

THE BLACK SASH

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"Law and Order" or "Terror and Disorganization"?

1988 is a year marking anniversaries of special significance for South Africans:

500 years since Bartolomeu Dias arrived on these coasts;
300 years since the French Huguenots arrived;
40 years since the National Party came to power.

Occasions like these spur people to look back and to consider the historical paths that have led them to their present situation. In other circumstances there could be no harm in celebrating the achievements of those who have contributed to South Africa's history, and indeed the courage and determination and skills of the early travellers and settlers are worthy of praise.

Nevertheless, historical landmarks also remind us of the wrongs which were done in the name of exploration, colonisation and civilization. Indigenous people often suffered oppression and exploitation, as their descendants do to this day.

Last year was celebrated as the 300th anniversary of Paarl in the Western Cape, with a festival of history, culture and wine. Yet it cannot be said that the Paarl valley was uninhabited before the first white settlers arrived there 300 years ago. Where was the history of those people who had already been there? The Black Sash in the Cape Western Region produced "The Hidden Story", compiled and edited by V.C. Malherbe, using Black Sash archival records and other sources, to tell a part of those people's own history of their town.

This recording and publishing of information is a vital part of our work. It is often arduous, it is hedged about with legal pitfalls, and sometimes what we are able to document is only a small section of a much larger whole. But it is an important contribution to understanding the whole.

Looking back on the past year in preparation for this Conference, I found one particular phrase coming to my mind, a phrase from another report we have recently published, "Greenflies, Municipal Police in the Eastern Cape". The authors conclude their introduction by citing as a primary concern "the municipal police as a new phenomenon, and the twin themes of their impact on South Africa's black communities: terror and disorganization."

It is those words, "terror" and "disorganization", that seem to me, more and more, to express what is happening in the country. The Government tries to convince the extreme right wing that the on-going state of emergency is permitting it to restore "law and order"; instead the inhabitants of the towns and townships, the urban squatter settlements and the rural or semi-rural villages, are subjected to terror and disorganization by those very forces which ought to exist for their protection. In Crossroads in 1986,

in the Pietermaritzburg area, in K.T.C. in Cape Town, in so many towns in the Eastern Cape there are violent confrontations between different groups. Time and time again we hear allegations that the security forces favour one group above the other, providing protection or even support.

The Rule of Law

The grip of terror replaces trust in the Rule of Law where emergency regulations are invoked to quell opposition to government policies, and when the courts seem to offer little or no protection against arbitrary detention and other official action. The approach of (then) Acting Chief Justice Rabie is not reassuring:

"We must be realistic. We have strangers coming in across the borders with bombs and mines. There is nothing in the common law to deal with a situation like that. We must get information from people we arrest, especially when they are carrying weapons from the Soviet bloc, otherwise we can't defend ourselves.

The situation in the country is pretty near that of a civil war. It is naïve to think you can quell it by bringing people to court".

Sunday Star, 3.5.87

Parliament may pass legislation, and the security forces may enforce regulations, but the South African legal system is "on the brink of dying" (Prof. D. Davis, quoted in the Argus 3.3.88)

It is inevitable that there will be a degree of conflict in any society, particularly one which is in a process of transition, about how to reconcile the protection of freedom with the need to maintain necessary restraints. This is where there is a need for guarantees of basic human rights, which I shall discuss further. But it is also essential for a legal code to have the acceptance of the majority of the population. That is the only way to ensure reverence for the body of the law. Laws which are passed by an unrepresentative government cannot command that kind of respect. Over 2000 years ago Cicero pointed to this:

"What about the many deadly, the many pestilential statutes which nations put into force? These no more deserve to be called laws than the rules which a band of robbers might pass in their assembly. For if ignorant and unskilful men have prescribed deadly poisons instead of healing drugs, these cannot possibly be called physicians' prescriptions"

(from Laws, quoted by Sir Robert Birley, Concepts of Freedom, UCT 1966)

If the Rule of Law is to be respected, the laws must have the legitimacy that stems from the participation of all the citizenry in their formulation, and they must be seen to protect rights as well as ensuring that justice takes its course.

When, for example, "warlords" in areas surrounding Pietermaritzburg are believed to act with impunity and to have the tacit approval of the police, the law is brought into disrepute. When laws allow discrimination on the basis of skin colour and ethnic origin, the law is brought into disrepute. And when this happens, when a legal system loses legitimacy, or does not meet the needs of the people, the people will formulate other systems of justice (cf. Dr. Wilfried Scharf on "People's Justice", Sash, Vol. 30, N° 4, March 1988).

