

BEYOND THE LAW

Extract from a speech by the Rt. Hon. J. Enoch

Powell, MBE, MP, (Wolverhampton S.W.) 13th June.

I SUPPOSE in all walks of life we feel ourselves from time to time condemned to the punishment of Sisyphus. You remember Sisyphus and his stone. He was for ever pushing it to the top of a hill, whereupon it rolled down to the bottom and all was to begin again.

All through the 1960's there were many of us who put our shoulders behind the burden of proof that the attempt to prescribe wages and prices by law must be not only futile but in addition something different and more dangerous: it must necessarily be destructive of the rule of law in a free society. The proof was not confined to argument. As time went by, people saw in practice what was happening. Experiment and logic went hand in hand. Our work seemed to be crowned with success, and the subject to be closed, when in 1970 a government was elected which explicitly forswore such a use of the law.

Alas for our exultation! After a hesitation of no more than two years, the stone of Sisyphus was off downhill like a thunderbolt, with some of us tearing after it, until it came to rest again at the bottom in a great morass or quagmire of the old fallacies. Friendless - in either party - in 1970, it was surrounded by a host of friends and champions in 1972. The chief casualty as before and as always, was the rule of law.

I hold in my hand a letter emanating from the Department of the Environment and signed by one, who, I make no doubt, is a most assiduous and blameless civil servant - a fact which renders all the more remarkable, and instructive, what he wrote. The letter is a reply to a firm which had enquired in March whether any order had been made under the Counter-In-

flation (Temporary Provisions) Act 1972 restricting increases in service charges made to tenants of flats on long leases. The simple answer to that question was No. As a matter of fact, if the question were asked again now under the Counter-Inflation Act, 1973, the answer would still be No. The official proceeded, however, to write a letter such as might have been written by a civil servant of Nero or Domitian, and of which every successive sentence is a calculated denial of the rule of law. It is so classic that it deserves the maximum notoriety I can give it.

"I am sorry", says the official, "and rather surprised that the notes we sent and the drafting of the counter-inflation measures themselves have apparently left you in doubt about the basic intention of these measures and of the way in which they work." I pause here for a moment to remind you that the 1972 Act imposed no obligations on the citizen: these, and the corresponding offences, could be called into existence only by orders or notices under the Act. Where there was no order or notice, there was no obligation and no offence: that was "the way in which the measures worked" - it is substantially still the way in which they work - and since that is what the Act said, presumably it was the intention of the Act, certainly the intention with which the law-abiding citizen had to concern himself.

I resume. "The reason", the official continued, "that no orders relating to service charges have been made is that the Government has not found it necessary to make such an order to prevent an increase in service charges. This does not mean that such increases are permissible. In common with all other

prices and charges, service charges are fixed at 2nd November 1972 levels". Now there are here two equally disagreeable alternatives. If "permissible" and "fixed" means "permissible" and "fixed" by law, the official was telling an untruth and must have known it. Alternatively, "permissible" and "fixed" mean "permissible" and "fixed" in accordance with the wishes of Government to which, quite deliberately and intentionally, the force of law has not been given because the Government "has not found it necessary." In that case the official is saying that the Government, without legal authority, can "fix" charges and prices and "permit" or otherwise such actions of the citizen as they please. As the emperor of Byzantium observed long ago, "the Prince's wishes are as good as law:" this was Justinian's doctrine in the 6th century, and it is that of the Department of the Environment in the 20th.

There is more to come. "The purpose of an order made against a particular firm" says the official - actually, he means "a notice issued to" a firm, and the verbal slip is not without significance - "would be to impose a sanction and criminal penalty in a case where there was reason to believe that the standstill had been, or was about to be, abridged" (he meant "breached"). This is breathtakingly revelatory. The purpose of making orders is, in fact, nothing of the kind: it is to bring the Act into force where the Government, subject to Parliament, consider that it should be brought into force. So little is the rule of law conceived by the civil servant that he actually thinks the only purpose of making law is to enable the Government to punish those who will not comply with its extra-legal wishes. "The Government" he says "had made it clear that it is for individual companies to obey the Counter-Inflation Act". Certainly it is the citizen's duty to obey the law, and he does not need the Government to make that clear to him; but the official is either bluffing or deceiving. Unless and until an order is made, or a notice

issued, a company which increases its charges is obeying the Counter-Inflation Act, because the Counter-Inflation Act does not apply to it.

After all this the reader should be fully prepared for the change of tone from admonition to threat which follows at once. "On the face of it", the letter concludes, "there would appear to be some reason to believe that your company is contemplating action in breach of these measures. I should be grateful if you would write setting out for me any reasons you may have for arguing that this is not so, so that we may decide whether to investigate the possible need for intervention". It is a short step from the Government as lawmaker to the Government as judge. Here is a civil servant calling upon the citizen to clear himself of presumed guilt for a non-existent offence. The rule of law is one and indivisible: if Parliament no longer makes the law, the courts no longer apply the law.

I repeat, I have not picked upon this official as personally delinquent, as consciously and deliberately misusing his position. I am sure he was not; and therein lies the importance and the danger of what is happening.

If the official wore jackboots and a peaked cap and carried a horse-whip, we should be put upon warning. It is when the insolence of arbitrary power is so pervasive and unconscious, when it is so prevalent and accepted, as to provoke neither comment nor remonstrance, that the rule of law is in danger. That this has arisen in the context of the attempt to fix and control prices by law is the reverse of accidental. It is because the attempt is inherently inconsistent with the rule of law. Even in the simplest initial stage of a "freeze", to which the example we have been considering belongs, it was considered impracticable to legislate: the Act of Parliament was an empty shell, virtually unimplemented by orders or notices.

The freeze was administered almost wholly outside the law. Yet

nothing could be simpler to define or to decree than nil all round. What when the entire, moving and changing complex of prices and wages is to be subjected to continuing control in Stage Three?

You have heard it said that Stage Three is hoped to be voluntary with statutory powers in reserve. Just so. That is an anodyne but sufficiently accurate description of one form of government outside the rule of law; that is to say, compulsion or duress brought to bear upon the citizen to act or refrain from acting in a particular

way, but compulsion or duress which has no foundation in law and is not applied by due process of law. It has all the characteristics and consequences of government without law; it is arbitrary, it is capricious, it is uncertain, it is covert, it is unappealable.

When we find that, with the best of intentions, we are being carried towards that goal, it is time to stop and think. Above all it is time for the individual citizen to do so; for in the last resort the defence of liberty under the rule of law lies in his hands.