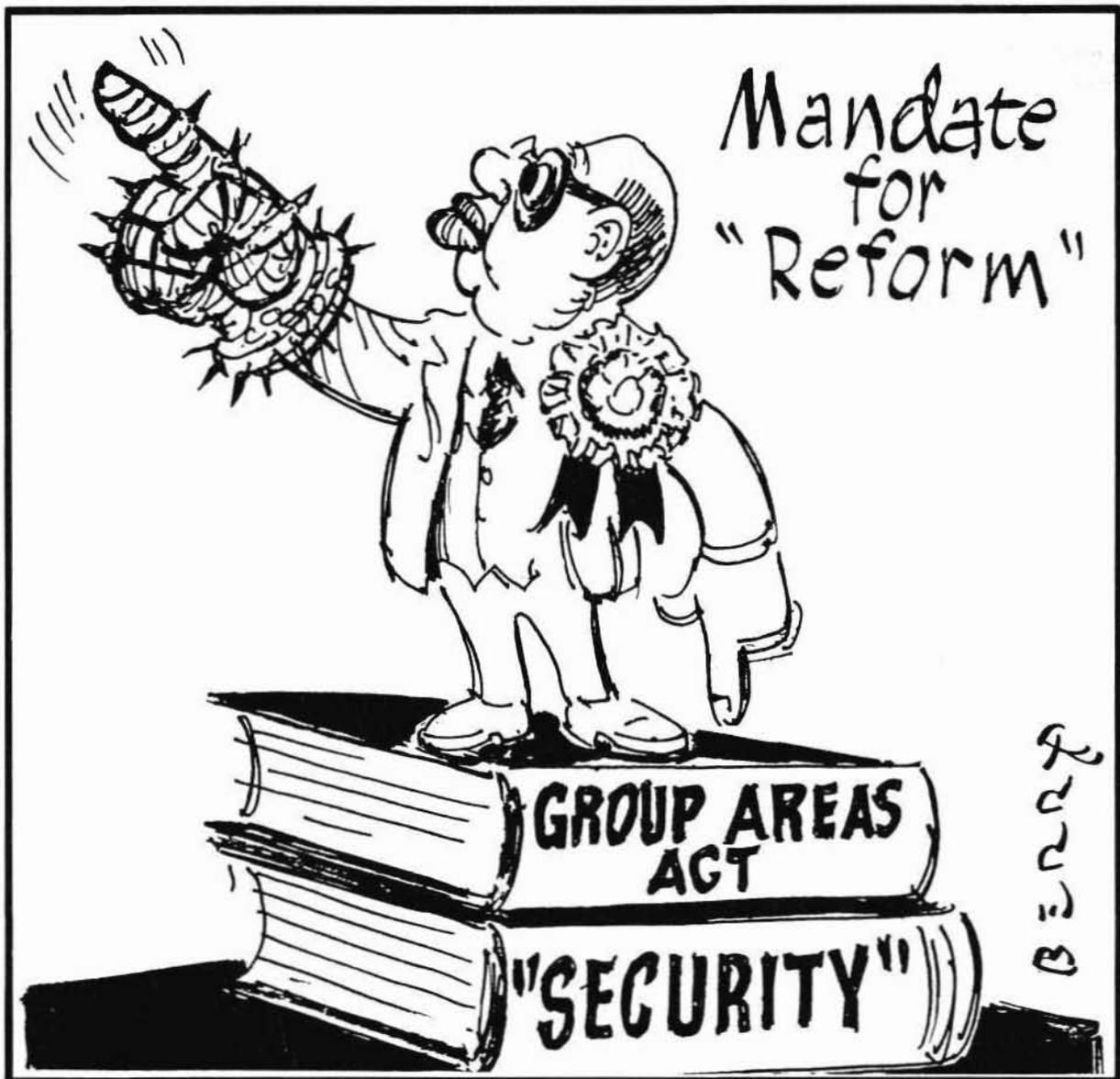


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Barry

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A JOURNAL OF LIBERAL AND RADICAL OPINION

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Cover Picture: Berry in City Press, October 30th 1988

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EDITORIALS

1. Any Hope?

Looking back at the Municipal Elections – how they were run and what came out of them – is there any hope for us?

On the black side, no amount of statistical juggling can hide the fact that, despite a vastly expensive propaganda campaign and a massive show of strength by the 'security forces' in the lead up to the elections and on the day itself, most people just weren't prepared to vote. There was no way that they were going to buy the kind of group-based local government the Nationalists were offering.

On the white side, it is a depressing reflection on how far to the right anti-Nationalist expectations have moved, when commentators take comfort from the fact that the Nationalists still control a place as unimportant as Tzaneen, or that the Conservatives didn't succeed in taking over all the Free State's smaller towns. The truth is, as the results show, that a large part of rural white South Africa has closed its eyes against the real world of today and has them firmly fastened on the fantasies of Dr Verwoerd, that many major centres have more reactionary Councils than they had before, and that only Cape Town, Durban and a few others seem prepared to face the future with their eyes open.

Yet, however unpromising the election results may have been, all is not gloom elsewhere.

The meeting between Rugby's big guns and the ANC is a quite remarkable event. Anyone predicting beforehand that such a thing could happen would have been advised to see a psychiatrist. But it did happen, and it is becoming increasingly obvious that there is a new and growing band of whites, many of them Afrikaners of influence and loyal party supporters up till now, who have just had enough of the bumbling disasters which pass for Nationalist Party policies. They seem prepared, even though they may not

much like the prospect of it, to face the inevitability of a non-racial future. The National Democratic Movement and the Independent Party have shown some ability to exploit this important crumbling at the edges, on the left of the monolith of Afrikanerdom. These two can surely get their act together with a De Beer-led PFP and bring some order and hope back into the ranks of whites opposed to apartheid? There are hints that by the time you read this, it may have happened. We hope so.

On the black side too, there are hopeful developments. In the week before the Municipal Elections. Aggrey Klaaste, Editor of The Sowetan, and his Assistant-Editor, Sam Mabe, launched a campaign in Soweto which they simply called **Nation-Building**. Before an audience of 400, half black, half white, they called on black and white to put behind them the violent excesses which have become such a feature of the political lives of both communities. They called on all South Africans to start reaching out beyond the narrow confines of their groups and their ideologies, to confront the hopes and fears of those who up till now they have simply regarded as adversaries, and to divert their hitherto destructive energies into constructive **Nation-Building**.

It takes brave men to talk such talk in Soweto, but this is perhaps an indication of a changing mood there. Match this with the disillusionment of an important section of the Afrikaner Establishment with P.W. Botha's Government, and we may be seeing something – a new movement born out of the violent traumas of the last years, our growing isolation, and a collapsing economy, towards **real Nation-Building**, embracing everyone.

If you look hard enough, there is hope. □

2. The Ban on the Weekly Mail

During October the Government issued a directive preventing the Weekly Mail from appearing for a month.

On an earlier occasion it issued a similar directive banning the New Nation for a period of three months.

Opening the Transvaal Provincial Congress in November the State President threatened legislation which would force reporters who claimed to have inside information 'leaked' to them by authoritative sources, to reveal who those sources were.

All this adds up to a further intensification of the campaign of threats and legal restriction which has been directed at the Press since this Government first took office forty years ago.

But now it is more dangerous than ever.

For now, more than ever, as our society goes through the agonies and upheavals which, whether Mr Botha likes it or not, are leading inexorably to the creation of a non-racial society here, it is vital that all of us, including him, should know what is happening.

More than any other publication, the Weekly Mail helps us to know.

Closing it down for a month has been an act of extreme stupidity. To close it down for good, a thought very much in the Government's mind we suspect, would be one of lunacy.

In the meantime, in order to help the Mail survive the financial implications of being off the streets for a month, we suggest that any of our readers who have not already done so, take out a subscription now, or order some of the calendars advertised below. □

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— by Benjamin Pogrund —

IMPRESSIONS OF ZIMBABWE

Years after the end of Zimbabwe's war of independence, the bodies of victims are still being discovered: not in ones or twos, but in dozens and hundreds.

They are people said to have been killed by the security forces of Rhodesia's white minority government during the 16 years of black guerrilla struggle. The war took a heavy toll: 40,000 people are estimated to have died.

It would not be surprising if the finding of ever-more bodies caused racial rancour, and especially as it is evident that many did not die in battle. Yet it strikes a visitor as a remarkable reflection of the interracial peace in Zimbabwe that the grisly evidence of mass murders is reported so soberly, and does not set off calls for revenge.

Last December, for example, a report in Harare's daily newspaper was worded in these terms: "Poor peasants in Mashonaland Central, which covers most of the former 'Hurricane Operational Area' during the liberation struggle, are planning to reinter hundreds of Zanla combatants buried in shafts and mass graves in the province." Using the same temperate language the report went on to say that the peasants were putting together their "meagre resources" to raise funds for proper burials.

The same approach is no doubt responsible for the continuing presence of the colonial past. Immediately after independence, statues were pulled down and a few street names in the centre of the capital, Harare, were changed. But most streets were left alone so that there are still visible reminders of the heroes of colonial rule. In the town of Mutare, on the eastern border, there is even a Jan Smuts Avenue, named after a South African white leader.



Robert Gabriel Mugabe, first Prime Minister of Zimbabwe.

The tolerance of colonial history can also be seen across the road from the official residence of President Robert Mugabe: there's a large sign on an imposing driveway which says: "Royal Harare Golf Club".

And a bookshop in the town stocks "The Reluctant President", the memoirs of Clifford Dupont, who was president of Rhodesia's illegal white regime, as well as the biography of one of most successful sanctions-busters who sold tobacco in devious ways to the world.

LIVE AND LET LIVE

Mugabe has led the racial live and let live policy. It doesn't necessarily mean much interracial mixing at the social level, but in everyday existence relations between blacks and whites are generally relaxed.

The number of whites has dropped to a third of the 300,000 who were there at the time of independence. They have seen no alteration in their luxurious lifestyle, with many owning imposing houses on large plots of land and with the real wages of their black domestic servants at about the same level as pre-independence.

One sign of creeping change, though, is that in the wealthy suburbs, anything from 10 to 35 per cent of homeowners are now blacks.

The infrastructure, whether electricity, water or roads, is well-maintained. A white professional man notes that, previously, white government officials often had poor qualifications but had extensive work experience; the blacks who have been taking over jobs from them often are highly qualified, with degrees earned at universities abroad, but are having to gain experience on the job.

