

reality

A JOURNAL OF LIBERAL OPINION

IN THIS ISSUE . . .**M. K. GANDHI**

Editorial	page 1
The Silence of the Oppressed: by Edgar H. Brooks	page 5
Race and Politics in Canada: by Peter Royle	page 7
"Verligtes" and Verkrampes: by C. O. Gardner	page 10
Gandhi—in Our Violent World: by Bernard Kemp	page 12
The "B.O.S.S. Act": by Donald Molteno	page 15
Book Review: by C. de B. Webb	page 19
This South Africa	page 21

EDITORIAL**GANDHI 1869 – 1969**

The centenary of the birth of Mohandas Karamchand Gandhi has certainly loosed a flood of words upon the world, and rightly so. Writers and speakers have paid tributes, held autopsies, condemned violence, and decried gentleness in political matters. At least no one has tried to debunk the Mahatma, because it really can't be done. Any man who can yield all possessions, practise total sexual abstinence in marriage, eschew all self adornment, and preserve the gaiety of a child throughout it all, is really somebody. And when in addition to that he brings about the liberation of a great country without bloodshed, and shakes a thousand-year-old caste system to its foundations, he is somebody very great.

The flood of tributes one therefore expects. All over the world people are paying tribute to the greatest, or the co-greatest, human of our century, and also to one of the greatest humans of all history. His only competitor in our age is Churchill, who betrayed a phenomenal obtuseness in regard to his contemporary, speaking of him with derision; he called him the "naked fakir", but he really meant "faker", and he was outraged because Gandhi went to Buckingham Palace in his loincloth.

WAS GANDHI A SUCCESS?

The flood of discussion, as distinct from the tributes, is much more critical. The criteria used are almost entirely utilitarian. Was Gandhi a success? If Gandhi had been a success, then why is the world in such a mess now? Why are Hindus and Muslims killing each other? Why are the Americans slaughtering the Vietnamese, the Northern by intention and the Southern by the way? Why are the Nigerians slaughtering the Biafrans? Why are

Peter Brown and Helen Joseph under renewed restrictions? Why for God's sake won't the wolf lie down with the lamb, and why can't the weaned child put his hand on the cockatrice den? And what on earth is the use of trying to be kind and tolerant, because the chap to whom you are being kind and tolerant is going to cut your throat at the very first opportunity? Why on earth don't we all just look after Number One, because even if we're not happy, we might at least be successful? By all means be religious, but for heaven's sake be moderate about it. Religion is really moderation in all things. And don't think you know what's right, because Mr. Vorster thinks he knows what's right, and he is a lawfully constituted authority, and you are not. You are only a do-gooder, and you think men and women are all angels (except the Nationalists perhaps — you see you can't even be consistent). Wake up and throw away your rose-coloured spectacles, and realise that Gandhi, like St. Francis, was strictly for the birds.

There is another observation, also strictly utilitarian. Gandhi lived under the British Government, or rather the British India Government, and they put him in gaol all right, but they gave him a table and writing paper. It is true that in 1919 General Reginald Dyer, with unbelievable brutality or with unbelievable crassness, killed more than 370 people in the Jallianwalla Bagh because they had gathered together in defiance of his proclamation, which many of them had never seen or heard. He testified to the Hunter Commission that he did this because it was essential to exercise "a moral effect" on the people, and that he had already decided on his way to the Bagh that if necessary he "would do all men to death".

This terrible event in the history of British India could nevertheless not obscure the fact that the British will to rule India was weakening, nor could it obscure the nature of British authoritarianism which contained queer elements like fair play and don't-kick-a-man-when-he's-down, which as all true authoritarians know, is the best time to kick him. Gandhi therefore was never in danger of being executed, and he was resisting a Government whose Viceroy was willing to sit down and talk with him; he was in fact encountering the British equivalent of General Smuts, not the British equivalent of Mr. Vorster, if there is such a thing.

GANDHI UNDER VORSTER

So the second utilitarian question arises, how would Gandhi have fared under Hitler, or more pertinently, how would Gandhi fare under Mr. Vorster today?

This latter question was asked of one of the speakers at the recent series of Gandhi lectures in Pietermaritzburg, and when he replied "he would have been on Robben Island", the remark was greeted by loud applause, almost as if the speaker had said "he would have been Prime Minister". If the speaker was right, then Gandhi under Vorster would not have been a success.

Why should one therefore celebrate the centenary of a man whose moral influence on Hindus and Muslims, on Nigerians and Americans, on Mr. Vorster and General van den Bergh, and on the incorrigible wolf and the intransigent cockatrice, has been so negligible? Or rather, why do people do it? There are of course several answers to this question.

Some of us like to celebrate the centenary of a good man, because it enables us to cast a public vote for goodness. We can stand up at centenary time and be counted, and then sit down for ninety-nine years and mind our own business. It's like that kind of religion that is confined to one hour on a Sunday. As Mr. G. H. Calpin recently wrote, Gandhi has thousands of worshippers but mighty few followers.

Others of us like to celebrate centenaries, and to quote great men, because it gives us the chance to use them for our own ends. On the whole Gandhi has been spared this. No one has been more used for men's own varied purposes than the founder of Christianity. Man makes war to save Christianity. He rains down bombs, and poisons man and beast and flower so that peace may come to all mankind. He ejects people from their homes, and submits them to all kinds of suffering and humiliation, so that God's great design may be preserved.

Some of us — and we naturally like to think that we belong to this category — revere the memory of Gandhi because he speaks directly to our condition. We long for peace in the world, for an end to man's interminable wars, for an end to poverty, for the removal of all man-made barriers to man's self-realization. We — if we are sensible — do not ask ourselves if he was successful, or whether he would be successful in this present world.

He himself wrote:

I can see that in the midst of death,
life persists, in the midst of untruth,
truth persists, in the midst of darkness,
light persists.

LIFE AND TRUTH AND LIGHT

That is true. And life and truth and light persist because they persist in men and women. It was because Gandhi was a bearer of life and truth and light that we remember him. Persons such as he inspire us to try to

do what he did, to become ourselves bearers of life and truth and light in a country where lives — some lives — are of little account, where truth means the voice of authority, and where light must never be thrown on officially disapproved places.

The life of Gandhi is a lesson to all those of liberal thought and aspiration in South Africa. The important thing is not whether we succeed, though that would be highly acceptable, and should never be thought to be impossible. The important thing is that life and truth and light should persist in us.

EDITORIAL

THE VOICE OF TRUTH

In his article on page 5, Professor Edgar Brookes indicates most lucidly and challengingly the reasons for the terrible, sullen silence of the oppressed peoples of South Africa. In the last few weeks — since Professor Brookes wrote his article — the silence of one fairly small section of the oppressed, the Coloureds, has been broken.

And this sudden and welcome breaking into speech has been brought about, happily enough, by the confusions and delusions engendered in the minds of members of the Government by Apartheid itself. (Nothing, alas, could be more just: Apartheid is a vicious and cruel pseudo-deity, and it is only right and only to be expected that its baleful influence should encompass its worshippers as well as its victims.)

Noticing, a few years ago, that many Coloureds were showing a strange and awkward tendency to think sensibly about their situation in this country and to support a political party which took them seriously as human beings, the Nationalist Government decided to rearrange things in such a way that such parties as the Progressive Party would be unable to have non-white members or to be voted for by non-white voters. The Coloured people were offered a Representative Council all of their own; and prominent Cabinet Ministers pointed out that this Council would give the Coloureds an opportunity to express their true feelings and attitudes. The people who made such statements may have assumed innocently that the words that they were speaking were merely the usual propaganda: how were they to guess that — by a dramatic irony of perhaps providential beauty — fate was going to take it upon itself to convert their harmless promises into hair-raising reality?

