

CIVIL



RIGHTS



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News Letter

Sinews of peace

Subscription time is here again. Please give your usual kind attention to the enclosed reminder. If you have any queries, let the Secretary know.

Conscientious objection and the law (Cape Times, 18-20/12/79, 7/1/80)

The case of Mr Peter Moll has quickened public interest in the whole question of provision for conscientious objectors. So the "Southern Cross" newspaper, calling for such provision, has pointed out the "draconian" provisions of the Defence Act, which provides that one could be fined R5000, or imprisoned for six years, for even suggesting to any person or persons in general that he or they should refuse military service. The Youth Chairman of the Progressive Federal Party has called for the repeal of section 121(c) of the Defence Act, which prohibits free and open debate on the subject. The Society of Friends, completely opposed to any act of war, strongly supports any proposal to establish a civilian service corps as an alternative for conscientious objectors.

A more personal but shocking point in the case of Mr Moll is the action of his employers, the Old Mutual, not only of firing him under a regulation that denies its employees "the right to attract attention to themselves by engaging in high-profile religious or political activities" but of demanding the repayment of his R5 500 bursary in monthly instalments starting in May!

One mitigating fact is that when Mr Moll's case went for review at Defence Headquarters, his sentence was reduced from 18 to 12 months. He is also allowed to continue studying in his spare time.

Our last chance? (Argus, 7/1/80; Cape Times, 16/1/80)

Champions in South Africa of civil rights and the rule of law will await with an almost painful interest the report of the Schlegelbusch Commission on constitutional issues which is at present hearing evidence in Cape Town. Our member and Patron, Professor A.S.

Mathews of Natal University, in a recent article in the Argus, expressed grave doubts as to the chances of peaceful change - indeed, predicted that "we shall not achieve either during or at the end of the 80's a political order in which civil rights and the rule of law flourish". We quote some of his reasons for this conclusion.

* "The real struggle between those who have power and wealth in South Africa and those who do not is only now beginning, and, far from being resolved, will greatly intensify in the next decade.

* "since both civil rights and the rule of law are institutions designed to restrain and qualify power, they will have little appeal to (and receive small recognition from) either those who are determined to preserve power and privilege or those who seek to wrest it from the present possessors ... While the rule of law does not seek to guarantee political and social justice, its attainment is heavily dependent on the creation of a social system in which power and wealth are distributed in a substantially equitable way. Civil rights and the rule of law require a foundation of political and social justice.

* "South Africa's power holders are not yet committed to resolving the problems of power and wealth by negotiating with the excluded groups within the society ... The government will need to match its present promising noises with more action and with a negotiating stance that implies a willingness to make substantial concessions."

Failing this, Professor Mathews foresees that "the conflict in the 80's will become increasingly militarised and will lead to the extinction in the 80's of the last remnant of civil rights in South Africa". He feels, however, that there is still a chance that pressure, internal and external, may lead to the bold steps needed to ensure change that is "largely peaceful and orderly". Civil libertarians, he says, "will need to unite courage and determination in their strategy with moderation in their expectations ... it will take time to accustom political actors to the ideas of divided authority, qualified power and due process of law. But even the partial realisation of these worthy goals in the 80's is worth all the sacrifice and effort that will be required to obtain them."

Professor Mathews ends his article with the prediction that whereas "under the present dispensation it is the blacks who feel the need of civil rights and the rule of law, by the end of the 80's the rôles could well be reversed so that whites rather than blacks will crave the protection that these institutions afford against the despotic tendencies of political man".

The Schlebusch Commission (Cape Times, 16/1/80, 17/1/80, 18/1/80)

In its representations to the Schlebusch Commission the S.A. Indian Council has called for a constitution that would "provide for sharing of power effectively by all racial groups, while taking all necessary precautions to provide adequate safeguards for the protection of minority groups". The Council's chairman, Dr Moola, said that the implementation of his Council's proposals "would result in a multiracial involvement and generate mutual respect, goodwill and understanding ... "Give the blacks a sense of belonging," he said.

The S.A. Indian Council's proposals included

- * A single Legislative Assembly in which, apart from whites, there should be an agreed number of representatives of the coloured, Indian and black South African people who should have "an effective voice" in the Assembly.
- * An agreed number of representatives of all race groups in the proposed Council of Cabinets and the State President's Council.
- * The inclusion of all groups in the electoral college to elect the State President.
- * The retention of the S.A. Indian Council and the Coloured Representative Council and the establishment of a council to represent black South Africans, as an interim measure until a satisfactory system of electing non-white members of the central assembly is realised. These councils to constitute electoral colleges to nominate candidates for the Legislative Assembly.

Mr Moola called for the formulation of an entrenched Bill of Rights.

The Schlebusch Commission has also had submitted to it proposals for providing more land for blacks, which included some measure of territorial separation leading to a confederation of South African states, or possibly (as suggested by Dr R.E. van der Ross in a recent book), even a race federation based on separate voters' rolls.

Representatives of Inkatha have stated that the organisation is not prepared to consider constitutional proposals based on a number of independent states. To fragment South Africa in this way, they maintain, is "to take extraordinary steps which are costly in terms of money and resources, to achieve something... not desired by the majority of the people of the country". The broad proposals of Inkatha included

- * power-sharing within one political system;
- * repeal of discriminatory laws as a first step towards political normality (which does not need constitutional change);
- * regionality without ethnicity - the inclusion of consolidated

existing homelands in a South African political set-up;

* protection of minority rights, which could not be protected by a total white monopoly of power;

* a bill of rights, including the question of the greatest possible redistribution of South Africa's wealth.

Inkatha further insisted that any national convention must include interest groups such as the banned ANC. Its representatives further pointed out that if the commission was expected to inquire into and report on a new constitution, then leaders of all groups should have been invited to serve on it, and not only members of three white political parties.

From Stellenbosch University comes a similarly challenging statement by Professor W.B. Vosloo. In his evidence to the Commission the Professor said the process of finding a solution must needs be an evolutionary one, taking into account existing realities, effective political power-groupings and specific adjustments in problem areas.

Practical steps which could be taken would include a declaration of human rights, the removal of discriminatory laws such as the Mixed Marriages Act and the deproclamation of aspects of the Group Areas Act.

Professor Vosloo also urged the establishment of a constitutional council or committee representing all groups, which could draw up an agenda for constitutional change.

The Civil Rights League, in a memorandum submitted when representations were first called for a year ago, laid down what it regarded as essential principles, in particular the provision for a complete Bill of Rights and a free and independent judiciary which could pronounce on the validity or otherwise of any action of the government in relation to that Bill of Rights. The League further specified such essential rights of the individual as the right to life, liberty and security of person; the right to basic education; the rights of workers and prisoners; and the right to freedom of thought and opinion, of peaceful assembly and association and to be represented in decision-making at all levels.

It is interesting what a measure of unanimity there has been in representations made to the Commission by organisations which presumably have worked quite independently of each other. We wish the Commission well in its dealing with this weight of evidence, and hope that the Government will take it seriously. The ignoring of so many recommendations of the Theron Commission is not an encouraging precedent - but perhaps the government attitude has become less granite than it was then. We can only hope so.