4. THE COST TO LAW AND ORDER

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THE cost of any government policy can seldom be reckoned in money. There are always effects, good or bad, which are not so tangible, but which nevertheless must be taken into account. For example, taxes are generally destructive. When in England a tax was levied on windows, many windows were bricked up to avoid it. Some revenue was derived from the tax, but the health of the people was injuriously affected. Numerous examples of dangerous consequences flowing from ill-considered attempts to legislate against the determined wishes of the people might be cited. In recent times the most spectacular was probably that of the attempt to enforce Prohibition in the United States. Not only was the attempt a complete failure, but it also brought into being hordes of criminals from whose depredations that country is still suffering.

An examination of the effects of the Union Government's policy of apartheid is desirable so that we may better be able to measure something of its cost to the country. In this article I propose to consider the cost in relation to the whole democratic concept of law, our system of justice and administration of public affairs.

Apartheid may be taken to mean a policy which aims, by way of legislation, to segregate socially, economically, and politically the different racial groups which make up the population of the country. The final object is to bring about the complete separation of our multi-racial population into independent communities. It is not relevant to the purpose of this article to consider the practicability of that policy. The question, however, of how far it is compatible with the basic principles of Western civilization is very relevant.

The foundation of that civilization is the rule of law and equal justice for every member of the community. It demands respect for the worth and dignity of each individual person, acknowledging rights that are not to be invaded or curtailed except under due process of law and are not to be subject to the arbitrariness or caprice of officials or interested parties. Laws are

fallible, because those who practise and enforce them are fallible. But, when they are made with the consent of the governed and impartially applied to everyone, they command general respect and obedience.

It is that respect alone that makes laws effective. If it is lost, the maintenance of law and order becomes manifestly more and more difficult and requires an increasing use of force. When the laws are made and enforced by a small minority of the population, ignoring the wishes of the majority and imposing on them ever mounting disabilities, it is inevitable that those laws should be resented and resistance to them provoked.

It has been said that that country is the happiest which has need of the fewest laws. By such a test South Africa must be one of the least happy countries in the world. Each year our Parliament churns out huge volumes of new laws restricting the liberties of the individual. Over and above them, vast numbers of rules and regulations, having the force of law and still further limiting the freedom of action of the people, are issued. Many of them are made by officials who are responsible to no one. Arbitrary powers are conferred on Ministers and officials to make decisions of the gravest import to those affected, but against which no recourse to the courts is allowed.

In theory every person is supposed to know the law. It is, of course, quite impossible, even for those who are learned in the law, to know of, much less know, the vast mass of laws and regulations that flow from the authorities in an unceasing torrent. And as a very large number of non-Europeans are illiterate, the plethora of laws, mostly imposing new disabilities on them, brings to them a great sense of confusion and injustice.

So numerous are these laws and regulations and so comprehensive are they in their reach, that in 1955 the huge total of 2,022,480 contraventions of them were alleged. That figure represents one contravention to every seven members of the population. Of course, the same persons may be included several times in that total. Nevertheless, the figures are startling and alarming. A very large number of those prosecuted are non-Europeans. And they are charged and convicted for offences which involve no moral obliquity. In 1955, for example, there were no fewer than 84,526 prosecutions for contraventions of "Locations, Mission Station, and Reserves Rules and Regulations".

It would require too much space here to enumerate or examine

all those measures designed to further and enforce the policy of apartheid, but some of them may profitably be mentioned so that their effect on those persons directly concerned and on the community generally may be seen.

The Pass Laws, which date back in one form or another to the previous century, have been a continuing cause of suffering and bitterness for the Africans and productive of a growing contempt for the White man's law. Theoretically, passes have been done away with by the Natives (Abolition of Passes and Co-ordination of Documents) Act, No. 67 of 1952, which substituted reference books for such documents. Except for the convenience of having one book instead of a multiplicity of different passes and papers, however, Africans find that the new arrangement has brought them little, if any, relief from the indignities and anxieties that they had to endure under the pass system. Just as before, they are still liable to arrest if they move a few yards from the premises where they work and have left their reference books behind. The fact that they have perfectly valid books is no defence. When arrested they are marched off to a police station.