DISTURBING ALLEGIANCE

It will be one of the pastimes of future historians to try to discover the exact nature of the thought-processes (if "thought-processes" is the right expression) which led the Government to assume that Coloured voters, who had shown such a disturbing allegiance to the Progressive Party, would manifest completely different attitudes when they came to vote for their own Council. Perhaps it was assumed that separateness might encourage "group thinking", and that "group thinking", which has had such an astonishing effect upon Nationalists, would have similar results with Coloureds. Or maybe it was taken for granted that liberal and humane ideas, being almost unheard of at volk-gatherings on the platteland, could not possibly have any sort of universal validity, and must therefore emanate from — indeed must have been invented by — a few troublesome white South Africans: "separate politics" would then, presumably, remove the taint from Coloured brains. Or it might have been thought that the sheer power of the Government and its ability to enforce its will in various ways would effect one of those "conversions" that Nationalists like to boast of.

At all events, the elections have taken place, and the Labour Party, which is firmly opposed to apartheid, has won twenty-six of the forty elected seats. Less than half of the

electorate voted: it seems safe to assume that a fair number of those who did not vote were so bitterly resentful of the fundamentally unjust setting-up of a separate Council that they refused to co-operate. (It may be objected that this assumption is unjustified. But is it? It seems likely that a Coloured person who supported apartheid would not miss the golden opportunity of pleasing the Government and of declaring his allegiance.) It is by no means unthinkable that, if another election were to take place immediately, many of those who had refused to vote would, cheered by the Labour Party's success, change their minds; and the result might well be that the winning party would achieve thirty-four seats instead of twenty-six.

DEMONSTRATION OF OPPOSITION

This, then, is the situation: the Nationalist Government, by a touching combination of ingenuity and naivety, has smilingly engineered a public (and indeed publicised) demonstration of Coloured opposition to its most cherished illusions. How do Nationalists react in such circumstances? They either leap hastily on to a high horse of somewhat disconcerting self-confidence, or they subside into soggy paradox. The first of these two reactions was piquantly displayed by Mr. S. L. Muller, the honourable Minister of Police and of the Interior (South Africa's interior being much taken up by police), when he announced that Coloured people had shown themselves to be children in politics. The second reaction seems to have been exemplified — as so many odd reactions have been exemplified — by the S.A.B.C's "Current Affairs" which proclaimed (we are told — we don't ourselves know anyone who can bear to listen to the programme) that the Coloured elections represented a defeat for the apartheid parties but a victory for apartheid.

Mr. M. D. Arendse, the leader of the Labour Party, has wisely begun to make a number of public statements. How pleasant it is, after several years, to read in the newspapers the words of a non-white leader who is prepared and able to tell the Government what most non-whites really think. And how enjoyable it is to know that Mr. Arendse's new eminence was created unwittingly by the Government itself. As for the quality of Mr. Arendse's contribution, we should like to quote a part of his comment on Mr. Muller's statement:

"Unfortunately it is clear enough that the remark is derogatory, stemming from his dislike of the outcome of the elections for the CRC. Had the elections gone the other way — that is, were Tom Swartz's party victorious — would our political age have gone up in Mr. Muller's estimation? For he appears to associate adulthood with the acceptance of apartheid.

"True enough, the mass of the Coloured people are dreadfully poor and shabby, terribly housed and but thinly trained and educated by comparison with the Whites. But, like ordinary people throughout the world, we welcome changes that uplift humanity, for (unlike our White brethren) we unhesitatingly accept mankind's common humanity, and readily bow before the conclusions of modern science. We see clearly enough that South Africa's White, Christian, Calvinist civilization — or apartheid culture — is as anathema to modern sociology as television is to Dr. Hertzog or as Maoris are to Mr. Stofberg."

We leave it to our readers to decide which of the two disputants shows the more striking symptoms of childishness.

ELECTION CASUALTIES

However, in nominating well-known supporters of Apartheid — and even many election casualties — as the further 20 members of the council, and appointing Mr. Tom Swartz — himself soundly defeated in the Kasselsvlei constituency — as its chairman, the Government has demonstrated clearly what its technique is in Non-White elections:

Invite the people to vote; see which party wins; put the other party into power; and then open wide eyes of innocent amazement when the outside world grinds its teeth.

Mr. Arendse and his party are not going to find the future easy. But they have already made their mark on South African history. **Reality** offers them its warm congratulations and its encouragement.

THE SILENCE OF THE OPPRESSED

by Edgar H. Brookes

One of the most striking phenomena in the South Africa of 1969 is the silence of the Africans, the Coloured people and the Indians. Their voices are not often raised in protest. Their attitude seems to be one of dumb acceptance. Official propaganda claims that this silence means contentment with Government policy, and somewhat smugly compares the peaceful atmosphere of South Africa with the angry controversies and the military coups of other African states.

There are other explanations of this silence.

Eighteenth-century Catholic Ireland was similarly quiescent. Certainly one of the reasons for this misleading calm was the expatriation of the natural leaders. "The native population," says Macaulay, speaking of the period after the Treaty of Limerick, "was tranquil with the ghastly tranquillity of exhaustion and of despair." "There were indeed," he goes on to say, "Irish Roman Catholics of great ability, energy and ambition; but they were to be found everywhere except in Ireland. Scattered all over Europe were . . . brave Irish generals, dexterous Irish diplomatists, Irish Counts, Irish Barons, Irish Knights of St. Louis and St. Leopold, of the White Eagle or of the Golden Fleece, who, if they had remained in the house of bondage, could not have been ensigns of marching regiments or freemen of petty corporations. These men, the natural chiefs of their race, having been withdrawn, what remained was utterly helpless and passive."

AMONGST US

One would not go so far as this in describing the South Africa of 1969. There are still men possessing gifts of leadership and endowed with great ability amongst us. But when one thinks of the men who sat in the Representative Council of the 1930's, men like Dr. Z. K. Matthews, Chief Luthuli, Paul Mosaka, Dr. Moroka and R. V. Selope Thema, when one thinks of such leading educationalists as Pro-

fessor D. D. T. Jabavu, Dr. Donald M'Timkulu and Dr. Selby Ngcobo, one is bound to say that it would not be possible to assemble a similar phalanx at this present time. We have the men, but they are not available. Some have expatriated themselves to England, some to Kenya and Tanzania, some to the United States. Few if any of these would be allowed to return to their country. Of the rest, some are in prison, some are banned. Those who would have been in this generation articulate and courageous leaders have been prevented from speaking. And so there is silence.

There are leaders out of gaol and unbanned who might speak but do not. Let us consider the facts of their situation. Their own accepted political organizations have been dissolved. They cannot hold a public meeting except with permission, and permission for that kind of public meeting is never given. If they attempt to attend a rare unbanned meeting, they will find the Security Police there taking names. Any suspicion of really manly and effective constitutional action is met by intimidation, perhaps by banning. It would cost a school teacher, a college lecturer, a Government servant, his job. Is it surprising that instead of manly speech there is sullen silence? It is nauseating to hear those who have reduced Africans to silence by such methods boasting of that very silence as a proof of happiness and contentment.

COMMITMENT TO SILENCE

This commitment to silence goes far indeed. Only a few weeks ago a prominent African leader replied to an invitation to meet a distinguished group of friendly white men for consultation replied more or less as follows: "I wish you fellows well, I am with you in spirit. But I dare not let it be known that I am working with white men, lest my own people disavow me."

Here is a second fear in this land of increasing fear — that of repudiation. This means that the contented African masses glibly spoken of by the propagandists are representing co-operation with even friendly white men. Under our very eyes we see evidence after evidence of this sullen withdrawal, and this is most dangerous for the future peace of South Africa. There are not wanting signs of great change among the white people, Afrikaans-speaking as well as English-speaking, towards the subject races. But, as has been well said, there is the danger that "when we have at last learned to love them, they will have learned to hate us."

There is plenty to talk about if the Africans were able to talk. The whole industrial system is being increasingly built up on a basis of migrant labour — a system condemned by the Dutch Reformed Church as well as by other Christian bodies. Alone among the nations of the world, South Africa does not permit the worker to have his wife living with him. In this deepest and most intimate of human relationships the deciding factor is not human affection but influx permits. Of recent years two other deeply disturbing restrictions have come in. An African is not free today to enter an African area other than his own without a permit. And an African is now discouraged from rendering business or professional services to his own people in a great African area like Soweto because it is not a "homeland". These decisions are cruel in the extreme, but most of the men who are responsible for them are not sadists. They do not love cruelty for cruelty's sake. It is something rather worse than that which motivates them. It is the working out of an ideology with an unfeeling consistency that takes no account of humanity or compassion.

