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Sol T. Plaatje

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in this issue . . .

EDITORIALS

1. The Group Areas Act:

If the end of apartheid starts with the end of the Group Areas Act, then there is no joy to be had out of the majority (all Nationalist Party) report of the President's Council on the Act. Nor is their any in the President's response to it.

If there is one step which the Government could take to restore some credibility to its reform talk it would be to scrap this Act. Certainly that would need courage on its part. There would be an inevitable white rightwing backlash of which the Conservative Party would take full advantage. But the benefit to its image in all sections of the black community and internationally would be enormous.

Unfortunately neither the State President nor his Government seem to have that kind of courage, if indeed they want to get rid of Group Areas at all. The most they seem able to contemplate is giving local authorities the option to decide whether areas under their control should be open or not, with residents having the right to petition for or appeal against, changes to the Government-appointed Administrator. This is just passing the buck. It is **Government** policy and legislation which has decreed that over 80% of the country is in white ownership and it is **Government** action which is required to remedy that gross disparity. This can only be done by **the Government** removing the present restrictions on black ownership and occupation of land and by its embarking on a programme of land redistribution which will bring agricultural land into productive use in black hands and release land at present under white control to be made available to meet the massive backlog in black urban housing.

Local option leaves black land ownership and residence at the mercy of local white prejudice. No great change will come that way.□

2. Allan Hendrickse:

The one good thing to come out of the present Group Areas rumpus has been Allan Hendrickse's threat to force the government into an election it doesn't want unless it repeals the Act.

If he has the nerve to carry out his threat, the tri-cameral Parliament may suddenly start to look more interesting.□

3. A State of Confusion:

The political scene gets more confusing by the day.

The State of Emergency is having many side effects, one of which seems to be a rethink in some UDF circles over whether they should drop their boycott of the tri-cameral Parliament.

On the white parliamentary scene the Progressive Party's losses in the General Election have been followed by the loss of three M.Ps and one President's Councillor, three of them to the new National Democratic Movement. These are blows which the PFP will be hard put to survive.

What of the National Democratic Movement?

Can it forge a combined parliamentary and extra-parliamentary movement, with significant Afrikaner support, which can really threaten the Government? Not soon we wouldn't think. Long term? Perhaps.

We will have to wait to see what it really stands for, and how the organisation and its leaders conduct themselves, and how the full range of public opinion reacts to it, before we can weigh up that possibility.

In the meantime we hope that the PFP and NDM do not spend most of their energies fighting each other – although the manner of the new movement's birth unfortunately makes that very likely. The PFP will have to be extraordinarily forbearing to avoid it. We hope that they can manage it.□

APOLOGY.

Through a complete misunderstanding between two members of the Reality Board the article by Mark Swilling in the last issue of REALITY appeared without his knowledge. We wish to apologise for this serious mistake and to express our regret at any embarrassment and inconvenience he may have been caused.

Editorial Board.

E.K. Moorcroft

THE DAKAR CONFERENCE; a different perspective

A great deal of attention has been focussed on the South African response to the Dakar Conference, and on the reaction of the Government to it. Scant attention has been paid to the significantly different African response, particularly by those countries which were in any way associated with it.

Whereas it was the actual meeting with the African National Congress that captured the headlines in South Africa, it appeared to be rather the fact that a group of (perceived) white South African 'boere' had actually turned their backs on apartheid which excited the imagination and admiration of the African people. Wherever we went, we were fêted as the Anti-apartheid Afrikaners rather than as the South Africans who had come to talk with the ANC. There was no mistaking the immense emotional response by our hosts to our rejection of apartheid. Something that we were soon to learn was that a willingness to take a stand against apartheid regardless of the consequences was the 'open Sesame' to Africa. Those who are prepared to disavow apartheid will find that Africa is eager to open its arms to embrace them.

What so many South Africans appear unable or unwilling to comprehend is the intensity of this emotional reaction to apartheid. At best, whites seem to think, if they think at all, that blacks get upset by apartheid because it 'discriminates against them.' Dakar opened one's eyes to how shallow is this perception.

Perhaps it was the visit to the Slave Island of Goree which brought it home to one why Africa will not rest until the last vestige of apartheid has been rooted out of the continent. Goree, off the coast of Dakar, was the most important staging post for slaves bound for the Americas. From the forbidding portals of its great slave houses more than twenty million human beings were sold into bondage during its infamous three hundred year history. Perhaps no other single place has witnessed so much human suffering over so long a period. Despite this, what is remarkable is the lack of bitterness amongst the people.

One senses that rather than hatred for the perpetrators of such cruelty, there was disbelief at the indifference of those who saw this cruelty and yet remained unmoved by it. This indifference was well captured in the design of the slave houses. Whereas the slavers lived in luxurious quarters facing the sea, the slaves were incarcerated in dark dungeons immediately below them.

This indifference was in direct contradiction to the concept of humanism, 'ubuntu', which is such an impressive feature of African philosophy.

So it is with apartheid. All the indignity and inhumanity of slavery was symbolized on Goree, and apartheid has, throughout Africa, been seen as the new slavery. Those who fail to take steps to bring this slavery of the mind to an end are regarded as being no better than those who remained unmoved by the suffering of their forebears. It is this kind of emotional response which prompts leaders such as Pres. Abdul Diouf of Senegal to suggest the holding of apartheid trials in post-apartheid South Africa.

If the South African Government harbours any hopes at all that it will be able to fob off black political aspirations with some sort of modernized apartheid, either in the form of 'own affairs' or any other system of neo-racialism, then it is even more out of touch with reality than we have dared fear.

One of the most heartening consequences of the Dakar conference was the way in which the internal delegation was left in no doubt at all by both the African National Congress and our African hosts that our bonafides as Africans were never in question. This was not a con ference between Africans and colonials or settlers, but a conference between Africans and Africans. By having rejected apartheid, the internal delegation was put in a position to be able to experience a privilege far greater than that of meeting with its fellow South Africans, it was able to experience a small part of our African heritage which we have for so long denied ourselves. It was an enormously enriching experience. □

Jonathan Burchell.

Judicial control of arrests and detention: Theory and Reality

The highest court in the land has recently affirmed that a police officer effecting an arrest without warrant under the notorious section 29 of the Internal Security Act 74 of 1982 (and certain provisions in the Criminal Procedure Act 51 of 1977) must have reasonable grounds for believing at the time of the arrest that the arrest fell within the framework of the statute. If the legality of the arrest is subsequently challenged, the arresting officer must satisfy the court that there were factual grounds for his belief and the court must then examine whether these grounds were reasonable. This welcome conclusion was reached in the unanimous judgement of the Appellate Division in **Minister of Law and Order** v **Hurley** 1986 (3) SA 568 (A).

THE MANNING CASE.

Not long after these basic theoretical limits on State power were authoritatively established by the Appellate Division a judge in the Durban and Coast Local Division of the Supreme Court has, in a judgement which has not yet been reported, provided a gloomy insight into the application of these principles in practice **(Manning** v **The Minister of Law and Order & others,** judgment of Thirion J delivered on 30 June 1987* case no 2517/87).

Ms Claudia Manning was arrested on 2 April 1987 on instructions given by one Colonel Büchner (B) of the Security branch of the South African Police. He ordered her arrest in terms of section 29(1) of the Internal Security Act which provides that a police officer of a particular rank may order without warrant the arrest and detention for interrogation of any person who he has reason to believe has committed or intends to commit, amongst other things, terrorism or subversion or who is withholding from the South African Police information regarding the commission of such offence. Section 29 is designed for the purpose of interrogating detainees and such detention may in fact amount to detention for an indefinite time. Dr Manning, the detainee's father, applied for an order declaring his daughter's detention to be unlawful.

EVIDENCE.

The evidence of the arresting officer (which would have done credit to a South African television documentary on the ANC) can be summarized as follows: The aim of the ANC is to overthrow by violence the State authority in South Africa. The ANC has, as part of its aim of intimidation and violence, established cells inside South Africa in order to provide logistic support, including accommodation, transport and information to trained ANC 'terrorists' entering South Africa (Thirion J commented on this evidence: 'As Colonel Büchner is a police officer who can speak on these matters with authority, I have to accept his evidence on this point as correct'). B alleged further that he had received information from a source, which he refused to disclose, that Ms Manning was a member of an ANC cell in the Durban district. One of the members of the cell had been arrested and this member confirmed that Ms Manning was a member of this cell. B's reason for not disclosing his source was that it would endanger the safety of the source (Thirion J considered himself bound to accept this explanation since it had emanated from 'a highranking police officer with experience in this field'). The evidence linking Ms Manning to the Wentworth cell of the ANC contained some ambiguity and lack of clarity which Thirion J tacitly acknowledged by having to explain what the police officer meant to say.

THE JUDGEMENT

Thirion J accurately stated the **Hurley** principles which apply to arrests and then emphasised two important variables which affect the assessment whether 'reasonable grounds' for an arrest existed: the reliability of the source and the nature of the information –

> 'If the source is trustworthy, one would tend to regard the information as reliable despite the fact that the information itself may not be detailed or persuasive. On the other hand, if the reliability of the source is not beyond question the probabilities and the surrounding circumstances may be decisive.'

The judge held that the source was known to the South African Police and had previously supplied trustworthy information to them. Police investigations had also confirmed the correctness of aspects of the information supplied by the source, certain persons mentioned in the information had been identified and some of them after arrest had under interrogation confirmed the correctness of the information received from the source. There was, therefore, in the judge's opinion, 'ample reason why Colonel Büchner could have trusted' this source.

Although accepting that B did not state that Ms Manning had done anything as a member of the ANC cell, Thirion J concluded that B was entitled to infer that she associated herself with the activities of the cell. B, had, therefore, discharged the burden of demonstrating reasonable grounds for believing that Ms Manning had committed the offence of conspiracy to bring about an act or threat of violence or an act aimed at causing such act or threat in contravention of section 54(i) (iii) of the Internal Security Act.

