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in this issue . . .

EDITORIALS

1. NKOMATI

However questionable the actions which lead up to it, the signing of the Nkomati Accord has transformed the situation in Southern Africa. It is a triumph for the hard facts of life ever rhetoric and ideology. Nothing suggests that either Pretoria or Maputo has changed its views on the policies of the other, but both had reached the point where they faced a conflict without end and the slow draining away of their economic lifeblood. No doubt Mozambique was suffering greater damage than South Africa, but South Africa was suffering all the same. Peace became more important than principle, as it usually does at the end of most 'no win' conflicts.

As our last issue suggested was bound to be the case, the most important part of the Accord relates to security matters. We raised the question then whether the campaign of destabilisation which it is generally accepted South Africa has been engaged upon since the collapse of the Portuguese Empire, was aimed primarily at eliminating ANC bases or at toppling unfriendly regimes. Nkomati suggests that while there may well have been a stage when toppling unfriendly governments was at the top of its agenda, by the time President Machel and Prime Minister Botha met under the marula tree, it was armed incursions that South Africa was concerned to bring to an end. Pretoria seems to have accepted, for the present at least, that it can put up with unfriendly neighbours – even, from recent events on the Namibian front, the prospect of a SWAPO government there – but it is fast cutting off the ANC from bases within striking distance of the Republic. This is something which could force the Congress to reassess its its whole armed struggle strategy and redirect its efforts either to the difficult business of trying to build up a really effective political bargaining force within the country, or to isolated acts of indiscriminate terror, of which we sincerely hope the Durban Embankment bomb is not a portent.

While the Nkomati Accord has been almost universally welcomed, the welcome has as universally been joined to a warning that unless things really start to change inside South Africa, it won't last. After this, of course, almost anything seems possible, but **will** there be that kind of change? Nobody expects it to happen overnight but to know whether it is even starting to happen requires that, from now on, we disregard all government rhetoric and concentrate our attention on government action.

Rhetoric tells us that the new constitution is a vehicle for reform. Professor Barry Dean's cool appraisal of its provisions elsewhere in this journal, six months after the excitement of the Referendum, shows that it is hardly that. Signs of at least one step forward seemed to come from the proposal to open Central Business Districts to people other than whites – until it turned out that blacks would be excluded. And even when an outcry persuaded the Government to extend the concession to

blacks it transpired later that they, and they alone, as a group, would specifically be precluded from owning the premises from which they conducted their business. Thus was emphasised once more the temporary status, in Nationalist Government eyes, of all blacks living in 'white' South Africa.

It is this Government obsession with the temporary nature of the presence of all black South Africans in 87% of the country which is the real threat to the future of the Nkomati Accord, for it is the myth which provides the rationale for refusing permanent rights to most of our people in most of our country. This is something that Africa will never be able to accept. Real change, then, means the abandoning of this myth, and the most reliable indicator of whether real change is contemplated or not will we suggest, from now on be provided by the energy with which the Government pursues its programme of removing black people from 'white' South Africa and resettling them in the homelands. So far there is no sign that its enthusiasm for it is waning.

World-wide protests did not stop the people of Magopa being moved. In the Eastern Cape the long-established, church-based, freehold community of Mgwali is fighting desperately to avoid a fate that could be worse than death, incorporation into the Ciskeian pocket-dictatorship. In Ladysmith, Natal, an umbrella organisation has recently been formed to fight the threatened removal of 100,000 black people living on freehold land in that magistracy alone. And this is only part of the story. In March the South African Council of Churches and the South African Catholic Bishop's Conference jointly issued a report on forced removals that estimated that over three-and-a-quarter million people had already been moved and nearly one-and-three-quarter million remained to be moved in terms of known government plans. They called upon the Government to 'cancel immediately any further plans for removals and relocation".

We do too.

For otherwise the Nkomati Accord will have been built on sand. □

2. HONORARY WHITES

One of the more nauseating qualifications to rigid apartheid is surely the one which permits foreign visitors and diplomants (unless they are unlucky, like Colin Croft) to be treated, on trains and in other places, like South African whites, while South African blacks continue to be treated, on trains and in all other places, like South African blacks.

Now we see that this special status may be accorded to the new Coloured and Indian members of the tri-cameral Parliament. Like members of the President's Council (we hadn't known about this), they will be given a special 'pass' which will enable them to 'pass' for white.

We wonder what kind of a representative it would be who would be prepared to so distance himself from the daily experience of his electors as to accept this insult? □

A MOMENT OF SELF-CRITICISM
(on learning that a friend has been charged with high treason)

You have tasted the fruits of status,
while enjoying the privilege of denouncing them.
You have experienced the full joy of marriage,
while your sisters and brothers have been forced into
celibacy and solitude.
You have allowed yourself the luxury of psychic balance,
while many of those around you have lapsed into
frustration and despair.
You have found it possible to live, and to live with a
certain confidence,
in a society which produces evil and madness.
You have stood firmly (though anxiously) beside the hard
wall against which brave men and women have beaten
out their brains.

Now you chew the cud.
You are spattered with blood.

Vortex

by W.H.B. DEAN

THE PROPOSED SOUTH AFRICAN CONSTITUTION
A (Westminister) Pig in a (Pretoria) Poke?

Among the striking features of the Westminister constitutional system are its flexibility and its adaptability. It has survived and facilitated Britain's progression from absolute monarchy through oligarchy to democracy based upon a universal franchise. In the process the functions of particular institutions of government have changed drastically. The medieval **curia regis** composed of noble cronies of the monarch, became, for example, the privy council consisting of the great officers of state which in turn gave birth to the modern cabinet made up of leading members of the governing political party. Throughout this process the essential structure of government has remained unchanged for almost five hundred years. Where exported, it has proved equally adaptable. Its essential features have been incorporated in federal systems (as in Canada and Australia) and have proved to be consistent with such exotic constitutional mechanisms as bills of rights (as in India and Sri Lanka). The fact that it has failed to produce stable constitutional government in Africa is the result less of its inherent character than of the difficulties which face any attempt at constitutional government on this continent.

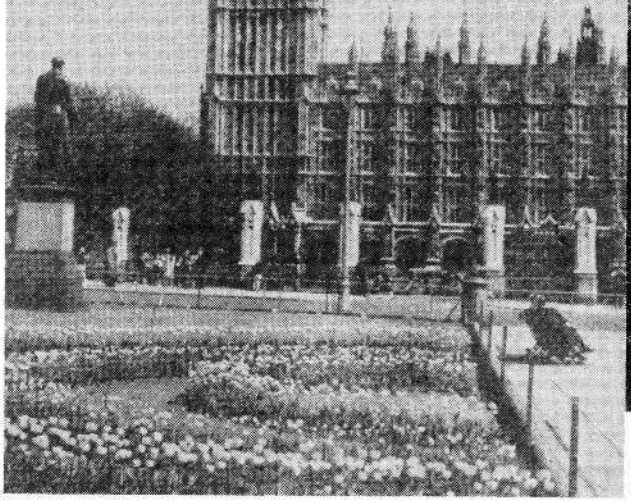
The flexibility and adaptability of the system have a price. They are the result of the fact that many of the ground rules of the constitution do not exist in any authoritative form and are essentially political in character. In consequence, they can be readily reinterpreted to reflect the political realities of the society in which the system operates. This is why white minority rule of an increasingly authoritarian character has been possible in South Africa within a constitutional framework which, in formal terms at least, is strikingly similar to the British system.

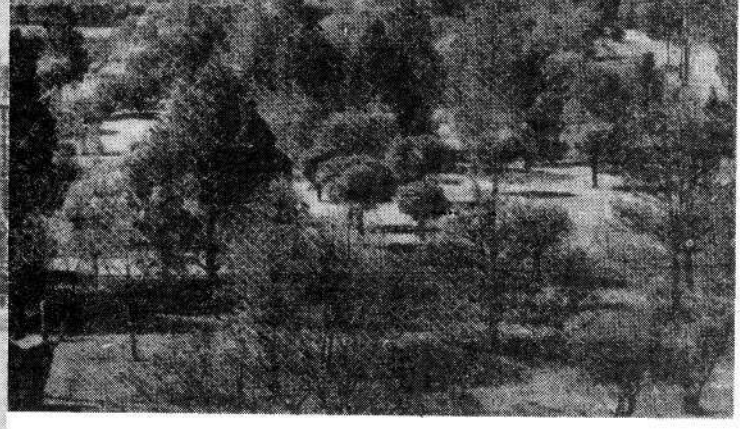
This is not to say that the constitution is simply a passive instrument of those who walk the corridors of power. Values inherent in the Westminster system such as representative and responsible government, freedom of political activity, impartiality in the public service, judicial independence, the Rule of Law, and constitutionalism,[1] have provided South Africans with criteria for evaluating and criticising the actions of those in government to which the latter retain an appreciable degree of sensitivity. Two examples will illustrate this point. The new Internal Security Act 1982, however inadequate it is from the point of view of the respect for civil liberties and the protection of the individual, contains changes which are the direct result of criticisms whose validity depends upon acceptance of the values of the Westminster system. Equally, one of the striking differences between the earlier models of the proposed constitution and the Republic of South Africa Constitution Act, 1983 is the limited reassertion of Parliament rather than the State President as the ultimate source of constitutional authority. Whereas the Constitutional Committee of the President's Council would for example have given extensive powers to the State President to take over the whole conduct of government in the event of the breakdown of the existing constitutional order,[2] the 1983 constitution gives this power to Parliament. I have no doubt that these changes were the result of criticism from virtually all quarters that the State President would become a dictator under the proposed constitution. Significantly the principal thrust of the amendments moved by both the Progressive Federal Party and Conservative Party in the Parliamentary Select Committee on the Constitution were aimed at re-asserting parliamentary control over the President and were often framed in essentially Westminster terms. The government's sensitivity to the criticism was obvious from the Prime Minister's speeches and in the Second Report of the Constitutional Committee of the President's Council.[3]

I am not trying to suggest that the South African constitution represents a lively and healthy example of Westminster-style democracy. It does not. What I am trying to suggest is that the constitutional system has played a significant role in checking progress towards authoritarian government in South Africa. True, it has done so in an essentially political manner but that is because the Westminster constitutional system is essentially political in character. It is a constitutional system none the less for that and changes in it are therefore potentially significant. It is for this reason that we should be concerned about the proposed constitution.