EVEN SUCH THINGS

And yet, in the face of even such things as this, there is silence. It is a silence that is more poignant than any speech could be. Where there is speech, there is hope. It seems

incredible that any but the very stupid and very insensitive can take this gloomy and cautious quiet for contentment and peace. Surely with many it is a case of "curses not loud but deep".

But there are those who do not even curse. The most disturbing of all the explanations is that there are many thousands of those concerned who are beginning to accept their subjection as part of the nature of things, against which it is folly to fight. To have produced this attitude is a mortal sin. It is killing the spirit of a whole people. It is of course much more convenient than noisy agitation, but it represents the murder of a people's soul.

Think a little of the evil which those who have done this have brought upon South Africa. The numbed spirits will remain numb, or if they waken to life it will be under the leadership of excited demagogues.

GRAVE ILLNESS

One is so conscious of the harm that this is doing to black and brown South Africa that one scarcely spares a thought to the grave illness of white South Africa. Our present situation causes a silence there too — the silence of people leading too comfortable lives who do not speak when they ought to, and whose politics are moribund or dead. There are, on the other hand, those who are only too noisy, capable at any time of much talk with little really deep thought behind it, and an almost total absence of that ruthless self-examination which is essential to national recovery.

Let us look again at these men. What has made them what they are? An honest diagnosis must lead us to see that a sense of self-preservation is responsible for all this apparatus of control, suppression, intimidation and interference. Some enjoy tyranny so long as they are the tyrants, but many are kind and decent men who have managed to persuade themselves that their national survival is possible only by the holding down of the subject groups. So an ideology has been built up, a series of slogans which have become sacrosanct. Truth is of little moment. Inconvenient truth is the enemy and wishful thinking a trusted friend. It is possible for such men, for example, to talk of Zululand as a future self-governing homeland, while it is already split into fragments with white farming areas between them and now with a railway to be driven across it to a modern white-controlled port at the end.

It is not only compassion which is in danger, but the very quality of truth itself. There is the lie in the soul which is as destructive of the real values of white South Africa as the policies based on that lie are to the life of black South Africa.

WHAT OF OURSELVES?

We speak of the men who have done these things, but what of ourselves? How many of us have been silent when we ought to have spoken! The evil that is around us can perhaps be put right by humble and courageous service but never by smug self-righteousness. Let us see to it that our lives are directed accordingly.

Well, this is our position. What are we going to do about it? It is not for us to subside into the silence of irretrievable tragedy. While there is hope there is life. We must penetrate the silence.

One of the best ways of doing this has been closed to us, since our young people, white, black and brown, are no longer allowed to mix at the Universities. The tribal Colleges, to do them justice, do provide some good teaching, some adequate laboratories, some promising libraries. They lack only one thing and that thing is life. Regulations, strict control, repression of every potentially dangerous word, protection from the influences of the outside world — these things can never produce life and they kill freedom, but freedom and life are of the very essence of a true University.

The increasing restriction of personal friendly contacts makes it difficult to do what we should like to do. Such welfare societies as are still permitted provide an opportunity for the exchange of thought. Potentially the best place for breaking the silence is the Church.

APARTHEID IN PRACTICE

The Church must do something about it. There is a saying in America, "Eleven o'clock on Sunday morning is the most segregated hour of the American week." Even where there is no active desire for Church apartheid the tyranny of the *status quo*, the failure to make purposeful moves for meeting together, may produce apartheid in practice. We can be truly thankful for the dissatisfied young clergy and laymen who want to end not only the tradition of separation but also the tyranny of any unreflecting tradition wherever it can be found.

Our task is a hard one — all but impossible. Thank heaven that "all but" is not "quite". It demands from us a life-time of surrendered and dedicated service to our country. It demands high qualities of self-abnegation. It demands inexhaustible patience, utter integrity and a defencelessness when we are attacked, sometimes from both sides. This is true patriotism. This is real service to South Africa. We do not want angry noises, but any noise is better than the silence of death. Somehow, someday, perhaps after we have gone, there will be the laughter and music and argument and friendly jest that indicate life, in place of the dark silence of death.

RACE and POLITICS IN CANADA

by Peter Royle

Of all the countries in the world Canada, where I have now been living for three years, is perhaps the one whose racial and cultural composition is, at least superficially, most akin to that of South Africa.

There are two European cultures, English and French, flourishing side by side, and bilingualism and biculturalism are the order of the day. There is an indigenous population of Indians and Eskimos, whose separate cul-

tural identities have to some extent, as with the indigenous peoples of South Africa, been artificially preserved by law. And there are various European sub-cultures, plus an economically and culturally active Jewish com-

munity largely centred in the big towns. Historically there have been the same tensions and conflicts between the indigenous peoples and the colonists as in South Africa, with the colonists not hesitating to resort to trickery and slaughter to acquire the land they coveted. And there has been the same rivalry, culminating in war, between the French and English as between Boer and Briton in South Africa. It should also be mentioned that, as in South Africa, there is a non-indigenous non-European population which, as in South Africa, is largely rooted in one geographical area: I refer to the Negroes of Nova Scotia. And there is also an Oriental community composed mostly of Chinese and Japanese.

Given these similarities, one would expect to find in Canada a political situation not altogether dissimilar to the prevailing situation in South Africa. And in certain respects the situations have much in common. There is, for example, an incipient Red Power movement, and the attitudes of the French community are rather like those of the Afrikaners. There is the same fear of being swamped in a sea of Anglo-Saxonism, expressing itself traditionally in the same somewhat subservient relationship to recognized authority, the same clinging to language and religion, the same hostility to bilingual schools, the same proneness to messianic delusions and to look with favour on the enemies of the Anglo-Saxons, however repulsive their political wares; and at the same time, as recent psychological investigations have shown, there is, in relation to the members of the dominant culture, a sense of inferiority which I suspect is shared by Afrikaners.

SOUTH AFRICANS SHOULD PONDER

There is, however, a point at which the similarities cease; and it is here that South Africans should begin to ponder. Canadians, on the whole, like the Afrikaners, are a very religious people, even puritanical; but they have none of the Afrikaners' morbid fears of the modern world. They are attached to democracy as they understand it, they are liberal and tolerant, and are excited by change; and, since the Quiet Revolution of the 1950's, despite the subsequent upsurge of various politically dubious brands of separatism (some of which have more in common with the erstwhile Natal variety than with anything in the Afrikaner world), this has become increasingly true of Quebec.

It is true that these attachments do not go very deep. The fears that Tocqueville formulated on behalf of the Americans more than a century ago would have been well founded had he expressed them in relation to the Canadians: populism, tolerance, and a concern for physical welfare seem to have led to a certain bloodlessness and lack of distinction in most spheres of life.

This, however, is a different problem; and at least the liberalism is genuine. (By way of illustration I will cite the case of the Negro elected to Parliament in a White Ontario constituency in last year's federal election. Nothing remarkable in this? Only that he was representing the Conservative party in a Liberal-held constituency in an election in which, outside Newfoundland, the Maritimes, and Quebec, there was a heavy swing to the Liberals. It looks as if his constituents voted Conservative to prove how liberal they were.)

WHY THE DIFFERENCES?

What accounts for the discrepancy between Canada's and South Africa's political climates? One of the causes is undoubtedly demographic. The Indians and Eskimos constitute a very small fraction of the total population, so the White population can entertain no fears of being swamped with the granting of universal suffrage. The Negroes are mainly of Loyalist origin, and, despite recent visits of American Black Power advocates, scarcely constitute a threat. The Orientals appear to have identified themselves politically with the Whites.

As regards inter-White tensions, it is the self-assured dominant culture which is in the ascendant demographically and hence politically, and not, as in South Africa, the one that considers itself beleaguered. That this is the case is not because there are more people of Anglo-Saxon origin than of French origin, but because it is the Anglo-Saxon culture which has assimilated the one-third of White Canadians who are neither of French nor of British stock; so that the present dominant position of the Anglo-Saxon culture is due, at least in part, to its greater openness.

