finding 180 virgins in this permissive age is not to be underrated; nevertheless, with a little imagination the Liberty Boys' protest might be adapted to present-day circumstances and laws, though one must not lose sight of the danger that a dinner could be declared a prohibited gathering and the toasts banned under the Publications and Entertainments Act! More seriously, one may lament the death of that ebullient spirit which characterised this early American demonstration.

Freedom in the other sense, i.e. freedom to influence the exercise of political power, is entirely in white hands. It is insufficiently recognised that even in the arena of white politics there are serious curbs on political activity. This is so because the suppression of civil rights hampers the operation of representative government and because any radical white party will soon be eliminated by the use of laws empowering the dissolution of organisations,⁴⁴ the suppression of newspapers⁴⁵ and the punishment of furthering certain political aims.⁴⁶ Nevertheless it is true to say that whites enjoy a substantial measure of positive freedom by virtue of their enfranchisement. Non-whites, on the other hand, have no power to influence decision-making through the political processes. The concessions made in the Bantustans to the political aspirations of black South Africans are too minimal to qualify the conclusion that freedom in the positive sense is the preserve of white South Africans. Furthermore, the economic and social equality necessary to make the exercise of political rights (such as they exist) meaningful, simply does not exist. In summary, then, freedom in any of the senses already indicated has either been obliterated or substantially submerged by present laws and policies. This conclusion will surprise nobody since it is patent that present policies are directed to the preservation of white power and privilege, not towards the establishment of a general freedom. Concessions to black freedom are allowed only to the extent that white power and privilege will not be seriously affected; and as the Bantustan policy shows, only marginal changes are reconcilable with white power and privilege. What will surprise you (or perhaps some of you) is my assertion that, apart from being not directed towards the goal of general freedom, present laws and policies are not really directed towards the goal of state security either. To say this is to challenge one of the major theologies of the

⁴⁴ The Suppression of Communism Act, No. 44 of 1950 and the Unlawful Organisations Act, No. 34 of 1960.

⁴⁵ Sections 6 and 6 bis of the Suppression of Communism Act, *supra*.

⁴⁶ Under the laws referred to in footnote 44 above.

country since almost every law abrogating freedom has been passed with pious incantations to state security.

The justification for the claim that the real purpose of our security laws is something other than state security is necessarily an involved one requiring the production of historical evidence and a careful analysis of security laws with reference to their place and function in the political system. In this necessarily brief discussion I can only present an outline of the argument. A study of history, both here and elsewhere, will show that many so-called security laws are a response not to violent and subversive attacks upon the government but rather to powerful currents of social change. The advocates of new social policies will always include some dangerous men who provide an unwise government with the opportunity to legislate against change as well as against dangerous acts. This tendency has been well summed up by Professor Chafee in the following words:—

“The presence of extremists can easily be made an excuse for outlawing an organisation when the real reason for getting rid of it is not fear of the extremists but hatred of its legitimate purposes”.⁴⁷

After World War I, a fierce persecution of radical dissenters was unleashed in the United States. The use of sweeping alien and sedition laws in this period is attributed by one commentator to “a generalized but largely unarticulated recognition that the country and the world had been transformed, and an equally widespread inability to comprehend the premises of the new, emerging social order”.⁴⁸ In South Africa, the employment of security laws to counter social change began at an early stage. For example, in 1914 Parliament enacted the Riotous Assemblies and Criminal Law Amendment Act⁴⁹ in response to the rising labour troubles of the time. Though this measure incorporates provisions which may properly be classed as security laws, it also contains a chapter of provisions designed to frustrate the exercise of collective labour power.⁵⁰ The measure was denounced in Parliament by Col. F. H. P. Creswell as an attempt to “curb the growth of the labour movement on its industrial side”.⁵¹ Creswell’s concern was for the white labour movement, but in time these provisions, which have been carried forward into later legislation,⁵² were used to forestall the growth of

⁴⁷ Zechariah Chafee, *The Blessings of Liberty* (J. P. Lippincott & Co., 1956) p. 153.

⁴⁸ Quoted by Emerson, Haber & Dorsen in *Political and Civil Rights in the United States* (Little, Brown & Co., Boston, 1967) Vol. 1 p. 61.

