

THE UNIVERSITY OF CHICAGO PRESS



THE UNIVERSITY OF CHICAGO PRESS

THE ALFRED AND WINIFRED HOERNLÉ
MEMORIAL LECTURE 1961

LIBERTY, EQUALITY,
FRATERNITY—TODAY

By

D. V. COWEN

Professor of Comparative Law, University of Cape Town



Second Impression

**DELIVERED UNDER THE AUSPICES OF THE
SOUTH AFRICAN INSTITUTE OF RACE RELATIONS
P.O. Box 97** **Johannesburg**

THE ALFRED AND WINIFRED HOERNLÉ MEMORIAL LECTURE

A LECTURE entitled the Alfred and Winifred Hoernlé Memorial Lecture (in memory of the late Professor R. F. Alfred Hoernlé, President of the South African Institute of Race Relations from 1934 to 1943 and of his wife, the late Winifred Hoernlé, President of the Institute from 1948 to 1950, and again from 1953 to 1954), is delivered once a year under the auspices of the Institute. An invitation to deliver the lecture is extended each year to some person having special knowledge and experience of racial problems in Africa and elsewhere.

It is hoped that the Hoernlé Memorial Lecture provides a platform for constructive and helpful contributions to thought and action. While the lecturers are entirely free to express their own views, which may not be those of the Institute as expressed in its formal decisions, it is hoped that lecturers will be guided by the Institute's declaration of policy that "scientific study and research must be allied with the fullest recognition of the human reactions to changing racial situations; that respectful regard must be paid to the traditions and usages of various national, racial and tribal groups which comprise the population; and that due account must be taken of opposing views earnestly held".

Previous lecturers have been the Rt. Hon. J. H. Hofmeyr (*Christian Principles and Race Problems*), Dr. E. G. Malherbe (*Race Attitudes and Education*), Prof. W. M. Macmillan (*Africa Beyond the Union*), Dr. the Hon. E. H. Brookes (*We Come of Age*), Prof. I. D. MacCrone (*Group Conflicts and Race Prejudices*), Mrs. A. W. Hoernlé (*Penal Reform and Race Relations*), Dr. H. J. van Eck (*Some Aspects of the Industrial Revolution*), Prof. S. Herbert Frankel (*Some Reflections on Civilization in Africa*), Prof. A. R. Radcliffe-Brown (*Outlook for Africa*), Dr. Emory Ross (*Colour and Christian Community*), Vice-Chancellor T. B. Davie (*Education and Race Relations in South Africa*), Prof. Gordon W. Allport (*Prejudice in Modern Perspective*), Prof. B. B. Keet (*The Ethics of Apartheid*), Dr. David Thomson (*The Government of Divided Communities*), Dr. Simon Biesheuvel (*Race, Culture and Personality*), and Dr. C. W. de Kiewiet (*Can Africa Come of Age?*).

Liberty, Equality, Fraternity—Today

THOUGH I did not have the privilege of personal association with Professor and Mrs. Hoernlé, I have found constant inspiration in their work, and respect them both as South Africans of quite outstanding intellectual stature and moral influence. I therefore feel very greatly honoured to have been invited to give this lecture, and so to be associated, however remotely and in however small a way, with them. At the end of the day, when the clamour and dust of the present have settled, their work and their names will shine through.

Twenty-one years ago, here in Cape Town, Professor Hoernlé gave a series of lectures on the prospects for the peaceful building of a stable and just society in South Africa as he knew it. He came to the conclusion that those prospects were virtually non-existent. And in reply to the question "Watchman, what of the night", he felt bound, he said, to report not the breaking of the dawn but an intensification of the darkness.⁽¹⁾

Hoernlé was criticized by well-meaning but less perceptive people for lacking confidence in the future, for being a pessimist. The criticism left him entirely unmoved. "I have no use," he said, "for confidence based on illusion or ignorance; I have no use for a faith which is unthinking, or which can flourish only in the atmosphere of an intellectual holiday." And, let me add, he had no time for loose platitudes about "good will", or "unity", or "patriotism" as the solvent of racial problems. He recognized that the South African situation demanded honest and clear thinking of a truly fundamental kind, not wishful thinking or blurred thinking. And more difficult even than honest thought, he recognized the need to match intellectual conviction with courageous action and honourable conduct.

Reluctantly, however, and after careful examination of various alternatives—ranging from total integration to total partition—Professor Hoernlé reached the conclusion that South

(1) *South African Native Policy and the Liberal Spirit*, p. 183.

Africans were not likely to measure up to the challenge of their situation; and that this country was doomed to remain "Heart-break House". Only the wilfully blind can fail to see that events have thus far proved Hoernlé right and his critics wrong. Let us briefly review the facts.

The story is a long and shaming one, but it can be shortly told: it is the story of obsession with the fetish of race, and with the heresy that in South Africa differences in skin-colour mean differences in culture which cannot be reconciled in one common society. It is the story of denial by whites to non-whites of the liberty which whites deem essential to the fulness of their own lives; it is the repudiation of an equal claim for all human beings to life, liberty and the pursuit of happiness; and ultimately, the utter betrayal of the Christian concept of the brotherhood of man.

I am not unmindful of the record which stands to the credit of South Africans in two world wars; nor do I lose sight of the achievements of industry and commerce, and of equally notable but less publicized work in the missions and in education. I do not forget the accomplishments of distinguished lawyers on the Bench and at the Bar, nor the work of other professions. Much, too, has undoubtedly been done by successive governments to improve the health and physical amenities of all sections of the population. There have, in short, been positive achievements. But when credit has been given where credit is due, the overall record remains one that cannot be viewed with pride. Indeed, the racial fear and prejudice in which we wallow mock at the achievements themselves.

I am well aware too of South Africa's distinction in sport, and am alive to the glory of scenery and climate, and to the treasure of mineral wealth, with which nature has blessed this land; but even here our values seem to be distorted. White South Africans are prone to put to the credit of their own account the gifts of nature herself, including the physical health which we enjoy and the buoyancy of spirit induced by a favourable climate. All this tends to produce a false and unthinking optimism—a world of illusion in which the privileged may forget the realities of our racial predicament.

I have neither the time nor the inclination to argue about the historical antecedents of South African racial policies. But one or two brief conclusions must nevertheless be stated.

There are critics of the Government who regard apartheid as an entirely new phenomenon in South African affairs, and who are disposed to attribute all the tensions and frustrations and bitterness of the contemporary situation to the activities of the Nationalist Party Government since its advent to power in 1948. On the other hand, there are supporters of apartheid who are at pains to give this policy the respectability of old lineage by claiming for it a wholly "traditional character" in South Africa. Both attitudes are historically inaccurate, though the Government point of view is nearer the truth than that of their critics.

Professor Hoernlé, whose analysis of the South African situation includes some of the most penetrating observations of an historical nature that have yet been written on the subject, expressed the opinion that :

"subject to the over-arching fact of white domination, South African Native Policy is an odd patchwork, exhibiting traces of Parallelism, Assimilation, Separation. Historic accident and deliberate policy—even conflicting policies—have contributed to this result".⁽²⁾

This, I think, is a fair and balanced judgment. Indeed it would not be difficult to confirm each aspect of it; and, more particularly, to show that the technique of white domination has historical roots which may be traced back to the early days of the settlement and especially to the eighteenth century.

Much of the evidence has been brought together by historians, and there would be no point in summarizing it here. The evidence goes a long way, however, towards supporting the view that the policies of the present Government are nearer to the main stream of South African tradition and thought than their opponents are generally prepared to concede. Nor would I challenge Hoernlé's view that rather too much importance is sometimes attached to the alleged strength of a contrary tradition of "Cape liberalism". Cape liberalism, as he observed, was in large measure an exotic, stimulated by officials from outside; it was not primarily an indigenous growth. Moreover it was never as completely colour-blind in practice as it was in theory—in fact it was sometimes transparently hypocritical—and, by the time of Union, already on the decline.⁽³⁾

(2) *Op. cit.*, p. 159.