On the other hand, when the courts uphold the appeal of the Universities of Cape Town and Western Cape against the Minister of Education's imposition of conditions for subsidies; or when interdicts are granted to protect the residents of a township such as Hofmeyr or Bongoletu from assaults by 'kitskops'; or when inquests lead to a proper investigation into the events resulting in a death; then the legal system gains in respect and legitimacy. The growing understanding of 'Street Law' may also help to broaden the concept of the law as providing protection against injustice. (see "Spotlight on Street Law", Sash, Vol. 30, N° 4, March 1988).

The Year Behind Us.

The events of the past year are somewhat overshadowed by the announcement on February 24th of the latest and most overt attack of recent times on opposition groupings. Here indeed is disorganization at its most visible.

Looking back, we follow the chain of events bringing us to this point. Last March we were concerned about the growing militarisation of our society and the rise in emigration figures. These two factors persist. We had to face the prospect of the whites-only election, and this resulted in the "lurch to the right" which jostled the National Party off its "reform" path and replaced the Progressive Federal Party with the Conservative Party in the role of official opposition in the House of Assembly.

Since then we have been exposed to a string of interconnected events, all of which have been influenced by, and have had an effect upon, one another:

* The swing to ever more conservative attitudes continues in several sectors of the white population. Transvaal rural constituencies in particular have been won over by the Conservative Party - a trend which was confirmed in the Standerton and Schweizer-Reneke elections.

* There has been growing evidence of poverty and unemployment, with little prospect of relief, despite schemes initiated or supported by the Department of Manpower. Job creation schemes and public work programmes were launched in several areas, and numerous organizations have expressed concern about the situation.

* The escalating cost, in every sense of the word, of maintaining the homeland system where barely viable, overcrowded entities are spuriously defined as independent or self-governing states and can only be administered and controlled at the expense of South Africa's true development.

* Simmering dissatisfaction and anger has continued to affect schools and other centres of education. Inequalities, authoritarian practices, breakdowns of trust and communication, all constitute a plague which could poison our school system irretrievably. It is no accident that education and student bodies figure prominently among those restricted by the new regulations.

* The centrality of the question of land allocation has become clearer than ever. From the period of colonial settlement to the present, one of the most crucial factors was the decision as to who had jurisdiction over the land. The struggles of the homeless - an aspect which has occupied our Regions this past year - are conducted on the bitter soil of dispossession and alienation from the land.

* The tense relationship between South Africa and her neighbours persists. Disturbing questions about the role of the SADF in our contiguous countries are a major factor in the decision of young men like Ivan Toms to risk prison or exile in preference to military service. We pay tribute to the End Conscription Campaign, to Ivan and to those who have honoured their commitment as conscientious objectors.

* With its reform drive stalled by its fear of the Conservatives, and in its desperation to stamp out all sparks of resistance, the Government has predictably attacked its critics, especially the press, the universities and the churches.

* There has been continued resistance to the government's proposed restructuring of regional and local administration, and no sign of willingness among credible black leaders to support them. However, there have been increased difficulties for extra-parliamentary opposition groups in the form of continuing detentions and the risk of arrest which hampered meetings and opportunities to discuss strategies or resolve differences.

* Detentions in terms of the state of emergency and security legislation have continued; major treason trials are under way; people, including children, have been sentenced to long prison terms for politically motivated public violence offences; condemned prisoners await the horror of multiple hangings. The repressive nature of our society is all too evident.

* In spite of this, the spirit of resistance is not broken. Even more now than after action taken against organizations in the 1960s there is a strong determination in many communities that a new society must and will be carved out. Not only among the voteless and the ever more militant youth, but also in the electorate there is a growing sense of a need to be more widely involved and more deeply committed. Alliances over specific issues which have allowed cross-fertilization of ideas have been notable developments.

1988

The start of 1988 brought the new session of Parliament, and the State President's apparent determination to ignore the most critical issues confronting him and to concentrate in his opening address on the economy.

Rumours gained strength that action would be taken to restrict or prevent income from abroad to various organizations. However, before that could happen, on February 24th new regulations were issued in terms of the state of emergency : severe restrictions were placed on the work of COSATU and the activities of 17 other organizations were so severely restricted that they are effectively banned. They are: UDF, AZAPO, DPSC, SAYCO, SANSCO, CAYCO, SOYCO, NECC, AZANYU, NEUSA, VCA, CRADORA, PEBCO, WCCA, SCA, RMC and DESCOM.

At the same time 18 individuals were restricted, among them: Albertina Sisulu, Archie Gumede, A.S. Chetty, Simon Gqubule, Joe Marks, Joey Marks, Willie Hofmeyer, Rashid Saloojee, Jabu Ngwenya, Derek Jackson, Reggie Oliphant, Mbulelo Grootboom, Aza Cachalia, Mama Zihlangu, Christmas

Tinto, Zoli Malindi, Roseberry Sonto.