The applicant also applied for an order calling on the State to produce the detainee in order to testify on the reason, facts and information relied on by B and, alternatively, an order that the evidence of Ms Manning be heard, either orally or by means of an affidavit. Thirion J rejected this alternative application on the grounds that the evidence of the detainee would not be relevant to the question whether B had reason to believe that her arrest was justified.

DISCUSSION.

Obviously the belief of the arresting officer does not have to be based on conclusive evidence of the guilt of the

arrested individual. This degree of proof is only required when the detainee is finally brought to trial – something which cannot be guaranteed in the present South African situation. As one commentator has stated – . . . 'the police need show only that their belief is reasonable, not that it is correct' (E Mureinik (1985) 102 **South African Law Journal** 80). It is difficult in **Manning's** case to regard the incomplete and virtually untested evidence of the arresting officer regarding membership of a specific ANC cell based on an unrevealed source and an inference of association with certain activities of the ANC drawn from this evidence of membership of the organization as constituting proof on a balance of probabilities of reasonable grounds for believing that the arrest was justified. But even assuming the court in Manning's case was right in concluding that there were reasonable grounds for believing an arrest and detention was justified, there is a more disturbing aspect of the judgment. Despite the flimsy basis for arrest, the detainee herself, who according to B denied her membership of the ANC or that she had had any involvement in its activities and maintained this stance in a statement which she made a few days after her arrest, was not heard either orally or by means of affidavit. She would undoubtedly be able to indicate, for instance, whether she had been questioned or interrogated after her arrest on her alleged involvement in the ANC cell. In fact, in an affidavit filed in a subsequent application for the release of other detainees, Ms Manning did allege that a total of only about ten minutes of her interrogation had been devoted to her alleged involvement with the ANC and that she could have supplied the information without being detained.

The object of an arrest under section 29 of the Internal Security Act is clearly to interrogate the detainee and evidence that a detainee was never questioned at all or at least not in connection with the main reasons for the arrest and detention would constitute strong evidence of an improper purpose in the detainee's arrest and subsequent detention. Even assuming, which is a dubious assumption, that the evidence of a detainee is not relevant in determining the issue whether the arresting officer had reasonable grounds for believing that the arrest and detention were justified, evidence of a detainee would be crucial in order to determine whether the police had used the detention as a device to interrogate the detainee about aspects unrelated to the activities forming the basis of his or her arrest.

Furthermore, the oral evidence of the detainee should be heard where there are reasonable grounds for doubting the correctness of an allegation made by the arresting officer.

The refusal of a police officer, to reveal the source of his information is a contentious matter. On the one hand, genuine and legitimate reasons for such refusal may prompt non-disclosure but, on the other hand, non-disclosure can be abused and utilized to throw a blanket of secrecy over the arrest. Such a tactic could effectively hide any evidence that there may be from the testing scrutiny of the court. There is, however, another approach to the problem which may help to provide some justice for detainees. Disclosure of sufficient information to constitute reasonable grounds for believing that an arrest is justified does not necessarily involve the disclosure of the identity of the source of the information. Surely it is not expecting too much of a police officer to disclose enough information to enable a court to decide whether reasonable grounds for the arrest existed and at the same time not to pin-point any individual who might be the subject of reprisal action or other intimidation? Furthermore, as has been suggested by Professor Mathews in the context of the Minister's refusal to disclose sufficient reasons for detention to the detainee, **in camera** examination of the evidence would avoid most of the difficulties involved in open-court disclosure (A S Mathews **Freedom, State Security and the Rule of Law** 69).

The **Hurley** principles for determining whether grounds existed for a valid arrest in terms of s29 of the Internal Security Act provide a powerful means of controlling State power and, therefore, must not be diluted in their practical implementation. At a time when the role of the court in scrutinizing State excesses is being slowly wrenched from it, the court must not surrender any more of its dwindling power. The purpose of detention under s29 is interrogation, not necessarily bringing the detainee to trial. Thus, a detainee may never be brought to trial and if his or her evidence is never adduced in court, an abuse of power that may have been present at the time of the arrest and unnoticed when the arrest and detention were initially questioned, may never be detected. □

Among our contributors:

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JONATHAN BURCHELL - Professor in the School of Law, University of Natal, Pietermaritzburg.

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THE SOL PLAATJE MEMORIAL LECTURE FOR 1987

At the University of Bophuthatswana

INTRODUCTION

I have the honour this evening to deliver the Sol Plaatje Memorial Lecture for 1987. To prepare myself for this task I have been re-reading his writings, and the various accounts of his life, and a wonderful life it was too. What makes his life seem all the more wonderful, and what makes his achievements seem all the more extraordinary, is the realisation that he did not enjoy the advantages that have been enjoyed or will be enjoyed by all of us here this evening, a university education. Nor indeed did he have a high-school education. It is recorded that he did not go beyond Standard III (some say Standard IV). His education he gave to himself.

At the age of 21, because of his proficiency in English and Dutch, and of course in his own home language Setswana he became the official interpreter at the Kimberley Magistrate's Court. He had already taken the Cape Civil Service examination, through the medium of Dutch, and had topped the list. He then entered a typewriting examination and again came top.

He increased the number of languages in which he was fluent, and towards the end of last century became the interpreter at the Magistrate's Court at Mafeking, today spelt Mafikeng. When the Anglo-Boer War broke out in 1899, Mafeking was beseiged by the boers, and at that time came Plaatje's most famous book **The Boer War Diary of Sol T. Plaatje.**

THE LAND ACT

Plaatje took his first big step into public life when in 1912 he became the first General Corresponding Secretary of the new South African Native National Congress, formed under the presidency of the Reverend J.L. Dube. He was already known as the editor of the Setswana-English weekly, **Koranta ea Batswana,** and for his opposition to the formation of the Union of South Africa in 1910. He feared the rise of Afrikaner nationalism, the decline of British influence, and the passing of racially discriminatory laws. His fears were soon justified. In 1913 the white Parliament passed the Natives Land Act, which prohibited both whites and blacks from buying land except in what were recognised as their "own" areas. The Act vitually made it impossible for a black man to become a farmer in the land of his birth. The Act of 1913 did not affect purchases of white farms by black buyers before that date. It was in 1936 that the United Party of Hertzog and Smuts legislated to remove the land rights of black buyers who had bought before 1913. The lands that they had acquired from white owners became knows as the "black spots".

One of my friends in the Liberal Party was Selby Msimang, who had close connections with Sol Plaatje, for they were both foundation members of the South African Native National Congress, later to become the African National Congress, the ANC. Selby Msimang lived for more than ninety years in our country, through the Anglo-Boer War of 1899-1902, the creation of the Union of South Africa in 1910, the removal of the African voters of the Cape to a separate roll in 1936, and the long rule of the Nationalist Party from 1948 to his death in 1982, during which time Parliament passed the Group Areas Act, the Population Registration Act, the Separate Amenities Act, the Bantu Education Act, the Suppression of Communism Act and all the security legislation that followed it. Yet although he had lived through all this, he always maintained that the most cruel Act of them all was the Natives Land Act of 1913.

Sol Plaatje reacted equally strongly to the Act. He wrote: "Awakening on Friday morning, June 20, 1913, the South African Native found himself, not actually a slave but a pariah in the land of his birth." He was one of a delegation of five which went to England in the hope of getting the British Government to veto the law, but the British were preoccupied with anxieties about the imminent First World War. In 1919 he was again the member of a delegation which vainly tried to get the peace conference at Versailles to discuss the Act.

LITERATURE

But Plaatje had another great love besides his love of politics, which is more accurately described as a love of justice. His other love was the word, language, literature. He translated four of Shakespeare's plays. In 1916, two of his works on the Tswana language were published. In 1930 his novel **Mhudi** was published. He was not very lucky with the publication of his work. His translations of Shakespeare were not published till after his death, as was also his famous diary. He was an honest and humble man, and spent some time entertaining lepers in settlements with the aid of an old projector and films.

I shared with Sol Plaatje a love of justice (I was certainly not a lover of politics) and a love of literature, so that in that regard at least I am qualified to give this memorial lecture. A further qualification is my esteem for Plaatje himself. My theme is going to be "Writing in South Africa Today," and it will deal with the difficulties of synthesising literature and politics.

The history of South Africa is for me primarily a history of conquest, and therefore of warfare. The early conquests were minor ones. The first great struggle was between the advancing trekkers and the resisting Xhosas; both of them were cattle owners, and both of them needed land. It was a struggle in which the British also became involved when they finally annexed the Cape in 1805. This struggle lasted for a hundred years, and the memories of it are still alive in that part of South Africa that we call the Eastern Province. These wars left a deep mark on the souls and minds of both white and black.

With the beginning of the Great Trek in the 1830's, chiefdom after chiefdom was conquered by the Boers. Twenty years earlier the great King Shaka created the

Zulu nation largely through the conquest of his neighboring tribes. The most notable refugee from Shaka was Mzilikazi, who in his turn conquered others, till he in turn was conquered by the Boers, and fled into what today is called Zimbabwe, where his descendants live in uneasy peace with Mr Mugabe and the Shona people. Shaka was assassinated in 1828 and his Zulu kingdom continued until 1879, when it was destroyed by the British. Zululand was divided into thirteen petty chiefdoms, ruled virtually by white magistrates. The British also conquered the Boer republics of the Transvaal and the Orange Free State in the Anglo-Boer War. The greatest conquest of all, the only one not gained by violence, was on May 26th 1948, when the Afrikaner Nationalist Party conquered us all, and so began the Great Plan, sometimes grandly called Separate Development, usually called Apartheid. I once said, in an epigram of which I was quite proud, that Apartheid was the finest blend of idealism and cruelty ever devised by man. It certainly deceived many Christian Afrikaners, who were able not to see the cruelty by contemplating the idealism. It has taken the great Nederduitse Gereformeerde Kerk, the largest of the Dutch Reformed Churches, until now in 1987, to admit their fault – or sin, if you like a stronger word – in proclaiming that Apartheid was the will of God. The Grand Plan is falling to pieces about our ears, and the Age of Conquest is coming to an end. When did it begin to come to an end? If one has to fix a date, then it would be the sixteenth day of June, 1976, the day that thirteen-year-old Hector Petersen was shot dead in Soweto. That was the day when the black man said to the white, "you can't do this to us any more." Or to put it more correctly, that was the day when the black man's children said to the white man, "you can't do this to us any more."