If only, one feels, the Afrikaners had understood the advantages of openness in 1910, a generation or two before the colonial liberation movements really got under way, and had begun perhaps by fully assimilating the Coloured population, they would have had no fears now for the future of their culture.

RED POWER

Despite the recent tardy emergence of the Red Power movement, the Indians number very few political activists among them; and, as far as can be seen, the Eskimos have none. This, I think, is partly because, owing to their numbers, they cannot, as groups, aspire to political power, partly because they have far fewer grounds for complaint than the non-Europeans in South Africa, partly because they have no clearly defined goals which cannot be worked for through one or other of the major existing parties, and partly — and I think this is important — because they have no prospect of support from another nation with whom they can identify themselves. The Negroes in the United States are in a fairly small minority, but, ever since the emergence of Africa as a political force, they have been brimming over with political passions. The Turkish Cypriots have, as a community, a clearly defined programme because of the un-failing prospect of support from Turkey.

Does this mean that salvation for the indigenous peoples of Canada lies in total assimilation? This is where the indigenous peoples themselves, more especially the Indians, cannot make up their minds.

The Trudeau government has just announced, with the purest of liberal intentions, that henceforth there will be no special federal legislation for the Indians, and that they should, without any attempt on the part of other Canadians to deprive them of their cultural identity, be brought increasingly into the mainstream of Canadian life. This has caused a rumpus among the Indians, and some of the accusations of faithlessness are reminiscent of the paradoxical circumstances in which the Progressive party came into existence in South Africa. One gets the impression that many Indians are more concerned with the honouring of ancient treaties than with working out a realistic policy for the years to come. (Another recent example concerns the right to cross the U.S.-Canadian border at certain points without being subject to customs or passport control.) History, however, would make it impertinent of us to blame them for this. And in their inability to articulate a coherent programme they are no different from most other North Americans.

OUTWARD-LOOKING POLITICIANS

Canadian politicians, on the whole, unlike the South African breed (men like Smuts excepted), are outward-looking. I have not, however, seen much evidence of deep interest in the outside world in many ordinary citizens, who, compared with Europeans (European Europeans), are very parochial.

However, one does get the impression that, in general, they are pleased with what their country is doing in the United Nations and the Commonwealth, and are proud of Canada's international image. They are, however, like South Africans, very sensitive to criticism. They tend, rightly, to regard themselves as morally superior to Americans, in relation to whom they are constantly seeking to define themselves: "America is a violent society — we are peaceful;" "Americans are racially intolerant — we are tolerant." This attitude makes many Canadians smug and self-righteous; but it would be only fair to point out that many others are aware of this and are trying to open their fellow-citizens' eyes to the ills of their own society.

In any case, it is this attitude to America that has helped to make inter-White relations, although strained, less so than in South Africa. For this attitude is common to both Anglo-Saxons and French, who, during the American War of Independence, opted to remain loyal to the British crown, guarantor of their separate cultural identity. Whereas, in Africa, the Afrikaners have felt threatened first by British imperialism and then by Black anti-colonialism, both of which forces have had numerically powerful adherents within South Africa itself, the main threat to the French way of life in Canada, ever since the late eighteenth century, has come from without; and this threat has been from the same quarter as that which has hung over the values and institutions of Anglo-Saxon Canadians.

SOUTH AFRICANS NOT BIG ENOUGH

Do the facts of history and population mean that White Canadians are wrong to point the finger at White South Africans, on the ground that they would have acted the same way themselves in a similar situation? Not at all. We cannot possibly know how Canadians would have responded to the challenge that confronts South Africa. It is true that since the eighteenth century their problem has been easier; but this does not mean that they would have proved incapable of handling something

bigger. (It is perhaps not irrelevant in this connection to mention that Canada is one of the few countries in the world to have recently liberalized their immigration laws in favour of non-Europeans.)

When South Africans assert that their problems are insoluble, what they really mean is that they are not big enough to solve them; and in this they may be right or wrong. But precisely because of the moral qualities which a satisfactory solution of their problems would require, free South Africans would, I think, be something of a moral and human élite. Another of the facts of history that has reduced cultural tensions in Canada is the low degree

of cultural intermingling: the Indians mostly live on their reserves, the French in Quebec, the Eskimos in the North, etc. But I suspect this is also one of the reasons for the bloodlessness of much of Canadian life. And this physical apartheid is obviously never going to be a feature of life in South Africa.

A certain amount of tension is good for people; which probably explains why Quebec is becoming, culturally as well as politically, the liveliest province in Canada. I still cherish the hope that one day South Africa will respond to its challenge and become a model of non-racialism for the rest of the world.

“VERLIGTES”

AND

VERKRAMPTES

by C. O. Gardner

For some time certain newspapers had been announcing to the world that the Nationalist Party was about to undergo an enormous split. The reaction of liberally-minded South Africans to this pronouncement tended to be a distinctly sceptical one.

For one thing, liberals felt pretty sure that the almost diabolical unity of the Nationalist Party — a unity based firmly and securely upon group loyalties, prejudices and fears — was not likely to be suddenly disrupted without a mighty series of shattering events or an almost Barnardian change of heart; and the bitter experience of twenty-one years of ever more oppressive Nationalist rule had made it impossible for liberals to respond briskly to the cheery call of facile optimism. Moreover they were, wisely, unwilling to acquiesce in a reading of the future which would allow white people who were unhappy about Nationalism to gain the impression (an impression which most of them were very eager to grasp anyhow) that their most useful course of political action would be to sit back in an armchair and, through the medium of the newspapers or even of TV, to watch the great, granite, tomb-like monument of Nationalism being ripped asunder by a stroke of lightning from a clear blue winter sky.

Recent events have indicated that liberals seem to have been partly wrong, but mainly right. The ramblings in the abdomen of the Nationalist Party were indeed real, not merely imaginary; and there is now to be a (so-called) general election to effect the required purge.

GUNS TURNED

We have been treated to the rare spectacle of Nationalist guns — long in use for either felling, or making explosive noises at, “enemies of the volk” — being fired at erstwhile respectable fellow-Nationalists, in fact men who themselves did sterling work at the guns in the not too distant past.

And the latest news (I am writing on October 1st) suggests that a new “verkrampste” party may be formed after all. But the lopping-off of a fairly small branch is very different from the splitting of the central trunk of the tree. Nationalism may well remain essentially almost untouched; certainly it would be wrong to suggest — especially in the pages of a

journal with so stern a name as **Reality** — that Mr. Vorster is likely to emerge from the April election with anything but enhanced status and "image". Indeed the most salient feature of the forthcoming election is probably the least pleasant: Mr. Vorster is clearly planning to kill two birds with one stone. Many supporters of the United Party — not, it may be added, that U.P. is to be taken very seriously in itself — are likely to be either tempted or bewitched by Mr. Vorster's supposed "liberalism" into announcing to themselves that it would be "enlightened" to vote for the newly-purged Nationalist Party.

And so the great noise in the sky which so many people thought would be made by the splitting-apart of the ruling party may in the end be provided instead by the clank of closing ranks and the clash of clicking heels as the whites form at last into almost a one-party state.

Even if the followers of Dr. Hertzog were to gain in April a little more support than most observers think them likely to, the fact would bring little comfort to liberals. The so-called "verligtes" do not seem disposed to allow the presence of a "verkrampste" group to push them towards any sort of real liberalism; in fact, rather the contrary. If Dr. Hertzog were to become a political force in the country, Mr. Vorster would begin to bend over towards him in a pose somewhat resembling that shape of an unlucky horseshoe in which the present leader of the "opposition" has so unhappily immortalized himself.

Besides, the differences between "verligtes" and "verkrampstes" are, on the whole, remarkably few and remarkably small. Mrs. Suzman has said truly, that the Nationalist Party consists only of verkrampstes and super-verkrampstes.

RUGBY AND CRICKET

One of the causes of the present "crisis", after all, is a disagreement about the forthcoming tour of South Africa by the All Blacks. Having utterly refused to allow so revolutionary and disruptive a phenomenon as the mild and gentlemanly D'Oliveira to play cricket against South Africa's protected white teams, Mr. Vorster has now ventured the view that perhaps the Government might, as an act of unprecedented imaginativeness and daring, ask the robust white South African rugby players to withstand the shock of a few bodies

that are somewhat darker in appearance than their own. Dr. Hertzog finds this extraordinary experiment completely unjustifiable and unacceptable; in fact he senses, hidden somewhere in those tight scrums the premonitory vision of which must have kept him awake for many a night, that small but significant little object that has always played such an important part in white South African politics — the thin end of the wedge.