(3) *Op. cit.*, pp. 60-1, 103.

The South Africa Act itself, which established the Union's framework of government, is often and very rightly quoted as discriminatory legislation openly adverse to non-whites, who were barred from being elected as members of an all-white Parliament; and save in the Cape and to a minute extent in Natal, were excluded from the franchise. Though it was a former Prime Minister of the Cape Colony, Mr. W. P. Schreiner, who courageously led a delegation to Westminster to remove "the blot" of colour discrimination from the draft South Africa Act, the tide was flowing too strongly against him. Calmly and truthfully he described the Act as being not one of Union "but rather an Act of Separation between the minority and the majority of the people of South Africa". But his mission failed; and two recent apologists of apartheid are probably correct when, after gleefully hailing "the statutory entrenchment of racial differentiation" in the constitution, they comment: "Thus the Cape liberal tradition suffered a blow from which it has not yet recovered."⁽⁴⁾

In recent years, under the present Government, racial thinking in South Africa has, of course, become more teutonically thoroughgoing, more inflexible. Whereas the earlier segregation policy was empirical and sporadic, and allowed the forces of integration to operate in many important fields, for the past twelve years we have been faced with a far more carefully planned and ruthlessly calculated policy to discourage integration and foster the growth of forces that divide the races. But when this has been said, we are left with the hard fact that racial thinking in every branch of national activity, coupled with what Hoernlé called "the over-arching fact of white domination", are the outstanding characteristics of what has hitherto been the South African way of life. No doubt the policy of the present Government has brought the day of reckoning nearer; but it is both arrogant and unctuous to put all the blame on Dr. Verwoerd. All of us who have had the privilege of political power, all who have had the benefit of the vote, are in some measure guilty.

And let us make no mistake about the heavy price that must be paid. It would not be difficult to quote chapter and verse to show how for non-whites each and every one of the basic

(4) Rhoodie and Venter, *Apartheid*, p. 116.

human rights and freedoms has been emasculated, and very largely obliterated, in South Africa.

At the same time it would be an error to believe or hope that the programme of apartheid is not levying a vicious toll on the whites as well. In a very real sense freedom in a community is indivisible; measures aimed against one group invariably react on others; and it is in this context that the words of Dr. John Donne are particularly applicable :

Any man's death diminishes me,
Because I am involved in mankind.
And therefore never send to know
For whom the bell tolls.
It tolls for thee.

There are several ways in which one might illustrate the truth of this statement.

At an obvious—but perhaps the least significant—level it is plain that much of the legislation for apartheid has, either in specific terms or in effect, hit whites as well as non-whites. For example, the process of constitutional manipulation used to strip the coloured voters of their rights, in effect undermined at one stroke the protection for the equal status of the official languages, which were accorded the same so-called “entrenchment”. Again, the Criminal Law Amendment Act, which makes it punishable to do or say anything that may cause some other person to commit an offence by way of protest against the law, has specifically struck at both whites and non-whites, and injured the freedom of all. Similarly the Suppression of Communism Act hits at all races alike, even though it has been used primarily to prevent the organization of African political opinion.

But notwithstanding all this, it remains true that very few whites suffer in the same way as the non-whites. The few who are prepared to suffer in the same way are put on one side by kindly disposed fellow-whites as starry-eyed liberals, sentimentalists, or hot-heads; and are pilloried by those who are less kindly disposed, for being “liberalist” agitators, fellow-travellers, communists, traitors, or worse.

The truth of the matter is that the encroachment upon civil liberties in South Africa affects the whole population, white as well as non-white, in a more subtle and pernicious way; but precisely because it is more subtle it too often escapes notice. In the first place it coarsens the moral fibre of individuals who

belong to that section of the community which is responsible for making laws which are unjust and repressive. They must either acquiesce and stifle their conscience; or decide to become outcasts. As Socrates pointed out in Book I of the *Republic*, injustice has a suicidal quality, and injures its perpetrator more grievously than the victim.

Secondly, it causes deep fissures in the structure of society itself. And on this point there is indeed much wisdom in some editorial Comment which appeared recently in the columns of the *Daily Telegraph* in London: (5)

“Apartheid is turning white against white. . . . The policy creates such tensions and doubts among the whites themselves that it can be made to work only in something like a police state . . . This, then, is the fatal flaw in apartheid; it creates conditions which will poison the whites long before it goads the blacks into revolt—and all Africa will suffer.”

Indeed, as Abraham Lincoln once pointed out, in a similar context, a house divided against itself cannot stand.

And there is yet much more to it. White South Africa is not only deeply fissured because of its racial policies; it has also become schizophrenic. This is manifest in every aspect of national life. Let me give one or two examples. White South Africans sometimes like to proclaim that theirs is a Christian country. But they would do well to ponder the truth of what Professor Hoernlé once said on this subject. Christianity and the civilization which the whites value are by their very nature all-embracing; they draw people by their strength and rightness. Yet, while trying to hold to Christianity, too many whites by their actions repudiate the fact that its draw is universal, i.e. concerns all men equally. (6) This leads to an inner tension, a facing both ways, which can be morally devastating. And believe me, ladies and gentlemen, this inner tension and doubt can be more corrosive and weakening and, ultimately, more destructive than bullets.

Precisely the same phenomenon of schizophrenia is to be found in social, and particularly in economic life. As Dr. de Kiewiet and others have observed, the economy of South Africa would surge forward if economic integration on a non-discrimi-

(5) 26th January, 1959.

(6) *Western Civilization and the Natives of South Africa*, ed. Schapera, at p. 281.

natory basis were encouraged. Yet while many of the whites desire the ultimate economic benefits, they are held back by fear of racial equality, and of the consequences of opening careers to talent. In de Kiewiet's words: "If a nation cannot be half-slave and half-free, it cannot be half-poor and half-rich. The poverty of the natives is in the long run a subtraction from the wealth available to all".⁽⁷⁾

The chronicle of missed opportunities is perhaps the most tragic aspect of South Africa's misery. That we should be among the world's leaders in reasonable race relations is obvious—instead, we are despised pariahs, officially parading our vices and proclaiming them to be our virtues. Consider, too, the crippling effect of racial strife and frustration on the creative energy of South Africans. It is true that a few artists and writers of distinction (who have not left the country) have been stimulated by race problems; but race tends, so to speak, to dominate and distort their energies, to drive them into a groove, so that each work, each book, seems to be a variation on the same theme—increasingly tired, and eventually tiresome. For others, the price is much heavier; drawn away from creative work by politics and the sheer emotion-consuming talk about politics which eats into everyday South African life—talk which inevitably leads, among the law-abiding, to a sense of frustration and impotence—they produce nothing at all.

Even a man of Professor Hoernlé's exceptional ability and toughness was not wholly immune. Here, for example, is the judgment of a fellow philosopher which was written shortly after Hoernlé's death:

"Had his superior gifts not been too much dissipated in struggling with the solution of acute academic and political problems . . . , and especially in the attempt to introduce reason into the solution of the race problem of South Africa, Reinhold Friedrich Alfred Hoernlé, gifted as he was, might have become a philosopher worthy to rank with the outstanding thinkers of our Western Culture".⁽⁸⁾

But, however triumphant and dominant in South Africa the apartheid policy may appear to be on the surface, it is very plain to every reflective observer that it has begun to disinte-

⁽⁷⁾ *The Anatomy of South African Misery*, pp. 71-2.

⁽⁸⁾ D. S. Robinson, A. Memoir, in R. F. A. Hoernlé's *Studies in Philosophy*, Harvard, 1952, p. xvi.

grate; and threatens, alas, to bring down with it much of positive worth.