I need not remind you that one of the results of the Grand Plan of Separate Development was the creation of the independent state of Bophuthatswana in which you all live. It is not for me to speak about the advantages and disadvantages of your independence. But what I can say is that I have no feeling of visiting a foreign country. As far as I am concerned, I am visiting a part of my own country, to give a memorial lecture in honour of a man who was a fellow-citizen of mine in the Union of South Africa. Do you know what my hope is? It is that one day we shall all be reunited in a federal republic of South Africa.

CONQUEST AND LITERATURE

However that is not my topic. My topic is to examine what effect these three centuries of conquest has had upon our literature, on our prose, our poetry, our drama. One can say at once that the effect has been profound. Some would say it has been catastrophic. Three centuries of conquest has also powerfully affected our religion, our politics, our education. They have powerfully affected our people, both the conquerors and the conquered. They have also powerfully affected a group of people who were never conquerors or conquered, and that is the group that we call the Cape Coloured People. As a general rule, the conqueror tends to look down on the conquered, and this attitude, which sometimes amounts to sheer contempt, has a degrading effect on them both.

I suppose that South Africa is the most complex society in the world. It certainly is the most fragmented society in the world. It has no common culture; it is a country of many cultures and many languages. It is not surprising that this diversity characterises its literature. One cannot expect the writer who has suffered and is suffering under, for example, the Group Areas Act, to produce the same kind of story or poem or play as would be produced by the writer whose people enacted the Group Areas Act. I have always found very useful the definition of culture as one's world of meanings, and the meanings of these two writers must be very different. In fact many black writers today challenge many of the old ideas as to what literature is, and as to what writers try to do. Some black writers contend that no white writer, and especially no story-writer, can possibly write about black people, or can possibly understand how black people live, or how they react to the way they have to live. I myself have been criticised on these very grounds, and I reply that these black critics are really saying that I have no right to write about my own country at all. There is no rational basis for these assertions. They are emotional, and often passionate. They are in fact the result of having lived under the conquerors for three centuries.

Some years ago I attended a festival at Rhodes University in Grahamstown. On one of the evenings of the festival a group of players from Soweto presented a play by an African dramatist. There were many African people in the audience, and they were interested – and perhaps excited – to know that also in the audience was one of the leading drama critics of England. After the play was over, a group of young black people gathered round the critic and demanded to know what he thought of the play. He said he thought that the play was a most interesting piece of dramatic experiment and it was clearly characterised by deep and intensely felt emotions. He praised the author and the actors, and then – reluctantly I thought – gave his opinion that it wasn't really theatre. The reaction of his questioners was decidedly angry. One of them said – and I try to repeat what he said as well as I am able – one of them said, "you think that the only theatre is Shakespeare. Well Shakespeare is not our theatre. We have our own theatre, and you have seen it tonight, but you do not understand it. Well we understand it, and that is what we want to see." They left the critic a bit crushed, but according to my standards of theatre he was right. For one thing the play was too long, and in the end lost the attention of what I suppose you could call the sophisticated members of the audience. It would have been of no use whatsoever to argue with the young questioners – you would have been arguing with passion, with feelings passionately held, and reason, or sophistication if you like, cannot argue with passion. One cannot argue with the passions of the conquered with their pains and their resentments. I end this story by recalling that Sol Plaatje was a lover of Shakespeare and wrote an article **In Homage to Shakespeare** which was published by the Oxford University Press in 1916.

This story concerns the writing of the dramatist, but it can also be told about the writing of the poet. Let me read to you a short poem by James Matthews, published in that excellent anthology **One Day in June,** edited by Sisa Ndaba, published by Ad. Donker in 1986. The poem is called **It Is Said.**

It is said
that poets write of beauty
of form, of flowers and of love
but the words I write
are of pain and of rage.

I am no minstrel
who sings of joy
mine a lament.

I wail of a land
hideous with open graves
waiting for the slaughtered ones.

Balladeers strum their lutes and sing tunes of happy times
I cannot join in their merriment
my heart drowned in bitterness
with the agony of what white man's law has done.

As I interpret this poem, Matthews is not dismissing or condemning the poetry of beauty, of form, of flowers and of love. He is simply saying that he cannot write such poetry in these times. He is inferring that it is not the kind of poetry that should be written in these times. Before I move on let me say that this short poem has a beauty of its own, although it is a beauty of pain and bitterness. I did not think the play in Grahamstown was good theatre, but I think that **It is Said** is good poetry.

I want to read to you now one of my favourite poems in English, because I want to use it to make a further point on the subject of literature and protest. It is not itself a poem of protest at all, but a gentle and witty way of poking fun at what Robbie Burns called the "unco guid", that is, the people who were too good. The poem is by Yeats, and it is called **The Fiddler of Dooney.**

When I play on my fiddle in Dooney,
Folk dance like a wave of the sea;
My cousin is priest in Kilvarnet,
My brother in Mocharabuiee.

I passed my brother and cousin:
They read in their books of prayer;
I read in my book of songs
I bought at the Sligo fair.

When we come to the end of time
To Peter sitting in state,
He will smile at the three old spirits.
But call me first through the gate;

For the good are always the merry,
Save by an evil chance,
And the merry love the fiddle
And the merry love to dance.

And when the folk there spy me,
They will all come up to me,
With "Here is the fiddler of Dooney!"
And dance like a wave of the sea

Yeats must have felt very pleased when he had written **The Fiddler of Dooney;** and he probably felt grateful too, that he had been given the gift of making such music. But that is not the point I wish to make. The point I want to make is that such a poem simply could not be written in South Africa today. It has no pain in it, it has no bitterness in it, it has no racial undertones or overtones, though Yeats could write poetry with all these characteristics. **The Fiddler of Dooney** is a song, and a merry song too, but as James Matthews wrote: "I cannot join in their merriment." No one can write a merry song in South Africa today.

I take advantage of my favoured position as your lecturer to quote some lines of my own:

Simple I was, I wished to write but words
And melodies that had no meanings but their music
And songs that had no meaning but their song.
But the deep notes and the undertones
Kept sounding themselves, kept insistently
Intruding themselves, like a prisoned tide,
That under the shining and sunlit sea
In caverns and corridors goes underground thundering.

Today we have no melodies that have no meanings but their music, and we have no songs that have no meanings but their song. Our songs, indeed all our writing, our prose, poetry, and drama are full of meanings. But the duty of the writer is to make sure that the meanings do not kill the writing. This is I think the greatest challenge that confronts our writers today. Can they write about the meanings of their society, and produce something that can be called literature, or can they only produce polemics? I have nothing against polemics, but their place is not in the novel or the poem or the play. Their place is in the lecture, the political speech, the party pamphlet. I may add that this challenge faces black writers more fiercely than white writers. The reason for that is that the meanings of black writers are more bitter, and the reason for that is that black writers belong to what for three centuries were conquered people. It is a challenge that was successfully met by Benjamin Moloise, who was executed on October 18th, 1985, having been found guilty of murdering a policeman. His few lines are called **Poem Written on Death Row.**

All the armies that ever marched,
All the parliaments that ever sat,
Have not affected the life
Of man on earth as that one
Solitary life.

I am proud to be what I am,
The storm of oppression will be followed
By the rain of my blood.
I am proud to give my life,
My one solitary life.

Sad indeed is the country that can produce a poem like that.

MHUDI

Sol Plaatje had to face the challenge to fuse protest and literature when he wrote his novel **MHUDI,** probably the first novel written in English by an African. It was published by the Lovedale Press in 1930, two years before Plaatje's death, but according to Professor Tim Couzens of the University of the Witwatersrand, it was written about 1917 and was completed by 1920, and its love story of Ra-Thaga and Mhudi is placed in historic times, the years of and after the Great Trek, and of the conflict between the Boers and the Barolong, and of the terror which Mzilikazi spread through the lands to the west of the Drakensberg.

Mhudi might be called a novel of protest, but perhaps the word **protest** is too strong. It certainly is a novel of strong political comment, and extremely critical of the blood-thirstiness of Mzilikazi, whose impis massacred women and children, and of the arrogance of the Boers, especially in regard to the black ownership of land, resulting many years later, in 1913 in fact, in the passing by the

white parliament of the Union of South Africa of the Natives Land Act. But the novel does not become a polemic. That was because Plaatje realised that the writer had a literary as well as a social duty. I note in passing that the style of the novel was criticised for its imitative and derivative nature, but I think that such a judgement is not worthy of great attention. If I could write in Tswana as well as Plaatje could write in English, I should be proud of myself indeed.

I quote from Tim Couzen's introduction to **Mhudi,** the following wise words of R.V. Selope-Thema, written in **Umteteli wa Bantu** in 1929:

> The duty of Bantu writers and journalists, as that of writers and journalists of other races, is to call the attention of the leaders to the things that are detrimental to the interest and welfare of the people. A writer who does not criticise and correct the mistakes of his people does not fulfil the purpose for which God endowed him with the power of the pen.
>
> A writer is a prophet, and his duty is not only to prophesy but also to rebuke, when necessary, the people for wrongdoing; to criticise, when occasion demands it, the conduct and methods of the leaders of his race, and to point out the way to salvation.