⁴⁹ No. 27 of 1914.

⁵⁰ Chapter II.

⁵¹ House of Assembly Debates, col. 3132 (4th June 1914).

⁵² See now Chapter II of the Riotous Assemblies Act, No. 17 of 1956.

black labour power. More recent examples of the incorporation in security laws of provisions against economic and social change will be found in the Suppression of Communism Act⁵³ and in the Terrorism Act.⁵⁴ These are examples of explicit recognition in the wording of security laws that a major function is to arrest social change. More frequently the real interest served by the laws is concealed⁵⁵ behind a blanket transfer to the executive of "security" powers, as in the Suppression of Communism Act. This Act does not generally prescribe any binding criteria for the implementation of its drastic provisions and it has certainly been used to render powerless individuals and organisations who have worked to change the social order without employing subversion or violence.

Of course, security legislation has also been used against people and associations which have resorted to subversive opposition. Is this not evidence that the laws in question are truly security laws? To the extent that the laws are used to punish actual violence or sabotage, it is. Nevertheless, much of the violence has happened *as a consequence* of the prior enactment of laws blocking off social change and closing the channels of expression for the excluded groups. When this is taken into account the security laws are attributable not to acts of subversion or sabotage but rather to a policy which is committed to suppress a social movement even if violence will be a consequence of that suppression. In this light, the security programme is an extension of laws which have been enacted to preserve the economic or social inferiority of the non-white people of South Africa. The Red Scare tactics of the last twenty years have so confused many citizens that they tend to take the security programme at face value. It is significant that the Red Scare first became a reality in America when that country was resisting the social pressures that followed the First World War. No sensible person will argue against the necessity of a cool-headed assessment of the danger of communist subversion; but the Red Scare as we know it in this country is a compound of irrational fear, plot-theories and half-truths. The people who propagate the Red Scare are usually sincere; in fact, they are in deadly earnest. However, history warns us to examine the sub-conscious motivations of the advocates of repressive policies, and the interests actually served by such policies.

⁵³ No. 44 of 1950, especially in the definition of communism in section 1.

⁵⁴ No. 83 of 1967. See section 2.

⁵⁵ By "concealed" I do not mean deliberately concealed. The framers of laws are frequently unaware, or only half-aware, of the deeper motivations of their programmes. For instance, the supporters in Parliament of the Riotous Assemblies and Criminal Law Amendment Act, *supra*, saw it as a charter for the protection of the worker.

The foregoing arguments help to explain why the short-term security measures of the Republic are not confined to words or conduct which directly threaten peace and good order. They sweep far beyond the concerns of security legislation in democratic societies. The preoccupation with short-term responses to real or imagined threats to public order is matched by the absence of the necessary long-term responses described earlier in the discussion. Does a reasonable assessment of the South African situation offer any hope that a policy which placed less weight on restrictive short-term measures, and more on remedial long-term provisions, might succeed in promoting both stable government and general freedom? Though I may seem too bold in asking this question, let alone in attempting an answer to it, I offer a few conclusions that appear to be warranted by historical experience.

State security in South Africa nowadays rests very largely upon coercive measures and very little upon the accommodation of the claims of disenfranchised and dispossessed groups within a broad programme of social justice.⁵⁶ Ultimately a coerced order can be maintained only by the full powers of the police or totalitarian state, a condition towards which we have been moving for the past twenty years. Though the government has stopped well short of a rule of total terror, the logic of its commitment to security through coercion may still drive it, or its supporters, to a total seizure of power under more adverse conditions. All governments that have not attained legitimacy are in a state of movement between the polar extremes of order through legally-backed terror and order through exclusive reliance on liberalization and reform. There is a danger that a government which approaches too closely to one or other of these polar extremes will come so much under its magnetic influence that movement in the other direction will prove impossible. The most critical problem of government at the present time is the problem of devising policies to arrest and reverse the drift towards the polar force of terror backed by law. How far and fast we should move in the other direction depends on the extent to which the social conditions are favourable. The social conditions will also dictate what mixture of force and social reconstruction will bring about an equilibrium at any given time.