Increasingly, it is being realized that the bitterness and tensions which apartheid causes are leading to ruin. Realization of national disaster, unless present racial policies change, is of course inescapable to all who are not blind to the facts. Internally, we have been racked by the events at Sharpeville, Langa, Cato Manor and in the Reserves; and as the months go by, tension mounts though it may not always be apparent on the surface.

Externally, throughout the civilized world, South Africa has aroused very deep anger; and among her friends or erstwhile friends, near-despair. Already racial obduracy has cost South Africa membership of the Commonwealth. Mounting opposition is annually becoming better organized and articulated in the United Nations. In the territory of South West Africa, which the Union has virtually appropriated as a fifth province, apartheid policies are being carried out, and in consequence South Africa is being required to answer to the charge that this development conflicts with her international obligations. In the opinion of many competent observers, the South West African issue may yet prove to be the weak link in the chain of defence which the Government has attempted to raise against the pressure of external criticism.

At a level of awareness which is related to immediate financial interest, there is deep concern at the fact that capital is not easily attracted to the Union, and is in fact going out; and that during the period 1959-60 the number of emigrants from the Union exceeded the number of immigrants. Nor will it do to whistle up one's courage and seek to denigrate the emigrants as being "rats deserting a sinking ship". If the ship is in fact sinking, there is cold comfort indeed for those still on board; nor is it fair to call those who leave "rats" or "just frightened"; on the contrary, they are often very courageous people forced to tear up roots because they see no future either for themselves, or more particularly for their children, in a country which seems bent on destroying itself. They are often among our finest citizens but are unable any longer to live a life of self-contradiction and muted conscience. South Africa can ill afford to lose them.

Again, who can be blind to the ever-mounting tide of African resentment which may (though God forbid) have to break be-

fore it recedes. No sane person can ignore the terrible warning of the African Msimangu, in Alan Paton's novel, "I have one great fear in my heart, that one day, when they are turned to loving, they will find we are turned to hating".

And then there are the religious, moral and philosophical objections to apartheid which, to many, seem to be overwhelming. Increasingly, moreover, they are being voiced by Afrikaans-speaking South Africans; and there are not lacking avowed supporters of the Government who are beginning to have some misgivings.

Even the ostensibly more positive side of the Government's apartheid policy, that of developing the African Reserves, is doomed to fail. Indeed there are, at least, four very solid reasons why Africans resent, and will continue to resent, Bantustan.

First, it is the creation of a white government; it springs from white initiative, even though the *ex post facto* appearance of local African acceptance may sometimes be obtained. Unless and until the lesson is learned that it is both insulting and futile to work out a framework of government *for*, and not *with* Africans, as if they were very young children, no progress in race relations will be made. Secondly, the Bantustan policy is a regressive return to ideas of indirect rule, i.e. direction and control from above, which in the experience of other countries were outworn decades ago. Thirdly, it is difficult to see how Africans could accept with enthusiasm an attempt to perpetuate a tribal system which can only qualify them for the rôle of an unsteady museum piece, in no way fitted to take their place in the modern world. And fourthly, the many thousands of Africans whose tribal ties have been broken, and who for years have lived and worked in the urban areas, do not wish to be relegated to the more primitive tribal structure which is being prepared for them. Not only do tribal ways belong to their past, but in most cases, relegation to the Reserves would mean a sentence of dire poverty and deprivation; for it should never be forgotten that to the African from the Reserves migration to the big towns has hitherto been, and is likely to remain, the road to progress and prosperity, and the escape from grinding poverty.⁽⁹⁾

(9) De Kiewiet, *op. cit.*, p. 38.

It just will not do for Government spokesmen to attribute all the unrest in the Reserves to Communist agitators. It may be that some agitators are indeed active; but the central fact remains that the material for discontent is very much at hand for them to work on.

And, finally, we may ask whether it is possible to justify these heavy inroads upon human freedom, this load of suffering and indignity, in terms of any conceivable benefit that may be gained? Here again there are many factors which point inexorably to a negative answer. There are today some $5\frac{1}{2}$ million Africans, that is between 50 per cent and 60 per cent of the entire African population, living and working in the proposed (but vaguely defined) "white" area. And, by the year 2000, according to the Tomlinson Commission, if the forces of integration and urbanization were allowed to go on operating, there would be upwards of 12 million Africans in the so-called white area, the majority of whom will be in and near the towns. At the same time, on the Commission's own estimate, even if apartheid policies are vigorously and uninterruptedly pursued on a more ambitious scale than the Government is, in fact, prepared to adopt, there will, by the year 2000, still be some 6 million Africans living and working in the white areas.⁽¹⁰⁾ In other words, apartheid will have achieved parity in numbers between Africans and whites, as in some of the southern states of America where racial tensions are most acute; and if the Asians and the millions of mixed blood are taken into account, the whites will still be outnumbered!

All this makes it difficult to resist the conclusion that in South Africa the values of civilized life are being corrupted and swept away in the determined pursuit of an impracticable ideal, against the wishes of the majority of the people.

Here then is the present South African situation :

1. Apartheid by its very logic is setting group against group, and leading to the disintegration of society.
2. At the same time there is no fair and just—or indeed any—alternative policy which has widespread support. All is confused, contradictory, tense.
3. Although there is still overwhelming white determination to stay on top, this is coupled with growing awareness

(10) Summary of Report, U.G. 61/1955, Ch. 7.

among whites that their position cannot be maintained indefinitely. The issues in South Africa are rapidly moving out of the sphere of rational argument and electoral appeals into the field of naked power. Tough and powerful as the white man unquestionably is—supported by guns, money, saracens and aircraft—he may soon have to reckon with yet mightier battalions.

4. Meanwhile, world opinion is hardening against the country. And as indignation mounts, the independent black African states in the United Nations interest themselves increasingly in South African Affairs, and address themselves increasingly to the means of making sanctions effective.
5. South West Africa, now within the Union's self-assumed jurisdiction, presents an obvious case for intervention; and may yet prove to be the Achilles heel of apartheid.
6. The yoke of apartheid falls with increasing weight upon a disenfranchised, underprivileged, and comparatively dispossessed proletariat. Sporadic and spontaneous demonstrations of opposition are becoming more frequent, and as time goes on, can be expected to become more serious. Already there are hundreds in the Union's gaols who refuse to recognize the legitimacy of the present Government, and there are some who have denied the binding force of the apartheid laws as being contrary to the law of God.
7. The white man's politics, and the procedures of Parliamentary government, are becoming increasingly irrelevant to an increasing number of people.

In short, as Mr. Chester Bowles has observed, a truly classic revolutionary situation has developed in South Africa.

If these factors are carefully and honestly weighed, one cannot but recognize that the chances for South Africa's peaceful future are very slender. And it is probably for this reason that many have already given up hope. They accept that the white man has failed in his mission as a "bearer of civilization", and they would try to negotiate a partition as soon as possible. Those who hold this view believe that the rot has set in beyond repair; that we are already faced in South Africa with two antagonistic and mutually irreconcilable nationalisms—white nationalism and African nationalism. Basically, of course, this

is very similar to the assumption upon which the whole policy of apartheid rests. Nor can it be doubted that fear of a destructive conflict between irreconcilable nationalisms is in the present situation a very real one. If in fact the rot has set in beyond repair, if the forces of division are intransigent, then indeed partition may be the last desperate resort. But, and it is a very big but, it would I think, be a partition far more favourable to the Africans than that which most white men could contemplate with equanimity. The whites (among whom the advocates of partition hope to include the Coloured people) might be lucky to keep a substantial portion of the Western Province—after great economic sacrifice, and probable strife. And what is even more to the point, this policy of failure could at best be regarded as a strategic withdrawal, a shortening of the lines of defence.

