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EDITORIAL

After experiencing decades of government deceit and administrative mismanagement, most South Africans are cynical about the exercise of public power. In the result we no longer hear much talk of *public virtues* in the political realm; indeed our cynicism cuts so deep that perhaps we regard 'public virtue' as a contradiction in terms. From our position on the threshold of the 'new South Africa', perhaps it is time to start thinking seriously about political virtues and to connect these firmly with demands for the recognition of civil rights.

Two of the most important virtues that attach to democratic government can be captured by the terms *accountability* and *integrity*. By 'accountability' is meant the duty of elected legislators and administrative officials to explain their actions to citizens who have a legitimate interest in knowing what is being done in their name. By 'integrity' is meant the virtues of honesty, candour and openness in public life.

Those of us who have lived all our lives in South Africa have had no experience of what it means to be governed on the basis of a commitment to these twin virtues. We are so accustomed to being lied to by Cabinet Ministers that we cynically assume that dishonesty is no more than part of the politician's job description. Examples abound. For years the government blatantly deceived us about South Africa's military involvement in Angola and Mozambique, constructing an elaborate web of lies and deceit that ought to have brought down the entire Cabinet. We were deceived about this country's atomic capabilities for a considerable length of time in a remarkable exercise of political subterfuge. And the truth about military 'covert operations' (for which read 'dirty tricks') has still to be told.

As South Africans we have become immune to all of this. Indeed there can be little doubt that the lying and dishonesty still carries on in the government today. More worrying still, the entire process of constitutional negotiations to date has been conducted in an aura of secrecy and expedience that is the antithesis of accountability and integrity. There is a sense in which we feel like helpless spectators as our future is bashed out in smoke-filled rooms by shadowy negotiators and summarised for us in 30-second sound bites on the evening news.

We are entitled to feel cynical about government in this country, but it would be a tragedy if this cheapened the currency of the public virtues. One of the most exciting prospects for South Africans is the thought that in the next few years it may be possible for all of us to live under a government that practises the virtues of accountability and public integrity. But that will not happen, and the future exercise of political power will continue to be a charade of expedience and manipulation, unless we demand these things from a future government as a matter of right.

It is sad that no-one talks much about public virtue anymore, and even sadder that a culture of accountability and integrity has not always characterised the activities of the liberation movements in South Africa. These are not anachronistic bourgeois virtues, nor the outdated baggage of Western-style liberalism. In the run-up to the first democratic election, accountability and integrity should be our minimum demands from the political parties that compete for our votes. We should demand these, not as scraps to be tossed from the tables of the powerful, but as aspects of our civil rights in a democratic society

MEMBERSHIP SUBSCRIPTIONS

In the February Newsletter we advised members that membership subscriptions were due, and asked for cheques and membership forms to be posted to the Civil Rights League at PO Box 23394, Claremont 7735. Although that information was quite correct, an administrative error led to the temporary closure of our Post Box and we understand that a number of letters containing cheques were returned to the senders. The problem has now been sorted out, and our address remains unchanged at PO Box 23394, Claremont. Would members whose cheques were returned to them please post those cheques back to us as a matter of urgency.

'Water On Stone': The Need For Judicial Education In South Africa

By Michelle O'Sullivan

Is there a need for a programme of judicial education in order to make Judges and Magistrates aware of racial and gender stereotypes which may impact upon their decisions, albeit at an unconscious level? The answer in Canada seems to be 'yes'; at least this is what provided the impetus for a recent Conference in Canada which sought to heighten judicial awareness of such issues. Michelle O'Sullivan (a Researcher in the Race and Gender Project in the Law Faculty of the University of Cape Town) attended this Conference and reports on the possible lessons for South Africa.

A total of 330 Canadian Judges recently attended a conference in Victoria, Canada, on the theme of "The Role of the Judge in the New Canadian Reality: Judicial Skills and Knowledge for the Future". Native indian elders, practising lawyers, academics, psychologists, sociologists, race relations experts, literacy specialists, diplomats and judges themselves presented seminars, held panel discussions and delivered speeches. The judges were faced with incontrovertible evidence that sexism and racism are pervasive in the administration of justice in Canada. The conference formed part of an ongoing process, attempting to eliminate these insidious forms of discrimination.

