

a procedural restraint on governmental action, whilst others have tried to infuse it with political, economic and social values. Liberal South African lawyers tend to confine it to a procedural concept, and are critical of those laws which empower the government to detain or otherwise restrict individuals without a fair trial. Arbitrary government powers are regarded as inimical to the Rule of Law. As Mr Justice Hiemstra once wrote:

“If Parliament should grant to the executive unlimited powers, then all the actions of the executive would be legal, but the rule of law could yet be grossly violated”.

*(Constitutions of Liberty, (1971) 88 SALJ 45 at 46)*

### **The Rule of Law concerns the quality of laws**

This statement points to the difference between ‘the Rule of Law’ and ‘law and order’. As we have seen ‘law and order’ requires obedience to the laws passed by the constituted authority, irrespective of the community’s perceptions regarding the legitimacy of the authority. The Rule of Law, on the other hand, is a yardstick according to which a given law may be attacked for its failure to meet certain requirements. It is accordingly incorrect to use the Rule of Law as a basis to require compliance with unjust laws, as those seeking to entrench the prevailing order sometimes do.

### **Repression cannot be used to maintain law and order**

I wish to make clear that I am not suggesting that the

concept of ‘law and order’ has no value in the South African context. The second element of the concept referred to by Mr Justice Boshoff in the *Cooper* case that is the protection of the general public, requires particular recognition. Ordinary citizens, including those living in black townships, have real and legitimate fears for their safety and well-being when law and order breaks down. The community requires protection from wanton violence. However, a society based on laws which are perceived to be unjust is unlikely to be able to maintain law and order indefinitely.

In the final analysis a government which cannot claim the support of the people it governs will be unable to maintain law and order except through repression. Repression, however, has not proved itself to be particularly effective as a long term solution to problems of legitimacy.

### **The danger when police fail to protect the general community**

What is to be feared is the possibility that the police are perceived by the black community as concerned with the first component of ‘law and order’, ie the protection of the constituted authority, and not sufficiently concerned with the second component, the protection of the general community from wanton violence.

Recent reports of police turning a blind eye to violent attacks on anyone seen as a political threat to authorities are therefore a source for grave concern.

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## **A child died in police custody**

**O**n July 5 1985, a 12-year-old boy died of head injuries while in police custody. He was Johannes ‘Witbooi’ Spogter.

Johannes was arrested during a demonstration by 150 youths in Steytleville townships over the deaths of Matthew Goniwe, Sparrow Mkhonto, Fort Calata and Siculo Mhlawuli.

In an attempt to draw attention to this diabolical act, two Black Sash members, Cornelia Bullen-Smith and Beverley Runciman, chained themselves to the railings outside Parliament. Placards strapped to their backs read: ‘A child has died in police custody’ and ‘We are horrified at his death’.

They were arrested — but with some difficulty — the police, unable to obtain a key to the padlock had to slip the women’s wrists out of the chains.

The women were subsequently charged in court for ‘wrongfully and unlawfully’ demonstrating. The hearing was adjourned to August 23 for preparation of their defence.