

# CIVIL



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# RIGHTS



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## Leo Marquard

By the death of Leo Marquard South Africa has lost one of her greatest sons, and the League one of its most valued members and friends. Space does not allow us to quote all the tributes paid to him from all over South Africa, but for the record, and for history, we give our own here: (Cape Times 4/4/74)

"Leo Marquard was a speaker at the historic meeting in the Cape Town City Hall on September 14, 1948, held to protest against the proposed removal of Coloured voters from the common roll by the newly-elected Nationalist Government. A few days later he was elected to the committee which set up a permanent body, the Civil Rights League, and was its chairman from 1949 to 1951. He was a member of the deputation which in 1950 presented to Parliament the petition, with more than 100000 signatures, against the removal of Coloured voters from the common roll.

"He continued to serve on the committee until September, 1965, when he left it for health reasons. He was however elected a patron of the League in 1966 and continued in that capacity until his death, keeping in regular touch with the League's activities. He rarely missed an annual general meeting, and frequently took the opportunity to emphasise the importance, as he saw it, of educating the public on civil rights and taking up issues of principle with the Government.

"It is appropriate to quote from the citation on the occasion of his receiving an honorary doctorate from the University of the Witwatersrand last year. The university honoured him for 'the courage, ability and determination of an eminent South African who has devoted his life to the advancement of the underprivileged, the protection of the weak and the safeguarding of liberty, and whose confidence in the aspirations and idealism of the young has never faltered'.

"He has indeed set up a standard to which the wise and honest may repair."

To us who remain he would assuredly say, "Hou moed!"

### The voice of the Coloured

One healthy result of the policy of separate development which was perhaps not fully foreseen by its initiators is the growing frankness of those involved in its implementation. The President of the Association of Management Committees of the Cape, at its recent annual congress at Port Elizabeth (Cape Times 1/4/74 and Argus 30/3/74) was emphatic that the association would make its 'voice heard in clear terms' when dealing with Provincial and local authorities.

It was necessary, said Mr Stober, for the authorities to realise they could not 'forever keep us from our full democratic rights.

'We ask for what we have earned as loyal citizens. If depriving us of these full and equal civic rights and amenities by the creation of management committees is another ditch in which the authorities plan to keep us then they must know that they cannot keep us there unless they stay there too to hold us down.'

On the allocation of beaches, Mr Stober said: "If a survey were to be made of all beaches and the ethnic groups to which they have been allocated, it will be found - at least in the Cape Peninsula where non-Whites far outnumber Whites - that the latter have all the safe, spacious and sandy beaches. We have the smaller rocky and dangerous beaches where no White person in his right mind would ever swim."

Referring to job reservation, he said: "Whichever way you look at it, it still remains one of the nastiest policies to hurt us as a people.... Why should our children with the ability and aptitude not have the opportunity to be apprenticed by all municipal and divisional councils as building artisans, electricians and plumbers? Why cannot our young men and women receive training and employment in all municipal and divisional council offices? ... Our call to every municipality is to open the doors and let our children in."

It is at least encouraging that Cape Town Municipality is investigating methods of consultation between the Council and the four management committees in the municipal area, including such matters as the planning of new housing estates and the submission of lists of candidates for posts in the townships. "Wherever possible", says the Director of Local Government, "anything that concerns the management committees will be a subject

for consultation."

### Breeding crime

In this connection a grave warning was sounded by Mr Justice Steyn recently in an address to the Playing Fields Association (Cape Times, 3/4/74) when he said: "If you design townships like Hanover Park you are creating a skollie menace. Police officers fear to send their men into such townships ... if we have the slightest foresight we would use some of the funds that get pumped out to give townships a community pulse." Crime, said the Judge, would flourish "while those who govern us lack the imagination to turn townships into communities."

### A Bill of Rights

Professor J.D. van der Vyver, Dean of the Faculty of Law in the University of Potchefstroom, an avowed Nationalist, has come out in favour of a Bill of Rights "to protect the individual against the powers of the State", and says it should be entrenched in the South African Constitution (Sunday Times, 17/3/74). The Professor lists ten principles to be embodied in such a Bill of Rights, namely

1. The prohibition of arbitrary arrest and imprisonment.
2. A person's rights may not be abridged or restricted in any way except by due processes of law - by order of court.
3. Everyone should be presumed innocent until proved guilty.
4. Prohibition of the duplication of criminal charges.
5. The right to legal representation.
6. The opportunity to defend oneself before conviction or the implementation of any act which affects the life, liberty or property of the subject.
7. The rule against self-incrimination.
8. Continued operation of courts of law independently and without bias or fear of intimidation.
9. The prohibition of retro-active laws and punishment for something which at the time was not a crime.
10. The prohibition of cruel or inhuman punishments.

These, says the Professor, are mostly general rules of South African law, "But I found there were many exceptions to these rules". He gave a number of examples which have been enacted during the past twenty-five years, including the prescribing of minimum sentences and the exclusion of the jurisdiction of the courts. He recommends, inter alia, in his 1250-page thesis

\* that existing legislation should be scrapped and replaced by laws which deal with real State security and real terrorism.

\* That the Government undertake an investigation into the powers of the executive, which could show that State powers are sweeping and arbitrary.

\* That an "ombudsman" be appointed to look after the interests of subjects affected by decisions of the executive.

"Such a person", he says, "would have the right to all relevant information so that he could judge whether the interests of the subject were safeguarded. This would apply particularly in matters which, because of their confidential nature, could not generally be disclosed - such as matters relating to State security."

\* The Bill of Rights would empower a court of law to test the validity of parliamentary legislation.

The Professor suggests that all crimes against the State authority be reviewed and codified. He would like to see the relevant common law and existing Acts abolished and replaced by an Act which "really deals with State security". It was possible to repharse these Acts to cover terrorism that really means terrorism.

We hope that the Government will at least give consideration to these suggestions from one of its own supporters, which Liberals have been urging for many years.

#### Erosion of judicial powers (Cape Times, 22/9/73)

It is worth recalling that a few months ago Mr J.F. Ludorf, a retired Supreme Court judge of the Transvaal, also referred to "a tendency to undermine the authority of the judiciary gradually and decrease the wide powers of protection of the rights of the individual", saying he was "concerned about the process of erosion of the authority of the Supreme Court". He referred to the proposal to abolish appeals to the courts against decisions of the Publications Control Board and the refusal of passports without giving reasons. The rule of law, he said, was based on the principle that the individual had the right to be informed of accusations against him and the right to put his side of the case. If he was proved innocent, it would save the State money and improve South Africa's good name in the administration of justice.