Canada is a multicultural country. Even though all Canadians formally enjoy the protection of the Charter of Rights and Freedoms, within the nation there still exist racial and other barriers whicb prevent some Canadians from participating fully in society. Commissions of enquiry have found that there still exists unequal and unfair treatment by the Justice system, in particular, to Native Indian People. The Indian delegates at the conference asserted that the formal justice system had proved inadequate in addressing their interests The impact on social behavior of violence against women, poverty, illiteracy, learning disabilities, alcohol and drug abuse, and the operation of the syndromes of sexual and physical abuse of children produce the stuff of court lists. Judges need full knowledge of these subjects as much as they do the technical rules upon which the justice system operates, if there is to be a fair and unbiased administration of justice.

"The judges were faced with incontrovertible evidence that sexism and racism are pervasive in the administration of justice in Canada."

This programme of judicial education has developed in the last ten years in Canada. Similarly, in the United States gender and race bias has been identified in the courts of various states and task

forces have been set up to document their existence and strategise towards their removal.

Because of a commonly held belief amongst judges that they ran their courts impartially, initial resistance to Judicial education was high. It can only be presumed that South African Judges and Magistrates would have the same reaction, should they be accused of having a discriminatory approach to the administration of justice.

"Similarly, in the United States gender and race bias has been identified in the courts of various states and taskforces have been set up to document their existence and strategise towards their removal."

The constitution of our judiciary and magistracy, mostly white and mostly male, would seem to suggest that they would have difficulty identifying with certain accused or defendants because of their race, gender or class. Although there seems to be few instances of overt discrimination in the Supreme Court, systemic discrimination is pervasive in the administration of justice in South Africa. This is much more difficult to eradicate than overt discrimination because it ranges so broadly. Systemic discrimination appears as a class issue. It cuts across racial and gender lines and primarily affects that class of people at the lower end of the socio-economic scale.

South Africa's justice system is particularly susceptible to systemic discrimination. The demographics and constitution of the courts, a high level of illiteracy and lack of representation are only some of the factors which contribute to this. This systemic discrimination makes it more essential that judges and especially magistrates, who dispense with the large majority of the cases in our courts, undergo an extensive educational programme focusing upon fairness in the administration of justice. An awareness, on their part, of both the conscious and unconscious sexism and racism which permeate our courts will help to combat the widely felt effects of systemic discrimination.

There is no doubt that the argument will be raised that such an educational process will tamper with the independence of the judiciary, the touchstone of our law, and in fact the entire Westminster system. The independence of judges from political interference is a principle with which everyone agrees. Judicial Education which challenges should not be viewed as an affront to this very important principle. The independence of the judges and magistrates is not threatened by having them learn from people who can tell them how the real world looks. Judges and magistrates can work with the community in raising the most difficult issues facing our society, and thus show by conduct that they are willing to include the reality of all people in their decision making. The need for education of this sort in South Africa need hardly be stressed.

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Putting Women on the Legislative Agenda

BY MELANIE THOMAS

On February 19 the government published three Bills concerning the Abolition of Discrimination against Women, the Prevention of Domestic Violence and the Promotion of Equal Opportunities. The Department of Justice's accompanying memorandum spoke of a 'comprehensive programme to abolish all forms of discrimination against women' and the 'development of real equality between the sexes'. In this article MELANIE THOMAS (a member of the Cape Town-based Caucus on Law and Gender) critically assesses the extent to which the three Bills deliver on those promises.

The Promotion of Equal Opportunities Draft Bill

The equal opportunities Bill does two main things. Firstly, it prohibits both indirect and direct discrimination against men and women, either on the basis of their sex, or marital status, or pregnancy. Secondly, it establishes an Equal Opportunities Commission which has the power to investigate allegations of discrimination, make proposals and draft codes of conduct.

There are several things about the draft Bill which are inadequate and even counterproductive. I will focus on four main criticisms.