Whites still dominate commerce while the farms they own produce a high proportion of the country's food. But there is every indication that they pay a price for the good life they enjoy: they must not interfere too much in government; they take part in the government but they must not do so obtrusively and they must remember the fact of black majority rule.

In particular they must remain as silent as everyone else about the darker sides of Zimbabwe: the carrying over, indeed the extension, of the arbitrary powers created by the previous white rulers and now used, it is whispered, for detentions which remain secret; the obedient newspapers, radio and television; the incidence of corruption.

Other problems are also gathering momentum. External debt, the modern curse of the developing world, is demanding ruinous interest payments and the pinch is being seen in the falling ability to buy needed goods from abroad.

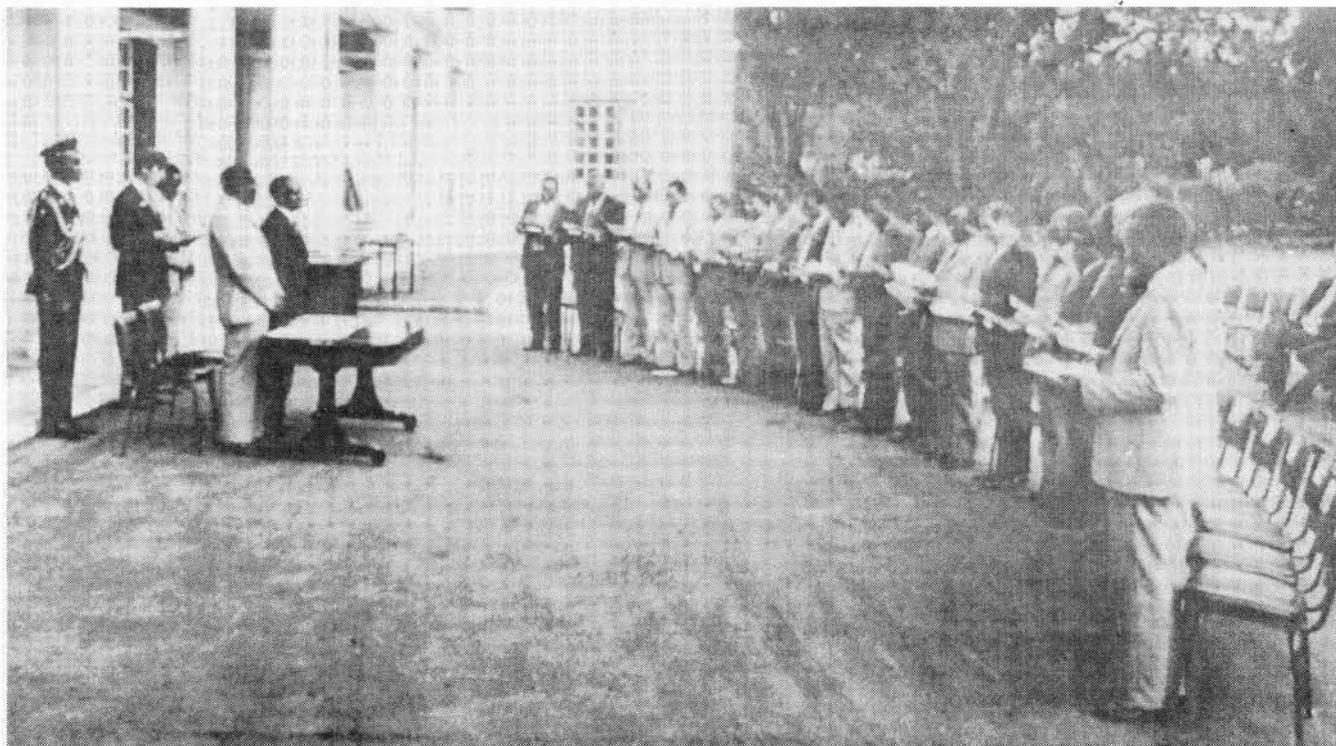
Domestic shortages are seen in queues for bread. The shortage of wheat means that a greater proportion of corn meal is used – with the result that loaves of bread crumble easily and it is best not to cut them for a couple of days after baking. Staples like salt and soap are not always readily available.

Government spending is soaring with a civil service which has probably doubled since independence; the latest Cabinet reshuffle, in January, doubles the number of ministers and deputies to a startling 50 – half the complement of the elected members of parliament. Vastly greater numbers of children are at school – but many cannot get jobs when they complete their education; nor is there any coherent plan for dealing with the rising tide of unemployment.

UNITY

On the other hand, there is no doubt that considerable energy and resources have had to be diverted into ending the violent dissent in the Ndebele area of the country. The unity achieved last December between Mugabe and Joshua Nkomo could contribute to a lessening of tension and a reduced need for draconian detention.

Whether the party amalgamation which took place on January 1, with Mugabe as executive president, is going to help or hinder national unity and the achieve-



The first government of Zimbabwe.

ment of economic progress, remains to be seen. But a distinction must be drawn between rhetoric and reality: although there has been a lot of talk about a Marxist socialist state it has thus far meant little in practice; and the emotional support for sanctions against South Africa is largely meaningless because the economic interdependence of the two countries puts a low ceiling on possible action.

But Zimbabwe can influence South Africa. Its existence offers a lesson in the meaning of black majority rule. That cheers up blacks in South Africa.

But the effects on white South Africans are less happy: they point fingers at Mugabe because of the roughness with which he has put down dissent and they jeer at his one-party rule; his actions justify their worst prejudices about what happens when blacks take over government.

Of course that's a strange view as it totally ignores South Africa's own lack of democracy. But the bias is so strong that it blinds whites to the benefits of the racial peace in Zimbabwe.



Bruce Springsteen: Human Rights Concert, Harare, Zimbabwe, October 1988

—by Kierin O'Malley—

SOUTH AFRICAN LIBERAL ECONOMICS AND THE QUESTION OF POWER.

In her comprehensive analysis of the relationship between capitalism and apartheid Merle Lipton not only empirically debunks many of the neo marxist myths reproduced and nauseated by the 'hard'/illiberal left, but her definition of a South African liberal summarizes one of the many dilemmas which currently face the embattled occupants of the 'middle ground' in South Africa. She states that "on economic policy they, ie. South African liberals, range from free marketeers to social democrats".¹

LIBERAL ECONOMICS?

In his address at last years Cape Congress of the PFP – published in the January 1988 edition of **Reality** – David Welsh argues "that the gross inequalities of our society will not be overcome by invoking the free market as a panacea" as the free marketeers or right wing economic liberals tend to do, and that social democracy has been described as the liberalism of those who really mean it. Along similar lines Terence Beard in his recent review of Democratic Liberalism in South Africa (*Reality*, March/May 1988) contends that liberals cannot afford not to abandon the pursuit of laissez faire capitalism – placing himself firmly in the camp of left wing economic liberals.

On the other hand free marketeers like Ken Owen and Leon Louw define laissez faire capitalism as the economics of liberalism. Any state interference with the market mechanism and with the production and distri-

bution of wealth is per se unacceptable. Strangely enough the free marketeer, right wing economic liberal view that unadulterated capitalism of the 19th century Manchester school type is an essential and determining element of liberalism is one shared by their arch ideological foes ie. radical or neo marxist scholars and activists in South Africa.

To avoid possible terminological confusion, it is necessary to make the point that labelling free marketeers right wing economic liberals, and welfare orientated liberals left wing economic liberals, has nothing to do with the growing tendency to divide the liberal camp into left wing and right wing liberals. The latter is nomenclature related to entirely different criteria.

Rightwing liberals are means and end liberals who refuse to countenance undemocratic, illiberal and often violent means from the hard left within extra parliamentary folds and tend to accept incremental reform as a viable strategy. Leftwing liberals are those who tend to reject all incremental reform as a hindrance to 'genuine reform', and who experience little problem in justifying illiberal and undemocratic means in terms of democratic, just and equal ends and the pervasive "struggle". It is nonetheless interesting to note that right wing economic liberals have more resolutely withstood what Jill Wentzel has called the liberal slideaway² ie. that right wing economic liberals have been less easily enticed by the hard left into adopting illiberal strategies in the struggle for liberal ends.

This is not the place to enter the free market/social democratic 'debate' as to the true nature of a South African liberal economics in any depth. What can be said is the following. Up till the present there has been very little sustained non rhetorical and liberal discussion of the issue. The exchange of letters between Ken Owen and welfare orientated Herman Giliomee published in the latter's **Parting of the Ways** is an exception that proves the rule.

The reasons for this failure or absence are twofold. Firstly, a preoccupation – possibly over occupation – with the neo marxist attack from the left, and secondly what I term the historical liberal aversion to the politics of power. The latter is discussed in greater depth in the second part of this essay.

NO SINGLE COMBINATION OF BELIEFS

It is nonetheless possible to deduce from Lipton's assertion as to the South African liberal economic dichotomy that a direct connection between liberalism of the South African variety and Manchesterian capitalism cannot be drawn. Harrison Wright has stated along similar lines that South African liberals "hold no single combination of economic . . . beliefs"³. He traces this not only to the worldwide bifurcation of liberal economic thought in the late nineteenth and early twentieth centuries, but also to the fact that the core assumptions of South African liberalism "rather than being economic, have been primarily moral and political".

Whether the core assumptions of South African liberalism have been political is a moot point, less so is Wright's conclusion that given the prevalent moral and political nature of basic liberal values in South Africa "it is inappropriate to consider as central of South African liberalism those individuals whose economic beliefs require a clear violation of the commonly shared moral and political ideas". Wright specifically mentions 2 doyens of the free market school – Michael O'Dowd and William Hutt – as not being "in accord with what is basic South African liberal thinking".

In this regard it is interesting to read an article by Jos Gerson on the future of South African liberalism in a recent volume of *Optima* – the in house journal of Anglo American. It must be remembered as David Welsh has put it "major sections of big business are liberal in a classic economic sense" ie. proponents of pre John Stuart Mill type laissez faire. Gerson distinguishes between what he calls mainstream and classical South African liberals, and surprisingly equates the former and larger group with the welfarist/social democratic tradition, the latter with the anti statist, anti welfarist free market school.⁴ Gersons' advice to liberals is that in spite of their economic differences, the two camps should mobilize around what they share in common ie. a belief in accountable government under the rule of law. The differences must be temporarily shelved.