If one weighs dispassionately these various considerations one cannot, I believe, avoid the conclusion that the present order in South Africa is about to pass away. In fact I am going to assume tonight, what I believe will be the case, that in a very few years—after a period of some ugliness—the present order in South Africa will have passed away. In saying this I am in fact but echoing what Professor Hoernlé himself said on that same occasion twenty-one years ago; for after reporting an intensification of the darkness, he added :

“ Yet, it is as certain as anything can be in human life that the spirit of liberty is ineradicable and cannot in the end be denied . . . If White South Africa continues along its present path of elaborating and strengthening its dominant position in a racial caste-society, it is probable that there lies ahead of it the tragic destiny of furnishing yet another instance of the old historic truth, that the great victories of the liberal spirit have been gained when those to whom liberty had been denied, have successfully achieved it for themselves.”⁽¹¹⁾

I am going to assume, further, that after the present order has gone, the very need which whites and non-whites have to find a better basis for living together in what is, and will remain, their home, will force them all to accept the one and only hopeful alternative to apartheid—namely a democracy in which all men, irrespective of race, colour, or creed, may

(11) *South African Native Policy and the Liberal Spirit*, p. 185.

enjoy the basic human freedoms and political and economic rights in one integrated society.

I should not be wasting your time and mine if I did not believe that there was still some hope for this latter alternative. It is the morally right and spiritually challenging solution. It is the only solution which offers to all the inhabitants of South Africa any hope of peaceful co-existence, and indeed—to the whites—any hope of continued existence in this country. For it should be plain that the result of choosing any one of the alternatives based on fear and prejudice will inevitably be the complete disappearance of the white race as such from Southern Africa, after a period of very unpleasant strife.

That non-racial democracy carries with it its own risks—among them the risk of retaliation—is obvious. That it may result eventually in a mixed race is possible, though not—unless our descendants want it so—inevitable. Nor, in any event, is there evidence to prove that a mixed race would be an inferior one. These contingencies exist but, as I see it, they are as nothing compared to the inevitable disaster which must overtake any attempt to maintain racial supremacy at the point of a gun. If there is anything worth surviving in what the white man stands for in this country, it should be allowed, in free competition, to survive on its merits.

In any event, the whites still have much to contribute; they have greater science, superior knowledge of technology, longer experience of modern government, and a great heritage in arts and the humanities. And they still have much to enjoy in this country, could they be persuaded in time to share willingly those things which at present they bind to their exclusive benefit. They are, again, fortunate in the very high moral calibre of the non-white inhabitants of South Africa, who compare favourably with any on the whole Continent.

Moreover, there are in fact strong and persistent currents flowing in the direction of integration.

First, there is the fact that were South Africa's economy to be freed of the stultifying mass of apartheid legislation, and the waste of human effort and money which is involved in bolstering it up, the country would enjoy the fruits of unparalleled industrial expansion. Moreover, from an economic point of view, the situation is ripe for this; for here we have a newly

and, as yet, far from fully industrialized country with a vast potential of labour and markets.

Then there is the fact that most of the whites claim to be Christian, although the whole theory and practice of apartheid, and indeed of any theory of racial discrimination, is deeply and completely unchristian. Those who wish to continue in the Christian camp must know in their minds and in their hearts—unless again they plead schizophrenia—that in Christianity there is no room for exclusiveness or for denying one's neighbour on racial grounds.

Again, there is the draw of a civilization which has come about through the fusion and spreading of ideas. As Professor Hoernlé wrote in a passage which upholders of apartheid conveniently ignore,

“to try to make Western civilization in South Africa the fenced-in prerogative of the white group, is to belie and betray the deepest drive of that civilization. For Western civilization just because it believes itself to be good, and its religion the highest, has in it the irresistible urge to self-communication”.⁽¹²⁾

A truly civilized, Christian and sane development in this country would be for the whites to offer willingly the best of their civilization (from technology to Christian charity), secure in the knowledge that much will be added by the vitality and freshness which the newly initiated will bring. I say civilized development, because this has been the experience of the ages; I say Christian, because there is no warrant for the denial of universal brotherhood in the Bible, and very little in twenty centuries of Christian experience. And I say sane, because present policies are bringing on that disintegration called madness, which we are told precedes the end of those whom the gods wish to destroy.

And let it be added that there is nothing exclusively “Western” about this civilization. In religion, in art, in philosophy, in law, ideas from the East have mingled with those from the West, and have borne new fruit. Whatever is enduring in it will endure by becoming the possession of all civilized human beings. The great society of mankind which is slowly and painfully coming into being will have a great civilization

(12) *Western Civilization and the Natives of South Africa*, ed. Schapera, p. 281.

to match it; in that society Africans will have a place, and in that civilization they will share. In this regard we do well to ponder, and ponder deeply, the fact that competing for the allegiance of men in the world today are two vital and antagonistic forces, government under law in a free society and communist authoritarianism—and in that struggle the way race issues are resolved will almost certainly be decisive.

And finally, among the unifying forces, perhaps the strongest of them all is the fact that South Africans of all colours feel and want this astonishingly beautiful country to be their only home; they do not really want a country held together by guns or torn apart by revolution.

And on this note I am brought to the title of my lecture—the motto of the French Revolution, which once set all Europe aflame and is having a similar effect throughout Africa today. Let us be under no illusion—the cry for “Liberty, Equality and Fraternity” (whether it be uttered in French, or in Swahili or in any other language), when shallowly understood, can be nothing more nor less than an inflammatory incitement to the have-nots to take the place of the haves and substitute their own tyranny. Men are faced here with a basic choice. Is the phrase to be merely a rabble-rousing slogan in times of social upheaval when the underprivileged are reaching for power to change places with their oppressors? Or is there more to liberty than a casting off of shackles; more to equality than a levelling down of the rich and the privileged; and is fraternity to be limited only to those who carry the brand of the underprivileged or to those who would promote the narrow and exclusive interests of one section of the community, with no real concern for the freedom of all.

In describing the evils which poison the mind and obscure understanding, Lord Bacon considered that we had most to fear from what he called “the idols of the market place”—those emotionally charged words and phrases which are used carelessly and without definition, and which, he said, “do violence to the intellect, throwing all into confusion”.⁽¹³⁾ The idols of the market place are of course worshipped today no less blindly than when Bacon first described them; and, due to modern methods of communication, their capacity for harm is infinitely greater.

(13) *Novum Organum*, Aphorism 43.

The proneness of men to abuse language, and to be hypnotized by words, is revealed most clearly in times of upheaval and unrest such as the world is now living through. The historian, Thucydides, was aware of this, for writing of the demoralization which marked Greek life in the midst of the Peloponnesian War, he said :

“ Words had to change their ordinary meaning and to take that which was now given them. Reckless audacity came to be considered the courage of a loyal ally; prudent hesitation was regarded as cowardice; moderation was held to be a cloak for unmanliness; ability to see all sides of a question was derided as inability to act on any. The advocate of extreme measures was always trustworthy; his opponent a man to be suspected . . . The cause of all these evils was the lust for power arising from greed and ambition; and from these passions proceeded the violence of parties once engaged in contention. The leaders in the cities, while making big promises, on the one side with the cry of political equality for the people, on the other side advocating enlightened aristocracy—in fact sought prizes for themselves in the public interests which they pretended to cherish. And recoiling from no means in their struggles for ascendancy, they engaged in the direst excesses. In their acts of vengeance they went to even greater lengths, not stopping at what justice or the good of the state demanded, but making the caprice of the moment their only standard. Thus religion was in honour with neither party; but the use of fair phrases to arrive at guilty ends was in high reputation. Meanwhile the moderate part of the citizens perished between the two, either for not joining in the quarrel, or because envy would not suffer them to escape.”⁽¹⁴⁾

The temper of the times in which we live is not dissimilar. And as few phrases have more emotional potency in Africa today than the cry for “ Liberty, Equality and Fraternity”, I have thought it worth while to try to examine with you its meaning and implications; its significance to the modern world—and especially for this country.