In my view an objective assessment of our situation supports neither of the two absolutist positions that have characterised political debate. According to the one view the social conditions,

⁵⁶ The Bantustan policy is, no doubt, an attempt to satisfy these claims; but it is by itself a hopelessly inadequate attempt.

especially the racial cleavages in the country, render hopeless the achievement of stability and a general freedom within a single society. According to the other, the ordered freedom of a constitutional democracy is not only possible but almost immediately attainable in South Africa. The supporters of the first position argue that separation is the correct response to the diversity of the society, though it is not clear whether by separation they mean partition and the creation of racially homogeneous states. The supporters of constitutional democracy demand that civil and political rights be extended broadly and swiftly to all groups. Their faith in the possibility of order and freedom after such extension rests largely upon the enactment of a rigid constitution with guaranteed individual and minority rights. In arguing for a more moderate, "middle" position towards change, I am not losing sight of the danger that the strongest factor which political and sociological analysis may disclose is a stubborn determination by whites to maintain the *status quo*, the present debate between separationists and integrationists being merely a smokescreen to hide an inclination not to change at all. The argument that the social conditions do support the construction of free and stable institutions, assumes that South Africans, especially white South Africans who control political power, will be forced to their senses even if they do not voluntarily come to them.

Of the facts which constitute the South African situation there is one which is so fixed that no realistic assessment can possibly ignore it. Whatever the position was in the past, South Africa has become (and short of major upheavals will remain) a single society organised around one dynamic economy. The geographic dispersion of the various race groups and the involvement of all in the economy make it completely unrealistic to plan for a major reconstruction of the society into separate and autonomous states. The strength of the integrationist approach is that it is founded on this solid fact. Conversely, a weakness of the separatist approach is that its success appears to depend on the break-up of the economy (which even its supporters probably do not envisage) and a social re-organisation (with all the attendant cost) of the magnitude of the post-revolutionary reconstruction in Russia. I am not suggesting that the territories now referred to as the Bantustans will not break away and become separate or that the various portions of the country may not be more satisfactorily linked in a looser federal-type arrangement. Even if such developments do take place, they will be marginal changes which will leave unaffected the basic fact of the singleness of the society. The separatist approach appears to be caught up in an insoluble dilemma: Either it stands for marginal

changes which will not bring about the envisaged separateness;⁵⁷ or it envisages upheaval and dislocations so great as to ruin the society in the process of creating separate and homogeneous states. Everything points towards the first interpretation and towards the consequential conclusion that substantially the policy aims at maintaining the *status quo*.

Within the single society⁵⁸ there are deep racial cleavages which undoubtedly make more difficult (some would say, impossible) the creation of institutions characterized by stability and freedom. Political scientists from John Stuart Mill⁵⁹ to Rupert Emerson⁶⁰ have declared that racial divisions are a major obstacle to the successful operation of the institutions of democracy. The problem of building up a broad consensus and loyalty to the national government in a multi-racial society is one which must be squarely faced by supporters of integration. But facing the problem does not mean that they must be overawed by it. Consensus and loyalty are terms which need to be freed of their mystical connotations. When this is done it will be recognised that whether the different groups in a multi-racial society develop an over-arching consensus and loyalty to the system depends precisely on whether the system is one which is designed to accommodate their expectations; in short, whether it is one which offers to all groups the hope of a place in the sun. Critics of integrationist policies seldom recognise that the lack of consensus to which they point is to a large, but indeterminable, extent a product of a system which denies to major segments of the society any hope of the satisfaction of reasonable expectations. They also fail to perceive a more ominous consequence of the frustration of reasonable claims. Lipset has demonstrated that extreme and revolutionary ideologies take root and flourish among excluded groups, especially during a period of rapid industrialization.⁶¹ But, however much the lack of consensus may be rooted in the present system, it remains an obstacle which the advocate of change towards free institutions must take into account.

Sociological analysis discloses several other pre-conditions of the creation of stable democratic institutions. Democracy appears to require an advanced level of economic development, the absence of sharp economic inequalities and a high degree of literacy. There must also be some representative institutions which can be broadened,

⁵⁷ And which implies the maintenance of a domination system.

⁵⁸ Which I have argued must be taken as one of the fixed or given factors in any analysis.

⁵⁹ In *Representative Government*, Chapter XVI.

⁶⁰ In *From Empire to Nation* (Harvard Univ. Press, 1962) p. 223.