I would add only one thing to that. A writer may well be a prophet, and he may well have a duty to prophesy, even to rebuke, but his first duty is to be a writer. And I should like to quote the words of Karl Kraus, the Austrian poet and critic, who was noted for his ability to express truths and principles in a few trenchant words. I came across this aphorism quite by accident and I have remembered it ever since. This is what Kraus said about writing and writers:

There are two kinds of writers, those who are and those who aren't. With the first, content and form belong together like soul and body; with the second, they match each other like body and clothes.

That seems to suggest that although writing may concern itself with politics and protest, with evil and ugliness, it must transcend them all, and indeed endow them with a kind of beauty. Otherwise it is not writing.

It is now time to bring this lecture to an end, and I am going to presume on my status as your guest of honour to read to you a piece of South African writing of today, and it was written by myself. I am going to read to you the closing words of Chapter Thirty of the second volume of my autobiography. The first volume was called **Towards the Mountain** and the mountain was that of the prophet Isaiah: "They shall not hurt or destroy in all my holy mountain; for the earth shall be full of the knowledge of the Lord, as the waters cover the sea." The lives of all good men and women are a journey towards the holy mountain; they never reach it, they see it afar off, but it gives meaning to their lives. The second volume is called **Journey Continued,** and should be published in Cape Town early next year. I read to you its last two pages.

CONCLUSION

"I think that this is a good place at which to bring this second volume to an end. It marked the close of what I might call my public life. I decided that I would never again join a political party, but would, because I could not help it, become a political observer. When I wrote, "because I could not help it", I mean that it is an integral part of my life and character to observe the political events of my times, and to be deeply concerned about them, and because I am a writer, to write about them.

However I intend to write an epilogue, which will deal with the extraordinary events of the 'seventies and the 'eighties, and which will discuss the future, in so far as it is discussable. I do not foresee doom for our country, the destruction of its economy, the triumph of revolutionaries, and the establishment of a new autocracy, which will call itself democratic and non-racial but will in fact be authoritarian (and harsh towards its former oppressors, of which I will be counted as one). Nor do I see the continuance of white supremacy, or of any statutory racial separation. I would like to see Afrikaner identity preserved, but it quite clearly cannot be done at the expense of other people, as has been the case for the last thirty-nine years, since indeed the year 1948 when the Afrikaner Nationalist Party came to power. I must not however anticipate the epilogue.

Although politics has played a major role in my eighty-four years, it has not dominated my life. Literature and the love of the word, and the love of writing the word, have been equally important. And the third dominating force has been my religion, my reverence for the Lord Jesus Christ whom I could have served much better (to use Tolstoy's words, I have not fulfilled a thousandth of his commandments, not because I didn't wish to, but because I was unable, but I am trying with all my heart), and my sense of wonder when I contemplate the Universe.

I must admit to one last dominant thought, and that is that my life is drawing to its end. Not long ago I read that Sir John Gielgud, who was then eighty-two, had said that he thought of dying every day of his life.

I would not use these words, but I certainly think of my age every day of my life. I find Tagore's words on death most beautiful.

On the day when death will knock at the door, what wilt thou offer to him?

Oh, I will set before my guest the full vessel of my life – I will never let him go with empty hands.

All the sweet vintage of all my autumn days and summer nights, all the earnings and gleanings of my busy life will I place before him at the close of my days when death will knock at my door.

And again:

I have got my leave. Bid me farewell, my brothers! I bow to you all and take my departure.

Here I give back the keys of my door – and I give up all claims to my house. I ask only for last kind words from you.

We were neighbours for long, but I have received more than I could give. Now the day has dawned and the lamp that lit my dark corner is out. A summons has come and I am ready for my journey.

I close with words from the South African Poet Roy Campbell. They are closing words for him too, and are to be found in the last paragraph of his autobiography, **Light On A Dark Horse.** He says that he was compelled to write the book.

So as to repay my debt both to Almighty God and to my parents, for letting me loose in such a world, to plunder its miraculous literatures, and languages, and wines; to savour its sights, forms, colours, perfumes, and sounds; to see so many superb cities, oceans, lakes, forests, rivers, sierras, pampas, and plains, with their beasts, birds, trees, crops and flowers – and avove all their men and women, who are by far the most interesting of all.

It is a debt that I also wish to repay."□

Sydney Kentridge

LAW AND LAWYERS IN A CHANGING SOCIETY

The first Ernie Wentzel Memorial Lecture

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ERNIE WENTZEL, THE MAN

It is an honour, but also a great sadness, to be delivering the first Ernie Wentzel Memorial Lecture. The sadness is that Ernie Wentzel should have died so early, still in his prime as a man and an advocate. The sorrow caused by his death was not due only to the almost universal popularity in the legal profession which his wit and good humour won him. There was also the sense that we had lost that rare thing, a true leader of our profession. Ernie Wentzel had been Chairman of the Johannesburg Bar Council, and an outstandingly good one. But his leadership was more than formal. He held strong beliefs about the law and about the society in which he practised law. Ernie's beliefs were clear, consistent and uncompromising. A founder member of the Liberal Party, he was and remained a Liberal with a capital L. He detested racism, white or black, and he detested Fascism, whether of the right or of the left. Above all, he believed in individual rights and individual choices. Thus it was inevitable that he became a steadfast political opponent of the government and inevitable, too, that in his profession he should be a forceful defender of the victims of government policies.

The government did not like this; nor did the security police, many of whose members Ernie put through the shredder in the witness box. When, during the Emergency of 1960, the security police first enjoyed the heady power of detention without trial, Ernie was one of those whom they held. He was imprisoned for three months. After the Emergency, the hostility of the government to Ernie continued. His passport was withdrawn and not restored to him for many years.

The experience of detention without trial must have reinforced what in any event flowed from Ernie's own philosophy – an implacable opposition to autocratic government action of any sort. It may seem superfluous to stress Ernie Wentzel's opposition to detention without trial. Who does not condemn it? But for Ernie it was not merely a matter of who was doing the detaining and who was being detained – he would condemn it whether done by governments of West or East, of left or right, whether by black governments or white governments. Some of his friends on the left found it difficult to accept this uncompromising stance. Ernie, I think, regretted this because he regretted any divisions among opponents of apartheid. He was a practical politician. But on certain basic principles he would not give way. Yet Ernie was never pompous – nobody was further from the "holier than thou" attitude than he was. To use an inadequate and no doubt old-fashioned phrase, what he had, and what he acted on, was common human decency.

Ernie Wentzel was born in Capt Town in 1933. He took his LL.B degree at U.C.T. in 1955 and joined the Johannesburg Bar in 1963. He took silk in 1978. His experience of the law in South Africa was therefore, like that of most of us here, entirely within the period of Nationalist rule. Before venturing to look at the future of the law and lawyers in this country, it would be as well to reflect a little on what has happened to law and the courts in the years since 1948. I propose to do this only in the broadest outline. I shall certainly not attempt a history of the racial laws and the security laws which have been thrust upon us in the era of apartheid. I shall take for granted your knowledge of that. I shall have nothing to say about changes in the common law, however important, during this period. I shall confine myself to that part of the law which can compendiously if not entirely accurately be called human rights law.

THE APPEAL COURT

At the beginning of that period, the Appellate Division was presided over by Watermeyer, C.J., and after him, by Centlivres, C.J.. Schreiner, J.A., Greenberg, J.A., and van den Heever, J.A., were members of the Court. One would have had to look far to find in the English-speaking world a

Court superior in independence and ability. It was this Court which held that the attempts of the government to remove the coloured voters from the common roll in the Cape Province were unconstitutional and illegal. They said the same of the government's attempt to circumvent their judgment by creating the so-called High Court of Parliament. This court struck down unauthorised segregation in railway coaches and racial discrimination in the issue of trading licences. In one of the early cases under the Suppression of Communism Act, the court applied the **audi alteram partem** rule to banning orders and invalidated orders which had been issued without prior notice. It was this Court (to mention just one other great case of the period) which heard the appeal of the late Solly Sachs (a militant left-wing trade unionist) against the attempt of the Minister of the Interior to withdraw his passport. The majority of the court held that under the common law the State, having issued a passport to a citizen, could not take it away without good cause. They ordered Sachs' passport to be restored to him.

It is well known that the South African Supreme Court enjoys a high international reputation. In a large measure this is due to recollections of the Watermeyer and Centlivres court of the early 1950's. And, of course, at that time there were other outstanding judges in the Provincial Divisions who took their cue from the court of ultimate jurisdiction. I do not think that it can be disputed that within the limits imposed by statute and the common law, the courts provided a real protection to the individual against executive excess.

Nor, I fear, can it be disputed that after the early 1950's there was a falling off – not merely in the willingness of the courts to protect the individual against the executive, but in the status of the courts. There have at all times been some excellent judges at all levels of the Supreme Court; and throughout the period I am speaking of, one can find striking cases where judges of the Supreme Court upheld the rights of the individual against the State. But that there was a general decline, I have no doubt. This process has been described acutely and in detail by Professor John Dugard and, more recently, by Mr Edwin Cameron. I shall not attempt to repeat what they have written, even in summary. But I shall try to give some generalised reasons for that decline.

The first cause was the legislative policy of the government which came into power in 1948. It showed scant regard for the courts. All the judgments of the Appellate Division to which I have referred were effectively reversed by legislation. and in one statute after another government reduced the powers of the courts. In particular, the common law concept of equality before the law was replaced by statutory and compulsory discrimination with which the courts were powerless to interfere, even had they wished to do so.

CHANGES IN THE COURTS

There was also a significant change in the composition of the Supreme Court. In South Africa, as in other countries, there have always been some political appointments to the Bench, but in the 1950's there was so marked an increase in these appointments – by which I mean appointments explicable only on political grounds – as to make it clear that it was a deliberate policy of the government. Indeed, in this period the Minister of Justice, Mr C.R. Swart, said openly that it had been his policy to appoint more Afrikaners to the Bench in accordance with their pre-ponderance in the white population. Mr Swart may then be given the credit for the first application of affirmative action in this field in South Africa – long before that expression was coined.