There, after much waste of the man's time and that of the police and other officials, he may be released if he signs an admission of guilt and pays the usual, to him enormous, fine of £2 or £3. If he has not got that amount of money with him, he will be detained and brought before the court the next day and fined, with the alternative of serving a term of imprisonment. It is difficult to describe adequately the hardships and indignities suffered by Africans under the Pass Laws.

Recently Colonel Grobler, Deputy Commissioner of Police for the Witwatersrand, said that "to deprive a person of his personal liberty was a serious thing", and he went on to suggest that for technical offences people should be brought to court by means of summons. Dr. Eiselen, the Secretary for Native Affairs, chided the police for making too many arrests for trivial or technical offences, referring particularly to documentary offences. Yet the number of such arrests continues to mount and the suffering involved to increase.

The position has recently been much aggravated in consequence of the Government's attempt to introduce reference books (passes) for African women. Previously they had not been required to have passes. The introduction has been begun in some small towns and a few rural areas. Wherever the attempt has been made it has been met with vigorous opposition. Many of

the books which have been issued have been burned, and there have been numerous riots. Mobs of protesting women have been dispersed in hard-hitting baton charges which leave many injured.

There can be no doubt about the unwavering and bitter hostility which is being provoked among the African population, men and women, by this policy of the Government. It is impossible to exaggerate the resulting resentment against the White man's laws and the damage that it is causing to the relationship between Europeans and Africans.

Apartheid legislation which is causing widespread havoc and immense losses to non-Europeans, although its application is still only in its infancy, is the Group Areas Act and the cognate Natives Resettlement Act, No. 19 of 1954. These Acts, passed by the Government majority in an all-White Parliament without consulting on any level the non-Whites whose interests are adversely and harshly affected by the Acts, have provoked in the sufferers a sullen resistance which is rapidly and dangerously undermining any remaining respect for law. And the Acts are being administered in such a way that all hardships and losses are borne by the non-Whites, while many Whites stand to gain considerably at their expense.

Under the Natives Resettlement Act, the owners of freehold in the African township of Sophiatown, Johannesburg, many of whom have good modern well-equipped houses on their land, are being told to give them up and move to areas where there is no electricity available and there exists none of the amenities which they presently enjoy. The compensation proposed is woefully inadequate. Those persons who are deprived of their businesses will receive no compensation for goodwill. No Africans moved under the Act can obtain a title to freehold land in the areas to which they have to move and must be satisfied with a very insecure leasehold tenure in exchange. The rage and sense of frustration which this measure has aroused can hardly be appreciated by a White person who has been brought up to believe that he can never be deprived of his property, except in the event of overriding public necessity and then only on payment of generous compensation for dispossession and loss.

The Group Areas Act, as it is being applied and if the application is successful, will mean the utter ruin of the Indian population of the Union, some 400,000 persons. These people, many of them with long-established, prosperous businesses, are being ordered to move to bare undeveloped land, far from the

areas where they have previously lived and worked and from access to which they would be cut off by unbridged streams or railway lines. Johannesburg Indians have been ordered to remove to bare veld 22 miles from the city, where there is no accommodation for them, and none of the services or amenities required by a community is available. And the price asked by private owners of land in that area is fantastically high, not much less than the price of land in the fashionable suburbs of Johannesburg. Traders forced to move will not only lose their businesses without receiving any compensation for the goodwill they have built up over many years, but will be restricted, in fact, to trading with their fellow Indians. It does not need a keen imagination to appreciate the fury that has gripped the Indians at the injustice of such proposals and their determination to resist and defeat the application. The cost of thus undermining respect for the law amongst an otherwise law-abiding people cannot be too strongly emphasized.

