

Justice and Truth in South Africa?



Credit: Ken Gooch (UCT)

This is an edited version of Prof. A. du Toit's inaugural lecture delivered at UCT in late September (edited by himself). The lecture will be published in full by UCT in the near future.

Prof. du Toit is a valued member of Idasa's Board of Trustees.

THE history of discourse about truth and justice in South Africa is marked by all the inherent ambivalences and ambiguities characteristic of the liberal tradition in our colonial and postcolonial society. To begin with it was very much the story of "British Justice" imposed by the new colonial power from the beginning of the 19th century on the existing racial status hierarchies of colonial society, and vigorously protested by the *trekboer* community as intolerable "gelykstelling" (or levelling). Quite soon, though, truth and justice were consistently espoused by local Afrikaner officials, the Van Rynvelds, Truters and Stockenströms, whose political thinking came to be strongly influenced by a seminal rule of law ideology. Let us look at one such ambiguous moment associated with the first entry of the new and more vigorous British legal machine and the emergence of a distinctive public discourse about justice and truth in South Africa. On 19 January 1815 the new Court House in Cape Town, which had become necessary when the proceedings of the court were opened to the public in 1814, was inaugurated with an address by the Chief Justice. This was Johannes Andries Truter, soon to become the first South African to receive a British knighthood as Sir John Truter, and he chose as text for his address a saying from Cicero: "Everything is precarious the moment we lose sight of Justice".

In his book *Justice in South Africa*, Albie Sachs quotes from this fine passage, but also reminds us that the new Court House had been erected in the yard of the former Government Slave Lodge and that Truter himself had been under a cloud for his part in looting the Treasury as the British troops approached Cape Town in 1806 (pp. 32, 34). More seriously, he goes on to analyse the political significance of the "external lustre" so associated with the administration of justice as a basic instrument of rule. The nett effect of the Charters of Justice and the accompanying measures, which so appalled many of the Afrikaner colonists as intolerable "gelykstelling", were much more ambivalent in Sachs's account. In short, the discourse about justice served to legitimate a particular system of domination. I don't know whether or not you will be persuaded of the truth of this claim, but I should tell

you that this work, *Justice in South Africa*, is a banned publication. In fact, it is a banned publication twice over, once by decree of the Publications Board and also by the Department of Justice since Albie Sachs — who had twice been detained for lengthy periods before he went into exile, and whose *Jail Diary* is one of the most moving and humane documents of recent South African political history — is a "listed person". It is also relevant to add that, more recently, Sachs has made an important contribution to the debate, so dear to the liberal tradition, about the need for a Bill of Rights, by arguing that this is wholly compatible with the aims and spirit of the Freedom Charter. Finally, you should know that this same Albie Sachs earlier this year was the victim of a car-bomb in Maputo: you will no doubt vividly recall that horrific front-page picture showing him crawling away from his car after his arm had been blown off in the explosion. We are talking of justice and truth in South Africa.

Let us rather return, from this all too barbaric and disturbing present, to the comforting distance of 19th century politics when the discourse of truth and justice could still be more assured even in the context of frontier wars. More than anyone else, it was Andries Stockenström, the most significant and controversial Colonial political figure of the first half of the 19th century, who made justice and truth his own political creed. Caught up in the violent and partisan conflicts which brought frontier politics repeatedly into open war, Stockenström fervently believed that his political conduct could be guided by universal principles: "I have the cause of truth to serve; I am to call 'murder, murder', and 'plunder, plunder', whatever be the colour of the perpetrator's skin."

Here we may surely hear the authentic voice of the Universalist and humanist commitment which has continued to inspire the best part of the 'moral tradition' in our liberal politics, and which still find their contemporary representatives in such exemplary figures as Helen Suzman or organisations such as the Black Sash.

But it has to be added that Stockenström's actual liberal politics was a much more ambiguous matter. He did not, and could not, face up

to the full social, cultural and political implications of truth and justice in a post-colonial society. That was the rock on which Hoernlé's liberal spirit would also come to founder at the onset of modern South Africa.

In his *South African Native Policy and the Liberal Spirit* Hoernlé attempted to rethink the theoretical foundations of liberal politics in the specific conditions of South Africa with a view to finding a basis for its "possibilities".

In the event, Hoernlé was not able to follow through on his radical critique of the postcolonial system of domination, nor to draw the full consequences of his questioning of the moral and political bases of a liberal ideology in the context of conquest and incorporation. Had he done so, he may well have found reason to link up with, and to carry forward, the earlier discourse of justice and truth. We are the poorer for his failure in what remains a desperately needed project.

Let us, in conclusion, take a hard look at what I have called the crisis of confidence in the "moral" tradition of liberal politics in South Africa, a generalised failing of moral will that has made it increasingly difficult for us to even talk about truth and justice in South Africa at all. That crisis of confidence has been a long time coming, and I will not detain you with its various reasons and causes which are many and familiar. Suffice to say that its signs are all around us. As good an example as any may be found in what is currently no doubt the most influential and incisive political commentary to appear in our liberal press, that by Ken Owen. In lucid and entertaining prose Mr Owen has sustained a powerful liberal critique of the many excesses and irrationalities of an increasingly authoritarian government. In Van Zyl Slabbert's words, He is "the most eloquent English-language Press chronicler of the sustained and massive assault of those who govern on what has remained of the values and institutions which could make up a liberal democracy in South Africa" (*Leadership*, 1988, Vol. 7/3, p.20). A worthy representative, then, of the traditional discourse about justice and truth? That would be a serious misunderstanding. The dominant tone of Mr Owen's coruscating wit and of his devastating polemical shafts is not

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that of serious moral commitment but of a comprehensive cynical disillusion. His is not a discourse about truth and justice. It would not be unfair to say that Mr Owen will not let any overriding concern for nuanced and uncomfortable truth spoil a good polemical sally. And when Human Rights spokesmen and others mount a campaign against the execution of the "Sharpeville Six", Owen will typically raise questions about the ulterior motives of any such moral crusade, insist that their reprieve or not must basically be a political decision, and argue that the best ground for clemency is the cynical one that it is not in the government's interest to create political martyrs (*Cape Times*, 4/7/88). This is a long way indeed from a stand simply on the grounds of justice and truth.

