

# CIVIL



# RIGHTS

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## News Letter

### "The Nemesis of Docility"

Dr E.G. Malherbe's presidential address to the Institute of Race Relations this month was sane, thoughtful and realistic, and therefore could not fail to be depressing. Yet it will serve a useful purpose if it helps to make South Africans realise where they are drifting. We commend it to all our readers. It is available from the Institute offices at 25c per copy (no doubt plus postage). Pass it on to your friends.

Space precludes our doing more than give a few extracts to whet the appetites of those who did not hear it.

Definition: Dr Malherbe defines docility as including "not only its original meaning of being amenable to training or teaching, but also ... the resultant condition of avidity for instructions, reluctance to accept responsibility or exercise initiative and, finally, complete inability to react against the pressure of autocratic authority". "In its recoil from what is ultimate", he says, "it accepts authority on its own valuation and does not dream of questioning its credentials." He illustrates this forcibly from the history of Germany during this century, and one cannot but realise that South Africa, mutatis mutandis, could go the same way.

Dr Malherbe mentions that the original title of Uncle Tom's Cabin was The Man that was a Thing. "Isn't our biggest collective sin allowing people to be treated as "things"? Look what we are doing to our Coloured people today and what happens to the family life of millions of Africans, mainly because we want to serve White interests first."

"South Africans", he says, "are at heart a decent, civilised people ... yet most of us resolutely refuse to discuss such topics as population registration, group areas, indefinite detention without charge, on the plea that we won't have anything to do with politics ... One section of the population simply does not know what goes on in the hearts and minds of the other section and couldn't care less... we are as a people increasingly showing signs of docile acceptance of an incipient political on

cultural totalitarianism similar to that which sent Germany to its doom and which is the chief characteristic of the much dreaded Communistic state."

In conclusion he quotes from Senator W.J. Fullbright's The Arrogance of Power: "A nation which <sup>now</sup> only allows dissent but encourages it is adult, confident. A people which fearlessly exercises the right of criticism is civilised, intelligent ... In a democracy, dissent is an act of faith, and criticism is an act of patriotism, a higher form of patriotism than the familiar rituals of adulation."

Bautn Education and Pensions

We have received through one of our members a form of petition, originating in Natal, asking the Government to give urgent attention to the fact that Africans have to pay for school fees and books while the other groups in the country, economically better off, receive them free, and also to increase the amounts of pensions to Africans. In the latter respect the organisers quote the following figures for Old Age, Blind and Disability Pensions (taken from the 1967 Survey of Race Relations, page 282):-

Maximum payable per annum:

Whites ... ..	R360
Coloureds & Asians, City	R168, Non-City R138
Africans ... ..	R44.30 (possibly, in cities, R3 more per annum depending on when they were registered).

Any who feel they can collect signatures for this very worthy cause can obtain forms from Box 323, Pietermaritzburg.

The Banning of Mr Malindi

Mr Z. Malindi, an African taxi driver, has for seven years been restricted to four magisterial districts in the Peninsula. He has now been restricted to the single district of Wynberg. This will deprive him of his job with a Sea Point firm for whom he has worked since 1958, and his appeal to the Minister of Justice to allow him to continue working in Cape Town, Bellville and Simon's Town has been turned down.

Mr Malindi has four children aged from 15 to 7 years.

Under the previous banning orders, Mr Malindi had an exemption for attending services in his church. He may apply for the renewal of this special permission.

It will not be possible for him to continue as a taxi driver in only one magisterial district.

### Paternalism and the Universities

Some concern has been expressed, especially by Student Representative Councils at the English language Universities, about a draft Universities Amendment Bill which is to come before Parliament during this session.

Universities are dependent on state subsidies for more than 70 per cent of their income, according to the latest figures, and have been asking for more money for research, says the "Cape Argus" (25/1/68).

As the law now stands, universities may only lose their subsidies for failing to comply with any requirements of the law. The draft Bill gives the Minister power to impose specific conditions for the payment of subsidies and states that the universities must also comply "with any condition subject to which any such subsidy is paid".

Ministerial powers in the field of education are already sufficiently far-reaching, and a very convincing case would have to be made out to justify this further addition to them. We hope that the Parliamentary Opposition will be fully alert in this regard.

### Fair trial and automatic review

Our South African courts of justice have a high reputation, and it is seldom that our magistrates are censured by a higher court. It is interesting therefore to learn that recently a particular magistrate was censured in two review judgments, in each case by two judges, for behaving in an improper fashion in the court and so preventing the accused person in each case from having a fair trial. In both cases the judges set aside the convictions, though in one case the sentence was allowed to stand.

One of the judges commented: "All accused persons, whatever their race or position in society, are entitled to a fair and proper trial. Good manners is one of the things one expects from the court." He said it had frequently been laid down that it is generally undesirable for the bench to play too big a part in questioning witnesses, that the magistrate's attitude towards the accused was unnecessarily aggressive and rude, and that he had clearly shown his prejudice against the accused.

"I think", said one of the judges in the other case, "it would be best if the magistrate attempted to avoid this sort of behaviour in future."

Because it appears not to be generally known, we quote here from an article on the system of automatic review in the "Cape

Times"(Jan. 20).

The system, says the paper, is peculiar to South Africa and has been described as one of the most important contributions to the administration of justice in this country.

"Regional court sentences no longer go on review, but from the district courts all whippings - except in the case of juveniles - imprisonment for longer than three months and fines exceeding R100 are automatically reviewed by a Supreme Court judge.

"The case record must be delivered to him within seven days, and whatever the outcome of the review the right of appeal is not prejudiced.

"Even where the sentence is insufficient for automatic review, the Attorney-General, a judge or the magistrate himself may secure a review of the matter. If the reviewing judge is satisfied he returns the case to the inferior court and sentence is executed. If he disagrees the record is circulated among the judges of the division, and each judge's opinion is appended to a covering sheet.

"The majority decision is then taken. A particularly difficult case may be discussed at a judges' meeting, after which it could be directed that the matter be argued before two or more judges. The accused is represented by an appointed member of the Bar, and the State by one of the Attorney-General's staff. The review system dates back to an 1856 Cape Colony Act."

"A former Judge President of the Cape indicated these advantages: the more important decisions by the reviewing courts appear regularly in law reports; the system may act as an incentive to magistrates to avoid becoming slack or careless; it also helps them to resist the pressure of public opinion, which is so often exercised in favour of severity."

"When one bears in mind that many accused persons are at least partially illiterate, and the great majority undefended and ignorant of their rights, the right to appeal alone is not an adequate safeguard. In that light the vital importance of this system becomes apparent."

In recent years there has been a steady increase in the number of automatic reviews at the Cape: 1966 - 5,718, of which 5,593 were confirmed, 29 set aside and 96 altered; 1967 - 7,052, of which 42 were set aside and 105 altered.

Tailpiece - Pot and Kettle? Mr Blaar Coetzee said he was "bitterly disappointed that the Opposition had neglected serious discussion of the biggest problem in the country, namely, the question of human relationships".