

# CIVIL

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# RIGHTS



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News Letter

## Constructive action

We have pleasure in bringing to the notice of our readers some recent student activities which constitute a constructive contribution to solving South Africa's problems. They are

"You and Your Pass": A pamphlet issued by NUSED, a wing of NUSAS, giving information to Africans about the working and requirements of the pass system. We understand that 40,000 of these are being distributed, free, to Africans in different parts of the country. This should make a real difference to the number arrested for "pass offences" in our towns and cities. Well done, NUSAS!

Legal Aid: The students of the Faculty of Law at U.C.T. are reported to be operating a legal aid service in conjunction with (though, we understand, independent of) SHAWCO. This will be a real help to people who cannot afford the services of the established legal profession and will provide valuable experience for the students participating, who will also have experienced legal help.

Citizenship Week: As a contribution to this recent effort Mr Peter Gross, a student of Law who represents the U.C.T. S.R.C. on the League's Committee, wrote a thoughtful article on the implications of civil rights for citizenship which was published in the "Cape Times". Our gratitude goes to Mr Gross.

## Bantu Scholars' Fund

We also commend to our readers this Fund, several of whose Trustees are members of the League. Its latest annual report shows that, in co-operation with Polaroid and the Institute of Race Relations, the Fund is bringing help to African scholars (151 bursaries so far in 1972). Each bursary application is checked first for academic merit, and the social background of applicants must be verified by a social worker or magistrate. The usual bursary pays for tuition, books and perhaps a fraction

of the cost of uniforms (and, in some cases, boarding school fees). Donations are exempt from Income Tax and the Fund's address is P.O. Box 294, Rondebosch, C.P.

### Quotes

In the course of a debate in the House of Assembly on the Defence Amendment Bill recently, the Minister of Defence and Dr G. de V. Morrison (M.P. for Cradock) made attacks on the League for its attitude to conscientious objection to military service. Our attitude on this question is well known and the Minister's charges have been replied to through the Press.

Dr Morrison, perhaps unwittingly, did the League some service in that he quoted at some length from the report of the Conference held under the League's auspices in October, 1970. These quotations are now enshrined in the columns of Hansard (1st March cols 2245-6). Some of the Honourable Member's comments, however, are worth quoting. It is also worth noting that, apparently, no Member of Parliament on that occasion challenged any of his statements. Dr Morrison said, inter alia:

"If we, like the Civil Rights League, also want to make provision for 'basic human rights of freedom of conscience' we are most certainly heading for a situation that borders on anarchy ... To speak of 'basic human rights' or of 'freedom of conscience' in times such as these, in which we are being threatened by the aggressive communism of both the Peking and Moscow varieties, where our security and survival are virtually being threatened every day, displays a recklessness in the face of reality which is not only astounding, but also extremely reprehensible ..." (Col. 2247)

### Contrast ...

By way of contrast, we quote from an interview reported in the Cape Times (8/4/72) with Chief Gatsha Buthelezi of Kwa-zulu on the question of equal pay for equal work:

"If this is done," he said, "there need not be any fear about so-called terrorists. I think the success of any attacks from outside would depend to a large extent on the co-operation of Black people here.

"So if Black people are satisfied in this country then it seems to/nobody need fear anything ..." /me

This may seem to some to be an over-simplification: but fundamentally the Chief is right. It is the voice of sanity...

### How much Freedom?

All those interested in civil rights must feel indebted to Mr Gerald Gordon, Q.C. for his thoughtful and detailed review of the recent book by Professor A. S. Mathews (Dean of the Faculty of Law in the University of Natal) entitled "Law, Order and Liberty in South Africa". Mr Gordon describes it as "clearly the definitive work on the subject", and it is a pity that its price puts it out of reach of the ordinary reader. For this reason we think it worth while to quote some of the salient points in both the book and the review.

Professor Mathews says that "the terms 'just' and 'free', as descriptions of society, would not nowadays be applied to a community in which the Rule of Law does not enjoy substantial acceptance". The principle, he says, conveys much more than public order maintained by the force of politically organised society. Mr Gordon, summarising the writer's arguments, says: "Many South African politicians erroneously claim that because a law is made by the properly constituted law-giving authority, Parliament, the doctrine is satisfied. But this is merely rule by law; it is not the Rule of Law.... Even a sovereign legislature must observe restraints on its power if it is to act consistently with the Rule of Law. Thus conduct must be controlled by rules that are clear and precise for all, and accordingly retroactive criminal legislation violates the doctrine since it purports to guide conduct of the past. Likewise delegated authority must be within defined standards to prevent bureaucratic despotism. To quote Professor Mathews, "The claim by an executive of the right to set up an emergency rule is essentially a demand to govern without law" (Mr Gordon's italics). Discussing the Suppression of Communism Act, Professor Mathews says: "In its totality the Act constitutes a licence granted to certain officers to abrogate almost every conceivable civil or political liberty ... The Act has been used extensively against non-communists and one of its functions is to suppress opposition to the policies of the Government ... The Act and the Rule of Law are in irreconcilable opposition." He even quotes a statement by the Appellate Division in 1934 (as he says, long before 1948) in which the court "affirmed its impotence in the face of a determined legislature", saying "Parliament may make any encroachment it pleases upon the life, liberty and property of any individual subject to its sway". The author says of emergency powers: "It is indeed surprising that Parliament has legislated the country into a permanent emergency when there are

statutes which confer plenary powers on the executive to deal with unrest when it actually occurs or threatens to break out." Indeed, the drastic emergency powers point to "fundamental defects in the administration of the country".

### Hope for the future

Professor Mathews states frankly that the security laws in South Africa have virtually effected "a substantial collapse of the Rule of Law"; but, says Mr Gordon, in his final chapter, "Towards a Free Society under the Rule of Law", he is not without hope. The South African industrial economy has reached a sophisticated stage of development. Our established representative institutions are capable of being progressively broadened. There are an advanced system of public administration and a strong (though still muted) liberal tradition of politics and law. But owing to the vast disparities in wealth and education the immediate, or even rapid, introduction of the whole panoply of democratic rights and liberties will not lead to a free and stable system. Progress must come in stages, and with transitional controls. But mass literacy must have high priority.

The ordinary man cannot do much - except at the ballot box - about reinstating the Rule of Law: but he can, to some extent at least, help towards mass literacy and equal pay for equal work, thereby providing much of the necessary foundation for a just and free society.

### Credit where it is due, but ...

Speaking in Parliament on the third reading of the Bill to introduce "aid centres", the Deputy Minister, Dr P.G.J. Koornhof, said: "The success of the aid centres has already been proved in Johannesburg. In February, out of a total of 3,636 Bantu charged for technical offences, charges against 2,481 of them were withdrawn, thanks to the intercession of aid centres."

This is welcome news. But one may well ask, in view of the Deputy Minister's emphatic denial that there would be any slackening of influx control, why the country should have to carry the enormous waste of man hours for both the police and the Africans concerned, if two-thirds of the charges brought can be withdrawn. The numbers involved, in one month, are sufficiently staggering to make any authorities consider the possibility of reducing them, even at the cost of some loss of "face". The beneficial results would be worth it. MOYA