Under a proclamation made in terms of the Group Areas Act, the Indians in Pageview, Johannesburg, an area set aside for Indians by President Kruger and in which they had legally acquired freehold title to their land, were ordered to move away by August 2nd, 1957. As they were not prepared to move voluntarily and there was no accommodation available for them elsewhere, the Government had no option but to grant permits to them to stay where they were. The fact that proclamations can thus be ignored as impossible of enforcement further weakens the authority of the law.

The same Act has been used to order Coloured people in Johannesburg to prepare to move away from their present homes in the near future. They can now sell only to Europeans, none of whom will buy while the Coloureds remain, so that there is no market if they wish to sell. The Government, which may buy such houses, will do so only at prices far below their real value.

These Acts run so completely contrary to long-established legal rights, to principles fundamental to Western civilization, and to the individual person's sense of justice, that they will not willingly be obeyed. Indeed, they will be resisted in every possible way, legal or illegal.

The Group Areas Act is having a directly hampering effect upon the practice of law by non-Europeans. It has long been the proud boast of the Government's representatives overseas that nothing was done to prevent non-Whites in South Africa from

qualifying for the professions. Under the Group Areas Act, however, when they have qualified as advocates, they are refused permission to have chambers in which to meet clients and prepare their cases, except in non-White areas which are many miles away from the courts where those cases would be heard. Two instances of such hampering have recently occurred in Johannesburg, despite the protests of the Bar Council, the sufferers being Mr. Duma Nokwe, an African advocate, and Mr. Mahomed, an Indian.

The Coloured people are the section most adversely affected by the Population Registration Act, No. 30 of 1950. They are bitterly incensed because it can be, and is being, used to interfere with their development and restrict their activities. They are also resentful at the Prohibition of Mixed Marriages Act, No. 55 of 1949, and the Immorality Amendment Act, No. 21 of 1950. These Acts have had the effect of breaking up stable unions of long standing between Whites and non-Whites, and, as no provision has been made for the children of such unions, great hardships have been caused by the application of the Acts. The law first prevented couples who were living together from marrying and then prevented them from living together at all. So many tragic instances of broken homes have resulted from the enforcement of these Acts, however, that the Government has suspended their operation in a number of instances. This exercise of administrative discretion, where no authority exists for it, amounts to a serious infringement of the rule of law.

No useful purpose would be served by referring in detail to other apartheid laws. Africans are unequivocally hostile to the Bantu Education Act, which will place insuperable obstacles in the way of their acquiring Western culture and knowledge; to the Nursing Act, which imposes a lower status on African nurses although they have the same qualifications as their European sisters; to the Natives Laws Amendment Act, the Act containing the notorious "Church Clause", with its object of preventing any personal intercourse between Europeans and Africans except in the relationship of master and servant.

The Industrial Conciliation Act, however, which places non-European workers at the mercy of their White fellow workers, is worthy of special mention.

African trade unions may not be registered under the Act. They therefore have no legal status. It is also made a crime for Africans to strike. Their interests as workers are left to be

protected by European officials who are appointed by the Minister of Labour.

No new mixed unions, that is, unions of White and non-White workers, are to be formed. Those mixed unions which existed at the time the Act came into operation may, at the instance of either section of the membership, be split into separate unions along racial lines. Mixed unions which continue to exist must have separate branches and hold separate meetings for their White and non-White members. The Executive Committees of mixed unions must consist of White persons only, unless the Minister permits otherwise.

Section 77 of the Act gives the Minister power to extend the colour bar, for the protection of European workers, to any occupation. An order for the reservation of jobs in the garment making industry was made recently by the Minister of Labour, in the supposed interest of the European workers. The non-White workers in some towns demonstrated, by remaining away from work for two days, that the industry could not function if the order were carried out. The order has not been withdrawn, but the Minister is allowing its enforcement to remain in abeyance. Not only does this leave the non-White workers to continue in a state of insecurity about their jobs, but it also gives a fresh example of the arbitrary power of a Minister to make laws and then suspend them at his whim.