I believe that this is not an inappropriate theme for a Hoernlé Memorial Lecture; for the phrase is often, and I think

(14) History of the Peloponnesian War Book III, Ch. 10.

rightly, quoted as the motto of democracy; and Alfred and Winifred Hoernlé were in the best sense democrats, intensely aware of the responsibility which democracy imposes upon each individual if it is to work and survive as a system of government. As Professor Hoernlé once said: "If democracy passes from the world it will be, not because it is in principle an inferior method of government, but because human nature proved unequal to its demands."⁽¹⁵⁾

Of these demands understanding and clarity of thought are among the foremost.

According to Aulard the first official use of the phrase was in a motion passed by the Club des Cordeliers on 30th June, 1793: owners of houses were to be invited to paint on their property in capital letters the words "Liberty, Equality, Fraternity—or Death". Not surprisingly, these sentiments excited, at the time, strong and conflicting emotions; and they have continued to do so ever since. Let me give you one or two more recent examples.

During World War II the late Master of Balliol, Lord Lindsay of Birker, claimed that, properly understood, the revolutionary phrase embodied the very essence of true democracy and Christian charity;⁽¹⁶⁾ and, from the other side of the Atlantic, President Butler of Columbia University extolled the motto as being both noble and great.⁽¹⁷⁾ On the other hand, Sir James Fitzjames Stephen, who was no friend of democracy, and who wrote at an earlier time when the extension of the suffrage on a property and educational basis was still a burning issue in England, thought very poorly of "Liberty, Equality, Fraternity".

"There is no room," he said, "for any rational enthusiasm for the order of ideas hinted at by the phrase 'Liberty, Equality, Fraternity'; because whichever rule is applied, there are a vast number of matters in respect of which men ought not to be free; they are fundamentally unequal and they are not brothers at all, or only under qualifications which make the assertion of their fraternity unimportant."⁽¹⁸⁾ He seems to have had some second thoughts; for he felt it necessary to assure his readers that he was not "the advocate of slavery, caste and

(15) "Philosophy," Vol. XIII, April, 1938, p. 17.

(16) *I Believe in Democracy*, Oxford, 1940, pp. 10 *sqq.*

(17) *Liberty, Equality, Fraternity*, New York, 1942.

(18) *Liberty, Equality, Fraternity*, 1874, pp. 2, 3, 339.

hatred", and he was even prepared to concede that "a sense might be given to the words in which they might be regarded as good" . . . but (in his view) they did not typify, however vaguely, any state of society which a reasonable man ought to regard with enthusiasm or devotion. Plainly there is need here for some preliminary definition and clarification.

In giving content to the words Liberty, Equality, and Fraternity—or rather let us say more properly in English, freedom, equality, and brotherhood—it is necessary to realize at the very outset that brotherhood is the key concept. When you think of the democratic ideal as meaning freedom in brotherhood, and equality in brotherhood, the words freedom and equality each take on a concreteness and nobility which they do not have in isolation.⁽¹⁹⁾

When we think of freedom and brotherhood together we are not likely to make the mistake of confusing freedom with licence or anarchy; for as Aristotle demonstrated long ago, a man can only live and be himself in society, and society cannot exist without rules and obligations. No society can hold together without certain restraints upon the individual freedom of men to do as they please.

These are, of course, the mere platitudes of the case, and need no emphasis. It is when we examine the restraints themselves, when we ask what restraints the State may legitimately place upon men, that our touch may become less sure. Yet for the democrat who believes in good government the answer should not be in doubt. For him there is all the difference in the world between a State which lays down rules for the sake of encouraging the fullness of life of its members, and a State which regiments its members for the sake of the State itself or its power. The ethical principle here involved was probably as well expressed by the philosopher, Kant, as it has ever been expressed, when he said: "So act when dealing with men that you treat them as ends in themselves, never treat men as means to an end." As a philosophy of government democracy asserts, before all else, the supreme worth, dignity and creative capacity of every individual human being. It presupposes that every normal man possesses a rational intelligence, a free will, and responsibility for his actions. And it insists that all organiza-

⁽¹⁹⁾ The clearest statement of this theme is Lindsay's essay *I Believe in Democracy*, Oxford, 1940, to which I owe much.

tions and, in particular, the State exist solely to provide conditions under which men may be able of their own free choice to fulfil their nature as men; for this is a right and responsibility which is pre-eminently human.

All this stands in radical contrast to the notion of the State as a mere instrument for the maintenance of order—there was order in Hitler's Germany but no freedom. And it stands in stark contrast also to the notion of the State as the universal provider, the notion which, among others, deforms the polity of Soviet Russia. Though there are many services which the state should undertake for men, it fails as a democratic state if it does not create the conditions which permit its members to act freely within the law *for themselves*. Indeed a state which purports to be a universal provider actually wrongs men by treating them contrary to their nature; for a man's first duty is to fulfil his nature by assuming the responsibilities which are his.

Once the state's claim to be a universal provider is acknowledged or encouraged, it is difficult to resist a further claim on its part to regiment men—as indeed the history of communist Russia has proved. But quite apart from the moral grounds to which I have already referred, there is a very practical reason why individual men should, as far as possible, be left to work out their own destiny free from state control and interference. It is this: men are fallible, and no man or group of men is good enough to be entrusted with absolute power over other men. And this, too, is the real justification for reversible democratic government and for the freedom implicit in it to organize opposition.

The freedom with which I am at present concerned is freedom in what might be called its political sense, and is best understood in the plural in the form of specific freedoms—the practical freedoms which a man enjoys as a member of an organized society; freedom of conscience, freedom of speech, freedom of association, freedom of movement, and so on. This is the most generally understood, the most widely admired and discussed, and at the same time the most seriously challenged aspect of freedom. And presently it will be our concern to pose the question, what are the prospects for these freedoms in the modern world—and especially in Africa? What is necessary

to help forward their growth and survival? But first there is more to say about the second and third articles of the democratic creed.

There are few sane people outside of totalitarian countries who take pride in despising liberty, but equality is another matter; it is far more suspect—indeed I am often surprised at the vehemence with which the idea is denigrated.

Some seventy years ago Matthew Arnold observed that in England equality was so little liked that inequality was almost a religion—an attitude which he repudiated as wholly “incompatible with the dignity of man as man, at once vulgarizing and depressing”. “A system founded on inequality,” he said, “is against nature, and in the long run breaks down.”⁽²⁰⁾ But in those days Arnold was regarded as a crank. It was fashionable to speak of equality as Frenchified stuff, and to sneer at what Sir Erskine May called “the demoralization of French society, and the paralysis of the French intellect, caused by the attachment of France to the blood-stained chimera of equality”.

However, as Mr. R. H. Tawney has observed, much has changed since Arnold wrote, and not least the Religion of Inequality. “Few politicians to-day would dwell upon inequality as a pearl beyond price to be jealously guarded against the profane. But institutions which have died as creeds often survive as habits”;⁽²¹⁾ and equality still has its implacable foes.

Let us begin by putting on one side some of the nonsense that has been spoken on the subject. There is a famous passage at the beginning of Descartes’ *Discourse on Method* in which he says that “good sense is of all things in the world the most equally distributed”. And here is the proof which he offered for this arresting statement: “Everybody thinks himself so abundantly provided with good sense that even those most difficult to please in all other matters do not commonly desire more of it than they already possess.”⁽²²⁾ But despite the wit with which Descartes attempted to prove that we are all equally sensible, all sense and all experience are against him. Only the

⁽²⁰⁾ *Mixed Essays*, 1894, pp. 36 *sqq.*

⁽²¹⁾ *Equality*, pp. 19-20.