THE PURPOSE OF THE NEW CONSTITUTION

According to the Minister of Constitutional Development and Planning the main purpose of the new constitution is to give those South Africans classified as 'Coloured' and Indians 'an effective say in the decision making processes which affect their interests and aspirations'. This is to be achieved by institutionalizing 'self determination' and providing 'the devolution of power' in what is claimed to be a consociational system of government. This means





of course that the proposed constitution makes no attempt to deal with the 'interests and aspirations of Africans'. Their political kingdom is to be sought in 'self governing' and 'independent' national states but the government has yet to find the solution to the chronic poverty of these areas and their incapacity to provide an adequate channel for the political aspirations of those Africans living and working in the (White) urban areas. In this respect, the proposed constitution leaves the current major problem of South African politics unresolved.

Apart from local government,[4] the incorporation of 'Coloureds' and Indians in the (previously exclusively White) decision-making processes of central government is to take place at two levels. In relation to 'own affairs' (i.e. matters 'specially and differentially (affecting) a population group in relation to the maintenance of its identity . . . way of life, culture, traditions and customs') separate governmental institutions will be created. Each group will have a legislature (almost all of whose members are directly elected on the basis of universal franchise within the group) and an executive, a Ministers' Council, consisting of members of the legislature appointed by the State President. With regard to the more important of these appointments (including that of the chairman) the State President is required to appoint persons who, in his opinion, enjoy the support of the majority in the legislature in question. The relationship between the executive and legislature at the level of 'own affairs' bears a strong resemblance to the Westminster system of responsible government. Thus, for example, the State President is bound to dissolve the legislature or reconstitute a Minister's Council if the legislature either passes a motion of no confidence in the Council or rejects appropriation legislation proposed by it. **Prima facie,** therefore, at this level, the system gives the legislature considerable control over the executive and therefore government policy but these rules have to be viewed in the light of two other factors: the nature and scope of 'own affairs' and the position and powers of the State President in relation thereto.

OWN AFFAIRS

The proposed constitution contains a list of matters which are 'own affairs in relation to each population group'. Some of these, such as education, are of considerable political significance but by and large they are not .and in most cases the determination of basic policy is in any event to be treated as a 'general affair'. In particular governmental institutions for 'own affairs' have virtually no power to raise money and their power to appropriate funds allocated to them will be subject to strict control by the institutions of government for 'general affairs'. The result is that their primary function will be to carry out policies determined by the latter. It goes further than this, however. It is quite clear from the proposed constitution that the content of 'own affairs' (even those matters listed as such) will not be fixed. Any matter can be treated as a 'general affair' if treating it as an 'own affair' would enable 'the governmental institutions serving the interests of one population group . . . to affect the interests of any other population group'. As a result although education is an own affair, a decision by the 'Coloured' Ministers' Council to open 'Coloured' schools to Whites could legitimately be regarded as a 'general affair' and beyond its power to make. The distinction between 'own' and 'general affairs' is not like

the distinction between state and federal matters under a federal constitution — i.e. an attempt to create a constitutionally defined division of powers between co-ordinate governmental institutions. It is rather an administrative system which allows for the delegation of functions to subordinate institutions of government not in terms of the constitution but in terms of Presidential decree.

The State President plays a critical role in relation to 'own affairs'. Not only does he have full (and unsupervised) power to determine the scope of government at this level but he is also able to exercise close control over the functioning of the legislature for each group by determining whether it has power to consider any particular piece of legislation and any amendments thereto. He may also have the power to secure the passage of legislation and the approval of budgets for 'own affairs' in the face of obstruction by individual legislatures by redirecting the legislation to the governmental institutions for 'general affairs'. As we will see, these can operate without the co-operation of two of the three groups with the result that government of each group's 'own affairs' will continue to be possible even in the face of obstruction by that group's legislature. In exercising these powers the State President is not subject to the supervision or control of the individual legislatures, except perhaps the (White) House of Assembly. He is elected by an electoral college controlled by representatives of the House of Assembly and cannot be removed from office by any individual legislature. The nature and extent of the 'devolution of power' as a method of institutionalising 'self determination' in the area of 'own affairs' will depend entirely upon the way in which the State President exercises the powers given to him by the proposed constitution.

GENERAL AFFAIRS

As 'general affairs' relate to matters which do not 'specially or differentially affect a population group', they are matters of mutual interest the regulation of which should involve co-operation between the three groups. Again according to the Minister of Constitutional Development and Planning such co-operation is to be sought by seeking consensus 'by way of negotiation and persuasion of other actors in the political drama'. In this process 'no group ought to dominate another or . . . deny (it) participation in the political decision making processes'. Participation will be principally as groups and not individuals. Thus although legislation on 'general affairs' will in principle require the approval of the legislatures of all three groups, such approval will be given separately. The proposed constitution expressly provides that 'no resolution shall be adopted at any . . .joint sitting' of Parliament. The Prohibition of Political Interference Act will continue to apply with the result that extra-Parliamentary political activity will continue to be strictly segregated. As significant is the fact that in the event of a conflict betweenthe three groups, the constitution is designed to ensure that the smooth operation of government can continue under the control of the White dominated institutions of government. Disagreement between the three Houses of Parliament can be resolved by decision of the President's Council in which the 20 representatives of the (White) House of Assembly and the 15 Presidential nominees (who do not have to be members of opposition parties) constitute a clear majority. Government can continue to function even in the face of boycotts or obstructions by two of the three groups. Both the electoral college and the President's Council can operate without the representatives of the Coloured and Indian Houses and any one of the Houses will constitute Parliament for the purpose of enacting general laws if the other Houses are 'unable . . . to meet for the performance of (their) functions or to perform (their) functions'. In theory the State President could use this provision to govern without the co-operation of the White House but, unless he were prepared to change the constitution, this is unlikely because his continuation in office will ultimately depend upon support in the White House and not the other two Houses. It is even possible that the constitution can be amended to eliminate 'Coloured' and Indian participation without their co-operation.

In short the proposed constitution gives the 'Coloureds' and Indians no institutional base which is secure enough to extract concessions from Whites in return for their co-operation to make the new constitution work. As under the present constitution, concessions will come not as an institutional necessity but in response to what Whites in power see as politically desirable.

If one has regard to the nature and scope of government at the level of both 'own'and 'general affairs', the proposed constitution has greater affinities with Ian Lustik's control model of stable but deeply divided societies (in which 'stability is the result of the sustained manipulation of subordinate segments(s) by a super-ordinate segment') than with Arend Lijpard's consociational model for such societies (in which stability is sought by negotiation and consensus).[5]

ANOTHER DIMENSION

But the incorporation of 'Coloureds' and Indians under the proposed constitution has another dimension. In order to allow for such incorporation and yet preserve the supremacy of Whites, some of the basic features of the existing constitution have had to be sacrificed. **In the first place,** the constitution for the first time will become a fully fledged apartheid constitution in the sense that participation will be on segregated lines. Previously, although those entitled to participate were narrowly defined, all participants were full participants. This will no longer be the case. **Secondly,** the executive government need no longer reflect the wishes of the majority in the electorate or even in Parliament. This is the result of three factors: the State President is elected and removable by an electoral college in which representatives of the White House of Assembly will constitute a majority; he is only obliged to resign or call an election if all three Houses pass a motion of no confidence in him or reject his appropriation legislation and, lastly, he can continue to govern effectively with the co-operation of only one of the three Houses which in the circumstances is most likely to be the (White) House of Assembly. **Thirdly,** while the substantive powers of the State President have not been significantly extended under the proposed constitution, his position vis-a-vis the legislature has been considerably strengthened. While he may dissolve the Parliament at any time, he will enjoy, if anything greater security of tenure between elections than South African prime ministers have enjoyed under the present constitution. No single House can remove him from office. In addition, the State President has become the gatekeeper to the complex process of enacting legislation. It is he who will: initiate legislation; decide whether legislation should be referred to the Presi-

dent's Council in the event of disagreement between the three Houses; appoint a significant portion of the members of the President's Council and it is he who will, in the first instance, decide whether general laws can be enacted by only one House in the face of boycott or obstruction by the other Houses. These powers will enable him in most cases to manipulate the legislature to his advantage. **Fourthly,** in exercising his powers, the State President will be subject to little or no supervision. It seems that he will not participate in the day to day proceedings of the Houses and will therefore not be personally subject to the kind of pressures and criticism to which prime ministers are presently subject. In some cases he is bound to consult Ministers of State and chairmen of the three Houses but except with regard to 'own affairs' (over which of course he has substantial control) he is not bound by the advice tendered to him. Review of his actions by courts of law will either be excluded or be more theoretical than real because of the unwillingness of the South African courts to question the validity of the exercise of discretionary powers. **Fifthly,** although the jurisdiction of the courts has been somewhat expanded by the entrenchment of the essential features of the new constitution, this may simply result in the courts being cast in the role of guardians of its apartheid character. The one possible exception here would arise in times of crisis in which the government was attempting to take short cuts or to eliminate 'Coloured' and Indian participation. There is authority in recent commonwealth decisions which could allow the courts to adopt the role of guardians of 'Coloured' and Indian participation in such case. To do so they will have to take the government at its word and abandon the traditional theories of all-powerful character of a sovereign legislature. Recent decisions such as **Komani** and **Rikhoto** in the area of urban Black law and that in the Ingwavuma land case suggest that the Appeal Court might be willing to do this. **Finally,** as the White referendum on the constitution has illustrated, judicious use of referenda to appeal to the electorate on a non-party-political basis, could seriously weaken what has probably been the most significant 'popular' check on executive power in South Africa in recent years, the political party system and the caucus of the Nationalist Party in particular. The legislative process which emphasises negotiation in joint committee rather than open debate and the continued operation of the Prohibition of Political Interference Act in what has now become a common institutional framework makes the role of the opposition equally doubtful.