The rule of law, with its requirement of equal access for every person to the courts, was fatally breached by the enactment of the Natives (Prohibition of Interdicts) Act, No. 64 of 1956. Under the terms of a number of laws Africans may be ordered to leave, or be prohibited from entering, specified areas. Various officials concerned with influx control may, in certain circumstances, order them to leave the area where they have been living or working. Formerly, if the African ordered to leave felt that the order was illegal, he could apply to the court for an interdict against its enforcement. The courts did not grant an interdict unless the applicant could show a *prima facie* case of illegality and irreparable loss if the order were carried out. Numerous cases of illegal orders have in the past been interdicted by the courts, but now the removal orders, whether legal or not, will have to be obeyed, and the victims have no adequate means of redress for loss of their homes and jobs.

There is one phase of the struggle to enforce apartheid in which the cost to law and administration can be measured fairly accurately

in terms of money. It is the Separate Representation of Voters Act. Before its enactment was completed, the Government had had to resort to numerous tricks and subterfuges which gravely besmirched the honour and reputation of Parliament.

For some six years a considerable portion of each session of Parliament was spent in discussing the proposals. There were four lengthy applications to the courts, with an appeal in each instance to the Appellate Division of the Supreme Court. There was the abortive High Court of Parliament Act, which brought Parliament and the majority controlling it into contempt. Then, as one of the steps taken in its campaign, the Government increased the number of judges in the Appellate Division of the Supreme Court from six to eleven. And finally it increased the Senate from 48 to 89 members, employing the power which it had thus acquired to destroy the entrenched clauses in the Constitution.

The whole of the cost of these measures and of the legislation and resulting litigation must be charged up to apartheid. The allowances of the additional 41 senators, exclusive of the value of the perquisites they receive, amount alone to over £70,000 a year.

The money cost of enforcing the multitude of apartheid laws and regulations cannot so easily be computed. It must, however, be very large, of the order of many millions of pounds. The number of police rose from 14,743 in 1946 to 23,016 in 1955. Allowing for the increase in the population during that period, the number of police per thousand rose by almost exactly 25%. A large portion of the cost of the police, which in the year 1953/1954 was over £11½ millions, is attributable to technical offences against apartheid which involve no moral turpitude. In addition, a great part of the cost of the Native Affairs Department, which in the same year was £5¼ millions, was incurred as a result of apartheid.

The money cost, however, is insignificant in comparison with the moral, social and political cost. It dulls the sense of justice of the Whites and turns their protestations of religion into blasphemy. It brutalizes countless thousands. It has gone far to destroy respect for law and the administration of justice. It made Parliament resort to the trickery of the High Court of Parliament Act and the packing of the Senate under the Senate Act. It has brought about one law for the Whites and another for the non-Whites. It shows a cynical disregard for the worth and dignity of the individual. It means an ever increasing curtailment

of the rights of the non-White citizens.

Apartheid plays a large part in aggravating the poverty of the non-Whites. This in turn leads to boycotts, defiance campaigns, riots, and strikes, which then, because of the fear they engender among the Whites, are suppressed with ever greater harshness. Poverty is a great promoter of crime, and of serious crime there has in recent years been a frightening increase. Savage punishments made compulsory by legislation have failed to stem the increase. Imprisonment of many thousands of non-Whites for what are purely technical offences has introduced them to hardened criminals and thus turned many to lives of crime.

We hear much of the rise in the number of agitators. As General Napier said, at the time of the Chartist riots in England, about a hundred years ago: "The only real agitator is injustice, and the only way is to correct the injustice and allay the agitation". The principles of civilization must be for all or they are safe for none. The French National Assembly, in 1789, laid down that: "Ignorance, neglect, and contempt of human rights are the sole cause of political misfortunes and corruption".

History shows that that is true. Apartheid is an attempt to defy the lesson of history, and its cost to South Africa is proportionately prodigious.