⁽²²⁾ Haldane and Ross’ edition, 1911, p. 81.

blind can fail to see that men are not all equally fat or thin, or equally tall or short, or equally intelligent and decent. And if the principle of democratic equality denied this, it would be the folly which its opponents declare it to be.

Democracy, however, does not imply that all men are equal in their capacities; but that they all matter. They are all equally members of the brotherhood. The principle of equality asserts that what men have in common as being men, persons, human beings, matters so much that, compared with it, their great and obvious differences are neither here nor there. And on this point, Abraham Lincoln, with his massive common sense, has, I think, said the last word. Debating with Senator Douglas on the eve of the Civil War, he was concerned to proclaim the irrelevance of skin-colour. He began by quoting the second paragraph of the American Declaration of Independence: "We hold these truths to be self-evident that all men are born equal." And this is how he went on :

"I think the authors of that notable instrument intended to include *all* men, but they did not intend to declare all men equal *in all respects*. They did not mean to say all were equal in color, size, intellect, moral developments, or social capacity. They defined with tolerable distinctness, in what respects they did consider all men created equal—equal in 'certain inalienable rights, among which are life, liberty, and the pursuit of happiness'. This they said, and this meant. They did not mean to assert the obvious untruth, that all were then actually enjoying that equality, nor yet, that they were about to confer it immediately upon them. In fact they had no power to confer such a boon. They meant simply to declare the *right*, so that the enforcement of it might follow as fast as circumstances should permit. They meant to set up a standard maxim for a free society, which should be familiar to all, and revered by all; constantly looked to, constantly labored for, and even constantly spreading and deepening its influence, and augmenting the happiness and value of life to all people of all colors everywhere. Its authors meant it to be—and thank God, it is now proving itself—a stumbling block to those who in after times might seek to turn a free people back into the hateful paths of despotism. They knew the proneness of prosperity to breed tyrants, and they meant when such should reappear in this fair land and commence

their vocation they should find left for them at least one hard nut to crack.”⁽²³⁾

And in order, continued Lincoln, that men should enjoy an equal right to life, liberty and the pursuit of happiness, it was necessary that all men—regardless of race, colour or creed—should be equally subject to the law, and that they should have equal protection of the law.

All this seems so reasonable that one might wonder why it caused a civil war—one of the bloodiest in history. Let us look a little more closely.

There are at least two reasons why the claim to equality has been and still is so strenuously contested; for it is thought by many to involve a demand for economic equality, and, in addition, a right to political equality—one man, one vote—and both of these claims have been deeply feared.

Sir James Stephen interpreted the second article of the democratic creed to mean “that all the advantages of society, all that men have conquered from nature should be thrown into one common stock and equally divided amongst them”. And this he denounced as a vile system of communism—a system

“which embodies all the bitterness and resentment which can possibly be stored up in the hearts of the most disappointed, envious and ferociously revengeful members of the human race against those whom they regard as their oppressors. It is the poor saying to the rich, ‘We are masters now by the establishment of liberty, which means democracy, and as all men are brothers, entitled to share and share alike in the common stock, we will make you disgorge, or we will put you to death’.”⁽²⁴⁾

“But,” said Stephen :

“if human experience proves anything at all, it proves that, if restraints are minimized, if the largest possible measure of liberty is accorded to all human beings, the result will not be economic equality but inequality, reproducing itself in a geometrical ratio. Of all items of liberty, none is either so important or so universally recognized as the liberty of acquiring property. It is difficult to see what liberty you leave to a man if you restrict him in this matter . . . If however every man has a right to be on an equality with every other

⁽²³⁾ *Collected Works*, Basler's edition, Vol. 2, pp. 405-6.

⁽²⁴⁾ *Op. cit.*

man because all are so closely related as brothers that the results of their labour should be thrown into a common stock out of which they are all to be maintained, you certainly give a very distinct sense to Equality and Fraternity, but you must absolutely exclude Liberty. Experience has proved that this is not merely a theoretical but also a practical difficulty. It is the standing and insuperable obstacle to all socialist schemes, and it explains their failings.”⁽²⁵⁾

Let me say immediately that I entirely agree with Stephen as to the importance of private property. Private property is really an extension of personality; and, as I see it, respect for human personality necessarily involves recognition and respect for private property. Moreover, it must, I think, be conceded that there is a contradiction between liberty and economic equality. Liberty denies economic equality because equality of ability and efficiency are unknown among men; to secure an equality of economic benefits, it would be necessary to shackle the more efficient so that they may not out-run the less efficient.

Are we obliged, then, to go to the opposite extreme and make a virtue of inequality? No; there is, I think, a middle way. The true democrat does not claim economic equality, precisely because he values liberty. However, he does claim freedom from violent contrasts between the economic opportunities of different classes. He does claim, on the one hand, a basic minimum of education and health services, and on the other hand freedom from the abuse of economic power in the hands of the few.

Are these objectives reconcilable with liberty? I think they are, but only if one rejects communism and at the same time guards against the misuse of private enterprise.

Under communism the means of production are controlled by the officers of the State, who are the masters of all the workers (that is to say, the slaves of the State), and the wealth produced is distributed, at the discretion of the State officials, among families, or, if an attempt be made to abolish even the family, then among the individuals of the community. All this I utterly repudiate. Not only is private property necessary for freedom; but communism denies freedom itself under the guise of attacking inequitable economic conditions.

⁽²⁵⁾ *Op. cit.*

At the other extreme, which is almost equally pernicious, you have unbridled private enterprise. This is the mark of what Belloc called "The Servile State". In this form of society the minority controlling the means of production supports all the vast majority of the dispossessed, even those whom it does not use in exploitation, and thus forms a stable society, though one from which freedom is eliminated. The privileged few, free from all restraint, "keep men alive by exploiting them at a wage, and when they cannot do this, still keep them alive in idleness by some small subsidy".⁽²⁶⁾

Between these two extremes it is possible to combine freedom for all with a necessary minimum of economic benefit, opportunity and security for all, especially within the fields of health and education. This middle way, no doubt, is a hard one; but it is the only way in which a people may prosper in a stable and civilized society. To this end laws preventing the abuse of economic power—for example, anti-monopoly laws—are of course necessary and can do much to help. But, in themselves, they are not enough; for ultimately the institution of private property must rest on a developed sense of ethical responsibility among the general body of citizens.

And now I must say a few words about the equal distribution of political power—the idea of "one man, one vote". I do not have time tonight to canvass the theoretical considerations for and against universal adult suffrage; nor is there time to go fully into the question to what extent Africa, and more particularly Southern Africa, presents a special case.⁽²⁷⁾ But there are certain conclusions which I must state. After the most careful weighing of the theoretical considerations on both sides, I personally have no doubt that the supporters of universal adult suffrage have the better case. Nor granted the kind of constitution to which I shall refer later, would I personally hesitate to see its early introduction in South Africa. It is possible, however, that on grounds of expediency, and solely in order to facilitate the eventual introduction of universal suffrage, a qualified franchise might prove acceptable to the people (that is to say, all the people) of this country—*on a strictly interim basis*. In that event, from the point of view of the non-whites,

⁽²⁶⁾ Hilaire Belloc, *An Essay on the Restoration of Property*, 1936, p. 11.

⁽²⁷⁾ For detailed discussion, see my book *The Foundations of Freedom*, Oxford, 1961, pp. 93-104.

the question of numbers will be decisive. Right from the very start the qualifications would have to be so devised as to ensure that a really substantial number of non-whites were given an effective voice in the government of the country. And finally it is, as I see it, necessary to face up to the fact that the eventual introduction of adult suffrage is inevitable. More than 100 years ago Alexis de Tocqueville concluded that "the further electoral rights are extended the greater is the need for extending them; for after each concession the strength of the democracy increases, and its demands increase with its strength . . . and no stop can be made short of universal suffrage".⁽²⁸⁾ All history has proved him right. Let us remember, too, that adult suffrage was declared to be a basic right in the Universal Declaration of Human Rights;⁽²⁹⁾ and that, ever increasingly, it is recognized as a distinctive feature of democratic practice. Whether we like it or not, it will in time prevail throughout Africa.