CHOICE

Without wanting to exaggerate these differences – for South African welfarists and free marketeers do share certain views, I do feel it is necessary to add a caveat to Gersons' advice. In societies characterized by rapid polarization and intense ideological conflict, it makes sense to address and hopefully solve differences sooner than later. By postponing the making of a choice or clarifying one's position one only runs the risk that options presently before one will become outradicalised. Such a

postponement can be no part of the game plan of non ideological, compromise orientated individuals and groupings. South African liberalism is hard enough to define in 1988. In 1998 or 2028 it will be even harder, if liberals of today refuse to make decisions that have to be made. Van Zyl Slabbert's warning that liberals must get off the fence and enter "the struggle" – while made in a less specific context – is apposite.

There are other reasons for the current weaknesses and troubles of South African liberalism, but until a South African liberal economics is defined and defended all attempts at reconstructing the "middle ground" will be much akin to shifting the deckchairs on the Titanic.

LIBERAL POLITICS AND THE QUESTION OF POWER.

Arguably one of the major causes for the current weakness of South African liberalism is what Adam has described as the failure to "come to grips with the nature of politics".⁵

Now politics is not the easiest concept to define, but most definitions would include some reference to the notion of power. South African liberals – with a few minor exceptions – have however taken the power out of politics, and replaced it with a self-righteous sentimental streak which scorns practical, porkbarrel politics as the pastime of immoral powermongers. The unspoken rule of the old Liberal Party that it was not a goal to attain political power is the best example of this tendency which is still strong in many liberal circles today.

Success then becomes measured not in terms of electoral support or positive steps towards attaining or sharing political power, but rather as being "true to ones' ideals" and "suffering the future". As Adam has said, "the effectiveness of political action generally ranks lower than the affirmation of principle".

Taking the power out of politics leaves liberals exposed to criticism from the left that they are merely softening the harsher edges of apartheid. The withdrawal from the politics of power ie. the realpolitiek has had the further drawback that liberal organizations have not generally thought in terms of a nuts and bolts/practical paradigm. Policy formulation has often been the result of intellectual parlour games. But the most devastating consequence of taking the power out of politics – which results in what can be called an apolitical approach to politics – has been a feeling of helplessness/powerlessness which results in a resort to illiberal and undemocratic means by disillusioned liberals. This is what Jill Wentzel calls the liberal slideaway, and which was referred to above.

Thus one gets Harris and the Jo'burg station bomb in the sixties, and in the eighties what Jill Wentzel has referred to as the liberal "slideaway" in the Black Sash, ECC, PFP and most white affiliates of the UDF.

Politics is as meaningless without a power component, as it is immoral without a restraining input from ethics. The key is to find the correct balance. Neither apologists for apartheid, nor the bearers of the South African liberal tradition have to date succeeded in finding this equilibrium. □

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RESTORING THE DIGNITY OF THE LOCAL COMMUNITY: A Case-study of Impartiality, SABC-style.

For any South African, the words 'Pietermaritzburg' and 'violence' go together. Since 1984, there was a simmering discontent which escalated into a full-scale war in 1987/88. Statistics of the numbers of dead and injured vary considerably, with PACSA (Pietermaritzburg Agency for Christian Social Awareness) quoting 662 persons as shot, stabbed, hacked or burnt to death between January 1987 and March 1988¹. PACSA noted that while the numbers of those dead or in detention can "indicate the severity of the crisis . . . numbers cannot really convey the level of trauma, sadness, frustration and anger that the people are experiencing day by day"².

The reasons for the crisis were complex, with both economic and political dimensions. At the root of the continuing problem lies the grinding poverty of the majority of black people in the area. Unemployment is high: the Natal Midlands is a primarily agricultural region with limited industrial development. The large number of destitute families in the wake of the SARMCOL strike bears grim testimony to the lack of alternative economic opportunities. Infrastructure around Pietermaritzburg is very inadequate, township revenues are low, and housing development virtually non-existent. A study published in May 1988 found that "white decision makers" in all private and public fields, even "Government development agencies", generally agreed that poor infrastructures in black communities were a key factor in the violence³.

Politically, the conflict has taken on the form of an internecine battle between the opposing interests of Inkatha, a Zulu 'cultural' organization under the chairmanship of Chief Mangosutho Buthelezi, chief Minister of the KwaZulu homeland; and the United Democratic Front (UDF), a front structure with affiliated women's, civic, students', youth and white democrat organizations, allied with the Congress of South African Trade Unions (COSATU). Colloquially, the Inkatha groups are referred to as 'vigilantes', while the UDF-affiliates have been labelled 'comrades'.

Edendale has been a crucial area in the conflict. Originally mission land, the area is one of the few remaining places in which Africans can have freehold property. This has given rise to a stratum of landowners, and a large population of land tenants attracted to the area in the hope of finding paid employment in and around Pietermaritzburg. Historically, the state has refused to support the Edendale district by allowing it any measure of autonomy through local government, causing great resentment on the part of the landowners. Thus, the rift

between the local populace and the state has a long history⁴.

Inkatha, on the other hand, would like to make serious inroads into the area which it sees as an enclave needing to be incorporated into the 'Zulu Nation', and to this end a recruitment campaign was launched in September 1987. It has been suggested that in this dispute, the interests of Inkatha, and those of the state, coincide:

For the state, it would have been ideal for Edendale to be under the direct administration of the KwaZulu bantustan, controlled by an increasingly collaborative organization like Inkatha. For Inkatha control over Edendale would give substance to its claimed membership of the so-called "Zulu nation"⁵.

The 'Pietermaritzburg violence' is thus the result of interacting political and economic causes. The media image of the conflagration has however been reduced to the political. In a random sample of fourteen press cuttings taken from Natal and Transvaal newspapers, and covering the period January to June 1988, only one mentioned the UNISA study cited earlier, while two mentioned Buthelezi's thesis that: "apartheid had crippled black unity and had also subjugated blacks economically. Therefore, the roots of the trouble in Pietermaritzburg were also socio-economic"⁶.

For the rest, any analysis has been couched in terms of a double motive of an ideological conflict between Inkatha and the UDF, which is clearly analogous to faction fighting and the need for a strong police presence in the area. This dominant media interpretation is issued directly from the state, as evidenced in the appraisal given by Brigadier Jac Büchner: all along it had been a "black-on-black confrontation" – and to check and eventually halt it his (ie. Büchner's) men had been obliged to engage in some "reactive policing".⁷.

It comes as no surprise then, that these themes should be foregrounded in an in-depth feature on Pietermaritzburg violence, aired by the SABC as part of the evening news programme, NETWORK, on January 19, 1988. In this paper, I outline the way in which the violence is perceived in SABC terms. While the 'analysis', both explicit and implicit, is seen only in terms of the two motifs outlined above, its presentation strongly favours Inkatha, while at the same time appearing to be 'neutral' and non-partisan. I suggest that there is a clear consonance between the views of the SABC and those of the South African Police Force (SAP).

ANALYSING THE VIOLENCE

"We in the South African Police, we are a law enforcement agency, we are not a political movement, we do not side with either the one grouping, or the other grouping . . . We are there solely to enforce the law and order, and . . . to re-establish, or restore the dignity of the people"⁸.

Büchner's message underlines the themes of political neutrality, non-sectarianism, and concern for the local population. Not unexpectedly this apparent neutrality disguises a deeper meaning, in which there is no neutrality, no standing back from siding with either grouping.

In the **NETWORK** programme investigating the violence in the Pietermaritzburg area, the reporter/commentator, Chris Olckers, never directly accuses either UDF or Inkatha of initiating the conflict. His message is nevertheless clear. At the outset, he tells us that the "trouble started" in Edendale. We then hear that "The United Democratic Front gained a stronghold in the trade unions and COSATU in particular". In SABC parlance, 'COSATU is immediately recognisable as SABC for 'troublemakers'. The UDF is set up as the initiators when we are told that Inkatha saw its position threatened by the UDF recruitment campaign. Specifically, they were threatened by what they saw as "a **foreign** organization, **foreign** to their **culture and tradition**". Inkatha is thus seen to be protecting from interlopers what is rightfully theirs in terms of unassailable and unchallengeable values: culture and tradition.



Brigadier Jac Büchner

Inkatha's legitimacy is strengthened as its case is presented first: "Inkatha has stated that the political strategies and tactics used by their opponents were designed by the ANC in exile". Buthelezi's face appears, his voice overlaid by Olckers' commentary. Shots of Buthelezi's supporters at the stadium give a visual impression of his power base. In contrast, no visuals of the UDF, either in terms of leadership or support, are provided. Since it is difficult, if not impossible, for an audience to identify with an organization of whom they have no visual image, the UDF remains ethereal.

Throughout the programme, the UDF is never provided

with an independent identity. It is only represented as a surrogate of the ANC. This is established visually at the programme's start, with the walls daubed there in different locations "VIVA ANGOLA – VIVA ANC – VIVA UDF". A second brick pillar is daubed with the slogan "UDF VIVA ANC". The camera then cuts to a close-up of a wall with "VIVA ANC". Verbally, Olckers spells out ANC dominance several times, for example: "Inkatha has stated that the political strategies and tactics used by their opponents were designed by the ANC mission in exile . . .". Thus the two protagonists in the "black-on-black" violence in the Pietermaritzburg area are firstly, **Inkatha**, and secondly, the **ANC**, acting through the UDF.

The **motivation** for the conflict is simple: "They (Inkatha) see it as a black-upon-black confrontation between themselves, who are committed to non-violent tactics, and those who oppose them because of it". Restated, Inkatha is non-violent, while the unholy ANC/UDF alliance is committed to violence. The latter oppose Inkatha on the grounds of their pacifist position, and this is the root cause of the confrontation.

ETHNIC STEREOTYPING: FOLK DEVILS AND TRIBAL INNOCENTS

Several themes inform the TV programme. Most striking is that violence is **black-on-black** confrontation. Any challenge to this proposition is forestalled by Olckers invoking the ANC bogey:

"The ANC has also stated that when their people, the UDF, wipe out the so-called puppets, they are not doing so on the basis of a black-on-black confrontation but as barriers in order to reach into the hearts of the enemy, and to destroy that enemy. The puppets to whom the ANC has referred include elderly men, women and children."

Ethnicity is subliminally stressed through drumbeats for the first third of the programme. During the sequences in which the UDF is denigrated the music changes to an ominous whine of high-pitched string instruments, invoking the message of foreboding and doom.