Whatever one may think of Mr Swart's motives, the fact is that when judges are selected on any grounds other than ability, judicial standards must fall. In 1955 the government increased the number of Appellate Division judges to eleven, appointing five new judges whose qualifications for promotion could not be detected by the legal profession. The Appellate Division has never quite recovered.

The change in the courts was also attributable to the spirit of the times. Looking back, one can see that by the early sixties there was a general spirit of submission to authority. The government was all-powerful. Resistance seemed hopeless. Protest became a minority activity among blacks as well as whites. Sharpeville, in March, 1960, saw the last major protest against the laws and institutions of apartheid for some sixteen years. Certainly, amongst the majority of the white population there was an assumption that the government and the police knew best. The courts seemed to share this view. Apartheid crept into the courts themselves. In courtrooms throughout the country a wooden bar was placed in the middle of each witness box. The sole object of this was to ensure that any white witness would stand on one side of this bar and any non-white witness on the other side. (Historians looking back on this era will think that this was a manifestation not merely of prejudice, but of actual insanity.) Even worse, in some magistrate's courts, apartheid was applied to black legal practitioners. One such case in 1958 concerned a young black lawyer who came into a magistrate's court to defend his client on a criminal charge. He went to the normal place where attorneys sat. He was directed by the magistrate to sit at a separate table for black practitioners. He refused to do so. He was there and then convicted of contempt of court. He took an appeal right up to the Appellate Division. By then, Watermeyer, C.J., and Centlivres, C.J., had gone. The chief Justice was Mr Justice L.C. Steyn. He dismissed the appeal. He held that the magistrate was fully entitled to apply segregation in his court. One will find in his judgment not one word of criticism of the concept of segregation in a courtroom nor any questioning of why a black attorney should be required to sit at a separate table; still less any appreciation of the fact that the black attorney and his black client might feel humiliated and discriminated against. What Steyn, C.J., said was simply this – that a defence could be conducted as well from one table as from another. Four other Judges of Appeal concurred. But what is most shameful is that this case drew no protest, either from other members of the Bench or from the Bar or the attorneys' profession. We all lamely accepted it. There had, incidentally, been a month-long boycott by the Johannesburg Bar of Mr Justice Steyn when he was first appointed to the Transvaal Bench. But this was not because of his degraded view of law and society – that had not yet been revealed – but because he had been appointed not from the Bar, but from the Civil Service.

In the period which I am talking about, and right through to the 1970's, there are numerous cases in the Law Reports about race; and the reported cases are of course only a fraction of those that were being heard. These were cases under the Immorality Act, the Race Classification Act and

the Group Areas Act. The State zealously prosecuted what we would now call victimless crimes. Judges and, more frequently, magistrates heard evidence about the racial antecedents of the accused persons or litigants before them, their history and their associations. The courts studied and recorded their physical appearance. One would find on the part of the judges and magistrates concerned no discernible distaste for these processes, still less any conception that the laws they were applying were as abhorrent as the laws of slavery.

There is no point in dwelling further on the law as it was applied during those years. I hope I am not over-optimistic when I say that we have passed through and out of that period. The partitions in the witness boxes have gone. I do not believe that any magistrate would today order a black practitioner to sit at a separate table. And if he did, his ruling would not be upheld by the present Chief Justice. The Immorality Act has gone. The Population Registration Act and the Group Areas Act are still very much with us but cases under them are few, and the humiliating processes which I have described seem to have disappeared. And in recent years many of our courts seem to have shown a new willingness to give protection and relief to individuals affected by State action. One can think of cases on the rights of blacks and their families to live in urban areas, even before the repeal of influx control – cases such as the **Komani** case and the **Rikoto** case. And there are the well-known cases where the courts have placed an onus on the State to justify detention orders under the Internal Security Act, and have often set aside orders under the Emergency Regulations. I need mention only the **Hurley** case and the **Nkwinti** case. Such judgments would not have been given during the 1960 Emergency.

This is by no means to say that all is well and that we have reached the sunny uplands. While apartheid in the courts themselves has gone, one still unfortunately hears occasional reports of uncouth behaviour towards black practitioners by magistrates and prosecutors. And I know that to most lawyers concerned with human rights the **Omar** case was a grave disappointment. Yet it has not nullified the advance made in the **Hurley** case.

At this stage one may ask whether the recent changes in judicial attitudes indicate anything more than a limited attempt to climb back to the standards of 1948. Is it simply that a number of liberal-minded judges have been prepared to tilt the balance a little towards individual rights? I think that it is far more than that. I believe that what I have tried to describe is a reflection in the courts of a profound change in South African society. I venture to say that this change can be dated from the events in Soweto in June, 1976, and that since that date there has been a general acceptance of the fact that Verwoerdian apartheid had failed, even within the party that had created it. Nobody now doubts that apartheid is bound to go sooner or later. True, the basic structures of apartheid society are still in place – residential segregation, educational segregation and white political control. But even those who maintain this structure have lost confidence in it. Their excuses for maintaining it carry no inward conviction. This loss of confidence is widespread. One result has been a diminishing readiness, even among those who have been supporters of the government, to accept that the government automatically knows best; or that the security police are to be implicitly believed. Even in white society there is now a spirit of scepticism rather than subservience. It is this scepticism which is reflected in some of the judgments which I have mentioned. Judges may still apply the provisions of the Group Areas Act if they have to. As recently as 1981, the Appellate Division refused to depart from the 1961 judgment in **Lockhat's** case, in which the Appellate Division had held that the Group Areas Act must be read as **impliedly** permitting substantial inequality of treatment, even though it did not expressly do so. But it is inconceivable that any judge today could say, as Holmes, J.A., did in 1961, that "the Group Areas Act represents a colossal social experiment". And if he did, nobody would believe him.

CHANGES IN LEGAL PRACTICE

The period since 1976 has also seen great changes in the practice of the law. There are new forms of legal practice not previously known in this country. Labour law is the first in both volume and importance. It is a subject taught in the Law Schools and it has become a specialist branch of legal practice with a growing number of practitioners. This growth is obviously associated with the recognition of black trade unions in 1981 (a major landmark in the disintegration of apartheid) and the expansion of their economic power. Another form of legal practice which did not exist ten years ago is public interest law. This change can be precisely dated to the establishment of the Centre for Applied Legal Studies and the Legal Resources Centre in 1979. Both these bodies, apart from their other activities, have created law firms of a new sort. They consist of both advocates and attorneys who, while acting for individual clients, do so with the aim of protecting and vindicating the rights of whole communities and classes of people. In the nature of things, most of their clients come from the disadvantaged sections of the black population. These centres have attracted some of the ablest lawyers in the country. They have provided the opportunity of legal careers perhaps more satisfying than careers in company or tax law even if, unfortunately, not quite as lucrative.

Another change, which is remarkable to those of us who were about in the 1950's and 60's, is the vast increase in the volume of what I can broadly call civil rights litigation. During the past two years attorneys and advocates throughout the country have brought numerous **habeas corpus** applications, applications for interdicts to stop ill-treatment of detained persons and proceedings to establish or protect the rights of prisoners. This is a far cry from the early 1960's when only a handful of embattled attorneys were prepared to take on political cases and, in particular, political criminal trials. Now, I understand, that has become a major area of competitive endeavour.

I have not yet mentioned what, to those of us who were in practice in those early years, must appear one of the greatest changes in the practice of law. That is the emergence of a body of black practitioners with the ability and the confidence to act in civil rights cases and political trials. This has been a positive achievement and not merely a natural development. It is an achievement because black practitioners have had to overcome the disadvantages of bantu education and tribal college law schools in order to qualify themselves for legal practice. (It is only very recently that black students have been entering the Law Schools of the open universities in any numbers.) There were other handicaps, also now largely overcome. I recall that in the early 1950's the first black member of the Johannesburg Bar was Mr Duma Nokwe. The then Minister of Bantu Affairs, Dr Verwoerd, refused to give him a permit to enable him to take chambers in the

building which housed the Johannesburg Bar. What is more, his admission to the Bar common room was secured only against the opposition of a small but vocal and determined minority of the members of the Johannesburg Bar. Today, perhaps the leading civil rights advocate of South Africa is a black practitioner. When he first came to the Johannesburg Bar, the law did not permit him to be a tenant of chambers in the centre of Johannesburg. When he first used to appear in the Appellate Division, it was illegal for him to stay in the Orange Free State overnight without a permit. I recall, too, that when, in the early 70's, I was Chairman of the Johannesburg Bar Council, we were told by the owners of the licensed premises where we were to hold our Bar dinner that we had to have police permission if black members of the Bar were to attend. I remember interviewing a colonel of police whose main concern was to receive an assurance that there would be no dancing. All that is now history. Even the Pretoria Bar, that home of what I hope are lost causes, has, admittedly with much agony and recrimination, removed the colour bar from its constitution.

It is always pleasant to be able to point to positive advances but, of course, they are not the whole story. Our legal and judicial system is still deeply flawed. The basic flaw has been stated time and again. It requires no original insight to see that to the majority of those subject to the laws of this country, the law is not seen as a protection against injustice but as an oppressive force. It follows that the courts themselves are perceived by many as an integral part of an oppressive system, and as an alien institution.

In the criminal courts a black accused will ordinarily see a white prosecutor and a white magistrate or judge administering justice, often in a language which he does not understand well and which has to be interpreted to him, and – perhaps this is most important – applying a law which he and his community have had no say at all in making. Save in the few cases where adequate legal assistance is obtained, the law does not give the average black urban dweller protection against the host of insolent civil servants who control his life – on the contrary, the prosecutor and the magistrate are likely to be seen as simply another extension of the system of township managers, location superintendents and local authority officialdom.