And here perhaps I should guard a little against being misunderstood. I emphatically do not equate universal adult suffrage with good government, any more than I would equate a qualified franchise with good government. When universal adult suffrage has been achieved there will still remain the supreme task of guarding against the abuse of political power, so that government may be reasonable and humane as well as popular. However, before dealing more fully with this aspect, I must complete my review of the articles of the democratic trinity.

In discussing the third article of the democrat's faith, namely brotherhood, I do not think that I need do much more than spell out a few of the implications of what I have already said. We have seen that the doctrine of human equality, properly understood, does not assert uniformity of human capacity, but rather the fact that what is common to all men is their essential worth as human beings. In the Western world this was first proclaimed by Zeno, the Stoic,⁽³⁰⁾ and it was to become a key assertion of Christianity. In the phrase of Jesus: "the least of these my brethren". Or, as St. Paul said in his letter to the Galatians: "There can be neither Jew nor Greek, there can be

⁽²⁸⁾ *Democracy in America*, Vintage Books, Vol. 1, p. 59.

⁽²⁹⁾ Article 21 (3).

⁽³⁰⁾ Barker, *Alexander to Constantine*, Oxford, 1956, p. 21.

neither bond nor free, there can be neither male nor female, for ye are all one in Christ Jesus". The immediate political implication of this is that the purpose of the state must be the service of all—all must be equally taken into account.⁽³¹⁾

Here again we should put aside some nonsense. The Christian concept of brotherhood is not a milk and water affair; nor has it anything in common with what was once hailed as the Religion of Humanity—the vain notion that the human race collectively has before it a splendid destiny of inevitable progress towards brotherly love and material comfort. On the contrary it recognizes that the gains made by one generation may be lost by the next; for virtue is always a question of individual responsibility. And each generation must learn for itself to value the freedoms and decencies, and to guard them, if they are to be kept alive. Above all, Christian brotherhood does not conceive of man as the measure of all things, but looks beyond man, to God, for its ultimate values.

And there is yet more to the concept of brotherhood. We have seen that men cannot flourish as human beings save in communion with their fellow men. But man needs more than his fellow human beings—he also needs a sense of communion with or belonging to the whole of creation. And to this end it is not sufficient to learn reverence for the dignity and worth of human life. "Slowly in our European thought," says Albert Schweitzer, "comes the conviction that ethics has not only to do with mankind, an idea which begins with St. Francis of Assisi . . . A man is ethical only when life, as such, is sacred to him, that of plants and animals as well as that of his fellow men . . . He shatters no ice crystal that sparkles in the sun, tears no leaf from its tree, breaks off no flower, and is careful not to crush the insects as he walks."⁽³²⁾

This is not mere sentimentalism: nor is the idea of being part of the world of nature without relevance to political liberty. "People begin," says Morel in Romain Gary's novel, *The Roots of Heaven*, "by saying that elephants are too big, too cumbersome, that they knock telegraph poles over and trample harvests, that they are an anachronism, and they end by saying the same thing about liberty—liberty and man him-

⁽³¹⁾ Lindsay, *I Believe in Democracy*, p. 12.

⁽³²⁾ Albert Schweitzer, *An Anthology*, ed. Charles Joy, pp. 262, 263, 265-6.

self end up by becoming an anachronism.”⁽³³⁾ Let us pray that in this most richly endowed Continent this lesson will be learnt in time.

Thus far I have tried to give content to the ideal of liberty, equality and fraternity. And it is well that we should realize that since the last war the peoples and governments of the whole civilized world, with the exception of the communist countries and South Africa, have been trying to make a reality of this ideal in social, economic and political life. To this end nations have increasingly concerned themselves with the entrenchment of fundamental human rights in specially devised constitutions, and with other bulwarks against the abuse of power, such as federalism, councils of state, and so on.

At the same time, the experience of the post-war years has taught several hard lessons. It has become plain for all to see that independence, or freedom from external control, does not bring with it automatic well-being and temporal felicity; there is still in the world today an overwhelming majority of hungry and illiterate people. It is being realized that independence is not an automatic panacea, and that although the maxim “seek ye first the political kingdom and all other things will be added to you” may contain powerful truth, yet it is not the whole truth.

It has become manifest, too, that the achievement of democracy was beyond the immediate capacity of several of the newly independent states (for example, Pakistan, the Sudan and Burma), and in others its achievement is still in issue (e.g. in Ghana). It has become plain beyond argument that democracy will always have hard going where it is faced with grinding poverty, ill-health and lack of education. Let us remember, in this connection, that several of the new states specifically proclaimed Bills of Rights and constitutional guarantees, which have since been swept away.

But all this proves nothing against the ideal of government under law—nothing against judicially enforceable constitutions which place fundamental human rights and freedoms beyond the reach of legislative majorities and executive decisions. I have said repeatedly, and I say again, that I believe that there is great value in properly devised constitutional safeguards. And

(33) Romain Gary, *The Roots of Heaven*, p. 194.

I very much hope that development along these lines will take place in South Africa. Admittedly, constitutional safeguards are not, and cannot be, impenetrable barriers against human artfulness and passion; but they can do much to tame power and prevent tyranny. They are, so to speak, the outer bulwarks of defence. This is not the occasion for me to go into details, but you may be assured that constitutional guarantees can certainly be made far stronger than the so-called entrenched sections of the original South African constitution—which, nevertheless, took six years of assault and manoeuvre to batter down. Moreover, a Bill of Rights in a properly drafted constitution can have great educative value in providing the written criteria by which to measure governmental conduct. The values which it embodies can be taught in the schools in civics classes, and, if properly taught, become part of the political education of the community—a common heritage which can serve also as a powerful cohesive factor in nation-building.

When this has been said, however, the fact remains that it would be the greatest folly to ignore the lessons of the last fifteen years. More particularly, the experience of these years proves—if indeed proof were needed—that no nation which desires a genuine Bill of Rights can afford to dispense with a clear understanding of the philosophy on which its binding force is based. Indeed, as I see it, the protection given by constitutionally guaranteed rights is likely to be dangerously weak without such understanding. For human rights can only be fully meaningful, and can only survive, when they are consciously based on a philosophy of life.

If true democracy is to survive, those who would give it allegiance must become more fully conscious of the real significance and place in history of the values which it must serve. Today, in the West, the very freedom implicit in democracy is menaced with becoming licence, freedom of thought with becoming anarchy of thought; and there is danger that, taken at its face value, “Western civilization” will seem just as materialistic as, and considerably less cogent than, the communist philosophy to which it declares itself opposed. It is senseless to compete with Russian Communism on a materialistic basis—with bigger and better Luniks or production figures. And certain it is that the West will be undermined unless it has a clear idea of what it does stand for. As Father John

Courtney Murray put it in a recent remarkable book, "the trouble is that even a damnable philosophy is more effective than no philosophy at all".⁽³⁴⁾ The West, then, must rediscover itself. And those who value freedom, equality and brotherhood, as opposed to communism or any other totalitarian system, must cleave to the heart of the philosophy on which these values depend.

It is a vain and idle belief that all one has to do in order to build a stable and just society is to call in the right constitution-makers. The finest constitutions, the most carefully devised Bills of Rights, are but scraps of paper in the wind if the people who work them, and for whom they are meant, are not worthy of them.