Why should the government take such drastic action, immediately followed by the tabling of legislation to cut off funding for organizations opposing its policies?

Does it not care about the international outcry? The truth is that outcries are unpleasant but they don't hurt.

Does it not care about opposition within the country? The government has the might to contain that opposition. It must be hoping that there will be no more than a degree of public protest which will be confined to its known opponents and can be easily controlled. In Parliament it has the majority, and outside it has the "kitskops" and the security system to cope with localized resistance.

Does the government hope to win back Conservative Party supporters by demonstrating its ability to hold onto power and control? This has undoubtedly played some part in the decision to act so decisively, but the government is also determined to deal strongly with the right wing, and to emphasize the difference between its own policies and the blatant racism and aggressive stance of the C.P. and the AWB. This will be important for the time when, having silenced opposition within the country, it can hope to turn back to the international community for support. That hope for future support makes it necessary to have silenced those organizations which have been particularly successful in disseminating information abroad about repression and detentions.

We need to understand that these actions, costly as they are for the government in terms of its public image, are necessary if it is determined to carry out its policies unhindered. Its principal aim for this year is to re-establish control wherever it has been lost in every city, town and village. It is absolutely intent on pursuing its restructuring programme, whether or not it can get the National Council established. The Regional Services Councils and the local authorities must be made to function, whether by co-option or coercion of local participants.

Could it even be that organizations like the UDF and AZAPO have been restricted in order to prevent them from changing their non-participation policies and using the new structures to gain power within the system? This did not seem an option which would have the support of those bodies, but perhaps the government was taking no chances.

We have spent time looking at the National Council proposals, and will be talking at this conference about the municipal elections planned for October. We can ask ourselves - why not use the structures the government is putting in place and then try to change the system from within? It would appear to offer some hope of evolutionary rather than revolutionary transformation - why do opponents of this option believe it is doomed to failure?

The first and most immediate reason is that the leaders of political groupings are not free and consultation is impossible. Even if it were possible to have consultation before the elections, there is no certainty that a continuing process of democratic accountability of local representatives could be maintained.

Furthermore, there is widespread and profound distrust of the government's intentions, and a long history of other attempts to provide a voice for black opinion without conceding any power.

In addition, the whole system is loaded against the possibility of a true democratic process emerging. There is no clarity about how the municipal elections are to take place. The government is already seen to be picking and choosing its partners. In areas where there

is resistance the authorities have not only the power of force but also the power of patronage to allow them to install complaisant groups or individuals in positions of control. Offers of resources such as clinics, creches, schools, roads, are powerful negotiating tools in disadvantaged communities.

Finally, and very importantly, there is the knowledge that the major battle which the government has lost is the struggle to win over the hearts and minds, the support of the majority of the population. That is a victory which has been achieved by the community-based extra-parliamentary opposition, and it is an achievement it is not willing to relinquish.

The existing groupings within the overall system of government do have a role to play, and this may be developed and expanded, particularly if the community-based organizations are immobilized for a period. This could be a useful development, especially if good communication can be maintained between those within and those outside the system, since the significant pressure for real change will continue to come from organizations committed to struggling for democratic rights for all, and to living that out in their own policies and practices.

For us in the Black Sash this means an on-going commitment to the ideals we have always upheld. I spoke at the outset of significant anniversaries this year. This is the fortieth year since the adoption of the Universal Declaration of Human Rights by the General Assembly of the United Nations. It is an appropriate time for us to consider what we mean by human rights, and how best such rights are to be recognised and protected.

Since 1948 a number of charters, covenants and conventions on human rights have been adopted in various parts of the world. They have considered individual civil and political rights as well as economic, social and cultural rights. In South Africa itself the Freedom Charter has played a significant role and is viewed by the many supporters of the charterist organizations as a sound basis on which to build a new and different society.

Charters and covenants, however, need to be backed by legislation and enforced if they are to have any effect. In South Africa there has been debate about whether a Bill of Rights could meet this need. The difficulties of introducing such a Bill here seem almost insurmountable. Not least of the problems is the mistrust of the motives of those who now propose it: the white, privileged sector of society is suspected of trying to ensure protection of its property, group and cultural rights in an increasingly uncertain future.

Nonetheless, we believe the defence of human rights and the pursuit of democracy to be a challenging and noble vision for us to follow. In this year ahead, culminating on December 10th with the anniversary of the Declaration of Human Rights, we rededicate ourselves to the long hard struggle to make South Africa a country in which those ideals are shared and upheld, and where the reality will keep step with the dream.

Mary Burton.