An aspect of the whole matter which Dr. Hertzog seems, surprisingly, not to have taken up is that, whereas in cricket you don't have to touch your opponent unless you are so benighted as to shake him by the hand, in rugby it's extremely difficult not to — though of course there is always the possibility that the ever-resourceful Dr. Craven may announce a fascinating change in Springbok tactics . . .

Another point of dispute is the presence in South Africa of diplomats from African countries. Mr. Vorster holds the "avant garde" view that it is allowable, for the purposes of expediency, to be polite and even apparently friendly to an African as long as he does not come from South Africa, whereas the "verkrampstes", more coldly relentless in their white logic, maintain that the prohibition on humanity must be overt as well as absolute (it is not enough, it seems, that injustice be done: it must be **seen** to be done).

In other matters the disagreement between "verligtes" and "verkrampstes" is even more academic and esoteric. On the whole, one is tempted to conclude that if Dr. Hertzog looks at the outside world through a glass eye, Mr. Vorster's celebrated "outward-looking policy" represents an ostentatious raising of a telescope (or is it a horoscope?) to the same glass eye.

A LITTLE OPTIMISM

The tenor of my remarks has been depressing and pessimistic. I have to admit that depression seems to me, in general, the appropriate reaction to the present South African political scene. But I now want to surprise my reader — and perhaps even myself — by saying some things that are tentatively a little optimistic.

An undeniable fact is that, when Dr. Hertzog claims to be the representative of the true and pure tradition of the Nationalist Party, he is right. Dr. Hertzog's views are Dr. Verwoerd's and Dr. Malan's. And it is Mr. Vorster who has deviated — if a change of direction

by a quarter of a degree can be called a deviation. And this fact, infinitesimal as it at the moment is, may in the long run — perhaps the very long run — prove interesting. Mr. Vorster has begun to capitulate, ever so slightly, to the pressure of world opinion and of what one might call world facts. And it seems that almost the whole of the Nationalist Party may be prepared to go along with him. Liberals have always believed or hoped that the views of the outside world would ultimately have a decisive effect upon South African affairs: in a minute, almost farcical way, the process may have begun.

And in another not wholly dissimilar respect, the small events that we are witnessing may represent the start of something that liberals have always predicted. We have maintained consistently that, though various apartheid arrangements could be put into force, apartheid as a complete system could never really work. Either the whites would have to be asked to make sacrifices that most of them seem to be religiously dedicated to not making, or it would become increasingly and embarrassingly obvious what apartheid really is — a hotchpotch of injustices, inconsistencies,

ad hoc measures, lies, confusions and false promises.

Now it seems just possible that beneath the largely trivial disputes that have been ruffling the surface of Nationalism there may lie a ground swell of incipient unhappiness. It is well known that petty domestic quarrels may often be indications of deeper discontents. A few of the "verligtes" may really be becoming a little enlightened, and may feel that either "separate development" must be taken seriously and self-sacrificingly or a drift towards liberalisation must be accepted; and most of the "verkrampes" seem to feel that, whatever ideologies are studiously proclaimed and whatever self-deceptions are studiously practised, the one thing that must be maintained at all costs is the *volk*, with all its militant and provocative loyalties and prejudices. Between these two fairly extreme viewpoints (extreme for Nationalists, that is) there lies the great mass of the Nationalist Party — heavy, complacent, fairly content, fairly blind, fairly mindless. But the force which will ultimately disrupt it may perhaps have begun its career.

GANDHI

— IN OUR VIOLENT WORLD

by Bernard Kemp

These are not times of which Gandhi would approve. Urban crime of unparalleled depth, horror and publicity; racial rioting, bloodshed and fire; mob rule; Powellism and Black Power — all these he would have resisted with spirit. It is ironical that in this, his centenary year, the climate is so indifferent to his beliefs and ideals.

Mrs. Coretta King, speaking of her husband, spoke also for Gandhi when she told her sympathisers in India: "In a profound way, Martin Luther King continues the struggle for peace and understanding between men and nations more powerfully in death than life. For his spirit has been loosed upon a violent and loveless world."

MISERABLE FAILURE

"I used to go with Martin (Luther King) and the non-violence thing," says Sammy Davis, junior, "but then I realised that no

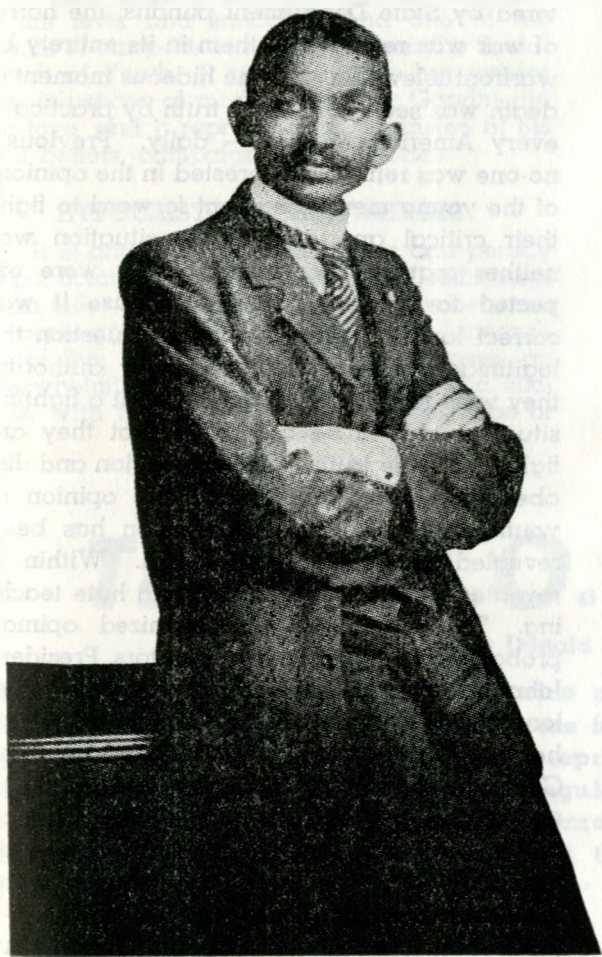
matter how you butter it up the whole 'We shall overcome' thing is a miserable failure.

"It's kind of frightening to admit it but it's true. Don't get me wrong, I'm not advocating violence — the odds aren't right, but just tell me what the non-violent approach has achieved . . . nothing. A lot of Black and White people died in peaceful non-violent demonstrations and nobody squeaked in protest." Plainly he stated: "America stinks and the whole world is in a mess so I'm moving to where people have decent values (the Bahamas)."

It's no use running to the Bahamas — nothing is as easy to solve as that. There will have to be a re-assessment of values and, because the truths that Gandhi taught were not original but were the universal truths taught by all the great teachers, these must prevail — there must be a return to the wisdom of self-discipline, simplicity, self-sacrifice and service. This is essentially what Gandhi represents and without it our society is amoral and self-destructive.

LIBERATE HIMSELF

There should be non-possession in an advanced community, Gandhi declared. Every one should do manual work and there should be no servants. Everyone must liberate himself and teach others to liberate themselves



GANDHI IN SOUTH AFRICA: 1904.

Acknowledgements: Gandhi Centenary Committee, Pietermaritzburg.

from violence, even in thought. Man should not only love, but love positively as Gandhi himself did — in love for the Muslim, love for the Untouchable, love for the poor villager living on one solitary handful of rice a day, love for the young, love for the old. He believed that every man should be aware of his neighbour's struggle against ignorance, poverty or disease; that no man should be governed without his consent. The greatest exploitation was possible only because of ignorance, and the remedy was in effective education. All these articles of faith are universal truths and apply as forcefully today as ever they did, and the world tragically lacks the leadership of such a man as Gandhi.