The emphasis on race-based killings carries important implications: it absolves the (white) authorities from responsibility for the conditions in which the disputes arose, and from accountability for policing the outcome. It also assists the development of ethnic myths which define the protagonists as being different from the (white) viewers of **NETWORK** and therefore not subject to the same morality which governs those viewers. A corollary is that the violence is analogous to faction fighting: vengeful, self-perpetuating and outside the ambit of (white) authority. Later in the programme we are told that "years old squabbles are being settled under the guise of political violence". The unpredictability of traditional vengeance allows the authorities an ideological escape-hatch should they fail to "re-establish law and order". The same theme is reiterated at the very end of the programme: "When the needless violence has ended, there is always the problem of traditional revenge. Men, women and children who will not forget what has happened". The visuals accompanying the narration tell a different story: as Olckers speaks, a contingent of armed, uniformed police in two rows, headed by three white policemen, and followed by six black policemen, make their way across a path between rural huts. The message is clear: an unequivocal emphasis on order restoration and the competence of the police force.

The **racist tone** of the programme is evident from the fact that, although a programme about black people, the dominant voice throughout is that of the white commentator/reporter (Chris Olckers), and to a lesser extent, the white Policeman (Brigadier Jac B chner). These two define, narrate and pronounce on the situation in Pietermaritzburg. Only four blacks are given a voice, accounting for less than a minute of the programme's 13 minutes running time. A more important indicator of the way blacks have been backgrounded, are the circumstances in which they are presented. **Buthelezi** is given the most favourable treatment: a close-up; with back-up shots of his supporters. He is referred to by his full title: "Chief Minister Mangosuthu Buthelezi, President of Inkatha". Yet even he is not permitted to speak for himself: his position is summarized by Olckers, his voice overlaid by commentary.

The second black person 'interviewed' on the programme is **Janet Dlamini**. This section is crucial to the "meaning" of the programme, and worth reproducing at length. As has been the case so far, the programme is narrated through Olckers' voice-over: "At this home the Thabethe family gathered for a son killed during the struggle. His father was a senior Inkatha official." The camera provides us with an encompassing long shot of a house in good repair. On the left of this frame stands a burnt out kombi, which we saw in a previous shot. In front of the door of the home stand three men. A superscript reads: 22 December, 1987. The camera draws out to a mid shot. In the centre of the screen a woman lies on the ground in a prone position; her clothing ripped, shoulders and arms bloodied. We see the booted legs, and coat hems of four men, apparently in firemen's uniforms. On the extreme right of the frame we see the legs of a fifth man. Olckers' voice over 'introduces' us to the woman: "Mrs Janet Dlamini travelled from Johannesburg to attend the funeral". On-screen, we are now given a mid-shot of the kombi, this time from the front. The camera reveals the fields behind, which are pulled into a close-up. On the sound track we hear: "Two days after the funeral, the youths struck again. Four people have died, three of them burnt beyond recognition. She survived the attack, but the horror will not be forgotten". The visual cuts back to a long shot of the prone woman, in which the four firemen in uniform are now clearly visible. Two (black) plainclothed men lounge against the door. It is not clear whether they are police or family. The 'fifth man', whose legs we saw earlier, bends down to speak to Mrs Dlamini. Olckers' narration continues:

"She told the police cameramen what happened as they waited for an ambulance to fetch her."

(Voice of Janet Dlamini, indistinct): "They poured the petrol on us

(voice of unidentified man): They poured the petrol on you

...
(Dlamini): ... on us. We were lying, the three of us, and . . .
.??

(indistinct) . . . they just said the dogs must die."

When Ms Dlamini speaks, her words are directed by her unnamed (white) interviewer who dominates what and how much she says. More contentious is the **admissibility** of this scene. Little thought is given to the dignity of Ms Dlamini, or the propriety of the public broadcast of footage shot under these circumstances. This, despite Olckers' sanctimonious comments over her injured body



Chief Buthelezi

in the final scene, and quoted at the end of this paper. The scene was probably chosen for its ability to shock. Thus, the SABC shows itself to be susceptible to the seduction of sensationalist violence – but only selectively, when it provides ammunition in support of its argument.

The footage was shot by the South African Police video unit, not the SABC. This raises the question of the relationship between the two. It also casts doubt on the claimed neutrality of the police in the area. The material was part of footage shown to journalists by the press secretary for the Minister of Law and Order at Pretoria's central police station on the 28th December, 1987. According to Lieutenant Piet Bothma, the aim of the screening "was to show journalists incidents from the Maritzburg unrest"⁹. This is a clear, if unsubtle example of the way in which the state, through the agency of the Police, attempts to influence the agenda of not only compliant news organisations like the SABC, but also the press, who are usually thought of as 'independent'. The material included footage of the two other dead women referred to by Ms Dlamini¹⁰, and this footage may have been the source of the dead man shown earlier in the programme.

The final two black people to be given a 'voice' in the programme are an **unidentified black man and woman**. These two snippets were recorded in Zulu and captioned in English. **Vox pop** interviews always permit selection of the 'right' quotation, ie. the one which supports the preferred position. They request extra **white** policemen, one implication of which is that whites do a better job than their black counterparts. At stake here is selection, and the methodologically unsound practice of assuming that a small sample of random individuals (two in this case) speak for an entire community.

DEMONIZATION OF THE UDF

While the programme is uniformly patronizing towards blacks, there is a basic contradiction between those blacks who are led to evil by outside forces (the ANC), and those who are naive innocents, caught up in terror they do not understand.

The programme dehumanises the UDF/ANC surrogates through selection. In one sequence the soundtrack talks of the ANC/UDF alliance wiping out 'so-called puppets', "elderly men, women and children", while the visual track shows us scenes of a devastated homestead, the exterior of which is reduced to rubble, and the interior gutted by fire. Outside, a burnt-out kombi (also seen in later sequences) stands as testimony to a lost prosperity. A heightened sense of poignancy is created by the shot of a child's teddy bear among the ashes co-inciding with the mention of children killed. Although unstated, the implication is that UDF supporters were responsible for the demolition of the home, and the deaths which resulted therefrom. This impression is strengthened by running the detailed description of an eleven year old boy allegedly tortured by UDF supporters in the same sequence.

This example indicates the way in which the UDF supporters are debased as sub-human murderers and torturers. In contrast, little is said of the atrocities committed by Inkatha: when one of their supporters is killed, he is "killed during the **struggle**", a word which implies a righteous position, and a sense of heroism. An Inkatha supporter is referred to as "a senior Inkatha official", providing him with the legitimacy that comes with age and position, while UDF supporters are referred to either in terms of ANC surrogacy or by designations which underscore their youth, brutality and lack of status: "so-called young comrades"; "youths" who "strike" out and "mere children".

BLACKS AS TRIBAL INNOCENTS: RESTORING THE DIGNITY OF THE PEOPLE

Alongside the view of some blacks as demonic agents, is an uneasy juxtaposition of Zulus as naïve innocents, guardians of a sacred trust, the Zulu 'culture and tradition'. These are the:

"... be-wilded (sic) people who do not understand the intrigue polity. Many do not even know who the UDF is, who do not understand why they should belong to Inkatha and others who haven't the faintest idea of what the policies of AZAPO and AZAZO are. Yet they are being killed because of the power struggle. Their homes have been destroyed and their families scattered".

In both cases, vulnerability is associated with **political** naiveté; once "the local population" becomes politicised, they face re-definition as "death-squads"; "so-called puppets" "the enemy" etc. Fear and superstition are part of this "traditional culture" expounded here in a pop-anthropology. Much is made of the fear of burning. The emphasis of this explanation is on necklacing as a method of intimidation, despite the fact that it has seldom, if ever, been used in Pietermaritzburg. This passage underscores two intertwined themes: firstly, the primitiveness of the people, a theme shown to be related to their apolitical status; and secondly, the barbarity of the atrocities to which they are subject. Why, amidst so much destruction, do SAP/SABC concentrate on the one form of violence which is not characteristic of the area?

STATISTICS AS 'PROOF'

The scientific/statistical approach of NETWORK to the violence sits unhappily with the superstition/revenge

scenario outlined above. From the outset is an emphasis on **quantification**, and intellectual **control** of the situation. 'Factors' which cannot be 'measured', for example, the "the intimidation factor", are seen to be out of the grasp of the authorities. Geographic, population and morbidity data are manipulated through graphs, maps and mathematical formulations, which are taken to the point of absurdity: "In the first week of this month alone, 35 people were murdered, an average of five a day". Such manipulation does little to elucidate the root causes of the problem; in fact it may act to conceal them, by providing neat temporal distributions which bear little relation to actual events.

Statistical data is also used to dazzle the viewer. For example, UDF supporters are seen to have initiated the violence: "Figures reveal that 29 UDF supporters have died at the hands of Inkatha members, 95 Inkatha members have been killed by the UDF, and 113 others who died have not had any known political affiliation." The linguistic devices of abstraction and passivisation ensure that the source of these figures remains unstated. No indication of who collected the data, what methodology was used, or on what basis political affiliation was established can be recovered from the bland statement. Other, conflicting statistical data on the cause and effects of the violence was available from anti-apartheid organizations, such as the Black Sash, or PACSA at the time, but this was not mentioned. PACSA, for instance, quoted a figure of 282 persons killed to the end of December¹¹, compared to the SABC's figure of 237.

The same linguistic device appears in the sequence demonizing the UDF: "Figures reveal that at least 16 children under the age of 18 have been killed." This quotation shows how statistics can be manipulated to lend support from **a priori** positions. Two months later, a Johannesburg paper, reported Büchner as saying that "there was not a single child under the age of 16 in detention by the police"¹². Thus, when it suits the authorities, 'children' are defined as those under 18, yet when the state holds children in detention, the defining age is dropped to 16 years.

IDEOLOGICAL CLOSURE: PAPERING THE CRACKS

The editorialising style of the programme's 'script' is written at leisure, with thought and consideration, but read in haste, once only. There is no opportunity to 'go back' as one might with a newspaper. Through deletions, simplifications, re-arranging and the collapsing of forms into single units, the ideological timbre of the text can be carefully controlled¹³. Conversely, the listener/viewer has less opportunity to decode the underlying meanings, and much is therefore taken as heard.