This last point highlights yet another important feature of the proposed constitution. Under the present constitution, the primary purpose of political activity amongst Whites has been to gain sufficient popular support for policies at the polls to secure control of the powers of government. For 'Coloured' and Indian politicians this will not be so under the proposed constitution. Unless the constitution is altered, there is absolutely no way in which they will be able to translate popular support amongst their own (and opposition White) voters into real political power. They cannot even bring the government down. They will still have to seek concessions from the Whites who will make such concessions not out of concern for the political power of those within the parliamentary system but out of fear of the extra parliamentary consequences of not doing so. Viewed in this perspective, the proposed constitution could change little except to give 'Coloured' and Indian politicians greater visibility.

If this last point is correct the direction of political change under the proposed constitution will depend more on political priorities as they are perceived by those in power than upon the institutional framework created thereby. The proposed constitution gives us little assistance in predicting what these perceptions will be. Those elements of the Westminster system which have proved useful to those in power (such as the sovereignty of parliament) have been retained. The basic framework of apartheid has been retained. What has been rejected has been any move towards casting the South African constitution in a mould more like that of the British model by extending the franchise and thereby giving direct access to political power via popular political support. In the process important aspects of the South African Westminster system have been weakened. Ironically the extension of the franchise under the proposed constitution has been accompanied,for example, by a weakening of representative and responsible government. This is important because it will make it more difficult to assert these values in criticising and evaluating the conduct of those in power. We have in fact bought a less Westminster-like pig in an increasingly Pretoria-like poke. □

REFERENCES

1. S.A. de Smith **Constitutional and Administrative Law** (4 ed 1981) 27 – 30.
2. **Second Report of the Constitutional Committee of the Presidents Council on the Adaptation of Constitutional Structures in South Africa** (PC 4/1982) para 6.14.2
3. Both the Prime Minister (in his address to the Transvaal Congress of the National Party in September 1982) and the Constitutional Committee of the President's Council (Second Report para 6.11) went out of their way to rebut these criticisms.
4. Local government at provincial level has proved remarkably resistant to change. Proposals for the reform of local government – emphasised by the Prime Minister (in his speech to the Federal Congress of the National Party in July 1982) and contained in the Joint Report of the Committee for Economic Affairs and the Constitutional Committee of the President's Council on Local and Regional Management Systems in the Republic of South Africa (PC1/1982) have yet to be reflected in practice. The existing provincial system (as set out in the Republic of South Africa Constitution Act 32 of 1961 – to be renamed the Provincial Government Act 32 0f 1961) are to be retained: a victory for vested interests.
5. Ian Lustik 'Stability in Deeply Divided Societies: Consociationalism versus Control' (1978-9) 31 **World Politics** 325. For an interesting marxist critique of Lijpard se E A Kieve 'A Marxist Critique of Consociational Democracy in the Netherlands' (1981) **Comparative Politics** 313.

by CLIVE NAPIER

THE "CAPITALIST" CONNECTION

SOUTH AFRICA'S TRANSKEI. THE POLITICAL ECONOMY OF AN 'INDEPENDENT' BANTUSTAN. ROGER SOUTHALL. Heinemann, London, 1982. Reviewed by Clive Napier. (Lecturer in the Department of Political Studies, University of Transkei.)

Roger Southall's, South Africa's Transkei, The Political Economy of an 'Independent' Bantustan, is one of the most recent books to be published in a series of contemporary political studies of the Transkei. As suggested by the title, this book contains one of the most thorough analyses yet of the evolution of the relationship of the territory of the Transkei to the South African political and economic system.

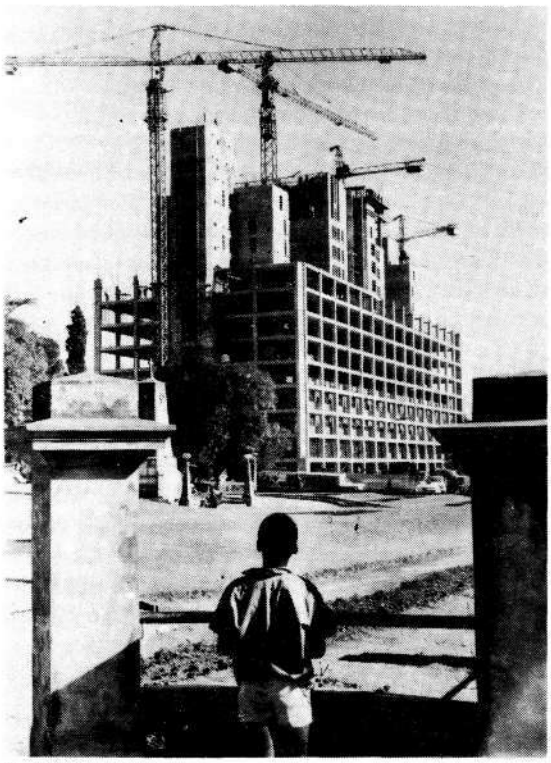
One of the features distinguishing this book from other studies of the Transkei, is that Southall undertakes his analysis from a neo-Marxist or radical-revisionist perspective. This study is very much in keeping with the trend at present, to re-interpret South Africa's past and present, in terms of a Marxist analytical framework.

The central theme of this study, is an attempt to illustrate how the bantustan strategy as implemented by the South African government, has been used as a device to ensure the continuing labour requirements of the white economy, also as a political response to internal pressures of black nationalism, and also to international pressures generated by the decolonization of the African continent.

Southall begins by tracing the historical evolution of the Transkei from pre-colonial times, through colonial rule, the imposition of segregation policies by successive white governments, to the "nominal" independent status conferred on the Transkei by the South African government in October of 1976. Future prospects and possibilities are also examined.

One of the underlying themes of the book, is an attempted explanation of how the region of the Transkei has been transformed "historically from a subsistence, pastoral, pre-capitalist economy into a reservoir of cheap labour for an external capitalist sector." (p. 60) Southall mentions several factors which brought about this transformation, which included the hunger for land, the possession of weaponry by white settlers, the introduction of trade, the extension of political control, the imposition of a hut tax by the white authorities, coercive legislative measures, and the contacts with white capitalist society. As a result of these factors, the peasant economy disintegrated, and the Transkei 'reserve' became the supplier of labour at a price to guarantee the profitability of capital and in particular mining capital.

Southall's analysis is typical of a neo-Marxist perspective, in that institutional factors are regarded as the main inhibiting factors of economic development. The neo-Marxist perspective tends to ignore factors like land tenure, values, a preference for oscillating migration, and a lack of entrepreneurship. Surely factors of a "cultural" nature must have some impact on development? The neo-Marxist perspective is therefore somewhat lop-sided in its attempted explanation of underdevelopment. The real and complete explanation for underdevelopment, would more likely be produced by including all these factors in one's analysis.



Progress in Umtata

Thus continuing with Southall's argument, the underdevelopment of the Transkei, has been functional to "capitalist" development in metropolitan South Africa. By allowing the predominantly black populated "homelands" to remain underdeveloped, the metropolitan "capitalist" sector has been assured of a plentiful supply of cheap labour. Certain questions arise from this argument. What rôle does influx control play, and why have such stringent laws been introduced by the National Party government? Has the influx from the homelands now become dysfunctional to the 'capitalist" sector of the South African economy? Also related to this issue are the recent attempts to develop the homelands by the white "capitalist" South African government, through the provision of a variety of incentives, more particularly financial incentives. Further, since "independence" all taxes collected from blacks in the so called "white" urban areas, are remitted to the homeland governments. Southall needs to integrate these issues into his general thesis. It is perhaps felt by the white policy makers that the South African "capitalist" base needs broadening, and the obvious direction in which to move, is to co-opt black elites into this system. These issues are indeed complex and need a great deal more thought and elaboration.

It could be a useful exercise if a comparative study was made between the other 'independent' states and homelands, and the Transkei, to establish whether they have played a similar rôle to the Transkei in the South African "capitalist" system.

Comparisons do very often suggest explanations and answers to outstanding questions.

There is a certain amount of overlap between the material included in Southall's book and other texts, but the inclusion of this material is perhaps necessary to maintain the thrust of his arguments. Southall does at the same time fill in many gaps in our knowledge of the political economy of the Transkei. For example, he includes a chapter on the rôle of the white traders in the political economy of the region. This issue has been hardly mentioned in other texts.

Some of Southall's assertions could have been supported with more statistical evidence. For example, in support of his arguments, he refers to the important issues of land lost and purchased by blacks from whites, gold mine productivity, the gold price and labour wages, but hardly refers to any statistics in this regard. Southall has relied heavily upon sources of an official and non-official nature, but unfortunately practical considerations very often preclude the researcher from relying more upon informal sources like interviews with local people. The opinions and information obtainable from local people can quite easily strengthen or weaken many arguments. In my view, Southall's neo-Marxist conceptual framework provides only part of the explanation for the underdevelopment of the Transkei, but nevertheless, to date it is one of the most sophisticated exposés of South Africa's Transkei. □

by GILBERT MARCUS

ASSAULTS IN DETENTION : TIME RUNNING OUT

The South African Police enjoy a privileged and protected position under South African law. There is probably no other police force in the western world which is able to exercise such extensive powers of arrest and the ability to detain suspects for lengthy periods without trial. In addition, it is an offence in terms of the Police Act No. 7 of 1958 to publish "any untrue matter" in relation to "any action" by the police or in relation to "the performance" of any member of the police, without having reasonable grounds for believing the statement to be true. An onus is placed on the person who published the information to show that he had reasonable grounds for believing the statement to be true. Even if a publisher thinks he has reasonable grounds for believing the truth of allegations concerning the police, he would undoubtedly think twice before going to print knowing that, if convicted, he could be liable to a fine not exceeding R10,000 or to imprisonment for a period not exceeding five years or both such fine and imprisonment. That the police should enjoy this special protection is in itself extraordinary and necessarily gives rise to the suspicion that there must be good reason why the activities of the police require shelter from public scrutiny.