INFLUENCE

In examining his influence on our generation, it is important to remember these facts:

- (a) Gandhi was often criticised as too much of a humanist and too impractical a politician — because of his refusal to permit violence to get out of control, or because of his refusal to use violence unscrupulously, or because of his refusal to take advantage of an adversary's discomfiture. Events justified his actions. Before he died India was independent; though partitioned; his close friend and disciple was Prime Minister of the new State of India, and it was not long before a Muslim was elected President of a predominantly Hindu India — all achieved with goodwill, dignity, true generosity and statesmanship.
- (b) Gandhi lived beyond the war years into a period of peace and freedom, into the years of the "brave new world." He was in fact justified politically only after the war, and his influence can not be regarded as primarily pre-war. Curzon, Harding, Reading, Linlithgow, Halifax, Lloyd George Baldwin, McDonald, are almost forgotten today. Only the two great adversaries, Churchill and his naked fakir, survived the war as great men. Churchill was almost obsolete with victory and indeed there was no place for the victor in the "brave new world"; but the high point of Gandhi's political life was post-1945.

MODERN INDIA

No-one denies Gandhi's powerful influence on modern India. Indeed he was its architect and achieved his purpose by personal revolution, honourable, bloodless and almost non-

violent. Who else could command the forces of Empire or cause Viceroy's to tremble simply by announcing that he intended to fast until the Government honoured its promises? It was no use marshalling great armies together for there was no one to fire upon: the British army had been disarmed by non-violent non-cooperation.

It was all quite simple to Gandhi. He was the spiritual force in all those long years of skirmish, pilgrimage, reform and seismic revolt. His greatest achievement was in educating not a few selected disciples but the masses, freeing them from the age-old prejudices, superstitions and ignorance which prevented their leaders from building a modern nation. His teaching was dramatic, as in the later years when he moved into a one-roomed mud hut in a small village to bring to all Indians an understanding of the problems of the distressed villager. With independence the spinning wheel became the symbol of free India.

AMERICA

Certainly no-one can deny also that in America Gandhi's ideas of civil disobedience inspired Martin Luther King's Civil Rights campaign in the United States; and similarly the campaign against the futility of war and especially the war in Vietnam (a campaign waged by young workers, students and faculty, and involving a Presidential campaign) was inspired by Gandhian tactics of civil disobedience. The burning of draft cards, the teach-ins, the sit-ins, the campaigns in and out of Congress, the pop folk and their anti-war discs (what an impact "Where have all the flowers gone?" had), the crusading support for Eugene McCarthy's candidature against the aging establishment, all these were admirably organized. They had astonishing results for they triggered a revolt which inspired Johnson to announce a gradual disengagement, an end to the war and his own retirement. President Nixon has already started bringing the men back and reducing the draft

in accordance with his election promises. He could not have won the election otherwise.

ORGANIZED YOUTH

America has been involved in wars since 1941 and if she achieves peace within the next year it will be due to the efforts of organized youth who refused to die for futile reasons of higher policy. The youth of 1914-1918 allowed Haig to sacrifice them in their hundreds of thousands and to die in the mud of Flanders: his avowed policy was to overwhelm the Germans by simple weight of numbers. The youth of 1968 refused to be slaughtered by State Department pundits: the horror of war was revealed to them in its entirety by warfront television: and the hideous moment of death was seen in its stark truth by practically every American citizen — daily. Previously no-one was remotely interested in the opinions of the young men being sent forward to fight: their critical appraisal of the situation was neither required nor noted. They were expected to fight and to die because it was correct form. Today, the young question the legitimacy of all action, policy or authority: they wish to be fully informed about a fighting situation and to be convinced that they are fighting for the truth. Civil dissension and disobedience have emphasized the opinion of youth en masse and that opinion has been revealed as something universal. Within is revealed a rejection of hatred and hate teaching. The power of this organized opinion probably astounded its own creators. President Johnson when he retired with dignity was no longer a free agent in the Country of which he was Chief Executive and Commander-in-Chief; the monolithic De Gaulle was made to understand that ten years was enough. It was the students who gauged his moment of vulnerability. Of great moral significance were the demonstrations of conscience elsewhere — in Germany, Italy, Great Britain, Japan and especially in Czechoslovakia ("We have the truth," youth cried, "they have the tanks" — was it ever more plainly defined?)

ORIENTAL CULTURE

Among modern youth there has been a revival of interest in Oriental culture, particularly in meditation and philosophy, however simple. The outward symbols have been strangely unwestern — beads, flowers, long hair, the kaftan, the sitar. Add to this the cult of the Maharishi; the Indian Look cultivated by the Beatles and their admirers; Flower Power; the tragic Crusade to Katmandu; the universal language of brotherly love, non-violence and song. Much of this derives from an admiration for the ancient Indian culture which has been oversimplified. It does not derive in particular from Gandhi but his influence is implicit. It is quite easy to see the relationship between them — between the Mahatma in his dhoti and sandals and the modern teenager in his levis and sandals. And one of the events of our post-war era has been the Social Revolt of Youth. It rejects all the hypocrisies and injustices of modern life that Gandhi did not love, and it represents an extension of his own beliefs, campaigns and victories.

HYPOCRISY AND SELFISHNESS

It is aimed against the power and perfidy of politicians; at the hypocrisy and selfishness of an older generation; the great gaps between precepts and practice in religion; the immorality of life; the lack of ethics in business; an overwhelming concern with materialistic success; with facade whether in clothes, face or

conversation; the great inequality of man — the sheer superabundance of wealth, the amassing of great and superfluous wealth by one man (consider the salary paid to the Chairman of General Motors) when whole villages are desperately poor and starving; the bloodshed, savagery, and horror of modern warfare. These were the objects of Gandhi's reform campaigns again and again — he fought them spiritually and with a love for all men. Although post-war youth has got involved and sometimes carried away with violence, the identity of interest and belief is quite obvious: it was all Gandhian. The young people lack Gandhi's spiritual experience and maturity, but they make modern man only too well aware of his weakness, his hypocrisy, his selfcentredness, his lack of conscience and of faith.

The social revolt has achieved great things but a spiritual re-assessment is still to come. In an age when a man dies of malnutrition every eight seconds and the rich can afford to be bored, there is an urgent need for Gandhi's ideas and men like Gandhi to be recognised. There is too much discordance, disunity, rivalry, violence and bloodshed in our modern world; too much immaturity of thought and action. In its troubles modern society seems to have rejected the Gandhian ideals of non-violence but his practice of self-discipline, voluntary poverty, self-sacrifice and service is the only remedy for a spiritually bankrupt community.

THE "B.O.S.S. ACT"

by Donald Molteno

The "B.O.S.S. Bill" (now Act), to which wide public objection was taken during its passage through Parliament just before the Houses rose for the recess, is, on the whole, a misnomer. For, apart from the fact that this measure merely represents the latest example of the undesirable practice, that now seems to have become a regular annual event, of legislating by way of a General Law Amendment Act, making miscellaneous alterations of the statute and common law of infinitely varied degrees of importance, S.29, the provision that has attracted most attention, is far wider in its scope than the field of activity of the security police.

S.29, in effect, empowers any Minister to order the withholding of evidence, whether oral or documentary, in court proceedings, if it relates to a matter disclosure whereof such

Minister regards as prejudicial to State interests or public security. Quoting, then, to the minimum extent necessary to recall the salient features of this provision, S.29 (1) provides that—

"... no person shall be permitted or ordered to give evidence ... in any court ... as to any ... matter ... , and no book or document shall be produced ... , if a certificate purporting to have been signed by the Prime Minister or any person authorized thereto by him or purporting to have been signed by any other Minister is produced ... to the effect that the said ... matter ... , or document affects the interests of the State or public security and that the disclosure thereof will ... be prejudicial to the interests of the State or public security."

LEADING CASES

It is not possible to appreciate the effect of S.29 without some knowledge and understanding of at least the leading cases defining the legal position that the section has altered. Before attempting some account of these, it might be as well to indicate to lay readers of this article that, although the general common substantive law of South Africa is the Roman-Dutch system, the law of evidence, which S.29 affects, is, by statute, English law. Our courts, therefore, are bound to treat the precedents embodied in the decisions of the higher English courts as authoritative.

