

FREE SPEECH

– unlimited or qualified?

There are huge obstacles to the free circulation of ideas and information in South Africa, but in opening doors that are closed at present the creation of more blockages must be avoided, says Albie Sachs.



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South Africa has suffered so many interferences with the rights of free speech that the tendency to let everybody say what they want, when they want, how they want is very strong.

At the same time there is an awareness that racism can ignite explosive passions and destroy the very fabric of a tolerant and democratic society. Furthermore, it is impossible to gloss over the fact that in addition to being unjust and exploitative, apartheid is spiritually injurious, it is insulting and defamatory. The problem, then, is how to reconcile the need for openness and the right to speak one's mind with the necessity for healing the wounds created by racism.

Clearly the constitution must protect the normal rights to criticise the government and public officials, to take part in free public debate over issues confronting the country and to discuss international questions. People should have an unqualified right to argue for or against socialism or capitalism, or abortion or capital punishment, or to warn us that the end of the world is near. Similarly, if the Flat Earth Society wishes to establish a branch in our country, they should be free to do so – there will be no lack of potential adherents.

Yet the real problem is not tolerance to the flat-earthers or the nationalise-everything-or-bust-ers or the free-market-at-any-social-price-ers. Nor is it whether or not to have free speech corners where every Tom, Dick or Harriet can mount his or her soapbox. The real issue is what to do about the organised mobilisation of racial and ethnic hatred.

Many countries have legislation which outlaws group libel. Should the South African constitution permit and even protect the right to say such insulting and provocative things as that all whites are rapists who should be driven into the sea? Or that blacks are baboons who should never have been given the vote? Or that the Xhosas have come to Natal to suck the blood of the Zulus? Or that the Shangaans are cowards and never knew how to fight? Or that South Africans of Indian origin should be deported to India? Or that Hitler knew how to treat the Jews?

In South African conditions, these are fighting words, the language of pogroms and blood. There is a strong argument for

saying that if the constitution is a compact – agreed upon by representatives of all the major groups in South Africa – it should include a shared undertaking not to indulge in mutual insults and not to permit the mobilisation of rabid racist or ethnic feelings for political advantage. In this sense, democracy and non-racism become inseparable – there is no democratic right to be a racist.

In theory, the constitution can adopt one of three positions in relation to racist speech: it can protect it, it can leave the question entirely to the legislature, or it can lay down express qualifications to free speech, including prohibition of defined forms of incitement to hatred and division. If it adopts the third position, the further question arises as how best to combat the promotion of racial hostility – whether to rely on the criminal law, or civil restraints, or voluntary codes of conduct affecting the media and political organisations. Should it also include provisions in the electoral law which forbid the creation of parties on racist principles or campaigning on the basis of racist or tribalist emotion?

There are other questions which bear indirectly but significantly on the question of free speech, which could affect the way constitutional principles were formulated. At present the press in South Africa is anything but open and anything but non-racial. The *Rand Daily Mail*, the most informative and widely-respected daily paper of the 1960s and 1970s was closed not on journalistic grounds, but because it was selling to too many blacks who had no money and not enough whites who had the money. In market terms, nothing should be free, not even speech.

English-language and Afrikaans-language monopolies control virtually the whole of the commercial press, which means virtually the whole of the press – and not only the press itself, but most of printing and distribution. Similarly, broadcasting is in the hands of the racist authorities.

What the commercial and state monop-

lies have in common is that they are completely white-dominated, locked into the apartheid structures. This affects not only the appointment of journalists, but the very determination of what is front page news.

Some attempts have been made by generations of courageous and imaginative journalists, both black and white, to mitigate the effects of this inequality. Space has been won for black voices in the commercial press, while journals such as the *New Nation* and *The Weekly Mail* have trans-

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formed reporting in South Africa.

Yet basically speaking, there are huge obstacles to the free flow of information in South Africa, ranging from unequal degrees of literacy, to the underprivileging of many languages, to official secrecy, to conscious or unconscious biases in the presentation of news. The new oral tradition of resistance has proved far more resilient and informative to the mass of the population than have the media. Yet we cannot rely on oral tradition in the new democratic South Africa to keep the people informed.

At the same time, we must remember that the objective is to open doors that are at present closed, not to create more blockages to the free circulation of ideas and information. We would have gained little if we were to replace the present controls on the media with new ones that simply switched the propaganda and biases around, if one realm of banality took over from another. Truth has always favoured the democratic cause and our people are tired of forever being protected in the name of what others think is good for them.

All these are issues which impinge on the language and substance of the constitution. We look to our articulate, technically experienced and battle-scarred media people to lead the way in proposing solutions.

Albie Sachs is a member of the ANC's constitutional committee.