Much of the meaning of the programme is provided through the sub-text: the juxtaposition of words, visuals and music to create a single, synergetic meaning. Television has been described as an essentially **oral** rather than visual medium and linguistic processes are a vitally important consideration¹⁴. One immediate implication of this is the selection of words: "violence" vis-a-vis "struggle" when respectively applied to the UDF/Inkatha. The distancing of the commentator from sectarian discourse is another example: "so-called enemy"; "so-called young comrades" and "so-called people's court" are all predictable attempts to imply the illegitimacy of these

appellations. The acceptance of factional discourse, eg. "black-on-black confrontation"; "Chief Minister Mangosuthu Buthelezi, President of Inkatha" implies an endorsement of the organization.

The programme ends with bodies loaded into the trailer of a yellow police van, papering over all the contradictions of the past 13 minutes. A sense of finality, of ideological closure, is created by harking back to visual sequences already presented. The verbal track outlines the main themes covered in the programme: violence, vengeance, ANC complicity, apolitical innocence and demonic brutality. Olckers' voice-over once more gives us the dominant interpretation.

When the needless violence has ended, there is always the problem of traditional revenge. Men, women and children who will not forget what has happened. And as these children watch the police van with the mortuary trailer, so the next generation could also stand and watch another trailer with bodies being removed. A legacy of violence, left behind by people who saw other human beings as tools for their own evil aspirations. Like those who attacked Janet Dlamini, who had no political affiliations, but they showed no respect for life and human dignity".

The scene of the injured woman which so shocked us moments before, shocks us again. But television is the medium of reassurance, and the message we take away with us is the message around which the elaborate production effect of the **NETWORK** programme revolved. In Büchner's own words:

"I can assure you we have decided on a non-confrontation policy . . . we . . . will re-establish, or we will attempt to re-establish law and order in the areas, and to re-establish the – or restore the dignity of the local community, which is of paramount importance."□

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I would like to thank Wendy Annecke, Gerhard Maré and Blade Nzimande for their useful discussions of the programme.

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AFFIRMATIVE ACTION IN THE U.S.

Theory and Practice

Affirmative action is at the same time one of the most benign and the most controversial governmental policies now in force in the United States of America. It is benign because all Americans support the theory in its less aggressive applications. It is controversial because many Americans deem its most aggressive applications to be unwise, unfair, unconstitutional, and damaging to the social fabric of our nation.

To begin this paper, I shall describe briefly what I mean by affirmative action. Then I shall relate what I deem to be the historical predicate and justification for it. Then I shall refer briefly to the great debate about extended forms of affirmative action now taking place in the United States. And, finally, I shall address, when will affirmative action end, if ever.

AFFIRMATIVE ACTION: WHAT IT IS

Affirmative action assumes numerous guises and many locuses of action and I cannot convey all its connotations in a short space. Nevertheless, the essential elements for these purposes are:

1. A plan imposed by law, either state or federal.
2. That requires governmental schools and employers, and regulated private schools and employers, to give preferential treatment in educational or job opportunities to persons of a designated race (i.e. Black rather than White).

The student admission policy of the University of Florida College of Law, where I teach, is exemplary. We reserve 10% of the seats in our classes for "minority" applicants who are primarily but not exclusively Blacks. The students admitted through this program could never be admitted under the criteria the other 90% must satisfy. Moreover, non-minority students (i.e. Whites) are not permitted to apply under the special admission criteria. (Finally you should know that not all black students apply under the affirmative action program; some apply and are admitted under the regular program.)

Affirmative action also takes on less aggressive aspects. For example, in some instances it may be nothing more than a published statement: "We are an equal opportunity employer," meaning that no distinction is made on the basis of race in choosing among applicants for jobs. Or, it may include making special efforts to attract black people to apply for jobs and to seek admission to school. These are the sorts of things that are generally deemed to be benign.

Finally, affirmative action often applies to give preferential treatment to attributes other than color and race. Initially, the theory was primarily one of reparation to a class to make up for disadvantages caused by past

governmental or widespread social repression. On these bases, the traditional attributes that qualify for preferential treatment, are race, color, religion, creed and national origin. The theory is that the majority population (i.e. White, Christian) has historically repressed discrete, insular minority populations (i.e. Blacks and Jews) because of these attributes (i.e. blackness, jewishness). In more recent times other preferred attributes that do not necessarily include all the insular minority characteristics have been given preferred status. Gender protection is exemplary: females make up more than 50% of the population in the United States but, because of traditional cultural discrimination against them, are beneficiaries of affirmative action in some settings. (Marital status; sexual preference.)

Having alluded to the rich complexity of the issue, I intend to focus the remainder of my remarks on the core; namely, affirmative action for Blacks. (i.e. persons of the Negro race; some Americans now refer to themselves as "Afro-Americans.")

BACKGROUND: WHY WE NEED IT.

As you may know, the ideal of equal opportunity is deemed to be a quality of unparalleled value to the present day population of the United States. This translates generally to a legal requirement of permitting no institutional, governmental, political or cultural barriers based upon race, religion, gender, etc. to stand in the way of progress for any person. Nevertheless, as I shall demonstrate momentarily, this has not always been the practiced ideal and as a result (and perhaps for other reasons), Blacks do not occupy stations of political, economic, professional and educational prominence in numbers that are proportional to their representation in the general population. They are far underrepresented at the top and in the middle and overrepresented in the bottom tiers.

This glaring mismatch between numbers and success starkly outlines a status that now seems intolerable, but it does not explain why it came about. Central to the "why", is the history of political, economic and cultural discrimination against Blacks that is the legacy not only of practices in the United States of America but of colonial practices that began almost coincidentally with the European settlement of the Americas.

I shall examine important milestones in that history. Columbus discovered America in 1492. Soon thereafter attempts to subdue and subjugate the indigenous American Indians began. They were called "savages" and "heathens," manifesting the belief that the White, European conquerors were superior in some more funda-

mental moral and worthiness measure than in mere social advancement. This sense of white superiority is an important attribute of the colonialization of America, because it carried over without dilution toward the treatment of black slaves.

The first permanent English speaking colony was established in Jamestown, Virginia in 1607 and the first black slaves were imported in 1617. (I will digress to make this point that I have never seen acknowledged elsewhere. Of the current population of the United States, except for that tiny proportion that claims ancestry in the indigenous Indians, a far greater proportion of the Blacks than of the Whites can claim pre-American Revolutionary War heritage in the Americas.)

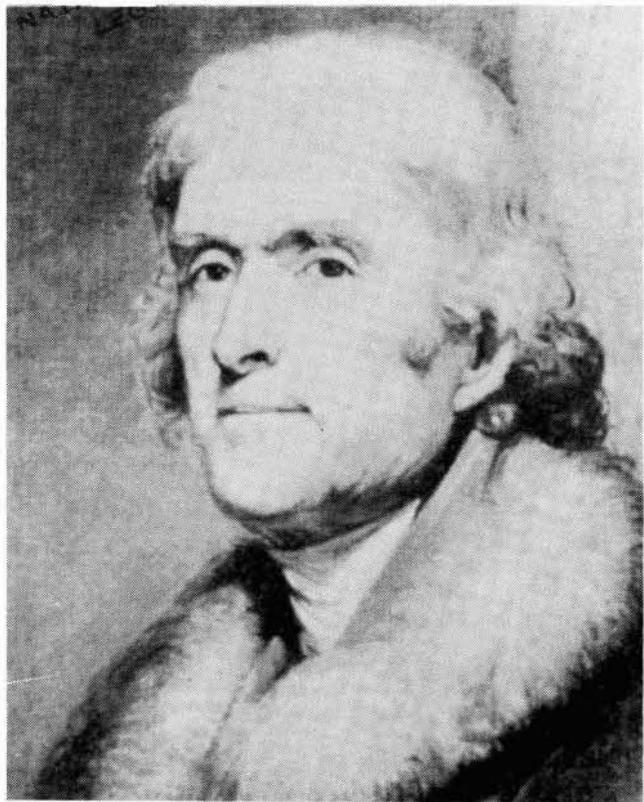
For the next 180 years, the colonization of the eastern seaboard of what is now the United States continued with the development of a black slave dependent economy in the South. The Indians, either because of their scarcity or resistance to enslavement or both, did not satisfy the demand for cheap labour, so the need was met by the importation of Black African slaves supplied by European and northern American slavers.

ASSIMILATION

Slavery was justified on the supposed ground that Blacks were morally and intellectually inferior to Whites. Biblical scriptures were often quoted to support this view. Notwithstanding this, the elemental culture of the slaves and of the slave holders, in time, grew progressively more alike. The slaves soon assimilated the language, the religion, the dress, the material values and even the names of their masters and, in the course of time, lost their own. Few modern American Blacks could trace any root to African soil. I might also mention that, from the beginning, American Blacks and Whites have lived in close physical proximity to one another. Yet, by and large, they have remained socially separated by the barrier of color.

By the 1730s an anti-slavery movement had begun in the North and it led to the enactment of what is known as the Northwest Ordinance in 1787. This measure prohibited the introduction of slavery in to territories north of the Ohio River. Thus, began a period of turmoil that saw the United States divided geographically into slave and non-slave regions. During this same period, some of the paradoxes and divisiveness of slavery manifested itself in important historical measures.

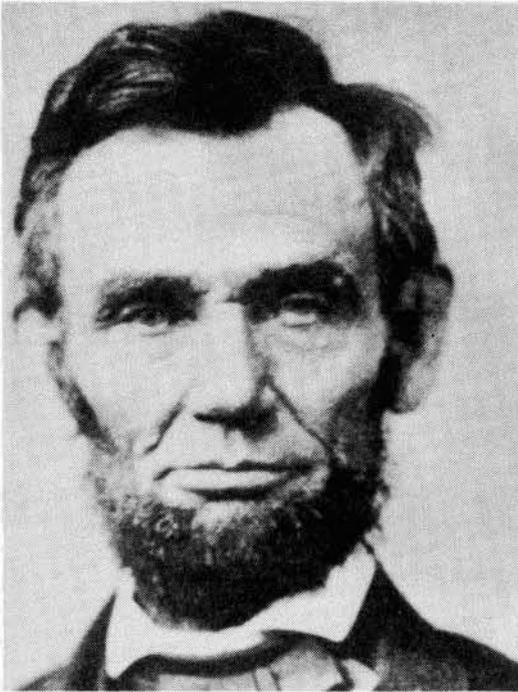
The famous American Declaration of Independence from British rule, written by Thomas Jefferson, and signed by a courageous band of American patriots on July 4, 1776 contained this high minded passage: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty and pursuit of happiness." The truth is, of course, that many of the signatories, including Jefferson himself, were slave holders. (Jefferson was, on principle, opposed to slavery, but thought the time of emancipation had not yet come.) The Declaration, then, perpetuated the view that black slaves were less than "all men" in their creation. The United States of America, thus, began existence as an independent nation as a slave state for Blacks and a free state for Whites.