If we would know how, in the last analysis, the values embodied in a Bill of Rights are to be understood, so that they may be effectively realized, then, as I see it, there is only one satisfactory answer. There must be a committal to the natural law—to the system which, stemming from the best thought of the Graeco-Roman world, flowered in the work of St. Thomas Aquinas and the later Christian Scholastics; there must be a committal to the philosophy of law and government which gave heart to the Huguenots after the massacre of St. Bartholomew's Night; which inspired the revolt of the Netherlands from the tyranny of Phillip II; which sustained Sir Edward Coke and other great Englishmen in the crisis of English liberty during the seventeenth century; and which flourished in the establishment of the American Republic.

Why do I say that there must be this committal to the natural law? And what do I mean by the natural law? Let me deal with these questions in turn.

Recently a distinguished American Judge, Mr. Justice Learned Hand, expounded his version of the basis of the American Constitution and its Bill of Rights. "I shall ask you to assume with me," he said:

"that the Constitution and the 'Bill of Rights' neither proceed from, nor have any warrant, in the Divine Will, either as St. Thomas or Jefferson believed; but on the contrary that they are the altogether human expression of the will of the state conventions that ratified them; that their authority de-

(34) *We Hold These Truths*, New York, 1960, p. 91.

pends upon the sanctions available to enforce them; and their meaning is to be gathered from the words they contain, read in the historical setting in which they were uttered.”⁽³⁵⁾

With respect to Judge Learned Hand, if this view were sound, if the validity of all the provisions contained in a constitution, including those dealing with fundamental human rights, depended solely on the fact that the people ordained them at a given time in history, and on the sanctions available to enforce them, then I would ask you to consider by what possible argument you would deny to the people, at any time, the right to ignore the work of their predecessors, and disregard the constitution itself?

One answer is to assert, as an article of policy, that the law for the time being should be observed; and inasmuch as the people when making a constitution provide how it is to be legally amended, you might, on this basis, contend that the people themselves should be bound by the legal procedure which has been established. This argument has been summed up by one authority as follows: “No heresy has ever been taught so fraught with evil as the doctrine that the people have a constitutional right to disregard the constitution . . . It tends directly to the encouragement of revolution and anarchy.”⁽³⁶⁾

Up to a point this is, no doubt, a satisfactory answer. But the formal proposition that the law in force for the time being should be observed, might in certain cases plainly result in nothing more than the perpetuation of injustice, as in the case of many of Hitler’s worst laws. Moreover, when the challenge of injustice is raised, when the justice of the law itself is impugned, one cannot escape by appealing to the declared will of the people. Many of Hitler’s laws reflected the will of the German people, just as many of the excesses of the French Revolution were the declared will of the French people. Once you accept the notion that there is no other criterion of justice, no other source for the validity of law, than the people’s will, you open the way for naked power to become the measure of right and justice; and he who can sway and control the people at any given moment becomes the sole arbiter of law and justice.

⁽³⁵⁾ *The Bill of Rights*, Harvard, 1858, pp. 2-3.

⁽³⁶⁾ *Koehler v. Hill* (1883), 60 Iowa 543 at p. 616.

If something in you repudiates this and finds it hateful—there is, believe me, only one alternative; and that is to recognize that the people's will can never make wrong right. It is sometimes said that the voice of the people is the voice of God. If this is meant to convey that the people can nullify God's law, there never was a more damnable heresy. There are rules which stem from a higher source than the people's will, and which are always binding on the people. And these rules are contained in what has long been known as the natural law. This truth was universally recognized in the Christian Middle Ages,⁽³⁷⁾ and there is no escape from it today.

Fundamentally, the natural law postulates the existence of certain unchanging principles of law and justice which can be discovered by man's intelligence, but can never be nullified by his will. These principles derive from the very nature of man as a being endowed by his creator with the faculty of reason. In the words of Cicero :

“ True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting; it summons to duty by its commands, and averts from wrong-doing by its prohibitions. And it does not lay its commands or prohibitions upon good men in vain, though neither have any effect on the wicked. It is a sin to try to alter this law, nor is it allowable to attempt to repeal any part of it, and it is impossible to abolish it entirely. We cannot be freed from its obligations by senate or people, and we need not look outside ourselves for an expounder or interpreter of it. And there will not be different laws at Rome and at Athens, or different laws now and in the future, but one eternal and unchangeable law will be master and ruler, that is, God, over us all, for he is the author of this law, its promulgator, and its enforcing judge. Whoever is disobedient is fleeing from himself and denying his human nature, and by reason of this very fact he will suffer the worst penalties, even if he escapes what is commonly considered punishment.”⁽³⁸⁾

In the *De Legibus* Cicero identifies “ right reason ” with the qualities of human nature whereby “ man is associated with the gods ”; and the true source of law, he says, is to be found in

(37) Gierke, *Political Theories of the Middle Ages*, Maitland's translation, pp. 37, *sqq.*

(38) *De Republica* III, xxii (a passage preserved by Lactantius).

the natural endowment and requirements of man's nature. This emphasis upon the nature of man as the true source of law was, as Dr. Carlyle pointed out, to become one of the most influential ideas in the whole range of political theory. For Cicero was proclaiming that all men equally, and all races of men, are by their very humanity to be considered capable of virtue, and equally entitled to the protection of the law.⁽³⁹⁾

If you reject the notion that might is right, if in other words you are prepared to adhere to the natural law, then it follows that to the extent that a constitution deals with fundamentals—that is, with the rights of man—its validity stems not from the fact that the people have enacted it but from its inherent truth. In short, the people, in the exercise of their reason, discover ultimate truth, they do not create it.

Of course not all the provisions of a constitution are of this fundamental character; not all of them deal with the essential rights of man. There are many aspects of modern constitutions which are ethically neutral—rather like the rule of the road; that is to say, some rule is needed but it does not matter whether the right or the left side of the road is prescribed for driving on. Within the constitutional field, provisions of this kind are those dealing, for example, with the organization of the legislature into one chamber or two; the organization of the executive; and so on. No doubt it is adequate to rest the binding force of such provisions on the simple proposition that the law for the time being should be observed. But, as we have seen, this is no sufficient foundation when the justice of the law itself is challenged.

When this cardinal issue is raised, one is necessarily faced with the most fundamental of all decisions: are man and his will the measure of all things, including truth and justice, or are there eternal values which it is for man to discover by the exercise of his reason, and which should regulate his life when so discovered?

I have suggested to you that only by seeking to give effect to the eternal values, can there be any strength and hope. And I could wish it that there were time for me on this occasion to discuss with you some of the immortal passages in the writings of St. Thomas Aquinas and others in which they elaborate and

⁽³⁹⁾ *A History of Medieval Political Theory in the West*, Vol. 1, pp. 8-9.

give specific content to the natural law. That the doctrine of natural law raises difficult issues I do not deny; but men cannot expect to enjoy the decencies of social and political life unless at the same time they are prepared to pay the metaphysical and theological price which these decencies ultimately involve. We have been living too long on spiritual capital. Those, for example, who attempt to assert the rule "Do under others as you would have them do unto you", as a purely human convention, in fact denature it; and render it impotent against a more strident assertion of human will that might is right. Fortunately, however, in the world today, amidst all the welter and confusion, there is taking place a great revival of natural law study and thinking. This, I believe, is the most exciting and most hopeful sign of our times.

And now, in conclusion, ladies and gentlemen, may I repeat that within the natural law, and within God's law, there is no room for colour discrimination of any kind. In South Africa, it is still just possible that the very need of people to live together in peace in what is, after all, their only home will bring them to their senses in time. And certain it is that in the South Africa of the future no constitution will survive, nor will there be any health, so long as South Africans (white and non-white) value their race and skin-colour above Liberty, Equality and Fraternity.

In this country the whites have a specially heavy responsibility, for the initiative to make a peaceful change is probably still in their hands. If the white man in South Africa passes ignominiously from the scene of history—as is not unlikely—it will be because of his craven fears of being great.