Most police actions take place in the public eye and if there are abuses these can be documented by witnesses. Those who are detained under the security laws do not enjoy such advantages. They are effectively removed from the public gaze being denied access to friends, relatives, lawyers and doctors of their choosing. If there are abuses, there are generally no witnesses apart from those who perpetrated the abuse. What goes on in the interrogation rooms of the security police is not purely a matter of speculation, however. Regrettably it is usually only when there is a death in detention that the public is allowed to hear what is otherwise kept a closely guarded secret. The inquests into the deaths of Steve Biko and Dr. Neil Aggett laid bare what many had feared. In July 1983 Mr. Paris Malatji was shot at point blank range between the eyes by a security policeman, Mr. Harm van As. The conviction of van As for culpable homicide marks the first time that a policeman has been found liable for the death of a political detainee. (More than 50 detainees have died in detention since the first provision for detention without trial was introduced in 1963.)

SPECIAL PROTECTION

It is not only when people die at the hands of the police that abuses reach the light of day, but also when aggrieved persons sue the Minister of Law and Order for damages resulting from injuries sustained by the police. (The Minister is sued in his representative capacity as the person statutarily responsible for the wrongful acts of the police.) Once again, the police enjoy special protections not available to mere mortals. Section 32 of the Police Act provides that "any civil action against the State or any person in respect of anything done in pursuance of this Act, shall be commenced within six months after the cause of action has arisen". In addition, written notice of the intention to take action must be given at least one month prior to such commencement. All legal systems prescribe time periods within which actions are to be commenced. These time limits vary according to the nature of the action but generally a period of three years is the limit within which an action for damages must be instituted. Time limitations of this nature are entirely reasonable. Save in exceptional cases, the administration of justice would grind to a halt if claimants were allowed to institute actions many years after the event. The time limitations prescribed by the Police Act, however,

vary markedly from the usual limitations. The period is very short, there is a requirement of written notice prior to commencement of action, there are requirements as to what must be contained in the written notice, and, most importantly, the time period is absolute, permitting no exceptions or qualifications.

Why then should actions against the police be instituted within such a short period? The ostensible reason is to enable the defendant to investigate the incident giving rise to the claim, to consider his position and to decide whether to resist, capitulate or compromise. The practice belies the theory. The reported cases bear witness to the use to which the time limitations in the Police Act have been put as a means of preventing matters from coming to court. As one practitioner has put it, "meticulous compliance with the time limits is crucial because of the apparent preoccupation of the Minister, or those who advise him, with the precise calculation of days" (R. Selvan, "Limitation of Actions Against the Police – The Case for Reform" **Lawyers for Human Rights** Bulletin No. 3, January 1984). The lengths to which the Minister has been prepared to go to defeat claims due to technical non-compliance with the provisions of the Police Act, are indeed extraordinary. Notwithstanding that there could not conceivably have been any prejudice to the Minister, every point has been taken, whether it be a delay of a few days beyond the prescribed time limits or insufficient compliance with the requirements of the written notice or the failure to address the notice to the correct official. In any other context, such objections would be, in the words of a former Chief Justice, "miserable pettifogging points" which show "a certain stamp of mind".

INSUPERABLE PROBLEM

People detained for more than six months under the provisions of the security laws have, until recently been confronted with the seemingly insuperable problem of instituting civil actions against the security police for unlawful assaults. In many cases assaults have occurred in the first few days of detention and the detainee, denied access to his lawyer, or anybody else for that matter, has been unable to comply with the provisions of the Police Act. Fears have been expressed that assaulted detainees have been deliberately detained for lengthy periods to prevent the institution of civil proceedings. There are several recorded instances of detainees having been kept in detention for well over a year and, in some cases, close to two years (See **Report on the Rabie Report : An Examination of Security Legislation in South Africa (1982)** Centre for Applied Legal Studies, University of the Witwatersrand).

The problem of the detainee who, by reason of his detention, is unable to institute a civil action against the police within the prescribed time limits, was recently dealt with by the Appellate Division in **Montsisi v Minister van Polisie** 1984 (I) SA 619 (A). The simple issue before the court was whether Montsisi was precluded from suing the Minister of Police (now the Minister of Law and Order) due to his failure to institute action within the required time limits. The parties to this dispute submitted an agreed set of facts to the court for adjudication. The truth of the facts, although not yet tested by evidence, was accepted for the purposes of obtaining a ruling on the question of law involved.

Montsisi was arrested on 10 June 1977 and detained in terms of section 6 of the Terrorism Act 83 of 1967. Section 6 of the Terrorism Act made provision for the indefinite detention of any person whom a policeman of or above the rank of lieutenant colonel had reason to believe was a "terrorist" or who had information relating to "terrorism" or other offences specified in the Act. A person so arrested was held specifically for the purposes of interrogation. The Commissioner of Police was empowered to order the release of a detainee when he had "satisfactorily replied to all questions" or when "no useful purpose" was served by his further detention. The Minister was also empowered to order the release of a detainee. The Act further provided that "no person, other than the Minister, or an officer in the service of the State acting in the performance of his official duties, shall have access to any detainee, or shall be entitled to any official information relating to or obtained from any detainee". In addition, the courts were expressly precluded from ordering the release of a detainee. (The Terrorism Act has now been replaced by The Internal Security Act of 1982. Despite cosmetic amendments, most of the obnoxious features of the Terrorism Act remain).

TWICE ASSAULTED

Montsisi was held under section 6 of the Terrorism Act until he was released on 28 July 1978. He alleged that, whilst in detention, he was twice assaulted by the police. These assaults were alleged to have taken place on 13 June 1977 and 27 October 1977. He alleged that he had suffered damages in an amount of R6,750.00. Montsisi only sent written notice of his intention to institute action on 23 November 1978. The Minister raised the defence that the action was barred by virtue of non-compliance with the time limit prescribed by the Police Act. In reply, it was averred that Montsisi had been prevented from instituting his action in time by virtue of the fact that he had been in detention. When the matter was first heard Mr. Acting Justice Kriegler upheld the Minister's defence. Montsisi appealed to the Appellate Division.

In a unanimous decision, the Chief Justice, Mr. Justice Rabie, ruled that it had been impossible for Montsisi to comply with the time requirements of the Police Act by virture of his being a detainee in terms of the Terrorism Act at the relevant time. He said that it was a principle of South African law that a person should not be forced to comply with impossible requirements. In the circumstances, the time limits did not apply for so long as Montsisi was in detention.

While this decision will go some way to mitigating the harsh effect of the Police Act, the time limitations will no doubt continue to be used to defeat good claims. In its present form, section 32 of the Police Act serves only the State and the particular policeman involved. It certainly does not serve the interests of potential litigants or the public at large. It is suggested that the Police do not warrant special protection and that the section be replaced by one more in line with modern notions of civil liability. At the very least, the court should be vested with a discretion to condone non-compliance with the time limits presently laid down. More importantly, where the guardians of society break the law, they should not be allowed to seek refuge behind the technicalities of the Act. The public interest is better served by the full exposure of abuses in open court. □

by O.D. DHLOMO

A REPLY TO PETER COLENBRANDER

I have encountered immense problems in attempting to grasp the point that Mr. Peter Colenbrander was trying to make in his article entitled "The Year of Cetshwayo revisited" (Reality, March 1984).

Firstly, I would have thought a research-oriented scholar like Mr. Colenbrander would be the last person to wonder whether "anything more" can be said on the life of King Cetshwayo, "given the outstanding calibre of works such as Jeff Guy's **The Destruction of the Zulu Kingdom.**" Indeed while we highly commend Jeff Guy for his excellent work on King Cetshwayo and the Anglo-Zulu War, we cannot say with any certainty that his has been the last word on the subject. It would be totally unscientific to adopt that attitude. The mere fact that Guy's book (published more than 100 years after the Anglo-Zulu War and after volumes had already been written on the subject) marked a clear point of departure from the century old doctrinaire colonial perspective of the war, should be sufficient proof that there seldom is any finality on a research topic – let alone an historical topic. Mr. Colenbrander can rest assured that it is our cultural and historical responsibility to continue to explore this period of our history to the best of our ability, not for our own sake but for the sake of generations of South Africans that will come after us.

Secondly, it is indeed revealing that Mr. Colenbrander quotes with apparent approval Carolyn Hamilton's reference to critics of pre-colonial history who, she says allege that 'pre-colonial history as a scholarly discipline and as a teaching subject – is at best irrelevant to the needs of black South Africans, and at worst is a hindrance to those working for change in this country'. I am quite certain that these critics have no authority to pontificate on behalf of black people and claim that the study of precolonial history is detrimental to their struggle for human rights. As far as I am aware, no black patriot worthy of the name, does not find pleasure in reminiscing about the precolonial period when his ancestors lived like human beings and were slaves to no colonial powers and to nobody. To argue that pre-colonial history is irrelevant to the needs of Black South Africans is tantamount to saying that Black South Africans and their children should not be informed about that period in their history when they were masters of their own destiny. Precolonial history has for centuries acted as the driving force in the struggle against colonialism on this continent. I know of no African struggle against colonialism whether violent or non-violent, whose architects did not draw inspiration from the pre-colonial period of their peoples' history. During my days as a student, what I found irrelevant to my needs as a Black South African was the need to memorise the long list of British colonial governors who took turns in governing the Cape Colony during the First and Second British occupations in 1795 and 1806 respectively. I also found it irrelevant to my needs to have to know how many pairs of shoes Queen Victoria of England and Queen Marie Antoinette of France had. I could have surely done with more African precolonial history periods in my class.

Arising from the above, I cannot help concluding that Mr. Colenbrander either believes or at least strongly suspects, that the KwaZulu authorities have used the Year of King Cetshwayo to perpetuate ethnic divisions and to divide black people in their struggle for liberation. To imply, as Mr. Colenbrander apparently does, that the celebration of the Year of King Cetshwayo had anything to do with attempts "to mobilise support for an ethnically-based, quasi-traditional political organisation" is tantamount to adding insult to injury. If by that socalled "ethnically-based, quasi-traditional political organisation" Mr. Colenbrander means Inkatha, then he must be blind to political realities of our time. Nowhere in Inkatha's constitution is it stated that it is an "ethnically-based" liberation movement. This has been stated by Inkatha spokesmen over and over again.