Thomas Jefferson. President 1801-09.

What to do about slavery was a hotly debated question in the 1787 Constitution Convention that drafted the Constitution of the United States of America. Although substantial sympathy existed to abolish slavery, the pro-slavers, especially from the South, made it plain that there could be no union of the independent states – that is, no United States of America – if slavery were to be outlawed. Thus, the great document – although without using the words "slave" or "slavery" – acknowledges its existence in at least three passages. (Article 1, s 2, par. 3 (slaves count 3/5 the value of non-slaves in computing numbers of representatives); Article 1, s 9, par. 1 (Congress may not put an end to importation of slaves before 1808); Article IV, s 2, par. 3 (fugitives from justice must be delivered up).) Nevertheless, neither the Declaration of Independence nor the original U.S. Constitution emancipated black slaves. Indeed, Abraham Lincoln once said, "All men are created equal, except Negroes". (2 Collected Works of A. Lincoln, note 1, at 323 (Basler edition 1953).) By 1787, however, slavery had been abolished in some of the northern states and populations of black freedom, as they were called, began to establish themselves there. There was, of course, a great temptation for black slaves to run away from their southern masters and seek refuge in free states. (ie Uncle Tom's Cabin; Adventures of Huckleberry Finn.)

As the American West was explored and occupied by American frontiersmen, a heated debate arose as to whether new states admitted to the Union (ie new territories admitted as states in the United States of America on equal footing with the original states) would permit or forbid slavery. This was resolved in 1820 by the adoption of what is known as the Missouri compromise. Missouri was to be admitted as a slave state but all states admitted in the future would be free states.



Abraham Lincoln. President 1861-65.

INTERNAL STRESS

In the meantime, slavery in the south of the United States and anti-slavery in the North continued to foment internal stress of great intensity. The first seminal United States Supreme Court decision on slavery was issued in 1856. In the case of **Dred Scott v. Sandford**, Mr Scott, a black slave in Missouri, claimed that as a citizen of the United States of America, he had become entitled to his freedom when his master took him on a journey to non-slave territories and to the free state of Illinois. (Scott's master had, of course, taken along his slave to make the master's travels easier; much as a Victorian English gentlemen would travel with a valet.) In the sad **Dred Scott** case, the Supreme Court held that a **slave** was property and **not** a citizen of the United States and, thus, because he was a mere chattel, being taken by his master to a place where slavery was prohibited gave him no just claim to manumission. **Dred Scott** reaffirmed the basest view of the quality of black slaves; they were less than fully human.

The negative reaction **Dred Scott** received in the North and other matters pertaining to trade and the economy lead the southern states to see that their slave based economy was unlikely to be sustained, if they remained in the United States of America. Consequently, after the election of Abraham Lincoln to the presidency in 1860, eleven southern states seceded from the United States and set up a new nation called the Confederate States of America. There followed the bloody American Civil War from 1860-65 to test whether secession was possible. That war ultimately saw the defeat of the confederacy and the restoration of the seceding states to the United States.

In 1863 – during the dark days of that horrible war that often pitted brother against brother – Abraham Lincoln issued the Emancipation Proclamation, freeing all the slaves in the rebellious states. His purpose was to regitalize the flagging spirit of the North (at that time southern forces seemed to be winning) and to gain more support within the South from the slaves themselves.

Eventually, the industrial capacity of the North won out and the Civil War ended in 1865. Shortly thereafter the Congress of the United States proposed a number of amendments to the constitution of the United States to do away with slavery. The 13th Amendment to the Constitution of the United States was ratified in 1865, abolishing and prohibiting slavery throughout all the United States. In 1868 the 14th Amendment to the Constitution was ratified, guaranteeing to all citizens of the United States – which now included the freed black slaves – the equal protection of the laws of all the states. (Remember that term, “equal protection of the laws”.) In 1870 the 15th Amendment was ratified with the purpose of assuring that the freed Blacks had full voting rights. And in the late 1860s and early 70s, the Congress of the United States adopted a series of Civil Rights laws that were intended to assure enforcement of these civil rights throughout the nation. In 1964 former United States Supreme Court Justice Abraham Goldberg summed up this history as follows: “the (original) Constitution . . . declared all men to be free and equal – except black men, who were to be neither free nor equal. This inconsistency . . . took a civil war to get right . . . (But) with the adoption of the thirteenth, fourteenth, and fifteenth amendments to the constitution freedom and equality were expressly guaranteed to all – regardless of race, color, or previous condition of servitude.” Goldberg, “Equality and Governmental Action”, 29 N.Y.U. Law Rev. 205, 206, 208 (1964).

AN IMPOSSIBILITY

Notwithstanding the adoption of these formal measures, the instantaneous transition of Blacks from a status of slavery to a status of equal enjoyment of political rights, much less economic, educational, and social rights, was an impossibility. The former slaves were for the most part poor, badly educated, and politically powerless. And, despite the new laws, forces were set in motion throughout the south and to a lesser extent in the North to keep them there. In an 1880 decision the United States supreme Court assessed the situation in these words: “the colored race, as a race, was abject and ignorant, and in that condition was unfitted to command the respect of those who had the superior intelligence. Their training had left them mere children and as such they needed the protection which a wise government extends to those unable to protect themselves”. **Strauder v West Virginia**, 100 U.S. 303, 25 L.Ed. 664, 665 (1880). For a short period of what is known as the era of “radical reconstruction”, Blacks actually gained large representation in governments in some southern states, but this did not last long. After full political rights were restored to them, the former southern White rebels resumed their prewar places of prominence in politics and government and Whites soon displaced the Blacks. Furthermore, violent secret anti-Black terrorist organizations sprang up with the sole purpose of denying Blacks the political rights guaranteed them by the constitution and laws of the United States. Foremost among these was the dreaded (by Blacks) White Knights of the Ku Klux Klan.

By the 1880s and 90s both private and official measures to keep Blacks economically, politically and socially subjugated were in place throughout the United States, but especially in the South. Mississippi, for example, passed an amendment to the Mississippi state constitution in 1890 to deny the right to vote to Blacks.

SUPREME COURT DECISION

But the most devastating event of this era was another unfortunate decision of the United States Supreme Court. In 1876, the Court decided a case called **Plessy v Ferguson**, 163 U.S. 573 (1896). In that action, Mr Plessy, a Black, argued that a Louisiana statute that required railroad companies to provide "separate and equal" accommodations for White and Black patrons and prevented the intermingling of the two races, was unconstitutional and void. Plessy asserted that this measure denied him and other Blacks the equal protection of the laws guaranteed by the 14th Amendment.

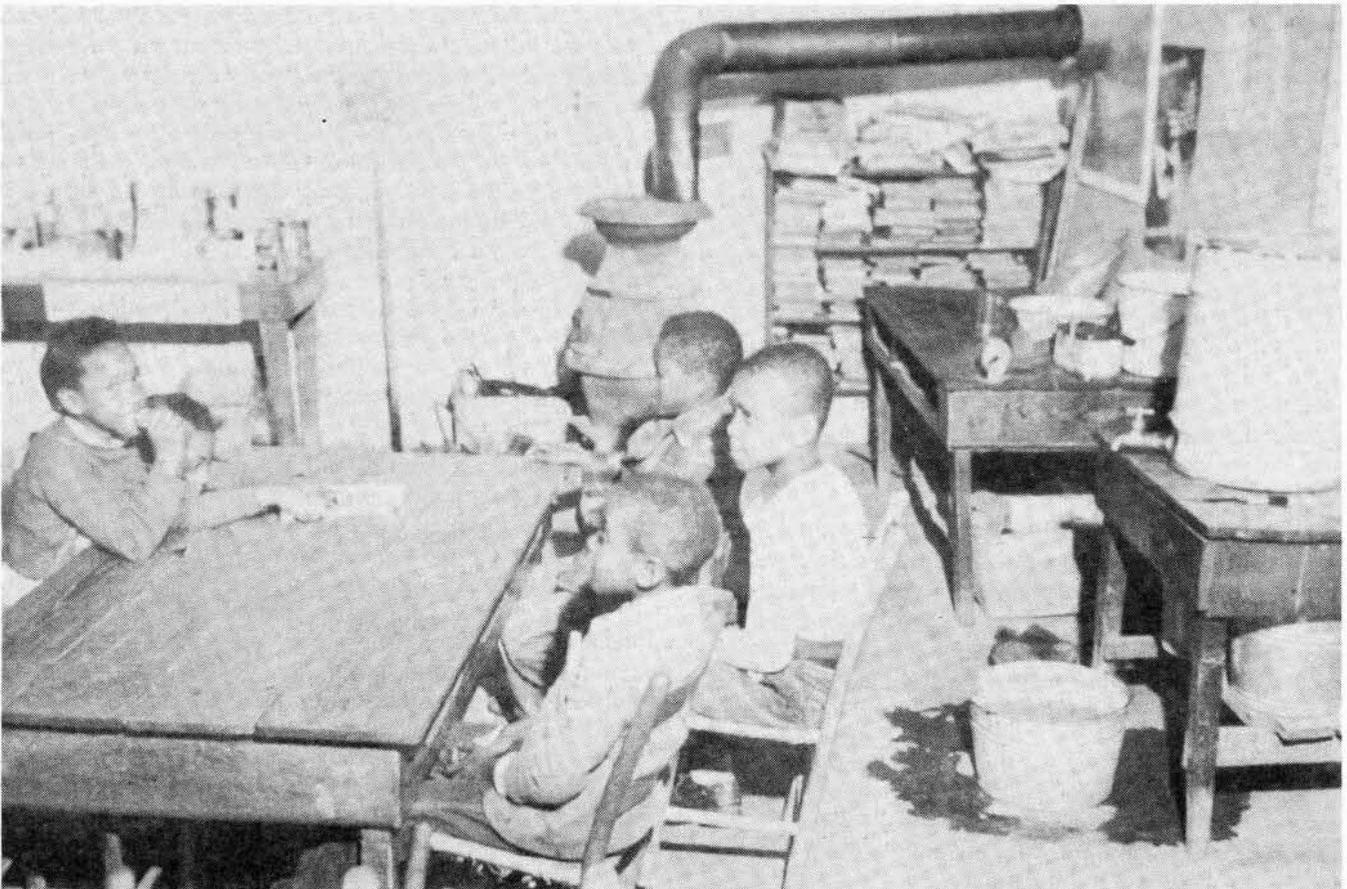
In upholding the law and dashing the political hopes of Blacks, the majority of the Supreme Court gave this cramped meaning to constitutional equal protection:

"So far, then, as a conflict with the fourteenth amendment is concerned, the case reduces itself to the question whether the statute of Louisiana is a reasonable regulation, and with respect to this there must necessarily be a large discretion on the part of the legislature. In determining the question of reasonableness, **it is at liberty to act with reference to the established usages, customs, and tradition of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order.** Gauged by this standard, we cannot say that a law which authorizes or even requires the separation of the two races in public conveyances* is unreasonable, or more obnoxious to the fourteenth amendment than the acts of congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures.