BLACK FEELINGS

It is not for me to speak for blacks, but one must surely be insensitive not to grasp the widespread feeling among blacks that, even in terms of the existing laws of the country, they do not get a fair deal in the courts. This is in part because of the factors which I have just mentioned. But it must also arise sometimes out of the vexed question of differences in sentences for what appears to be the same criminal offence. It is always difficult to make a true comparison between sentences in different cases. Cases may look similar yet the circumstances of the crime might be different; so may the circumstances of the accused. Nonetheless there have been too many cases even in very recent times in which the race of either the accused or the victim seems to have played a part in the sentencing of the accused. It is not within the scope of this lecture to make a collection of such cases, but let me mention a few, some recent and some not so recent. Many years ago a group of young white men seriously assaulted a black man and gang-raped his wife. They were found guilty of rape, given a wholly suspended sentence and advised by the judge to join a club in order to give them something constructive to do in the evenings. A few years ago a number of white high school boys thought they would have a bit of fun with a black tramp found in their school grounds one night. The fun consisted in kicking him to death. The boys were found guilty of culpable homicide and their sentence was this: to spend all their weekends for one year working at a local hospital. There was the case of the white policeman who was given a paltry fine after he had knocked down a Coloured man who died as a result of his fall. The very recent case of the white man who drove his car over a black woman in a Pretoria park must be fresh in everyone's memory. The judges and magistrates concerned had no doubt considered all the circumstances of these cases and must have had what they considered good reasons for the sentences. It is unlikely that they were consciously and deliberately discriminating against blacks or in favour of whites. But as an advocate of more than thirty-five years' experience, I know, with an absolute certainty, that if in these cases the races of the victims and the accused had been reversed, it is impossible that sentences of such leniency would have been imposed.

A former judge once told me that one of the things he learned on the Bench was that he had no knowledge of the lives of black people, of their feelings, their loyalties or the pressures on them. He at least had the sensitivity and perception to understand this. The simple fact is that for the most part blacks do not participate in the administration of justice in South Africa, except passively. If this is so, the obvious solution seems to be to involve the black population actively in the administration of justice. What can we lawyers do to bring that about? But before one answers that question, another, more fundamental one arises. Is it at this stage worth making the effort?

This is a fundamental question for a number of reasons. In the first place, the basic legal structure of the country remains a structure of domination of black by white. It is a structure which is kept in place by an apparatus of security laws which give enormous powers to the executive and which place the narrowest limits on the jurisdiction of the courts to protect the individual against the exercise of that power. Even if every accused person or litigant had a lawyer, and even if every judge were a Centlivres or a Schreiner, the courts could not alter the fundamental realities of South African life. Only a radical political change could do that.

THE FUTURE

What conclusion this leads to must depend on one's view of the political future of South Africa. I have said that apartheid is bound to go sooner or later. If you believe that it will be so much later that nothing we do now can be relevant, it would be rational to leave everything to history. If you believe that a successful revolution will take place in the near future, you may think that the new revolutionary government will decide what legal system it wants. In that case, there would not be much point in tinkering with the present system. Such views cannot be shown to be wrong and may logically and comfortably justify a policy of inactivity. Certainly to those who hope and believe a revolution is imminent anything other than the revolution itself may be regarded as irrelevant – the National Association of Democratic Lawyers equally with the Law Society and the General Council of the Bar. Indeed, if this is one's view, there would be no point in the

meantime in attending a law school – you might be learning the wrong law.

However, I do not think that many people, whatever their political beliefs, really apply that logic. The first objection to it that I would raise is a general and practical one. Nobody can say how much time will pass before the present legal and constitutional system comes to an end. (After Sharpeville in 1960, some well-informed analysts gave it five years.) In the meantime many people will live and die under the present system. Ordinary people are involved in litigation; they need and want lawyers to help them. Whatever the future, therefore, there seems to me to be an immediate moral and practical case for expanding the existing benefits of our legal system and for reducing its inequities as far as we can.

The second objection which I would raise against a policy of inactivity is a more personal one. I myself do not believe in either of the scenarios which I outlined above. I claim no special political expertise or insight, but that has never been a bar to political prophecy. I am going to use my privileged position as a lecturer to tell you how I see the future – whether I am optimistic, pessimistic or realistic is for you to judge. I believe that the conflict between black liberation movements and the South African government is one which both sides must ultimately realise cannot be won outright. A military victory against the formidable South African armed forces by black insurgents and black revolutionaries in the foreseeable future is hardly a real possibility. But the government's policy of pacification by a mixture of force and peripheral reforms is just as unlikely to succeed. If the conflict is to continue, the prospect is one of indefinite although limited violence against the forces of the State and eventually the white population. This violence would no doubt be reinforced by industrial action and internal boycotts. This will in turn be met by repression of an increasingly violent and unpleasant nature. This is likely to bring in its train a lengthening of the present period of conscription for young white men, more foreign disinvestment and general decline in the economy and in the quality of life for nearly everyone. This prospect, however appalling, is not likely to lead either side into unconditional surrender. Reason therefore suggests that both sides will eventually see that a negotiated settlement is a necessity. A negotiated settlement would rationally include an agreed constitutional structure. One hopes that such a structure would include an independent judiciary and an independent legal profession. If that is not an entirely irrational hope, then it is surely worth using such time as is left to us to prove to the majority of the people of South Africa the value of those institutions, and to involve them actively in their workings.

There is much that the legal profession can still do to this end.

In the first place, we must do all in our power to develop the concept of law as a protection against power, even under the present system. This means developing and expanding the work already done by the Legal Resources Centre and the Centre for Applied Legal Studies and, more recently, by the Black Lawyers Association. Legal services must be provided not only in political cases, but as widely as possible for blacks caught up in the mess of regulations which still exists notwithstanding the abolition of influx control. Nor is it government alone against which the protection of the law is needed. Unscrupulous hire purchase dealers and bogus insurance companies are only two examples of that part of the private sector (as it is now fashionably called) whose business is to exploit the less sophisticated members of the black population. Every time one of these enterprising businessmen is forced to disgorge by means of legal process (even if it be only a lawyer's letter), the image of the law as a protector is enhanced. The same thing happens when a lawyer assists a wrongfully dismissed domestic servant to claim a month's wages. It may be objected that there are not enough lawyers in South Africa to do this work. I shall refer in a moment to the need to expand the legal profession. But the need for legal services of the type which I have mentioned calls for new and flexible forms of legal practice. A major development has been the establishment of the community advice office staffed not by lawyers but by members of the community who have received some basic instruction in such matters as rights to pensions or to unemployment insurance and rights under township regulations. They are able to assist members of their community in dealing with the simpler legal problems which constantly arise in their lives. When more difficult problems arise, the advice office will refer them to a qualified lawyer. There are already in the Transvaal alone some 25 advice offices of this type which operate with the assistance of the Legal Resources Centre. There are many more advice offices which have other sources of legal assistance. there is an obvious need for funds to establish more advice offices, to train those who work in them and to provide legal advice for them when it is needed.

Another source of legal services of a similar kind is the University Law Clinic, run by law students under the supervision of a member of the faculty. The University of the Witwatersrand established the first of these clinics. Many other universities now have them. They, too, provide legal advice at elementary level. the University of Natal Law School has gone even further. It has a programme, picturesquely called Street Law, which takes lawyers to high schools, particularly in black communities, to teach that there are such things as legal rights as well as legal obligations and that law is something which can be used as well as merely endured. I believe that the University of the Witwatersrand is starting a similar scheme.

If the practice of public interest law and consumer protection law (or what in the United States is called poverty law) is to be developed, it is obviously necessary for the law schools to train their students to practise in these fields. That would not constitute a soft option for students. There is as much "hard law" in them as in any other branch of law.

MORE BLACK LAWYERS

If these developments are to be successful, the overriding necessity is for a really substantial increase in the number of black advocates and attorneys. This is urgent, but not easy to achieve in short order. I have already mentioned the effort needed to overcome the disadvantages of Bantu Education – a system designed to ensure that there would be as few as possible well-qualified black professional men and women to spoil Dr Verwoerd's vision of the future. The law graduates of the tribal colleges, through no fault of their own, are seldom adequately qualified to go straight into private pactice. Graduates of those colleges who go on to do an LL.B. at this University or other open universities often require

bridging courses. An LL.B. degree may therefore be a long undertaking, and for black students often impossible without maintenance over and above the cost of tuition. Many bursaries are available, but there are never enough.

The problems do not end at the university. In present economic conditions it is not easy for any students, white or black, to obtain articles. Even in good times there are unlikely to be sufficient vacancies to take the hoped-for flow of graduates from the Law Schools. I know that the attorneys' profession has been considering alternatives to articles, such as colleges for practical training. I hope that these alternative schemes have a high priority.

The number of black advocates has grown only very slowly. For example, the Johannesburg Bar has about 350 members. As far as I know, only about a dozen of them are black. I believe that Bar Councils should actively recruit well-qualified young black lawyers to their branch of the profession. The Johannesburg Bar is taking at least a first step. All Bars require new members to undergo an unpaid pupillage of at least four months. I am glad to say that the Johannesburg Bar is planning to set up a pupillage bursary scheme.

Most of the suggestions I have made require the raising of funds. In the present climate of opinion here and abroad it should not be impossible to do so. It would be money well spent. I can think of nothing which would more thoroughly and beneficially change the substance as well as the appearance of the administration of justice in our courts than to see large numbers of competent black practitioners regularly appearing in all our courts on behalf of black clients. The courts would lose their alien appearance to the black litigant or accused. It would influence and educate the white prosecutors, magistrates and judges who will for the most part continue to fill those positions. I am sanguine enough to believe that even the discrepancies in sentencing which I referred to earlier would become markedly less frequent if judicial officers had the daily experience of meeting black professional men and women in their courts.