S.29 is a specially blatant example of an abuse in our constitutional system which has developed during the past two decades. That is that, whenever a court gives a decision interpreting either the common or statute law adversely to the contentions of counsel for the State, with remorseless regularity legislation is promptly passed having the ad hoc purpose and effect of reversing the decision in question. This practice is referred to as an abuse because, in the writer's view, it is subversive of an important aspect of the concept of the rule of law.

Basic to that concept is the proposition that, within the limits of human fallibility, the law shall be reasonably certain, so that members of the public may determine their conduct and arrange their dealings in compliance therewith. Generally speaking, this is feasible enough. But, in practice, as demonstrated by experience, there will always be marginal cases in which novel circumstances render doubtful which of more than one common law rules is applicable, or which of more than one meanings, of which a relevant statute is

capable, embodies the intention of the legislature. Here the best that can be done is to engender public confidence that the precedent created by a judicial decision settling the doubtful point shall be regarded as finalising the matter. Today, however, especially in the fields of criminal and administrative law, and the adjective law of evidence, the public can have no such confidence. The abuse to which I have referred precludes it.

OBVIOUS PURPOSE

The obvious purpose and actual effect of S.29 was to reverse the unanimous decision of the Appeal Court in the case of **Van der Linde v. Calitz**, (1) decided on February 28, 1967. There the plaintiff, a storeman employed in the roads division of the Free State Provincial Administration, had sued a roads superintendent, employed in the same division, for damages for defamation, alleged to have been contained in a report by the defendant to the chief roads engineer. The defendant filed a plea admitting the use of the words complained of with reference to the plaintiff, but denying that they were defamatory. In the alternative, the defence of privilege was pleaded.

The plaintiff subpoenaed the Provincial Secretary to produce at the trial the report containing the words complained of, as well as two official files, one being his own personal file. In response, there was produced at the trial not these documents but an affidavit of the Provincial Secretary objecting to their production on the ground of its being contrary to State policy to disclose the contents of confidential files of this nature, and as being prejudicial to the proper functioning of the public service.

Now it has for long been established by judicial decisions, both in England and in this country, that evidence may not be given in a court of law upon any matter that it would be prejudicial to the public interest thus publicly to disclose. As the reported cases illustrate, this question normally arises where a litigant seeks to secure the production of an official document, the contents whereof afford relevant, and otherwise admissible, evidence in relation to an issue in the case. But the rule applies to oral, no less than documentary, evidence. It applies also irrespective of whether the State is a party to the litigation or not. In either case the principle is that, if

necessary, even so important a matter as the vindication of private legal rights must give way to the overriding interests of society as a whole.

IN ISSUE

These well settled propositions were, of course, not at all in issue in **Van der Linde v. Calitz**. What was in issue was the vitally important question whether the view of the executive authorities as to the prejudice to the public interest that would result from disclosure is decisive, and hence must be accepted by a court as conclusive, or whether such court retains an ultimate, or residuary, power to override the objection of the executive to the admissibility of the evidence in question.

Nor was the issue thus presenting itself for decision free from difficulty. The difficulty arose out of two decisions, one of the House of Lords and the other of the Privy Council, apparently directly in conflict. Their respective facts were of a widely different character.

The House of Lords' case, **Duncan v. Cammell, Laird & Co.**,⁽²⁾ was a wartime case. The defendants had been, under contract with the Admiralty, the builders of a submarine, the "Thetis". While undergoing her submergence tests, her two foremost compartments flooded, the vessel plunged to the bottom of the sea, and ninety-nine men lost their lives. A number of actions by their dependents, etc., were commenced, based on alleged negligence in the construction of the submarine. **Duncan's** case was proceeded with as an arranged test case. For proof of negligence depended on the availability of certain documents in the custody of the defendants, including the contract for the building of the "Thetis" and a number of plans and specifications of various parts of the vessel. The defendants refused production unless ordered by the Court, and produced an affidavit of the First Lord of the Admiralty objecting thereto on the ground that disclosure would be "injurious to the public interest." Quite obviously this was not a case in which production could be ordered. The case was decided in the most critical days of the war — it reached the House of Lords on appeal early in 1942 — and knowledge of the contents of the documents involved was of the highest potential value to the enemy.

Perhaps unfortunately, however, the Lord Chancellor, Viscount Simon, delivering the

judgment of the House, proceeded to base the decision on wider grounds than the facts of the case seemed to necessitate. Having laid down that Government objection to production of documents such as these should be supported by the sworn statement of the Minister responsible for the department concerned that he has read and considered the documents and formed the view that their production would be prejudicial to the public interest, the Lord Chancellor went on to lay down that such sworn statement is conclusive, so far as a court is concerned⁽³⁾, and that, apparently, in all cases, including not only such major executive matters as concern national defence, but also reports, etc., by or to ordinary departmental officers, objected to on the ground that secrecy of this class of documents is necessary for the proper functioning of the public service, in that "the candour and completeness of such communications" might otherwise be impaired⁽⁴⁾. **Duncan's** case was concerned with documents of the former type, not the latter. And, as pointed out by Steyn, C. J. in **Van der Linde v. Calitz**⁽⁵⁾, a court might well be bound to treat a sworn Ministerial statement as conclusive in the former class of case, but not in the latter. In effect, then, the Appellate Division approved two decisions of the English Court of Appeal in 1964⁽⁶⁾ that the observations of the Lord Chancellor in **Duncan's** case, in so far as they covered the latter class of case, were *obiter dicta* and not binding in law.⁽⁷⁾

PRIVY COUNCIL DECISION

Very different from **Duncan's** case was the Privy Council decision in **Robinson v. South Australia**.⁽⁸⁾ A statutory wheat marketing scheme provided for compulsory one-channel marketing of wheat through the State Government. Arising out of the administration of the scheme, a large number of actions were commenced against the State, based on alleged official negligence in the handling of the wheat crop of a particular year. This case also, therefore, was a test case. Disclosure and production of a large number of documents relevant to the administration of the scheme were claimed by the plaintiff, such as reports of the Wheat Harvest Board's inspectors, correspondence of the Manager of the Scheme and of the Minister with departmental officials, etc.

The response was an affidavit, sworn by a subordinate official, annexing a minute addressed to him by the Minister, stating that he had considered the documents and that their production would be prejudicial to the public service and the public interest.

The Privy Council held an objection in this form to be "entirely inadequate". It should have appeared that the Minister had personally read and considered each document; further, what the particular danger was to which their production would expose the State; and, above all, the Minister should have placed his objection on oath. However, insufficiency of the form of the objection did not result in forfeiture of the privilege (if such there was). On the other hand, the existence of the privilege — and hence the prejudice to the public interest — was ultimately a question for the Court to decide, not the Minister, and, for this purpose, the Court might look at the relevant documents as an aid to the determination of this question. The Privy Council, therefore, remitted the case to the South Australian Supreme Court with a direction to this effect.⁽⁹⁾

BINDING IN OUR COURTS

Returning to **Van der Linde v. Calitz**, the Chief Justice, having emphasized the conflict between **Robinson's** and **Duncan's** cases, pointed out that the Privy Council and the House of Lords are courts of co-ordinate jurisdiction, the former being the court of final appeal from Commonwealth courts, and the latter from United Kingdom courts. Hence **Robinson's** case would have been binding in our courts at the time it was decided. The effect of abolition of South African appeals to the Privy Council is not to rob that case of authority in South Africa, but to assign to it the same authoritative effect as is attributable to decisions of our own Appeal Court. As held by the latter Court in several cases, it can depart from its own previous decisions, but only if satisfied that they are wrong. The same

proposition, therefore, applied to **Robinson's** case. Since the Court was far from satisfied that the latter case was wrongly decided, it followed that it should treat it as binding, and judgment was given accordingly.⁽¹⁰⁾

From the foregoing it is surely clear that the principal effect of S.29 is to discard the law as laid down in **Robinson's** case and to adopt that as laid down in **Duncan v. Cammell Laird**.⁽¹¹⁾ Does this justify the public outcry, since, to a very large extent at any rate, the latter case embodies the law on the point applied in the United Kingdom courts? Probably it does, firstly, because, as was at one time the practice, the executive should consult the judges on bills directly affecting the administration of justice; secondly, because we have here a blatant example of the pernicious contemporary practice of legislating for the *ad hoc* purpose of reversing the considered decisions of the courts; and thirdly, because unfortunate experience has long demonstrated how unfit are our administrative authorities to be trusted not to abuse wide discretionary powers.

