

CIVIL



RIGHTS



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News Letter

Human Rights Conference (Cape Times, Argus, 24-27/1/79)

The International Conference on Human Rights held at our University in January was extremely interesting. A wide range of speakers from overseas, as well as South Africans, took part and about 270 people attended. It was well reported in our local press. The proceedings are to be printed and will be sent to all delegates. While it is obviously impossible to do justice to the Conference in this news letter, we select a few outstanding topics.

The Conference had its critics. As usual the "liberals" were attacked from both sides. Conservative speakers said it had been overloaded with criticism of the South African system and that the papers were political rather than academic. On the other hand, a more radical speaker pointed out that most of the people who should have been there to "challenge the liberal premise" of the conference were either banned, exiled or in jail! But the majority who attended fell between these two extremes and found the conference stimulating and very worth while.

Perhaps the critics, especially the conservatives, misunderstood the aim of the conference. It did not set out to strike a balance between good and bad in South Africa, but to bring out aspects of our national life and policies which need to be changed, and in this it succeeded very well.

A number of contributions may be briefly quoted.

Professor John Dugard (Wits):

* "Critics of the South African judiciary sometimes tend to forget that it is the white South African society and not the judiciary that is responsible for the unhappy state of affairs in our country. This does not, however, mean that there is no positive rôle for the judiciary to play.

"Nothing short of a full-scale inquiry into the methods of interrogation used by the security police would satisfy a hostile world and sceptical South African public opinion... If the government persisted in its opposition to such an inquiry, there remained the trial judges and the legal profession. This would be a step towards restoring the once-high reputation of the legal profession which was being questioned both internally and

externally because of its "passive acquiescence" in a legal order which "arguably permits inhuman and degrading treatment".

* Advocate E.M. Wentzel (Johannesburg): "We don't want a judge or a magistrate to visit the detainee. We want access by his family or his lawyer. Let him be seen. And if he is seen I venture to suggest we will never have another suicide in detention... The best protection a detainee can have is if his little wife or relative or legal representative can visit him and see that he is well."

Press freedom (Argus, 26/1/79)

* An outstanding visiting speaker, Anthony Lewis of the New York Times, described freedom of the press as "untidy and annoying", especially to those in power. But, said he, there was no other practical way of "bringing the citizens into the process of public decision". He quoted the key rôle of the American Press in the Vietnam war, the Pentagon Papers case and the Watergate scandal. Says the Argus, in support of this view, that freedom of expression, though often seeming to be dangerous, is in fact the path to safety for a democracy. Mr Lewis said that press freedom involves the larger right of the public in a democracy to hear all sides before deciding public policy.

We can but hope that history will record a similar achievement by the South African Press regarding the Info scandal. As the Argus comments, "There are already many fetters on our Press. The danger is that they should become a muzzle."

A New York judge said on the publishing of the Pentagon Papers: "A cantankerous press, an obstinate press, an ubiquitous press must be suffered by those in authority in order to preserve the even greater values of freedom of expression and the right of the people to know."

* Mr Tertius Myburgh, editor of the Sunday Times, told the Conference that South African newspapers had more than 40 laws curtailing their activity, as well as the usual laws which applied to all in society. "The press laws are frighteningly broadly framed and give editors sleepless nights." He pointed out, however, that in most parts of Africa the idea that the citizen should have access to the media to criticise government was unthinkable.

* Talking of press freedom, Professor A.S. Mathews (Durban) said constraints on the South African press were too strong for it to have cracked the Information scandal on its own, and it required Mr Justice Mostert's "bold decision" to provide the press with the leverage necessary. These constraints were apparently to be intensified with new legislation on "rumour-mongering".

The rôle of ombudsmen (Argus, 25/1/79)

Professor Walter Gellhorn, professor emeritus of law at the University of Columbia, U.S.A., described the rôle of ombudsmen as valuable external critics of administration. "Because", he said, "ombudsmen, in every land they served, have regarded themselves as improvers of public administration rather than primarily as exposers of malefactors, they have on the whole engendered a co-operative spirit among officials." Prisoners, like other people, he said, should be given opportunities to be heard before discriminatory practices were taken against them.

A Bill of Rights (Argus, 25/1/79)

In opening the Conference, Mr Justice M.M. Corbett of the South African Appeal Court declared himself as having become, by reason of a visit to the United States recently, a "convert" to the American system of a bill of rights enforceable by the courts. The American Courts can declare even legislation unconstitutional if it conflicts with such a bill of rights. The judge said he thought the system was worth a trial in South Africa, though it would present constitutional and political problems.

Mr Justice Corbett pointed out that if a bill of rights were introduced by legislation it could at any time be amended or repealed by Parliament (reminding the older generation among his hearers of the fate of the "entrenched clauses" on the Cape coloured vote). The only effective way of introducing it, he said, would be by "a constitutional compact entered into by the peoples in a state, and therefore by some form of national convention".

A bill of rights could only protect human rights if a court existed powerful enough and independent enough to proscribe both legislative and administrative infringements. Such a court would have to maintain a fine balance between, on the one hand, the need to protect constitutional rights and liberties and, on the other hand, the danger of a too great interference in "the affairs of the executive and legislative branches of government". The effectiveness of the system of judicial review, said the judge, depends on its broad acceptance by society.

We agree respectfully with the judge. If it can work in America, it is worth trying here. What, we wonder, do Mr Jimmy Kruger, Minister of Justice, and his colleagues think about it?

Getting things in proportion

Professor James Read (School of Oriental Studies, University of London) told the Conference that legal protection of human

rights in black Africa did not flourish during the early years of independence. It was surprising, he said, that such protection had been attempted at all. It was even more surprising that it had been persisted with when the fragility of constitutions generally had been demonstrated by military coups and civil war, when the economic problems faced by governments had been well nigh insurmountable and accentuated for many of them by natural calamities. He said:

* "It is unrealistic to expect that the authority of the courts will prevail against the will of a dominant political party or military government on important issues."

* "Human rights depend more on the ethical sense of the people than on formal guarantees in law."

* "No human rights are absolute. Everyone has the right of free speech, but no one has the right to shout fire in a crowded theatre."

* "When imprisonment is possible without explanation or redress, every form of liberty is impaired."

Rights in Israel (Cape Times, 25/1/79)

"From the first days of the State of Israel the press has indicated, in no uncertain terms, that it will not stand for strict, rigorous applications of censorship." (Professor Amnon Rubenstein, member of the Democratic Movement for Change Party in the Knesset)

Results - a Permanent Human Rights Commission (Cape Times, Argus, 27/1/79)

At the end of the conference a steering committee was set up, with a mandate to establish a permanent South African rights commission, under the chairmanship of Professor J.D. van der Vyver of Witwatersrand University. We look forward with interest to developments in this regard.

Help us to grow

Please let us have the names of any of your friends and/or family who you think might be interested in becoming members of the League. We will then send them news letters and membership forms. We greatly appreciated your help in this last year - it brought us in a number of new members.