The same distrust of moral discourse has become a pervasive feature of many academics at our liberal universities as well. There are many reasons for this: the influence of the positivist ideal in the social sciences, the spread of the technocratic ethos, the many historical defeats of liberalism in South Africa, and so on. At present there is certainly no lack of academic involvement in the study of local social and political developments, and academics contribute in a variety of ways to the making of public policy as well as to devising strategies of opposition. But they also take increasing pains not to do so on any explicit moral basis. Consider a representative example in a recent publication by one of South Africa's most respected social scientists, with a distinguished career in liberal circles, most recently as Pre-

sident of the Institute of Race Relations: Lawrence Schlemmer. Professor Schlemmer has recently assumed the position of Director of the important new Centre for Policy Studies at the University of the Witwatersrand, which has just published, almost as a manifesto, a paper called *"Beyond Protest: Thoughts on Change Strategies in South Africa"*. As we are wont to expect from him, Schlemmer's paper gives much sober food for thought. Precisely for that reason, we should take quite seriously what he has to say about moral discourse and public policy. For Schlemmer's position paper amounts to an outright rejection of the different varieties of what he calls the "moralists". Apart from revolutionary confrontation, Schlemmer distinguishes three main forms of committed and sustained opposition to the racial order in South Africa. These are (1) protest and the expression of moral outrage; (2) strategies of pragmatic moral pressures; and (3) strategic analysis (p.1). Like Peter Berger and Bobby Godsell in their new book, *A Future South Africa: Visions, Strategies and Realities*, Schlemmer is primarily concerned with arguing for the need for strategic analysis, and warns against the dangers and confusions inherent in either version of the "moralist" approach. Schlemmer is prepared to grant that the moral pressure approach "may have some strategic

ability if it is used with careful discipline" (3). However for (1), the expression of moral outrage and protest, he has no use whatsoever. The moral protest position, he says, "need not necessarily imply concrete objectives since a moral posture is often its own reward" (p. 1). To Schlemmer moral protest and outrage is no more than a question of "achieving immediate emotional release", of futile "emotional catharsis" (p.2). Schlemmer looks to a form of *strategic analysis* apparently purged from all moral connotations whatsoever. This position is "based on careful analysis and the assessment of strategic opportunities" (p.2); it is concerned with identifying ongoing "processes which take changes and reforms beyond the limits intended by decision-makers" (p.6); it recognises the essential "interests" of the parties concerned, distinguishing between "core" and "marginal" interests; it seeks to devise mechanisms which can "seduce" or "reward" reactionary political groupings into accepting reform and change. If there is any moral component to the strategic task of "facilitating" the slow and painful process of change, then it is resolutely suppressed. In this perspective the phenomenon of moral outrage appears simply as a lamentably dysfunctional and irrational factor.

Perhaps, if we are still even residually concerned with truth and justice in South Africa, we need to take the social significance and political functions of "moral outrage" rather more seriously. Schlemmer is right that, both internally and internationally, moral outrage is a major component of the committed and sustained opposition to the apartheid order. But it would be wrong to dismiss that simply as moral posturing, or as irrational emotional gratification. Part of the problem is that we tend to think of moral protest in terms of actual organised demonstrations or petitions, typically by students or other marginal groupings. But this is to look at some of the attendant symptoms, not at the underlying social forces and experiences. In its most basic forms the experience of moral outrage and protest which sustains opposition to apartheid is to be found at quite a different level. It is to be found in the struggles through which migrant labourers and their families refused to remain separated

by the pass laws and influx control; it is to be found in the experience of whole communities uprooted by the Group Areas Act which has made District Six into such a searing public symbol; it is to be found in the indomitable resistance of traditional rural communities like KwaNqema or Magopa to their forced removal as "black spots"; it is to be found in the will of squatting communities such as Crossroads and KTC not to be moved, coming back again and again after their shacks had been destroyed or razed; it is to be found in the traumatic experiences of individuals and families who fell victim to the Race Classification and Immorality Acts; it is to be found in the moral courage which enables a solitary Black Sash member to stand in silent protest in the midst of uncaring suburban bustle; it is to be found in that which brings young white conscripts to declare in public that they cannot fight an unjust war or go with the troops into the townships, even if this would cost them six years of their lives. I could go on, but the point should be clear. Moral outrage and protest is not an irrational encumbrance to strategies for change; it is a major source for the social and political processes which give rise to and sustain resistance against the injustice of the apartheid order.

What might be concluded from this for our topic of truth and justice in South Africa? At least this: if the liberal tradition of discourse about truth and justice has proved highly ambiguous and more often than not abortive, then the struggles of our recent history have certainly established a popular and effective *sense of injustice*. From this, there cannot be any going back, but it also does not ensure the achievement of truth and justice.

But if our liberal tradition of discourse about truth and justice can find appropriate ways of relating to the current historical experience of injustice, it may yet be able to contribute to the liberating rather than repressive components of that popular moral outrage. To do that it will have to come to terms with its own ideological functions and historical failures. Perhaps we may yet learn how we might also be empowered by the intellectual and political traditions that have too often imprisoned us in the past.

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