If blacks are to take part in the administration of justice, why not as prosecutors and magistrates? Under the present dispensation it can hardly be expected that many black lawyers would want to serve in a government department in those capacities. That must await another era. Whether they should serve on the Supreme Court bench is too large a topic to enter into now.

This lecture has concentrated on the place of lawyers in our changing country, that is, on one small segment of our society. I think it is as important as any, because a country without an independent legal profession would be a doomed country. That also is too large a topic to expand on now.

The law was a profession in which Ernie Wentzel could give practical expression to his ideals. I hope that there will be many young lawyers of all races who will follow the calling of the law in his fashion.□

By Michael Whisson

BEYOND THE ABYSS – Race and Social Structure in a future South Africa

A lecture given at the University of Durban/Westville.

Many years ago, when I was teaching a first year class I defined Anthropology as "rethinking categories and rethinking relationships" – and I would not change that definition now.

Classifying things, and defining the relationships between them is, according to the Judaeo-Christian tradition, the primary or original cultural and intellectual activity of man. In the second account of creation YHWH (translated as "the Lord God" in the King James and New English Bibles) makes Man, Adam, out of the dust and breathes life into him. He then makes the animals and brings them to Adam to name them, to impose man's categories upon the natural fauna and hence his intellectual and even physical domination over them. It is a powerful myth, re-enacted every time a scientist discovers something new and names it (often after a patron, or himself) so incorporating it into the cultural order. There it may rest as knowledge for its own sake – or it may be further domesticated and used in the service of man.

The bible is a great chronicle of man's efforts to rethink his categories and relationships, told in the context of one particular people, and from their point of view. The story of Noah and the survivors of the great flood provides a basis for a new set of categories. There is one pair of each species – except man, of whom there are three pairs. This puts man into a peculiar position – a nice ambiguity of classification. Are we one species, or three? Or three races in one species? The chronicle moves swiftly to turn category into hierarchy – Canaan, son of Ham, is made the hewer of wood and drawer of water to his brethren. The Canaanites are categorised as racially inferior to the Israelites who are descendants of Shem, and the Israelites henceforward claim divine sanction for their conquest of Canaan and for the subjugation of its autochthonous people. The myth was re-enacted once more in 1948 and in the subsequent wars which have punctuated the history of modern Israel.

The classification of the Israelites in relation to their neighbours is spelled out in the genealogies and adventures of the patriarchs and their neighbours. By marrying his half-sister, Abraham finds the closest possible approximation to a nice Jewish girl in a situation where he, as apical ancestor, is, by definition, the only Jew. The neighbours of the Jews are categorised as the offspring of father-daughter incest, while other people in the region are eliminated for even less desirable practices.

And so it goes on, the cultural heritage of myth and history, accounts of the past whose historical truth is virtually irrelevant compared with the contemporary meanings attributed to those accounts, the cultural heritage is built up and mankind is classified, relationships defined and hierarchies validated.

Revolutionaries produced new classifications constructed on new bases, or more often on the reinterpretation of old ones. Thus St. Paul declared that the key ethnic division from the Jewish perspective – between Jew and Greek, and the basic class division – between slave and free – were irrelevant, and that henceforward the basis for human classification was to be a religious affiliation which would transcend the former divisions. Paul's view was not easily accepted by many of his Christian Jewish friends – the heritage of centuries built up from myths, scriptures, food taboos, infant mutilation and the experiences of ethnic captivity was not to be lightly set aside, even though the Son of God returned from the dead to instruct his followers to evangelise the world and break down the ancient classification.

The Christian ideal set out by Paul worked quite well as long as the Christians were an oppressed minority, glad of any allies in adversity even if they did talk or dress or look a bit odd. But with political power and influence came new classifications, new relationships, new hierarchies. Pagans and those ambiguous "people of the Book" (the Jews and Muslims) were made into distinctive and alien categories, to be conquered and if possible, converted (if not, killed). The categories "orthodoxy" and "heresy" defined enemies within the gates who had to be identified and destroyed. That process, astonishingly, continues to the present day. In Sudan, Lebanon and Israel people define themselves largely in terms of religious affiliation and in the Persian Gulf the most destructive war since Viet Nam is being fought for mainly religious reasons. In Northern Ireland, for all the efforts of the I.R.A. to make their campaign into a class war or a war of national liberation, religion is the bedrock of the antagonists' affiliations. American radicals may be deceived by the I.R.A. Marxist rhetoric, but Stalin was not. When the I.R.A. sought his help in 1925 he enquired of their delegate how many bishops they had killed – and sent them on their way with no more than a dictator's blessing.

Science, you might imagine, would put an end to all this pseudo-speciation, this elevation of trivial and often passing variations in man into the bases of a social order in defence of which men are willing, even eager, to kill and be killed. But science has not only set up its own classifications, it has also achieved its own mythological status – its authority based on "reality", the most powerful myth of all in contemporary society.

Anthropologists, students of man in all his complexity, variety and glory, have been in the vanguard of the processes of re-thinking categories and relationships. Many have been beguiled by the myth of reality, separating out the biological or physical variations in man as being "real", whilst seeing the social and cultural as ephemeral. Others have compounded the biological and the socio-cultural into what they call the "ethnos" – a

subtle blend of the trivial "reality" of biological variation to produce rigid bio-cultural boundaries between what they define as ethnic groups. From the 19th century evolutionists who rationalised colonial arrogance into the categories savage, barbarian and uncivilised; from the enthusiastic physical anthropologists who measured everything measurable in man from cephalic index to earwax texture; from the German and Afrikaner cultural scientists who devised the **ethnos** and the idea of the unassimilable people; to the so-called "scientific racists" like Jensen, Shockley and Eysenck on both sides of the Atlantic with their obsession about "intelligence", the anthropological heritage is a scientific enterprise which we can only look back upon with a deep sense of shame. We can take no more pride in our academic ancestors' efforts to rethink the categories of and relationships between man than we can take in our religious ancestors' efforts to do the same. Those scholars and ideologues in our own generation who speak of "scientific socialism" and categorise man in terms of inevitably antagonistic classes are heirs to that tradition in human thought which observes the seamless spectrum; domesticates it, or brings it into the sphere of human discourse, by dividing it into exclusive categories; and then manipulates the categories into a moral and political hierarchy.

Southern Africa, which has possessed, over the past few hundred years, just about every category of person devised by theologians, anthropologists, politicians and sociologists, seems to have been chosen by an angry God as a testing ground for man's most basic intellectual activity. The evolutionists can point to hunter-gatherers, pastoralists, horticulturalists, peasants, and industrial societies appearing in the correct order in the region. Physical anthropologists have had a field day trying to decide whether the tawny, click-speaking people of the Cape were of the same or a different "race" to the negroid Bantu-speaking people who followed them here – to say nothing of those spurious applied physical anthropologists who sit on the Race Classification Boards and pose such questions as, "Doctor, would you not say this man has the appearance of a Bantu?" to equally spurious experts. I will not comment on the traditional "test" of whether a victim of such officials was "Bantu" or "Coloured" – a pencil was thrust into his hair, if it fell out he was "Coloured" if it stayed in he was "Bantu". That is one of the myths of Cape society. I have never met a person who claims to have witnessed or experienced the test himself, so it may never have happened. I did know, however, many young men who believed the story sufficiently to ensure that they kept their heads virtually shaven. The aficionados of the ethnos have also had their day – nine ethno-national collectivities of Bantu-speakers, each with its own ethnos, seven sub-classes of "Coloured" of which only one is Indian (I am surprised that since the "Cape Malays" and "Griquas" have received the recognition of Proclamation 123 of 1967, being Gujerati or Tamil has remained a matter for consenting adults and private). And the nonsense of the Jensens and the Bakers continue to boost our racist folk cultures.

But enough of this – it must be all too familiar to you, even if you have not had the experience of being a permanently temporary foreign native nor appeared in any capacity at a hearing of a race classification case. My topic refers not to the past, but to the future, and here am I, using up half my time on the past. I make no apology, for it is through understanding more fully what we have taken for granted in the past, that we prepare for the future and possibly even save ourselves from repeating the errors of the past.

I have argued thus far that the exercise of classifying things naming and domesticating our experience of the natural and social world is as ancient as culture itself, and that the categories which man creates tend to become "reality" to him rather than a matter for debate in or out of academe. I have also argued that the step from differentiation to moral and political hierarchy is an easy one to take, as well as an appealing one.

What are the implications of these arguments for a post-apartheid South Africa? I would suggest three elements – **continuity, flexibility, inevitability.**

First, we are not going to escape readily from the shackles of our cultural heritages. I recall Tom Mboya, the Kenyan Nationalist, suggesting in 1961 that if the Indians in Kenya really wanted to be a part of the new nation, they should encourage their sons and daughters to marry black Kenyans. This produced a retort in a Nairobi newspaper – that if the Singhs are not going to allow their daughters to marry the Patels, it was hardly likely that they would accept the Kamaus and the Ocholas as in-laws! We are the heirs of long traditions which tell us who we are – and who we are not – and that heritage is not going to be lost, no matter how traumatic the transfers of power may be. There are today in Poland small congregations of Jews, still worshipping in the traditional way – neither the holocaust nor the forty years of communist re-education has stamped out or converted those obstinate adherents of Judaeism. Nearer home, each year I see one or two of my students wearing cheesecutter caps, and I know at once that they too have been conforming to a cultural imperative which has defied nearly two centuries of concerted opposition. The Xhosa have been told that circumcision and seclusion in the bush are bad for their young men. Missionaries said it was pagan; doctors said it was unhealthy; educators said it disrupted schooling, employers that it disrupted work and cost a lot of money. Confirmation, matriculation, graduation were offered by the cultural imperialists in exchange – and many Xhosa took them, in addition, but not at the expense of their own assertion, through the great ritual, that to be a man one must be properly initiated. So, the first implication of what I have said is that there will be continuity of values and forms of cultural expression. Ideological evangelism, even when it is hammered home with rifle butts, and converts are rewarded with cushy jobs and fat salaries, will not eliminate people's sense of who they are, nor their obstinate determination to pursue what they believe to be right for them.