It now seems to us that Inkatha's only crime is that it was founded by Zulus and that Zulus happen to be the largest ethnic group in South Africa. Yet nothing is ever said about the fact that the A.N.C. was also founded by Zulus in 1912 in Bloemfontein. Inkatha membership is open to all black people and indeed it has hundreds of thousands of non-Zulu members within its ranks. I do not understand what Mr. Colenbrander means by a "quasi-traditional" organisation. On my part I have not come across a single black liberation movement in Southern Africa that does not subscribe to traditional African political tenets. While the U.N.I.P. of Zambia for instance, subscribes to African humanism, Inkatha subscribes to the philosophy of UBUNTU – BOTHO which emphasises the primacy of the human being (UMUNTU). These are traditional African political tenets. Or must Inkatha perhaps be "quasi-Western" or "quasi-Eastern" in its political orientation?

Further, Mr. Colenbrander should know that the KwaZulu Monuments Council that was responsible for organising celebrations during the Year of King Cetshwayo is a multi-racial Council consisting of white and black South Africans. Its Chairman is Dr. Tim Maggs, the famous Natal archaeologist. The

KwaZulu Monuments Foundation which is responsible for collecting funds on behalf of the Monuments Council, is also a multi-racial organisation chaired by Mr. George Chadwick, the famous Natal historian. Every South African who is interested in South African history can become a member of the KwaZulu Monuments Foundation. Indeed scores of white South Africans are already members, as well as interested persons from overseas countries. It will be recalled that in 1979, the KwaZulu Government and the Natal Provincial Administration jointly decided to celebrate the centenary of the Anglo-Zulu War in a spirit of reconciliation and with the aim of honouring heroes on both sides. Multi-racial celebrations were held in Isandlawana, Rorkes Drift and Ondini, culminating in a historic multi-racial dinner in Durban.

Chief Buthelezi, the present leader of the Zulus and a descendant of King Cetshwayo, has never in his numerous speeches and public statements advocated a separate political destiny for the Zulus nor claimed that Zulu Kings like Shaka, Dingane and Cetshwayo are exclusive Zulu public property. On the contrary, he has always maintained that Zulus are South African citizens and shall never accept socalled independence that Pretoria is offering them. Zulu Kings who left their mark on South African history did so as South Africans and as such every South African who cherishes the history of his country is entitled to honour them.

In September 1983, Inkatha decided to use the King Shaka celebration in Umlazi as a multi-racial meeting to protest against moves by the South African Government to introduce the tri-cameral parliament. This turned out to be the biggest multi-racial protest meeting in the whole national campaign against the tri-cameral parliament, and about 30 000 people were present.

All the above facts should re-assure Mr. Colenbrander that neither Inkatha, the KwaZulu Government nor any sane Zulu person for that matter, will ever attempt to regard a Zulu figure like King Cetshwayo as Zulu public property. King Cetshwayo is a South African hero and his struggle against colonialism was waged on behalf of all the people of South Africa who value freedom and human dignity. The unfortunate events on the campus of the University of Zululand in October 1983 had nothing to do with the celebration of the Year of King Cetshwayo, as Mr. Colenbrander alleges. Instead of trying to come up with simplistic excuses for the tragic events at the University of Zululand, we as adults, should be co-operating in teaching our young people that differing political views can be expressed honourably without hurling insults and abuse at our political opponents, and their leaders. We in Inkatha are already doing our part in this regard and have taught our young people that it pays to exercise self-restraint even when faced with extreme provocation and ferocious violence.

After reading Mr. Colenbrander's article, I could not help concluding, rather reluctantly, that black oppression in South Africa is increasingly assuming various forms. The first and well-known form is political oppression resulting from discriminatory laws that deny black people full political rights in the land of their birth. The second and hitherto ignored form is cultural oppression, otherwise known as cultural imperialism. This cultural oppression/ imperialism manifests itself in statements and actions by

Dr Oscar Dhlomo

some (not all) apparently well-meaning white fellow-countrymen who subscribe to the liberal tradition. In their over-enthusiasm to sympathise with the black liberation struggle these fellow-countrymen fall into yet another temptation of attempting to prescribe destiny for black people. Cultural oppression and prescribing destiny for black people consist in a non-black person attempting to dictate to black people:

1. who, amongst their cultural and historical heroes should be honoured
11. how and for how long such heroes should be honoured
111. what political loopholes should be avoided in honouring such heroes.
1V. which aspect of their history they should be allowed to study
V. who their authentic leaders are, and
V1. which black political movements are credible when compared to others.

The Black Consciousness political theory (which Inkatha totally rejects) that no white person can ever be a genuine ally in the black liberation struggle was propounded as a reaction against cultural oppression and the tendency by some whites to prescribe destiny for black people.

The white liberal tradition in South Africa is indeed a noble and illustrious one. It has produced revered heroes with whose memory every freedom-loving South African, regardless of the colour of his skin, would like to be associated. The history of the black liberation struggle would indeed be poorer without the substantial contribution of white liberal fellow-countrymen, both alive and dead. I am however, afraid that hurtful and unsubstantiated statements directed at black people, their leaders and political organisations go a long way towards eroding the mutual respect that our forebears have patiently nutured over many decades. It is high time the likes of Peter Colenbrander took careful note of these issues. □

PART 3 by MICHAEL COWLING

TERRORISTS, GUERRILLAS, FREEDOM FIGHTERS - AND OTHER THINGS THAT GO BUMP IN THE NIGHT

Parts 1 and 2 of this article discussed the historical development of "rules of war" and the attempts to codify them in the Geneva Conventions and the later "protocols" to the Conventions – and the shortcomings of these agreements when confronted by the problems raised by guerrilla-type wars of "liberation".

What about the A N C? At present it is submitted that the latter's campaign of military violence against the South African government (although rapidly escalating) is not of sufficient intensity to warrant classification as an international conflict. However, this does not imply that the situation is merely internal and hence to be regulated exclusively by South African domestic law. In fact there are a number of factors which indicate the contrary. In the first instance, the ANC enjoys a considerable amount of legitimacy within the international community. Thus, recognition as a liberation movement by the United Nations has accorded the organisation a degree of international legal status which cannot simply be ignored by the South African government. This was considerably enhanced in relation to the laws of war by the decision by the ANC to accept and be guided by general principles of international humanitarian law which relate to armed conflicts. The ANC has further undertaken to respect the rules of the 4 Geneva Conventions of 1949 and Protocol 1 of 1977 when this is practically possible. Although South Africa is not a signatory to the 1977 Protocols, there is a possibility that the latter might crystalize into norms of customary international law (as happened in the case of the 1949 Geneva Conventions). This would mean that the conflict between the S A government and the ANC could be classified as international in terms of article 1 (4) of Protocol I i.e. in the sense of its being a liberation struggle against a racist regime. The other important factor relates to the fact that if the hostilities continue to escalate at the present rate, it is merely a matter of time befor South Africa will be plunged into a situation of full-scale civil war. The problem in this regard is that it is difficult to gauge the precise degree of escalation in order to satisfy the requirements of international law. (Indeed, this is what impeded any early settlement of the Rhodesian Bush War because the Smith regime refused to acknowledge that the conflict had become internationalized. Hence the Rhodesian government stubbornly persisted in regarding it as purely domestic and thus to be settled by internal means exclusively). But even at the present stage of development, the conflict situation between the ANC and the South African government cannot be labelled as merely internal. Indeed, the ANC campaign is politically motivated and of a sufficiently sustained military nature to fall within the ambit of an armed conflict not international in character. This serves to distinguish it from a mere riot, temporary disturbance or purely criminal activity and hence renders it liable to international regulation.

It is all very well to talk in terms of international legal regulation, but one is now confronted with the problem of analysing the effects of such regulation. It has already been seen that the laws of war governing armed conflicts of an internal character (as contained in common article 3 of the 1949 Geneva Conventions and the 1977 Protocol II) are notoriously vague and lack any real substantive and obligatory content. But perhaps this is advantageous since guerrilla warfare, by its very nature, is extremely difficult to subject to any form of legal regulation and vague formulations afford a necessary measure of flexibility. Therefore, at the outset, one should not view the regulation provided by the laws relating to internal armed conflicts in terms of specific consequences emerging from detailed rules, but rather look at the broad implications arising out of the general principles which underline the laws of war.

OBJECTIVITY

One of the more fundamental effects of legal regulation will be the introduction of a measure of objectivity into one of the most difficult types of armed conflict viz. civil war. The latter is usually characterised by a high level of emotional intensity which, in the case of South Africa, is greatly exacerbated by the fact that the parties to the conflict will ultimately be divided along racial lines. It is clear that only in the case of objective international legal regulation is it possible to effectively deal with a situation in which one man's "criminal terrorist" is another's "heroic freedom fighter". The domestic criminal law of the incumbent government is patently unsuited in this respect.

The international regulation will undoubtedly influence the attitudes of the conflicting parties in relation to each other since it is essentially based on humanitarian principles. In the first place, both sides will be accorded a measure of international legitimacy. This will enable them to develop some form of mutual respect for each other which will inevitably lead to a reduction in the intensity of emotional and personal animosity between them. This in turn will have a positive effect on the concept of reciprocity. In cases where the incumbent government labels internal military opposition groups as mere criminals and affords

them like treatment, such treatment is likely to be reciprocated by the opposing groups. This inevitably leads to an escalation of atrocities. In basic terms this means that if the South African government continues to hang members of the ANC, then what kind of treatment can South African soldiers expect when they fall into the hands of the ANC? This is a practical problem which would be greatly reduced in the event of international legal regulation.

Such international legal regulation will also result in the introduction of a far greater degree of neutrality in internal armed conflicts. This is especially important in respect of the civilian population because one of the fundamental tenets of the laws of war is that civilians should be placed outside the sphere of direct military operations and are hence protected in this regard. And yet one of the tragic characteristics of most civil wars has been the high death toll among civliians. For example the casualty rate for civilians "caught in cross-fire" during the Rhodesian Bush War was fifteen times higher than that pertaining to combatants on both sides.