Firstly, the manner in which the Bill was published is unacceptable. This is an important piece of legislation with potentially far-reaching consequences and in which most women have an interest in ensuring that it is done properly. However, the Bill was drafted and published in a hasty and authoritarian fashion without consulting any women's organisations or drawing on any of the substantial expertise available in this country. The results of this are plainly visible: The Bill is badly drafted: simple things like grammar and spelling are appallingly bad; legal concepts have not been thought through carefully; the research done by the drafters has clearly been inadequate; ideas are often borrowed willy-nilly from the legislation of other countries without careful consideration of whether or not they have worked in those countries and of whether they are suitable for South African conditions. Furthermore, only a few weeks was allowed for comment on the Bill to be submitted -- clearly not enough time to do the in-depth research and thinking that is necessary before such an important piece of legislation is adopted. The motivation of the National Party is, unfortunately, clear: it needs to push this legislation through Parliament in this session in order to convince women that it has their interests at heart in order to garner votes. An analysis of the Bill reveals how little it really does do for women and how much of an empty electioneering ploy it is, rather than a sincere and honest attempt to improve the quality of women's lives.

A second criticism relates to the way in which the Bill approaches the issue of equality. Even though it recognises the notion of indirect discrimination, which does go some way towards recognising that the formal equality model is an inadequate way of remedying disadvantage, its focus is exclusively on prohibiting discrimination in the provision of opportunities. Its approach is thus entirely negative:

it tries to ensure that women are not discriminated against any further, but does not really address the issue of past disadvantage in the way that a substantive equality approach would.

Thirdly, the criticism can be made that the Bill is too limited in scope: it applies mainly to employers but also to institutions like partnerships, pension funds and employment agencies. It does *not* apply to clubs and societies. We have recommended that we should rather adopt the approach of the English Sex Discrimination Act which makes sex discrimination unlawful not only in all the areas mentioned already, but also generally in the provision of any goods, facilities or services to the public.

Fourthly, the methods which the Bill adopts for implementing its provisions are clearly inadequate. It relies mainly on the Industrial Court to enforce its provisions. It would be far better to set up a specialist Equality Court consisting of judges with expertise in the area of sex discrimination to hear equality claims. The Bill also establishes an Equal Opportunities Commission, such as those existing in America and in England. However, the Commission's powers are limited to investigating matters, making recommendations and drawing up non-binding codes of conduct. If one looks closely at these provisions, it becomes quite clear that the EOC is a body with no teeth. I would recommend that the powers of the Commission be extended to enable it to hear sex discrimination claims and that it be given enough financial and human resources to make it a really effective institution for assisting women.

The Abolition of Discrimination Against Women Draft Bill

Essentially, what this Bill does is to target existing legislation which directly discriminates against women and to abolish those parts which are discriminatory. The removal of these blatantly discriminatory provisions can only be welcomed.

The most important reforms relate to the area of marriage law, and these proposed reforms can be itemised as followed.

(1) The marital power which might still exist in marriages concluded before 1984 is abolished. This means that all married women are now able to enter into contracts without the legal assistance of their husbands.

(2) The Bill also provides that both spouses are to act as joint and equal guardians of their children. This removes the common law rule that men are automatically the legal guardians of legitimate children. However, this clause is badly drafted and doesn't pay attention to several problems: for example, it does not tell us who the guardian will be when the parties get divorced and it says nothing about customary marriages or Hindu and Moslem marriages.

The problem with this Bill is not what it says, but what it doesn't say - what it leaves out. And it does leave out some very important discriminatory provisions:

Firstly, there is no mention of any reform to the Abortion and Sterilization Act. Abortion is a difficult and complex issue on which opinions and emotions vary , but let it suffice to say that the issue is ignored in this Bill.

Secondly, it does nothing to remedy the inferior position of women in African Customary marriages, in terms of which women are perpetual minors (in other words, they always have to fall under the guardianship of a man, whether it is a father or a husband.)

Thirdly, in terms of present law, a court can only order a redistribution of assets on divorce in very limited circumstances. It is vital that a court be allowed to make such an order whenever it hears a divorce matter so that divorced women do not continue to experience poverty and are given sufficient resources to care for their children.

Prevention of Domestic Violence Draft Bill

There are two main things which this Bill does: firstly, it tries to provide easier, cheaper and more effective legal remedies for battered women and secondly, it retains the rule of our law that a man cannot legally be charged with raping his wife.