Secondly, and this may seem to contradict what I have just said, the history of man to date, indeed, the history of all successful animal species, is one of adaptation and flexibility. Our perceptions of the world around us, the categories which we use to divide up our universe of people, and the relationships which we define between those categories, are fixed only for a season, not for eternity. Those who are unable to adapt their categories and review their relationships in the light of changing circumstances are doomed to join the wrecks of extinct cultures and species which serve as landmarks in time.

In the area where I live, a lot of copies of a poster appeared during the weeks just before the white election this year. It said "REMEMBER RHODESIA – VOTE H.N.P."

It captured the essence of what I am trying to say today in one astonishing **non sequitur.** Anyone who has followed the history of what is now Zimbabwe must surely know that in the long run, the majority will overthrow an exclusive minority regime, and that the longer the minority resists, the poorer the prognosis for reconciliation between the new rulers and their former masters. De Gaulle, that ultimate Nationalist, recognised the fact that others could be as passionate and determined in their nationalism as he was – and dismantled the French empire in a single decade with hardly a shot fired in anger south of the Sahara. The result was an association of Francophone states with enduring ties with their metropolitan power. The post-independence history of Zimbabwe underlines the point still further – those who have sought their security through constitutional safeguards of minority ethnic status have been disillusioned, embittered and fled, while those who have committed themselves to the development of the ocuntry have found much that is worth living for. Remember Rhodesia indeed – not least for the speed with which socialist rhetoric was replaced by material pragmatism. And Zimbabwe is far from unique. In 1961 I drove the elderly mother of a white missionary across the Rift Valley in Kenya. She told me, "As long as they don't let Kenyatta out, we shall be all right". Four years later I found myself doing the same trip in the opposite direction – again with an elderly lady as a passenger, "As long as Kenyatta stays in power", she said, "we shall be all right". Both elderly ladies were wrong of course – but they illustrate how flexibility of perception enables people to live in the present and postpone their fears to an uncertain future. So, recognise that while the old cultural myths, and old bases of ethnic identity, the old hopes and fears will continue to haunt the future as they have the past, those myths, that identity, those hopes and fears can be re-interpreted, can be adapted creatively to new circumstances. Creative adaptation, or flexibility, will be demanded of us all in the years ahead. We **have** to evaluate – but we should be conscious of what we are doing.

Let me give you three examples which may be familiar to you. When used to describe people, what does the term "Black" mean? Does it mean people categorised by physical anthropologists as Negroid; or Bantu-speaking people; or people who are classified under the Population Registration Act as Black; or all people who are not classified as "white" under the same Act? I am pretty sure that if I had asked some years ago that question, I would have received a different range of answers from the one that I would get from you today. In our lifetime, crucial ideological categories have changed – creative adaptation if you like (but meaningful only when it goes far beyond political rhetoric). It is not enough to emulate the driver of the school bus in Plains Georgia who announced to his waiting passengers, "Now listen y'all, our Mr Carter is now President of the U.S.A. and he's said there ain't no different coloured folk no more. You ain't white and you ain't black no more". His audience looked bemusedly at themselves and him, but he battled on. "You ain't white and you ain't black, you, you'se all green. O.K. Now get on the bus – light greens at the front, dark green at the back".

A second example. When I listen to speakers at student mass meetings today, I hear them suggesting, or claiming, that they identify themselves as workers, pitted against the bosses in the university administration and Senate. Sometimes they even persuade some of the black employees of the university that they are united in their struggle against the bosses in admin. The students in Paris in 1968 tried the same re-interpretation of their class position to promote a worker-student revolutionary alliance. Organised labour was little more impressed by their rhetoric than Stalin was with the I.R.A. and the students retired with sore heads to review their correct analyses of their situation. Flexibility and adaptation, yes – dilettantism and contradiction, no. If you want to identify in that sense with the workers, don't live off the taxes they pay or the profits your sponsors or parents have extracted from them. Discover the real bases of your common interests which transcend the categories of Marxist rhetoric – that is creative adaptation, rethinking the categories and rethinking the relationships.

A third example. I hear, like a shrill trumpet from across the sea where Mrs Thatcher struts, and echoed in government statements here, claims about the free market economy, about privatisation and such, as the means whereby our economy will grow and happiness be spread across the land. But I see the growth of monopolies in business; a still growing army of civil servants, matched by their variously uniformed brethren; and, according to the Free Market Foundation, over five hundred different pieces of legislation inhibiting free enterprise and trade in this country. And I read of more bureaucrats directing their energies at what they call "promoting the informal sector" – a concept which would be quite meaningless if we had a free economy, since what "formal" and "informal" really mean are "legal and protected" and "illegal and harassed". If we are going to cry "Freedom and Democracy" and seek to bring about Isaiah's vision of the new Jerusalem where men live in their own houses and reap what they have sowed, then we have to decode the myths and rhetoric of the free marketeers and capitalists with no less vigour than we decode the myths and rhetoric of colour and class.

Of the third element, inevitability, history and anthropology have much to teach us, and I have referred to it in various ways already. The title of this lecture implies the inevitability of a great divide between what we are experiencing now and what our future will be.

The inevitabilities turn on such hard variables as numbers of people, resources with which they can work to generate wealth, and the unwillingness of the majority to accept second or third class status indefinitely. Constitutional packages, however elegantly wrapped, are ultimately about access to scarce resources, and "protection of minorities" (however one cares to define majorities or minorities) means that some people are being given rights of access which are being denied to others. However hard we may try to create our classifications of people and to impose our interpretation of differences upon them, the common elements which embrace all people will ultimately dominate. Those basic needs which have been outlined by scholars from Malinowski to Mazlow are not colour coded in the long run, even if they are culturally evaluated.

I have not said much about race and social structure as such – so let me conclude with some thoughts on those concepts and the relationship between them.

How the spectrum of human variety is to be divided up and ordered is a matter which will not be determined by scientists but by politicians and ideologues. You may see

two colours in your human rainbow (black and white); or three (black, white, brown) or four, or seventeen. All those classifications reflect something, all have some sort of meaning to some people – although how anyone could cheerfully define **himself** as "Other Coloured" is beyond my imagination! But how the significance of each category is perceived and translated into political factions and political rights – indeed, whether each is given any political significance at all, is a crucial issue. It is an issue that will dominate politics as long as some people endeavour to protect or advance their interests by appeal to ethnicity. It will only subside when people realise its artificiality and find alternative principles of cohesion around which to organise in order to prusue their interests – when, as Mboya put it, the Patels and the Singhs are sufficiently at ease to marry the Khumalos and the van der Merwes – and vice versa.

At university we should be engaged in trying to distinguish between rhetoric and reality, between what people say and what people do – and how those dyads relate to each other. In the new society, beyond the abyss all the skills mastered in this area of decoding rhetoric and assessing reality will be needed quite as much as they are here today. When politicians speak of the dictatorship of the proletariat we should ask ourselves (or better them if we dare) whether they are part of the dictatorship or part of the proletariat. When they speak of fair shares for all, ask how **their** income compares with the national per capita income, and what **they** will give up so that all may start equal. We should be experienced at asking the questions by now, as members of this strange society of ours. (You heard what happened when Advocate Lombard, the public prosecutor for Stinkwater went to the Holiday Inn in Maseru? He met a local who was dressed in a smart white uniform with lots of gold braid. "You a commissionaire?" [illegible]ombard "Certainly not", replied the officer, "I'm [illegible]al". "Don't play the fool with me", said Lombard, "Lesotho is land locked – you haven't got a Navy". "What department did you say you worked for?" asked the Sotho Admiral "Ministry of Justice", said Lombard. "Then we do have something in common", replied the Admiral, "Our Navy, your justice"). In short, the faces on the TV will change, the rhetoric will change, but until what the mass of us perceive as reality changes, the ethnic and social landscape will remain familiar to us. Those of us who learn – by our studies of history and culture, and by our close observation of the world about us – how categories and relationships can be re-interpreted, and how they are manipulated in the names of ideology and reality, should be well equipped to survive and even prosper in a modest sort of way, through our own creative adaptation. Do not believe the doctors who tell you that rigidity sets in only a few hours after death – that is bio-logic. Rigidity of thinking in an age of revolution is the cause, not the consequence of cultural extinction. And maybe at least the younger generation are getting the message –anthropology is the fastest growing social science at Rhodes University, a fact which not only gives me pleasure but also hope for us all beyond the abyss. □

A reply to Christopher Merrett on "That Election".

It is true that there is no statistical evidence to support the contention that people who might normally have been expected to vote for the PFP in May stayed away from the polls because of the "irrelevant circus" campaign. Nevertheless it is the conviction of people who worked in the election that they did, and it is certainly their view that many former and potential workers did nothing to help them this time.

As to the question whether the PFP was worth voting for on May 6th (or should all white voters energies be going into extra-parliamentary work) my own view is that, whatever reservations anyone might have had about some of its policies or its campaign, it was.

The crucial dividing line in white South African politics seems to me to be whether one rejects apartheid and commits oneself to a non-racial future or not. For many white voters support for the PFP has been their affirmation of that commitment. Most of these people are not political "activists" or ever likely to be, and we are deluding ourselves if we think that they are. They are therefore highly unlikely to attach themselves to the "extra-parliamentary democratic movement". But, unless they are persuaded otherwise by the Right or the Left, they will not resist the coming of a non-racial society and will accept it with reasonably good grace when it does come.

This is a bonus for the future and not an irrelevance. It should be helped to happen, something which the "irrelevant circus" campaign did not do.

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