We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it. ***. Legislation is powerless to eradicate racial instincts, or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal, one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the constitution of the United States cannot put them upon the same plane."

Justice Halran, the lone dissenting member of the Court, had this to say to the majority's argument:

"The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth, and in power. So, I doubt not, it will continue to be for all time, if it remains true to its great heritage, and holds fast to the principles of constitutional liberty. But in view of the constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. **Our constitution is color-blind and neither knows nor tolerates classes among citizens.** In respect of civil rights, all citizens are equal before the law. the humblest is the peer of the most powerful. **The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved.** It is therefore to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent



INADEQUACY OF NEGRO SCHOOLS. In this one-room school in Person County, North Carolina, all the "facilities" are in view, including the "library," "running water," and "central heating." Seven classes are taught in the room. Photo by Alex Rivera, 1947.

for a state to regulate the enjoyment by citizens of their civil rights solely upon the basis of race.

In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the *Dred Scott Case*."

Justice Harlan's doleful prophecies have been borne out with an ensuing half century of intentional suppression of Blacks and, after that, with a half century of strife and turmoil in a struggle to lift the yoke that *Plessy v. Ferguson* permitted to fall upon them. Even after the passage of more than a century, the race-based consequences of that decision continue to plague the USA. The current affirmative action controversy is just one of the fruits of the seeds sown by *Plessy v. Ferguson*.

Justice Harlan argued in *Plessy* that the 14th Amendment made the Constitution of the United States "color blind" and, therefore, it denied to all governments the power to make any law or other legal distinction based upon race. (Note that Harlan did not argue for affirmative action: but the converse, total race neutrality.) But the majority repudiated this view, and instead adopted as the constitutional standard what became known as the "separate but equal rule." That is, laws could be enacted that separated citizens by race in schools, transportation, public accommodations, etc., as long as the services provided one race were equal to those provided the other.

SEPARATE-BUT-EQUAL

Separate-but-equal treatment took hold with a vengeance, especially in the South: separate schools, separate public toilets and drinking fountains, separate places to sit on buses and trains – **but**, the equal was never forthcoming. Wherever Blacks were separated, they were provided inferior resources and services and their culture was proportionately deprived. Blacks were also precluded from entering high paid vocations and professions; and suffered economic subjugation, especially in the South. Despite this, Whites and Blacks in low paying jobs often worked side by side and Blacks and Whites often lived in close physical proximity to each other. Indeed, even under the *Plessey* view, the Supreme Court had ruled that laws forcing blacks and whites to live in separate geographical areas were unconstitutional and void. *Buchanan v. Wartley*, 245 U.S. 60 (1917). The rationale, however, had to do more with property rights than with nondiscrimination. Nevertheless, the purely social interchange was rigidly forbidden, often by law and always by social mores. The unbreakable rule was that any White, including a poor White, was superior in social and political status to any Black.

This culture of **de facto** separate but **fanciful** equal treatment became known as Jim Crowism in the South and the measures that embodied it were known as Jim Crow measures. Jim Crow held sway, with gives and takes, up until the United States entered World War II in 1941. The war effort took so many white males as soldiers (the armed forces were then segregated, too) that the economy required new efforts of Blacks (and also women). As a result, Blacks gained bargaining leverage that they never before had and used it to persuade President Franklin Delano Roosevelt to issue an executive order prohibiting racial discrimination in the war industries. Also, the war ultimately broke down the racial barriers in the armed forces and put black and white soldiers and sailors on equal footing without regard to race.



"General Blotchit, you take your tanks and feint at Lynchville, General Pannick, you move into the county seat. And then in the confusion, my infantry will try to take little Luther to school!"

After the war, Jim Crow attempted to reassert itself but was met in the northern and western states by state laws, called Fair Employment Practices Acts, that prohibited racial discrimination in employment and housing in those states. But **the** true "jewel in the crown" of civil rights under law for Blacks in the United States, is the 1954 decision of the U.S. Supreme Court known as **Brown v Board of Education of Topeka, Kansas**, 347 U.S. 483 (1954). In that case, a black school girl named Brown argued that the *de jure* "separate and equal" treatment rule of *Plessy* that required her to attend a segregated all black school was unconstitutional; that it deprived her of social and economic values in a manner that denied her the equal protection of the laws guaranteed her by the 14th amendment.

In an unanimous decision with volcanic ramifications, the Supreme Court did not merely adjust or modify the separate and equal rule of *Plessy*, but flatly and wholly repudiated it. From the day **Brown v Board** was decided on, equal protection under the laws has meant that the states may not segregate schools and other public facilities by race. The Court no longer holds that constitutional "equal protection of the laws" could be achieved by a separate-but-equal policy. Said the Court, "To separate (black children) from others . . . because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone". 347 U.S. at 494. Moreover, the Court exhorted governmental officials everywhere to end racial segregation "with all deliberate speed". (*Brown v Board*) (I), 349 (1955). Obedience to that exhortation has not been easy. Affirmative action is one of the whips used to spur it on.

By the late 1950s, the reason for continued opposition to equal treatment of Blacks under the laws of the United States was no longer the belief in Black moral inferiority that had served to justify slavery, but was now grounded more in fear, racial hatred and bigotry, and perceived threats to economic status. Also, especially in the South, many people were antagonistic to the specter of remote, outside forces (i.e. the rarefied Supreme Court and northern do gooders) dictating basic social choices upon a reluctant population. The American people, by and large and especially in the South, have always believed that government should be limited – the servant and not the master of the people – and what was happening seemed to be the reverse.



Putting aside childish things. A six-year-old girl awaits arrest. (Wide World Photo, 1962)

It was not until the early 1960s, after the election of John F. Kennedy to the Presidency, that the United States Congress (the national legislature) began to enact legislation prohibiting racial discrimination in private employments and in various private accommodations held open for public custom. The watershed enactment is the Civil Rights Act of 1964 and its most far reaching element in Title VII, which prohibits discrimination on the basis of race (and religion, sex, creed and national origin) in most private employments throughout the United States. Somewhat ironically, as the federal laws and court rulings gained strength and began to dismantle legal barriers to equal opportunities in education, jobs, housing, and so forth, the realities of centuries of cultural and economic deprivation began to manifest themselves. While some Blacks immediately rose to high positions in politics, education, government (e.g. Thurgood Marshall, the first Black Justice of the United States Supreme Court) and business, much of the rank and file were ill prepared to compete. Consequently, many people – shall I say reformers – saw the need to go further: not merely to remove artificial barriers to equal opportunity but to take **Affirmative action** to put Blacks where they would have been, absent the history of discrimination.

Initially, these efforts focused upon Blacks who could demonstrate that they **individually** had suffered direct personal discrimination, most often in employment. Although the closely affected white co-employees were often disgruntled by it, the American public at large did not and does not bridle at giving these discriminatees the job positions they would otherwise have attained, had

they not been discriminated against. This is another relatively benign version of affirmative action.

NEVER PERSONALLY DISCRIMINATED AGAINST

But what about Blacks who were never personally discriminated against by anyone? Those who come fresh from school and enter the job market for the first time? Are they to compete – color neutrally – with everyone else for jobs and educational opportunities, or are they to be given special favoritism because of the historic discrimination against the Black race? Far from benign, this question is inflammably controversial.

In the mid-1970s, the medical college at the University of California at Davis adopted an affirmative action student admission program similar to the one now in place at the University of Florida College of Law. A certain number of admissions were set aside exclusively for minority applicants (i.e. Blacks, Hispanics, Asians). A white applicant named Bakke failed to be admitted under the competitive non-minority plan and sought admission under the affirmative action plan. Even though his credentials were far superior to those of any of the students admitted under the plan, Bakke was denied the opportunity to compete solely because he was White. Bakke sued the State of California, alleging that the admission plan violated his 14th Amendment rights to equal treatment under the law. In sum, Bakke argued for the “color blind” constitution that Justice Harlan called for in 1896 and that many people believed the 1954 decision in **Brown v. Board of Education** had adopted.

The U.S. Supreme court ordered the State of California to admit Mr Bakke to medical school (and he graduated in due course), but Mr Bakke’s case did not secure a decision announcing with finality that the Constitution of the United States is color blind. Instead, the Bakke decision seems to put these constraints on race based affirmative action programs: (I say “seems to” because the court was severely divided in its opinion.)

Any program that calls for the consideration of race as a criterion for admission is inherently suspect. This means that they can be valid only if necessary to achieve a compelling state goal. (i.e. a goal deemed to be beneficial by the Court).

The Supreme Court ordered California to admit Mr Bakke to medical school because the State of California had not proved that the affirmative action program was necessary to achieve an important state goal. The failure was in the proof; not in the theory of affirmative action.

GUIDELINES

Bakke, thus, establishes two important points. First, race based affirmative action plans are not necessarily and always unconstitutional. Second, but the authorities must prove, and not merely proclaim; first, that the state has a compelling goal; and, second, that the affirmative action plan is necessary to achieve it. A suitable goal, in most instances, is to open up a field of study, an occupation, or a profession to members of a race that have been historically excluded from it.

Though the particular California plan failed the test, the **Bakke** decision laid out guidelines that have permitted institutions throughout the United States, but especially in the South, to adopt **Bakke**-like affirmative admission plans. In the meantime, the federal government (i.e. the

United States government) has put tremendous pressure on state schools and institutions to adopt affirmative action programs. The pressure is exerted by requiring these institutions to adopt affirmative action plans as a condition of receiving grants of federal money from the United States treasury to support their general education programs. Most schools cannot afford to turn away the money. Similarly, private contractors that do business with the federal government must adopt affirmative action employment plans as a condition of obtaining federal contracts. Few of them are willing to turn away the money to avoid the affirmative action strings.