GOVERNMENT CONTROL

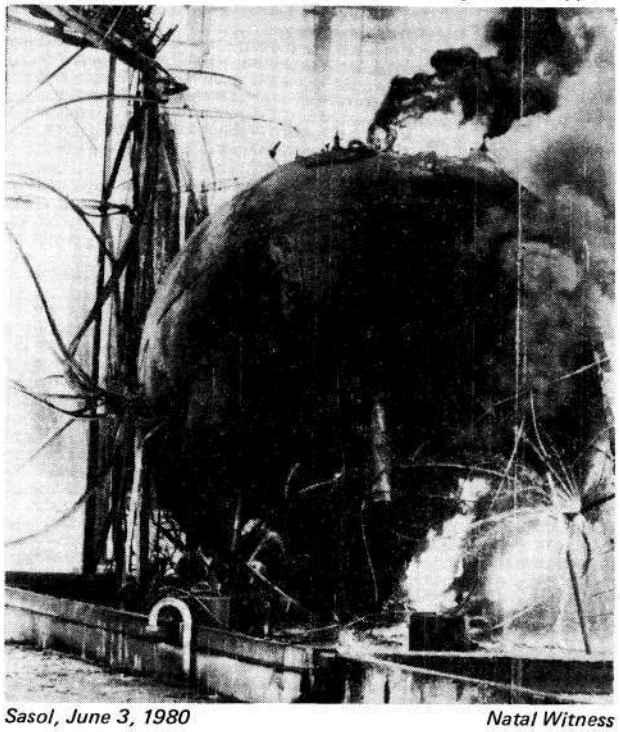
To a larger extent this results from the fact that incumbent governments monopolize state institutions and thus enjoy total control over the civilian population. This has the effect of the South African government being able to define such concepts as "patriotism", "national interest" and "state security" in extremely narrow terms based on the sole interests of the exclusive white minority from which the ruling National Party derives its support and power. And yet, notwithstanding the exclusion of Blacks from all facets of the political process, the government still demands the allegiance of the latter. Therefore, far from being a situation of civilian neutrality, the government is actually requiring indirect (but nonetheless active) support of Black civilians in the form of positive duties to assist security forces by rendering information concerning and refusing assistance to the guerrillas. And those Blacks who do not comply with these duties are branded as traitors and punished. It does not require much imagination to realise the effect this attitude will have on the S A Defence Force since, as occurred in the Rhodesian Bush War, failures in intelligence gathering are generally ascribed to lack of co-operation on the part of the local population. This is bound to lead to a serious degeneration in the treatment of the latter.

The subjective approach to neutrality on the part of incumbent governments would be greatly reduced by objective international legal regulation. As a result incumbent governments would be forced to recognise the claims of the opposite side to limited forms of assistance from the civilians. This especially takes the form of medical assistance and the right to silence on the part of the latter. Thus, the assumption on the part of incumbent governments that they have the sole right to co-operation from the civilian population (and hence the imposition of duties to inform) is a blatant violation of the basic idea of neutrality in civil war. This is especially so in South Africa where the opposing groups are so distinctly divided along racial lines. Surely in such situations neutrality implies that civilians should have the right to choose which side they wish to indirectly support?

OTHER AREAS

There are a number of other areas in which objectivity will have the effect of rendering the conduct of a civil war more humane. Thus, for example, the choice between military and civilian targets will be placed on a realistic level. It is a fundamental principle of the laws of war that only military targets should be the objects of direct attack. However, if the incumbent government labels the opposing group as a mere bunch of criminals, this will mean that no targets will be considered by the government as legally susceptible to attack. Thus, no matter how military the nature of the target might be, an attack on it will be classified as a criminal act. In this regard it is important to note that it has been (up until now at any rate) ANC policy that its operations will be restricted as far as possible to military targets. This does not mean that civilian targets are totally excluded since the latter are nonetheless indirect objects of attack. And it is submitted that international legal regulation will place this issue in a clearer perspective since the South African government would no longer be in a position to classify all acts of sabotage as cowardly, perfidious and treacherous.

But possibly the most important aspect of international legal regulation is the effect that it will have on the issue of participation. Although not specifically enumerated in the laws relating to internal armed conflicts, it is one of the fundamental principles of the laws of war that participants in a conflict should not be punished for the mere act of participation. Therefore, since the ANC enjoys a considerable measure of international legitimacy, it is submitted that members of that group engaged in hostilities against the South African government should not be punished provided they have complied with the general requirements of the laws of war relating to participation, and provided attacks are not aimed directly at civilian targets. The latter requirements entail identification as military personnel (as distinct from civilians) and implies the wearing of some kind of military uniform and the carrying of arms openly during actual military operations. Owing to the exigiencies inherent in the nature of guerrilla-type



Sasol, June 3, 1980 *Natal Witness*

warfare, these standards are not very exacting and it can be said that individual members of the ANC have generally complied satisfactorily.

CAPTIVES

This poses the fundamental and very important question as to how should the South African government treat captured ANC Members? More particularly, is the government justified in executing these captives? The laws of war are clear on this issue: any participant rendered **hors de combat** by reason of capture may only be detained by the other side in order to prevent his constituting a threat to the latter. Therefore, should the conflict in South Africa become internationalized, the S.A. government would come under an international obligation to confer prisoner-of-war status and treatment on captured ANC members. So at this stage it is contrary to the fundamental basis of international legal regulation of armed conflicts to bring down the finality of capital punishment on politico-military opponents of an incumbent government. Such action leaves no room for compromise or amnesty in the future and besides, the international legal regime has never looked favourably upon the execution of possible future leaders of a state.

In addition, the issue of international legal regulation will have a positive effect on the question of the ultimate settlement of a particular dispute. Most conflicts can only be finally settled through a process of negotiation between the parties to such a conflict. And negotiation presumes that all parties to a conflict recognise — to a greater or lesser extent — the legitimacy of each others' existence. However this situation cannot arise where a conflict is regulated solely by the internal criminal law of the incumbent government since (as is occurring in South Africa) the latter usually labels members of opposition armed groups as mere criminals. It is extremely difficult from a political point-of-view for any government to undertake negotiations with and grant political concessions to a group that it hitherto regarded as criminal. This was the dilemma that confronted the Smith regime in Rhodesia and is already making itself felt in South African political circles. Thus just as Ian Smith stubbornly refused to negotiate with the Patriotic Front (whom he regarded as nothing more than a bunch of terrorists and murderers) until it was too late, so the South African government seems headed in the same direction. And yet it is submitted that the only possibility of a real settlement of the conflict situation at present confronting South Africa is for all parties to talk to each other around the negotiating table, since one can rest assured that the ANC is not simply going to disappear. And this is precisely what is implied by international legal regulation, viz that the latter confers legitimacy on both sides with the result that parties will not be precluded from negotiating with each other.

NEUTRAL GROUPS

Finally, this concept of neturality and the concomitant principal of humanity in armed conflict will be further enforced by reason of the fact that the laws of armed conflict confer certain powers of regulation and control upon such internationally neutral groups as the International Committee of the Red Cross. The latter organisation has played an extremely important role in the formulation of the 1949 Geneva Conventions and the 1977 Protocols. It has a long history of neutrality and objectivity during times of war and has played a very important role as regards treatment of prisoners, distribution of aid and supply of medical facilities as well as undertaking certain general supervisory functions during the latter stages of the Rhodesian Bush War. Thus the mere presence of the Red Cross together with its powers and functions during armed conflict will greatly enhance the cause of humanity in warfare.

In conclusion it can be said that the basic aim of international regulation of internal armed conflicts is to avoid situations where incumbent governments utilise their own domestic laws to label politico-military opposition groups as criminals, terrorists — especially in cases where such groups are regarded as heroic freedom fighters by a substantial section of the population. It is thus clear at the outset that the labels attached to these groups (viz. terrorists, guerrilla, freedom fighter) is of the utmost importance in determining the opposing side's attitudes to each other. So therefore the basic function of international legal regulation is to accord both sides a status of legitimacy in much the same way as the parties to a full-scale international armed conflict. This will tend to defuse the intensity of the situation — even if only in an indirect sense. This is because, in addition to the question of regulating the conduct of parties to a conflict, the laws of war seek to educate and divert individual participants from inhumane practices. In such an atmosphere it becomes easier for participants to resist the pressures of military necessity by qualifying the latter in terms of fundamental humanitarian principles. This means that throughout the hierarchical chain of command inherent in any militarily organised group. the line of least resistance will no longer be to conduct oneself in an inhumane manner (by committing atrocities, etc.) but rather to act as humanely as possible in accordance with the basic principles of the laws of war. And this should extend to government institutions and arms of government which are responsible for the implementation of these ideals. And it is in this sense that the changing attitude of the courts in South Africa (in the form of increasing sentences and greater resort to imposition of the death penalty for political crimes) is to be deplored.