I would like to deal with the so-called marital rape exemption first. Briefly, the law as it stands at the moment is that a man who rapes his wife cannot be charged with rape as rape within marriage is not considered to be rape at all. If a man assaults his wife and also rapes her, the fact that he raped her will be regarded as an aggravating circumstance. But in general terms, husbands may rape their wives in South African Law.

I'm sure that there will be widespread consensus that this is a barbaric rule of law which has no place in a civilized society - and particularly one which is premised on human rights and which values women as equal beings. Nevertheless, the government in its draft Bill has seen fit to retain the marital rape exemption. No more need be said about this than that it is totally unacceptable and a fundamental and brutal violation of human rights to allow this situation to continue.

Moving on to the question of legal remedies for domestic violence, the first point to note is that domestic violence, or the battering of women is a criminal offence. However, the police are slow to react to calls which involve so-called domestic violence and the prosecution of offenders is not taken seriously by the legal system. As a result, the only protection a woman can obtain is invariably to go to court herself and obtain an interdict which restrains her husband from continuing the abuse. The problem with this, however, is that it is an expensive and complicated process and the majority of battered women simply cannot afford it and are thus completely helpless against the violence which rules their lives.

The draft Bill attempts to deal with this problem by creating more simple and effective procedures by which women are able to come to court to get interdicts or restraining orders. For example, it allows a court to grant a conditional warrant of arrest where evidence is laid before it that there is a real danger that the person to whom the interdict applies is going to disregard it. This means that one needn't wait until the person *actually* disobeys the terms of the interdict before getting a warrant of arrest. Furthermore, the magistrates' courts are given the power to issue these interdicts whereas at present only the Supreme Court has this power.Now, the provisions are fairly technical, but I would like to make a few general points:

Firstly, the problem of expense has not really been dealt with. Even though procedures in the magistrates courts are inevitably less expensive than the supreme court, a woman still needs a lawyer to obtain an interdict and the protection of the law will remain beyond the reach of the large majority of women. There are many ways in which this problem would be dealt with more effectively: one way would be to provide a state-funded legal aid system which would provide lawyers to assist women. The other would be to simplify procedures and educate women sufficiently about their rights to enable them to bring applications for interdicts themselves.

Secondly, the procedures laid down in the Bill are still unnecessarily technical and require very high standards of proof before they can be made use of. This clearly limits their usefulness in assisting battered women.

Thirdly, the range of the Bill is far too narrow: it applies only to marriage relationships where one party is abused by the other within the matrimonial home. It does not therefore protect children or other family members against violence; it also does not protect people in relationships other than marriage; and it does not protect women from being battered in public by their husbands or lovers. It also does not protect parties who do not live together.

Fourthly, in order to ensure that orders which are granted under the Bill are effective, the police need to be placed under a *duty* to charge any person who disobeys an interdict. At present, and in the proposed draft Bill, the police are under no obligation to respond to protect women from abuse. This must be remedied if the law is to be at all effective.

Fifthly, and finally, we need to look at alternative methods of punishing abusive husbands. Locking them up in jail is not the answer, for it is the family who suffers the most because it invariably loses its chief source of income. Alternative strategies such as counselling and community service need to be seriously considered.

Censorship and Violence in an Already Violent Society

By George Ellis

The issue of press censorship has been much in the news recently. In this article George Ellis, a member of the Committee of the Civil Rights League, considers the case for and against the censorship of violence.

As a long-standing liberal, the idea of censorship is abhorrent to me by its very nature; for free flow of information is at the root of a free society. However in recent times I have had cause to think more and more seriously about the unbridled spread of violence in films and on television, and to contemplate the effect this has on society, It raises severe problems about the issue of censorship.

There are really two separate ways tbe issue arises. The first is the general violence that occurs daily in numerous films and TV programs, where violence is presented as a normal and acceptable way to solve problems. If you do not like what someone is doing, beat them up; if you feel like it, shoot them or stab them. The message is that violence is not only normal but often laudable (cf Charles Bronson and Rambo). It is true that sometimes a violent criminal meets their come-uppance in these fables, but that in itself is inevitably in some or other extreme form of violence.