⁶¹ S. M. Lipset, *Revolution and Counter Revolution* (Heinemann, London, 1969) Chapters 6 and 7.

a tradition of liberty and a reasonably efficient bureaucracy.⁶² Some of the conditions on this list have already been met in South Africa while others, especially economic equality and literacy, are still far from satisfied. Though inequality and low standards in education are also to a considerable extent products of the present system, they have to be counted among the obstacles to the establishment of a stable democratic order. The position may be fairly summed up in the conclusion that the social conditions in South Africa, while potentially favourable to the growth of free institutions, cannot at the present stage support a full democracy.

While the overnight extension of liberty is certainly undesirable, the sociological facts of the situation warrant a broadening of freedom and the hope of the ultimate creation of viable democratic institutions. In devising the correct strategy for change, political planners will have to take into account the fact that the majority of whites do not at present favour the extension of political rights *outside the Bantustans*. There does however appear to be sufficient support for a combined policy of accelerated political development in the Bantustans and a rapid extension of economic and social rights for non-Whites in the "white" areas. The improvement of the economic and social situation of urban non-whites is of critical urgency for several reasons. The greatest threat in the future to stability, and therefore to state security, is the concentration in the urban areas of large communities of depressed and rightless black workers. They are the future ghettos of the South African society. The apartheid theory which envisages their removal, or the satisfaction of their aspirations in terms of a vote in distant homelands, is the most dangerous kind of wishful thinking or dreaming. The growth of extreme and revolutionary ideologies among an urban, rootless proletariat is inevitable, as I have already stated. For reasons of self-interest (as well as for humanitarian reasons) the economic and social changes required to prepare urban non-whites for later participation in the political power structure must be launched *now* on a massive scale. The policy most dangerous to future state security is one which will result in an enforced transfer of political rights at a time when the necessary social groundwork has not been created.

Though the extension of economic and social rights should be accompanied by a relaxation of harsh repressive measures, especially the worst features of the security system, it will not be possible to

⁶² Readers may consult Lipset, *Political Man*, *supra*, for an extensive survey of the conditions of the democratic order. Another recent study is by Niebuhr & Sigmund, *The Democratic Experience — Past and Prospects* (Pall Mall Press, London, 1969).

do away with all legislation which curbs civil and political rights. In other words, the ideal security policies which I outlined earlier in the discussion are just as impossible of immediate realization as freedom is of over-night creation. The following words of Professor Paul Freund represent wise counsel to those who desire to remove all curbs as well as to those who would retain all:—

“Our whole perspective and experience leads us to see civilization as a tension between continuity and change, between heritage and heresy, atrophy and anarchy.”⁶³

Whereas the reactionary places all the emphasis on continuity and heritage, and overlooks the danger of atrophy, the impatient libertarian tends to put too much stress on change and to be indifferent to the dangers of heresy and anarchy in a period of transition. We should certainly demand and work for the repeal of barbarous institutions such as unlimited detention in solitary confinement and deprivation of liberty without hearing. But we should also be realistic and recognise that in a period of ordered change some undemocratic restrictions will be necessary for those who cannot accept anything less than immediate satisfaction of all the expectations of the deprived groups and who actively frustrate peaceful change. The acceptance of legal restraints which are out of harmony with the principles of full democracy will certainly represent a shift in the liberal-progressive approach to politics. However, the shift seems warranted by a rational assessment of the facts and is one which may propel whites, to whom change has generally been presented as uncontrolled, towards a more accommodating position.⁶⁴

In counselling compromise and moderation I invite the rejoinder of Roy Campbell to the advocate of restraint in writing:—

You praise the firm restraint with which they write —
I'm with you there, of course:
They use the snaffle and the curb alright,
But where's the bloody horse?

It is therefore necessary that I should end by stating that my aim is not to produce a paralysis of thought and action. What I recommend is vigorous action towards more limited goals.

⁶³ These words are taken from an article by Paul A. Freund entitled *Contempt Power: Prevention not Retribution*, published in *Trial*, Jan./Feb. 1971, 13 at p. 16.

⁶⁴ I do not suggest that rational argument alone will produce a change of attitude. It seems important, however, to have available a sensible alternative to present policies for use when growing pressures compel the search for new directions.