Therefore if one accepts military violence as an inevitable and integral part of South Africa's ultimate political solution (which must necessarily result from the exclusion of the Black majority from the political process), then it must surely be within the interests of all South Africans that such conflict be conducted in as humane manner as possible. And it is in this respect that the laws of war and questions of international legal regulation become relevant. Whereas it is submitted that South Africa is already engaged in a full-scale international armed conflict in Namibia, internal hostilities between the government and the ANC are rapidly escalating. Thus it is only a matter of time before South Africa will come under a clear obligation to apply the full body of the laws of war. Failure to do this is a war crime for which individuals as well as the state may be punished in terms of international law. Although this might seem unlikely at present, the South African government would do well to consider this aspect from a point-of-view of possible future developments. After all, how many Nazis would have thought in 1943 that 3 years hence they would be standing trial for acts considered to be internally legitimate? □

by ROBIN HALLETT

NIGERIA TODAY

Viewed from the outside, Nigeria has the appearance of being a hugely exasperating country . Exasperating in its astonishing ethnic diversity, that pullulating conglomeration of "tribes" (a term that should be banished from the vocabulary of political commentary, unless we are also going to apply it to, say, the United Kingdom and talk about the English, the Welsh, the Scots and the Northern Irish as "tribes".) Exasperating in the confusion of its politics – how difficult it is to remember what all those party initials – NPN, NPP, UPN, GNPP and so on – stand for. Exasperating in the country's descents into violence: at least a million Nigerians died in the Civil War of the late 1960s; the little-reported urban riots that errupted in the great northern city of Kano in December 1980 led to at least 5,000 deaths – so that this outbreak of urban violence must be regarded as one of the very worst incidents of its kind in the bloody history of the twentieth century. Exasperating, finally, in the rampant corruption that has become an endemic feature of Nigerian life, a corruption that has led to the wanton squandering of the country's most easily exploitable resources, its wealth in mineral oil. Add to all this the fact that Nigerians in their dealings with outsiders, both in their own country and abroad, have often displayed an abrasive arrogance that provokes deep resentment and dislike, and one can begin to see why Nigeria is a country that has not inspired a particularly warm feeling from those who have made only peripheral contact with its peoples.

FROM THE INSIDE

Viewed from the inside the spectacle looks rather different. In the first place there is the pride that Nigerians take in the fact that their country is Africa's "giant". Look at the estimates of population – there are no accurate statistics, population counting being a process that carries with it profound political implications. Current estimates put the country's population at about 100 million, almost four times that of South Africa. In area Nigeria is about three quarters the size of South Africa, yet taking the population of the continent as a whole, one African in four is a Nigerian.

Nigerians have other, even more deeply rooted, reasons for pride. Their history is the richest of any state in black Africa. Long before Van Riebeeck landed at the Cape, there were great kingdoms flourishing in the territory that came later to be known as Nigeria: the imposing sultanate of Bornu dominating the country to the West of Lake Chad; the cluster of Hausa kingdoms, Kano, Katsina, Zaria and others, their urban settlements soundly founded on the economic base of efficient agriculture and vigorous trade; the constellation of Yoruba polities, of which Oyo and Ife were the most prominent, with their elaborate systems of political organization and their marvellous tradition of craftsmanship – it is no hyperbole to compare the naturalistic bronze and terracotta heads revealed by archaeological research in Ife and now dated to the fourteenth century, to the greatest works of classical sculpture: the forest-kingdom of Benin that so impressed the Portuguese, the Dutch and the English when they made contact with it in the sixteenth century: the diversity of Ibo polities, 'stateless societies' to the historian and the anthropologist, that colonized the dense tropical forest east of the Niger and produced among other things the fabulous bronze artifacts found at Igbo Ukwu (dated through the radio carbon process as early as the ninth century AD) – these and many other early states and communities provide Nigerians with a sense of historic greatness that is an enviable quality for any people to possess.

DIVERSITY

So it can be seen that the obverse of ethnic diversity is cultural richness – a richness that the visitor to Nigeria can most easily perceive by engaging in that highly pleasurable process of wandering around the great open air markets in such towns as Kano, Ibadan or Onitsha. But a political price has to be paid for this creative opulence. The difference between Nigeria's different peoples runs very deep. Difference in language: Hausa, for example, something of a lingua franca in the north, is as different in linguistic terms from Yoruba, the main language of the south-west, as English is from Urdu or Chinese. Differences in religion: much of northern Nigeria is clearly part of dar-al-Islam, the land of Islam, while much of the south has been profoundly affected by the work of Christian missionaries. Differences in political experience: there is a world of difference between the egalitarian communities of the Ibo and the socially stratified, almost feudalistic structures to be found in the old Muslim emirates of northern Nigeria. Differences in the economy: the north a land of grain and cattle, the south of root crops and fish. Differences, as any one who has the opportunity of meeting a great range of Nigerians, soon comes to perceive, in personality patterns: the contrast, putting it at its simplest, between the reserve and sense of decorum of Muslim northerners and the extrovert bonhomie to be encountered so often in the south.

HISTORY

Historically Nigeria in its present shape is a highly artificial construction. It lacks a deep organic sense of unity: in the past a city such as Kano was more closely in touch, through the trans-Saharan caravan trade, with the Mediterranean world than it was with the Atlantic coast. Nigeria came together to form a single country through the accident of conquest at the time of the European 'scramble for Africa'. Had the French and the Germans moved more vigorously from their bases in Dahomey and Cameroun then the map of West Africa would have taken a very different shape. As it was the British found themselves burdened with the task of establishing the 'iron grid' of the colonial superstructure over an astonishing diversity of political communities, ranging from highly sophisticated Muslim states to tiny independent communities set in remote, almost inaccessible areas.

In the late 1940s the British decided that Nigeria must be prepared for independence – and educated Nigerians, their number rapidly increasing with the expansion of schools and universities, found themselves embarked on a political debate that can be said never to have ended. For how does one govern a state like Nigeria – a state made up of as great a diversity of peoples as some imaginary European state that contained in its population sizeable numbers of Germans and Spaniards, Englishmen and Russians, Greeks and Swedes,

1 Federal Capital Area
2 Lagos State
3 Ogun State
4 Oyo State
5 Kwara State
6 Niger State
7 Sokoto State
8 Kaduna State
9 Kano State
10 Bauchi State
11 Borno State
12 Gongola State
13 Plateau State
14 Benue State
15 Anambra State
16 Imo State
17 Rivers State
18 Bendel State
19 Ondo State
20 Cross River State

with sizeable minorities of Albanians, Swiss, Irish and Basques thrown in? This is the basic problem of Nigerian politics. Only when one has grasped this problem in all its complex implications can one begin to understand Nigerian politics. What is the right answer – a Federation based on the Westminster tradition of parliamentary democracy? That was the system laboriously worked out in constitutional conferences in the 1950s and tried, only to be found wanting, in the first Nigerian Republic overthrown by military coup in January 1966. So what about a federation with a greater number of units – nineteen states as opposed to the four regions of the first republic – and a system of central government copied from the constitution of the United States? That too has now ended in failure, as was demonstrated by the ease with which the soldiers again seized power on the last day of 1983. Under the British Nigerians became familiar with a mild system of authoritarianism. The soldiers who ran Nigeria between 1966 and 1979 can be seen as the natural successors of the old British governors, residents and district officers. Now the soldiers are back in power. But many Nigerians have a natural relish for democracy, for a system that allows freedom of association and freedom of expression. Military rule offers some assurance of stability and a possible end or at least restraint on corruption – but it lacks the necessary sanction of popular legitimacy. This the soldiers know very well: sensible men, they have no desire to be in power for ever

PROBLEMS

Cross cutting these political difficulties lie the country's mounting social and economic problems. The fabulous oil boom of the 1970s allowed many Nigerians to indulge in the illusion that they were not essentially a Third World Country, with all the horrendous problems of deepening poverty that Third World Status now implies. But now there is a glut of oil in the world, Nigeria's oil revenues are falling, the burden of indebtedness is growing heavier, life for all but a favoured few is becoming more and more difficult. The capital city of Lagos has come to assume a nightmarish quality of urban squalor and violence. The squatter settlements increase, the neglected countryside sinks deeper into listlessness and stagnation. In the 1950s the Nigerian economy was based on the export of agricultural products, groundnuts in the north, palm oil in the east, cocoa in the west. Export prices in those halcyon post-war years were riding high, and though much of the wealth derived from these products was syphoned off by marketing boards and used to benefit the urban areas and so provide lucrative opportunities for enrichment to the rapidly emerging national bourgeoisie, nevertheless a fair proportion of the proceeds still came aback to the producers themselves, the farmers and their families in the rural areas. 'Now' – to quote from the 'survey of Nigeria' published in the **Economist** of January 23, 1982, the frankest and most penetrating report that I have seen – 'Nigerian export agriculture is dead and the communities it supported are dying'. Now one-sixth of Nigeria's import is made up of items of food, and the proportion is steadily increasing.

So too is the population –. Nobody knows quite how fast, but population growth rate could be as high as 3,5% . That would mean that by the year 2000 Nigeria would have a population of 200 million. After meeting the fuel needs of this doubled population, Nigeria would have little oil left to export. Without oil, which now accounts for 95% of its export earnings, Nigeria would have almost no foreign exchange – and therefore no money to buy the additional food that the country would certainly require. 'A formula for catastrophe' as the Economist grimly remarks. It is a sombre prognosis, especially when one reflects that growing economic hardship is bound to provoke increasing political turbulence. To many Nigerians the era of the oil boom must begin to look like a fool's paradise. Yet Nigeria with its range of universities and centres for higher education, has produced in recent years the largest professional and managerial class to be found anywhere in black Africa. There are many able and concerned men and women in the ranks of this new elite. They have a hugely difficult task before them – but a task no more daunting than that to be faced by realists in any African country including South Africa.

SOUTH AFRICA AND NIGERIA

Between Nigeria and South Africa the barriers have long been up. When the day comes that South Africa acquires a ruling class with a proper sense of priorities, a proper awareness of the deep demographic and ecological threats that face what seems to be the richest country in Africa, then Nigerians and South Africans will be able to get together, compare notes, think about the best ways of tackling similar problems, pool their expertise, lay through a proper devotion to the land of Africa the foundations for a mutually enriching camaraderie. But do not let us indulge in facile optimism. Educated Nigerians hate the apartheid system with peculiar intensity. There will have to be massive changes in Pretoria – not trivial 'reforms' and deceptive constitution-mongering – before a Nigerian-South African accord becomes even remotely possible. □

by SHEILA MEINTJES

UNRAVELLING THE COMPLEXITIES

HISTORICAL DICTIONARY OF SOUTH AFRICA by CHRISTOPHER SAUNDERS.
African Historical Dictionaries No. 37. The Scarecrow Press, Metuchen NJ, 1983.

Dr. Saunders' **Historical Dictionary of South Africa** is one of a series produced by Scarecrow Press devoted to countries of the African Continent. Dictionaries of this kind are useful to non-specialists and specialists alike as handy, quick reference tools. The **Historical Dictionary of South Africa** has been admirably produced : entries are written simply and clearly, with lots of cross references.