Tbe result would appear to be inevitable: children grow up absorbing this atmosphere and the associated message; often there is no strong counter-influence in their lives, so many of them start to act in accord with it. I do not have access to serious research on the topic, so what I am saying is based on broad impressions rather than substantiated research; that research should certainly be done, for one can claim as an ad hoc working hypothesis that some of the apparent world-wide surge in violence could be linked to the world wise spread of a culture of violence through the international TV and film industry. It is of course possible that some people are relieved of the need to carry out acts of violence in real life because they can participate in them in fantasy on the screen. My own view is that the opposite is the case: the violence on the screen spawns imitation (indeed it is known for certain, that this has happened in some specific cases: the issue is how widespread it is).

What solution can one have? The industry seems unable or unwilling to place limits on the horrors it wishes to show to the public, many of whom in turn respond to the drug of violence by immersing themselves in it. The issue, then, is if some kind of censorship should be imposed in view of the lack of some kind of responsibility in this area by the media. I do not like the sound of it, but I find it increasingly hard to argue against.

The second case is equally perplexing. It is the issue of the spread of violence caused by the showing of violent scenes in news broadcasts. Again the informed public must be aware of what is going on; however the broadcasting of some kind of scenes of violence on TV can, I believe, sometimes be directly related to the spread of public violence in response.

Partly this occurs through the 'copy-cat' element, for example in individual robberies, murders, and kidnappings; but partly - and more seriously - through inflaming community hatred, of the kind that occurred for example in India at the time of the partition of the country. One famous recent example is the scenes of Rodney King being beaten by the Los Angeles police, broadcast hundreds of times on TV, and ultimately eliciting a violent response in which several people were murdered, many stores sacked, and community tensions massively heightened. One might also suggest that broadcasting of specific scenes on TV news was one cause of the spread of community violence in this country in the past decades, and may still be a contributing factor today. Some people may laud this as having helped, or still helping, the liberation struggle. Suppose however we contemplate a post-liberation South Africa; given political change, we will not be able to solve community conflict overnight. In a somewhat fragile equilibrium that we hope will emerge from the present state of conflict, any potentially powerful medium that acts as a means of spreading conflict

rapidly from one part of the country to another must be regarded with great circumspection.

One suggestion made is that one can reduce the risk of the medium acting as both the messenger and the message of violence by training news teams into specific styles of reporting that convey the news without stirring anger. It remains to be proven if this is possible. As in the previous situation, one needs at least to consider if there is a case for a degree of censorship of what will be shown on the TV screen to the extent that it should be ensured that certain types of scenes should be spoken to but not dramatically illustrated in graphic images.

The counter case is that I am totally exaggerating, that news scenes are never dangerous to society. A certain liberal view will accept this without question: taking the stance that freedom of information is more important than any damage such information may cause; and that secrecy can be demonstrated to have been the cloak behind which many iniquities have been carried out in the past; any tendency to restrict the flow of information should therefore be resisted. These arguments carry weight. They do not however answer the questions raised above.

To my mind this is, like the previous case, a conundrum that needs wrestling with. There is, at the minimum, a need for an ethics of presentation in both cases that is lacking at present; and some means of enforcing this ethic, or at least making it dominant in the industry. At present we have nothing of the kind; rather we have a nightly bath of violence, without end in sight. This represents part (but certainly not all) of the reality of our society; however it may also act as an amplifier of that tendency.

I do not have a ready answer. The point of this article is to raise what is in my view a significant and perplexing issue in the field of civil rights.

** George Ellis has recently published a SAIRR Regional Topic Paper entitled "Third Force: The Weight of the Evidence". Copies of the Paper may be obtained from the SAIRR office.*

A Guide To Politically Correct Speech for the Perplexed.

In an age of Politically Correct (PC) speech, it is difficult for even the most well-intentioned South African to be confident that he or she is not using offensive language. We are pleased to provide the following brief glossary of Politically Correct Terms as an aid to members of the Civil Rights League who would hate to be caught out at PC cocktail parties. (All of these are borrowed from Henry Beard and Christopher Cerf The Official Politically Correct Dictionary and Handbook, published in New York by Villard Books in 1992.)