American Faces. White and Negro college students on the steps of a hitherto entirely Negro college in Missouri, 1963.

In a sense, then, **Bakke**-like affirmative action has become a national governmental policy. The federal government enforces it indirectly by the strings tied to grants of federal money. This, of course, resulted in the growth of a massive federal bureaucracy to see that the affirmative action criteria are appropriately met. The presence of this lurking, threatening bureaucracy is resented by many people, including some who in other respects favor affirmative action goals.

COLOR BLIND

Nevertheless and notwithstanding the federal affirmative action policy, many people continue to believe that all racial preferences are wrong; that the constitution should and does require the states to be strictly color blind on racial matters. It would be wrong to assume that all the people of this mind are conservatives or, worse yet, bigots. Mr Justice William O. Douglas, now dead, was one of the most liberal and humane jurists in the history of the United States Supreme Court. Yet, this is what he said about a law school affirmative action admission plan in a 1974 opinion that preceded the **Bakke** case:

"There is no constitutional right for any race to be preferred. The years of slavery did more than retard the progress of Blacks. Even a greater wrong was done the Whites by creating arrogance instead of humility and by encouraging the growth of the fiction of a superior race. There is no superior race by constitutional standards. *** Whatever his race, (an applicant) has a right to have his application considered on its individual merits in a racially neutral manner. ***

*** The State *** may not proceed by racial classification to force strict population equivalencies for every group in every occupation, overriding individual preferences. The Equal Protection Clause commands the elimination of racial barriers not their creation in order to satisfy our theory of how society ought to be organized. *** A segregated admissions process creates suggestions of stigma and caste no less than a segregated classroom, and in the end may procure that result despite its contrary intentions. One other assumption must be clearly disapproved, that Blacks or Browns cannot make it on their individual merit. That is a stamp of inferiority that a State is not permitted to place on any lawyer."

Defunis v. Odegaard, 416 U.S. 312, 94 S.Ct. 1704, 40 L.Ed.2d 164 (1974). (Douglas, dissenting.)

The controversy continues, but the **Bakke** case, which just celebrated its tenth anniversary, remains the law. In the meantime, the U.S. Supreme Court has approved similar affirmative action employment plans in both governmental employment and private industry; always with heated dissenting views being expressed. These approvals have been given despite the language in the federal Equal Employment Act – that I referred to earlier – that appeared to prohibit plans that required racial goals or quotas based upon proportional numbers by race in the general population.

ACADEMIC TWIST

Most recently, the affirmative action movement has taken a curious academic twist. Two of our prestigious private universities, Stanford in the West and Duke in the Southeast, have voluntarily adopted extended affirmative action measures that have inflamed the debate. First, Stanford modified its core curriculum requirement that all students study the writings of the seminal western thinkers from the time of Classic Greece to the present to, instead, require a mixture of the classics **and** of modern ethnic and feminist writers. No lesser an official than the U.S. Secretary of Education denounced that change as a spineless dilution of intellectual values; but, as with all these issues, outspoken voices supported each side. Then, Duke announced a firm goal of hiring at least one minority (i.e. Black) faculty member in each department by a designated date. In other words, **race**, and not intellectual merit or educational preparation, was to be given primary consideration. Again, a storm of debate erupted and continues through U.S. academia.

It has not been only ultra-conservative voices that are crying out "Too Far". For example, Gertrude Himmelfarb, a distinguished professor of history at the Graduate School of the City University of New York and a reactionary by nobody's standards, recently wrote in the *New York Times* (May 5, 1988, p. 27)

Separate episodes at Stanford and Duke typify a two-front attack going on quietly – and perhaps for that reason insidiously – in many universities. They illustrate a prevailing interpretation of affirmative action that perverts the original theory . . .

This was the original, and proper, function of affirmative action: to seek out the best people wherever they might be found, to encourage them to do their best and to reward them for being the best. The Stanford and Duke versions of affirmative action debase the ideas they are meant to affirm and demean the faculties they are meant to serve.

In the same vein, another writer from the UCLA law school recently complained in the pages of the Chronicle of Higher Education (June 8, B1) that the extreme form of affirmative action employed at UCLA turns out lawyers of "marginal" qualifications who are of benefit to no one.

Of course, voices rise to support these extended forms of affirmative action, but the complaints are being heard more often and from more places. One critical view holds that specified members of a race, who were never themselves the victims of discrimination, should not be elevated to prestigious positions over competing whites solely because members of their race were historically repressed. An answer to it is that the main beneficiary is not the favored individual but the less capable members of the class who will bestir themselves to greater achievement because of the visible evidence that achievement will be rewarded. Still, the Harlan-Douglas ideal of a color-blind constitution remains compelling to vast numbers of Americans, making it unlikely that extreme forms of affirmative action will ever gain permanence in United States constitutional doctrine.

FRUITS

But what have been the fruits of affirmative action? No one can deny that schools and places of employment in the United States have opened up to Blacks and that is to the good. Many genuine black leaders and intellectuals have emerged – people who could not have attained prominence under Jim Crow – and that is better. Still, we do not know whether these gains are the benefits of the "color blind" mainstream of the law, or of the exceptional benefits of extreme forms of affirmative action. University of Chicago philosopher Allan Bloom holds the former view and has produced much evidence to support it. In his recent controversial book, "The Closing of the American Mind", R2. Bloom asserts that everyone knows but no one says that on the **average** black students in American universities are academically inferior to white students; that unlike every other American minority, Blacks resist assimilation in university life; and that they voluntarily maintain racially separated subcultures. Bloom also says that employers, while they must and do hire these students upon graduation, expect less of them and give them less responsibility. Bloom, of course, is speaking of the average and does not deny that many stellar black students separate themselves from the pack. Bloom also asserts that these facts – though plain and well known in private – are public taboo. One cannot publicly question "why" without risking rebuke as a racist. There is, as Bloom says, a "closing of the American mind" as to some painful matters.

Former Colorado Governor Richard Lamm, now an academician, is one of the few public people in the United

States who will openly confront, in his words, "discussion of the deep racial divisions and persistent patterns of failure of some racial and ethnic groups (because they are) a taboo subject." He goes on to say:

"All sorts of buzz words must be employed to avoid stating the truth: America is a racially and ethnically divided country, and the nation's failure to assimilate blacks (and Latinos) into the mainstream is the fault of both society and those minority groups themselves.

We can no longer pretend that racial and ethnic equality will come about on its own. We now have 25 years of incontrovertible evidence that achieving racial equality will require more than mere legislation to combat discrimination.

. . . Uncomfortable as it makes us feel to criticize other people's cultures, there can be no doubt that the culture of the ghetto (and the barrio) has contributed to the failure of large numbers of blacks (and Latinos) to take their place in the American mainstream."



Harlem Street Scene.

GHETTO CULTURE

What is it about American black "ghetto" culture, as Lamm refers to it, that deserves criticism? Horance G. Davis, a Pulitzer Prize winning commentator in my hometown of Gainesville, Florida and a social progressive by any standard, recently laid out this litany of consequences:

- Blacks make up 13% of the U.S. population, but
- 50% of arrested murderers are Black
- 41% of murder victims are Black
- to be murdered is the leading cause of death of black men between ages 16 and 34
- 50% of the male prison population is black (6% of the population is black male)
- 35% of black males in urban centers are drug or alcohol addicts
- 46% of black males between ages 16 and 62 are out of the work force
- 32% of black workers earn less than the poverty level
- 30% of black homes live below the poverty level
- 57% of black babies are illegitimate at birth (5 times higher than the white rate)
- 43% of black families are headed by women who are abandoned by men.

and on and on.

What does all this say about affirmative action as I have described it? Most fundamentally, of course, that the bitter fruit of 300 years of deprivation and suppression cannot be sweetened by racial preference at the upper tiers of society. That kind of maltreatment does not prepare a **minority** population (and I mean minority in numbers) for easy assimilation – top to bottom – into a modern culture which espouses both the egalitarian and the meritocratic expectations of present day American life. But as to what the future of affirmative action is to be, I observed in an article several years ago that it was a doctrine of "inherent transience". By that, I meant the

need for affirmative action must necessarily erode as an inevitable consequence of its own successes. (I might also mention that I generally endorse the view that the law should be and must be color blind.) This implies that no inherent difference in capacity divide the races and that a suitable period of equal treatment salted lightly with "affirmative action" will thoroughly integrate the educational and economic cultures. Now I am more pessimistic about the timetable.

If "affirmative action" is to be truly effective, it must **not** be only of the sort that gives Blacks with inferior credentials a preference in job selection and university admissions over Whites with better credentials. Although the evidence has not yet been assembled, this at best can prove to be of limited value; at worst, it produces massive resentment and failure (ie., in 1987-88 a rise in racial disharmony has been noted on American campuses.) Effective affirmative action, if there can be such a thing, must take the uncomfortable step – to use Governor Lamm's description – of criticizing the status quo. It is not enough to criticize the attributes of black ghetto culture that breed the failures I listed above. We must candidly admit that "affirmative action" implies that the majoritarian culture on the whole, is more desirable than the culture presently enjoyed by those whom "affirmative action" is intended to move from the one to the other. We must, therefore, also, criticize the majoritarian culture to reach a shared consensus on to which objects of the action deserve the effort. I am confident that most of the attributes of majoritarian economic well-being and social civility will prevail as desirable goals. Finally, to make a genuine difference, we must do more than criticize; we must take positive steps that will make Blacks want to make the effort and will make Whites want to see them make it. Candidly, I do not know that we collectively Black and White, have the toleration and courage to do it. If we do not, our current versions of affirmative action may survive for a very long time – whether they do any good or not. □

Corrections:

The issue of September 1988 was incorrectly designated as Vol. 21 No. 6, instead of Vol. 20 No. 5.

In the same issue Rupert Taylor was incorrectly described as a lecturer in Sociology, University of the Witwatersrand. He is in fact a lecturer in Politics, University of the Witwatersrand.

Picture Acknowledgements.

pp. 3 and 4: ed Seidman, Martin and Johnson: *Zimbabwe: A New History*: ZPH, Harare, 1982 pp. 136, 139.

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