The Dictionary commences with a chronology of South African historical and contemporary development, beginning in the third century AD and ending in August 1982. Two contemporary maps are followed by a brief introduction to South Africa. The dictionary itself has 354 entries in its 191 pages, on a wide variety of topics. The breadth of subject matter in the dictionary is suggested by the scope of the select Bibliography which is divided into nine subject headings : reference; biography; culture; the economy, history; politics, religion; sciences; society. A brief bibliographic guide is also provided.

The majority of South African school children learn that relevant history began in South Africa in 1652 with the landing of Jan van Riebeeck, an official of the Dutch East India Company, at the Cape. They just might have learned that prior to 1652, in the fifteenth century, it was the Portuguese who first discovered the Cape. Dr. Saunders' chronology has provided us with a quite different beginning point and perspective, which is elaborated on in entries in the dictionary itself.

The chronology begins in the early iron age, which lasted from the third century to the tenth century AD. So we have over a thousand years of 'pre-history' in South Africa before the arrival of the Portuguese and Dutch East India Company. The entry under **Iron Age** elaborates on these early inhabitants. From the third century, they worked and used iron, they practiced agriculture, raised cattle and made pots. The people of the later iron age, from the eleventh century onwards, distinguished by their pottery style, moved from the valley bottoms, lived on hilltops and the sides of valleys. They were engaged more fully in cattle husbandry. In the Transvaal, their productive activity centred around mining for gold, copper and tin hundreds of years before the modern mineral revolution at the end of the nineteenth century. The people of the later iron age appear, too, to have lived within wealthy and powerful state systems.

Dr. Saunders' periodization pushes back the conventional view of historical origins in South Africa. The evidence he brings to the dictionary calls into question, as does much revisionist scholarship in South African historiography, the notion that Bantu-speaking people have tenuous claims to being original inhabitants and that they, as much as the Europeans were colonisers. This is a myth that has been used to justify contemporary racism and whitewash the conquest and consequent oppression of black South Africans by Voortrekker and British rule in the nineteenth and twentieth centuries. By contrast, the strength and originality of Dr. Saunders approach is the weight he gives to the historical experience of all groups in South Africa.

The balance of Dr. Saunders' approach can be seen in the way he gives equal weight to the precolonial as to the post-colonial periods in the entries of **agriculture** and **economic change.** The entries, taken together, provide a neat history of economic transformation. They begin with the transition from hunting and gathering to pastoralism, a movement which occurred amongst the Khoi-Khoi. Agriculture was associated with iron technology, which developed sui-generis. The Khoi-Khoi and Bantu-speaking people were engaged in production for long distance trade from about AD 1000, long before Europeans established a victualling station, and later a colony, at the Cape. The advent of a European settlement transformed, in its turn, the nature of the economy. It introduced a merchant economy locked into a world-wide trading network, the effect of which was to increase the scale of trade and increase demand for agricultural over pastoral products. In the late nineteenth century, the discovery first of diamonds, then of gold, shifted the centre of gravity from the coastal merchant parts to the interior. The mineral revolution provided the basis for subsequent growth and the industrial transformation which occurred in the twentieth century. In entries under **diamonds, gold, mining, manufacturing industry** these developments are discussed. The development of **trade unionism** and **industrial conciliation** in the twentieth century is also narrated.

There are entries chronicling the history of South Africa's diverse cultural groups. Following these through, one gets a sense of the rich fabric of South African historical experience. The history of conflict and of opposition appears under such varied entries as : **Afrikaans, 'Coloured', African National Congress, Pan African Congress, Indians.** There is somewhat of a Cape bias in Dr. Saunders' emphasis. For instance, whilst he notes early Cape African political involvement in the formation of **Imbumba Yama Nyama,** he fails to note the formation in 1888 of the Funamalungelo Society of the Natal Kholwa exempt from customary law. The Funamalungelo Society subsequently changed its name to the Natal Native Congress, and its members were founders of the South African National Native Congress, along with other provincial organisations in 1912.

Helen Joseph *Natal Witness*

The entry on the **Congress Alliance** of the 1950s is a bit vague. When was it formed? What was its relationship to the early 'Doctor's Pact of 1947 between the leaders of the ANC, and the Transvaal and Natal Indian Congress? Dr. Saunders has erred in claiming that the Alliance included the Federation of South African women. Though it is true that individual women, members of FSAW affiliates, were on the National Executive Committee of the Alliance, they were there as representatives of their own organizations. Lilian Ngoyi represented the ANC, and Helen Joseph the Congress of Democrats. It is also somewhat misleading to say that the FSAW was founded by Helen Joseph. It was first mooted in 1953 by a group of Cape-based women in the trade union movement, amongst them Frances Baard and Ray Alexander. Helen Joseph rose to prominence in the FSAW as a result of her organizing tour of South Africa prior to the great march of women to Pretoria on August 9th, 1956. Thereafter she became National Secretary, and Head Office was transferred from Cape Town to Johannesburg. Cheryl Walker's recent book, **Women and Resistance in South Africa,** banned in South Africa, provides a good history of the FSAW.

There will invariably be differences in approach to history. Dr. Saunders has admirably brought out some of these in his entry on **historiography,** and entries under individual scholars like **De Kiewiet, Macmillan, Thompson, Marks and Legassick.** The **Neumark thesis** on trekker links to the market, and the **Bundy Thesis** on the rise and decline of a black peasantry are explained. Surprisingly, the Wolpe thesis is not mentioned, although its influence on South African socio-economic analysis has been profound. A weakness of the dictionary is the neglect of a key aspect emphasised by Harold Wolpe in his seminal article "Capitalism and cheap labour - power in South Africa : from segregation to apartheid", **Economy and Society** vol 1 no. 4; that is, the issue of labour control.

South Africa arguably has the most sophisticated system of labour control in the world today. The **Bantustans, migrant labour** and **mass removals** are part of that system, and, in fairness Dr. Saunders has given them a place in the dictionary. But he does not mention the influential Riekert Commission on influx control, nor is the key institution of labour allocation and control in South Africa, the labour bureau, administered through the Department of Cooperation and Development mentioned. This key government department is almost an **imperium in imperio** with enormous discretionary administrative and policing powers over the African population. It at least deserves a mention in any dictionary on South Africa.

But no dictionary on South Africa is going to be able to capture the totality of the South African experience from the third century to the present. Dr. Saunders has approached his task with considerable skill and insight, and with a thoughtfulness that unravels some of the almost intractable complexities of South African history without creating confusion. The dictionary is one that any South African school or household ought to have on its bookshelves. □

A SAD TALE

It's a pity about George. He was a nice lad in many ways. He was well brought up by his parents, who taught him to be thoughtful and considerate. He was an outgoing, pleasant, hard-working, creative sort of person. But he had this terrible vice that he simply couldn't get rid of, and that no advice or persuasion could remove : he didn't like killing people.

His parents spent many anxious hours discussing the case with their friends and with specialist psychologists. He was subjected to various tests and questionnaires and interviews. But the true root of the problem couldn't be found. Somehow his nature seemed not to possess that willingness to obliterate other people which is one of the obvious hallmarks of common sense and civilization.

In the end the experts had to tell his distraught parents : "All we can say is that he was born with something missing. It's not brain damage, exactly, but a sort of cerebral deficiency."

The parents were relieved, however, to be told that researchers had perhaps found a cure for their son's illness. And they were only too happy for him to be hospitalized in the army's detention barracks.

Vortex

by BILL GUEST

PROVOCATIVE SCHOLARSHIP

The Emergence of Modern South Africa: State Capital, and the Incorporation of Organized Labor on the South African Gold Fields, 1902 - 1939 by David Yudelman. Westport, Connecticut: Greenwood Press, 1983. (Distributed by David Philip.)

The history of South African goldmining and the evolving relationship between that industry and successive governments since the 1880's has already been related, in substantial detail, from several differing perspectives. In particular, the reconstruction era following the disruption of the Anglo-Boer war, the emergence of a militant and better organized white work force which gave vent to its discontent in the Rand 'revolt' of 1922, and the implications of the Pact election victory in 1924 have all been subjected to close analysis. So too have the origins and nature of the South African state itself. The significance of David Yudelman's contribution to this already well-documented period lies pre-eminently in his vigorous, though not entirely successful, development of an interpretation which is independent of those offered by his predecessors.

In avoiding easy identification with any prevailing school of thought, Yudelman's book is in no danger of being disregarded. He examines the struggle between labour and capital through several eventful stages in the history of South African goldmining in order to substantiate the contention that 'contrary to the widely accepted view of South Africa's past, organized (white) labour was decisively subordinated and co-opted by an alliance of state and capital in the early part of the twentieth century, and that, partly as a result, a symbiotic relationship of state and capital was cemented, which has endured to the present.'

Yudelman's thesis is bound to add further controversy to what is an already hotly-debated field. For example, his emphasis on the essential continuity of history challenges the climactic significance which other scholars have attached to certain events within the period under consideration and questions the uniqueness of South African racism by viewing it in a broader historical and international context. Similarly, his attempt to distance the 'state' from 'capital' by implying that the former pursues (or can pursue) interests of its own which are quite independent of the latter raises questions about the nature of both, and of their inter-relationship, which are understandably not fully exhausted in this book. Not least, the illuminating analogy which he draws between the crisis generated in the 1920's by an aggressive white work force and that posed in the 1980's by the black work force will be welcomed by many as a tangible demonstration of the dynamic interplay between past and present but dismissed by others as grossly exaggerated.

One need not be entirely convinced by Yudelman's argument to recognize this book as a work of meticulous scholarship. Carefully researched and drawing partly on valuable new primary evidence, it offers much by way of useful empirical information as well as at the level of methodology and theoretical analysis. It is written with a fluency which makes for remarkably easy reading considering some of the fairly complex issues which it encompasses. The title of this work is misleading in so far as one might reasonably expect any account of 'the emergence of modern South Africa' to cast a much wider net than is evident here. Nevertheless, David Yudelman has made a significant contribution to a debate which is still central to South African history and politics. □

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