bald - follicularly challenged; hair disadvantaged.
boring - differently interesting; charm-free.
cigarette smoking - assault with a deadly weapon.
dead - terminally inconvenienced; metabolically different.
drunk - sobriety-deprived; chemically inconvenienced.
fail (a course) - achieve a deficiency.
failure (a person) - incompletely successful individual; individual with temporarily unmet objectives; uniquely-fortuned individual on an alternative career path.
girl (eleven or younger) - prewoman.
housewife - domestic incarceration survivor; unwaged labourer; domestic artist.
houseplant - botanical companion.
illiterate - alternatively schooled.
lumberjack - tree butcher.
meat - processed animal carcasses; scorched corpses of animals.
old - chronologically gifted; experience enhanced.
pregnant - parasitically oppressed.
psychotic - socially misaligned; person with difficult-to-meet needs.
sado-masochistic - differently pleasured.
shoplifter - nontraditional shopper.
short - vertically challenged; vertically inconvenienced.
stupid - cerebrally challenged; differently logical.
unemployed - nonwaged; involuntarily leisured; in an orderly transition between career changes.
vagrant - nonspecifically destinationed individual; directionally impoverished person.
waiter/waitress - waitron; waitperson; dining room attendant.
white - melanin impoverished.
worst - least best.
wrong - differently logical.

Human Rights and Judicial Hangings

by Jeremy Sarkin and Alfred Cockrell

While these last days of empire are replete with strange occurrences, it is hard to think of anything stranger than the government's recent decision that the discredited tricameral Parliament is the appropriate body to settle the controversy regarding the moratorium on judicial hangings. As a political strategy, this seems akin to taking a vote amongst first-class passengers as to how the lifeboats on the Titanic should be allocated.

There were a total of 1 088 executions in South Africa for the ten year period 1981-1990. These statistics peaked in 1987, a year in which no fewer than 181 executions took place.

The spiralling rate of judicial hangings was brought to an end by President De Klerk's speech on 2 February 1990, in which he announced that there would be a moratorium on all executions until such time as Parliament had considered 'reforms' to the system of capital punishment.

These promised reforms were eventually embodied in the Criminal Law Amendment Act of 1990. The primary innovation was the replacement of the mandatory death sentence for murder with a system in which the imposition of the death penalty would be in the discretion of the trial judge. A number of secondary reforms were also introduced in order to improve the appeal and review procedures involved in the reconsideration of a death sentence. Finally, a panel was created to review the sentences of all those who were on death row as at 2 February 1990.

In the result there have been no executions in South Africa (not counting the TBVC states) since 17 November 1989. This situation may well change in the near future in the light of the government's announcement that it intends to allow the tricameral Parliament to decide on whether or not the existing moratorium on executions should continue.

We in the Civil Rights League wish to stress that at this stage our objection to the ending of the moratorium focuses solely on the institutional competence of the present Parliament. Not to put too fine a point on it, this is a discredited institution which possesses no legitimacy whatsoever in regard to an issue of such major constitutional significance.

South Africa has at present no Bill of Rights, and the flurry of attempts to put drafts on the negotiation table continues at such a pace that there is still no clarity regarding what our future Bill of Rights will eventually say about the death penalty. It would surely be premature to prejudge such a highly divisive issue at a stage when no checks exist on the powers of Parliament.

While the avowed intention of reintroducing executions might be to reduce the level of violence, a much more urgent need is for the establishment of a human rights culture in this country. The level of violence is politically related, and as such requires a political solution. It should be obvious to even the least cynical observer that the government is batting around an issue of great constitutional importance in order to score cheap political points.

At a time when so many policy issues are 'up for grabs' in the new South Africa, it is astonishing that a racially-based Parliament elected by a small minority of the population can arrogate to itself the power to make this sort of human rights decision. Before a decision can be taken about such a fundamental right, there has to be wide-spread, educated and informed debate on the issues involved. In addition, a mechanism such as a Constitutional Court needs to be in place in order to act as a check on all decisions that impact upon civil rights.

The reintroduction of state executions is a policy decision that should be made by a democratically elected legislature within a human rights culture and with testing powers vested in an independent court of human rights. All those who are serious in their democratic commitments should demand that the current moratorium on hangings be retained until such time as a fully democratic society exists.

Jeremy Sarkin and Alfred Cockrell are members of the Committee of the Civil Rights League. This article first appeared in the Cape Times on 14 April 1993.