But there is a further reason why this Act may prove specially dangerous in the circumstances of South Africa. The cases cited herein, including **Duncan's**, are all civil cases. Indeed in that case the Lord Chancellor expressly left the question open whether the principles he laid down would apply to criminal cases. S.29 of the Act, on the other hand, clearly does apply to criminal, no less than civil, cases. What, however, is by no means clear is the effect of so applying it. Hoffmann, in his **S.A. Law of Evidence** (p. 266) says that in no English or South African case has the objection been taken to "an item of evidence essential to the defence in a criminal trial." But what about **R. v. Abelson** (1933 T.P.D. 227), which the learned author himself cites on the next page of his book? There the Court, on appeal, both upheld the magistrate's decision to sustain an objection founded on public interest and dismissed the appeal against the conviction. This latter aspect of the case would seem to answer Hoffmann's

footnote to his observation just referred to, namely: "Presumably if the objection were upheld the accused would have to be acquitted, since the court could not say beyond reasonable doubt that the missing evidence might not have established his innocence." That might be so in some cases, but that of **Abelson** surely indicates that this is by no means necessarily so, and hence gives grave cause for disquiet.

REFERENCES:

1. 1967 (2) S.A. 239 (A.D.)
2. 1942 (1) A.E.R. 587 (H.L.)
3. *Ibid* at 593-595 per Viscount Simon, L.C.
4. *Ibid* at 593, 595.
5. At 260 per Steyn, C. J.
6. **Merricks v. Nott-Bower**, 1964 (1) A.E.R. 717 (G.A.); **Re Grosvenor Hotel**, 1964 (3) A.E.R. 354 (C.A.)
7. At 251-252 per Steyn, C. J.
8. 1931, A.E.R. 333 (P.C.)
9. See on these various aspects the judgment of the Board delivered by Lord Blanesburgh at 338-341.
10. See especially at 250-251, 262 per Steyn, C. J.
11. And this notwithstanding that, since **Van der Linde v. Calitz** was decided, but before the passing of the "B.O.S.S." Act, the House of Lords itself, in **Conway v. Rimmer**, 1968 (1) A.E.R. 874 (H.L.) declined to follow its own decision in **Duncan's** case and adopted the law laid down by the Privy Council in **Robinson's** case.

BEVY OF BOSSES

by Bob Connolly



Die Swart Serp, Augustus, 1969

BOOK REVIEW

by C. de B. Webb

THE OXFORD HISTORY OF SOUTH AFRICA, edited by Monica Wilson and Leonard Thompson. Volume I, "South Africa to 1870". O.U.P., 1969. 502 pp., U.K. price 75s.

It is not often that a solidly-bound volume begins to wear a well-thumbed look within months of its purchase. My copy of Volume I of the Oxford History of South Africa already has this appearance; though acquired in July, it is now no more conspicuous on my shelves than books that have been there for ten years or more.

That it has so rapidly taken on the features of the older desk habitués (those used to being pulled out, and paged through, and left lying about) is a more fitting tribute to the scholars who collaborated in the making of this volume than the praises of a review-writer can ever be. As a South African historian, and a teacher of the subject, I have had the volume in almost daily use.

Not that we have here a work of magisterial quality: were definitive history possible, this is still not it, as the editors themselves

would be the first to admit. Indeed, if the pages of my copy are becoming dog-eared, it is partly because of vain searching for material which the volume does not contain.

GREAT EXPECTATIONS

But more important than these disappointments are the expectations from which they derived. If, at times, my demands have been set too high, it was because a rapid first reading had shown that the volume offered so much. Like the poor man who has peeped into the castle, I came to expect greater riches than could possibly be there.

Because it is a pioneer work, the **Oxford History** cannot be a treasure house. If it is to be likened to anything, it should be to the display-window of a new and enterprising workshop — a workshop in which the old treadmills that have turned out South African history for so long have been abandoned for techniques that are already yielding a richer and less stereotyped product.

Over years, scholars in different fields — archaeologists, anthropologists, sociologists, philologists, even some historians—have been probing back behind Van Riebeeck and out beyond the frontiers (psychological as well as geographical) of White society in Southern Africa. But their achievements have been limited by the horizons of the disciplines within which they have worked. To the lasting credit of the editors of the **Oxford History**, these separate studies have now been brought together in a synthesis which transforms South African history from the story of White exploration, settlement, expansion, conquest and rule, into the story of the interactions between numerous peoples who, over long centuries, have made South Africa their home.

SEEN AS A THREAT

In doing this, the editors have done no more than shift thinking and writing about South African history into line with historiography elsewhere in the contemporary world; yet their work, one fears, will probably be seen as a threat, certainly as a revolutionary departure, by those in South Africa who (consciously or unconsciously) brace the defences of racism with the bland epistemological assumption that non-literate peoples can have no history.

Those who occupied the land before the **Drommedaris** sailed into Table Bay have, with the **Oxford History**, ceased to be a featureless mass of "Bushmen", "Hottentots" and migrating "Bantu", waiting to be invested with significance by the impress of the bearers of

"history". Their descendants have ceased to be peripheral peoples, important only as the cattle-thieves and warriors who obstructed orderly settlement and economic growth. And so it will be, one anticipates, with the descendants of these "cattle-thieves" and "warriors", once the second volume of the **History** has appeared. They too, one hopes, will cease to be what they have been so far — "problems" in an outpost of high "civilization". Instead, like their ancestors, whose story is told in Volume I, they too, perhaps, will at last become men, whose actions and reactions and aspirations and problems are as interesting and significant as the actions and reactions, hopes and problems of those whose possession of archives has so far given them a proprietary right to history.

For professional South African historians, the first volume comes as a challenge. It does not invalidate studies of the traditional sort; but it denies that they illuminate more than one corner of the field. It implies that aspirant South African historians require more than a training in documentary analysis; and it gives warning to those already established in South Africa's History Departments that they will remain purveyors of an impoverished scholarship until they break down the walls that isolate them from colleagues working in related disciplines.

But the challenge is not limited to the specialists; it extends to all South Africans. Indeed, the **Oxford History** was not meant as a book for professionals only; though the nature of the material in the opening chapters may make the going heavy at first, it is a book for reading by intelligent men whoever they may be. Not only does it haul down the academic barriers that have held history to a narrow documentary path; it seeks also to leap over the barriers of thought and feeling that arise in a multi-cultural, caste society. It is an attempt at **understanding**; and of all the challenges bequeathed to us by our past, that of achieving understanding is surely the most testing of all.

This South Africa

Contact across the colour line was welcome so long as the motives for the contact was the greater separation of the races, the Minister of Mines, Planning and Health, Dr. Carel de Wet, said here (Vryheid) last night.

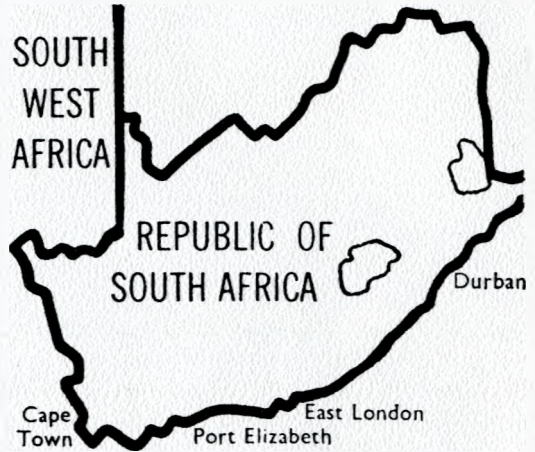
Addressing a Nationalist Party meeting, the Minister said there had to be contact between White and non-White in South Africa, but "it must always have the result of bringing greater separation of the races."

If this was the motive behind the recent decision of Stellenbosch University students to establish contact with Coloured students from the University of the Western Cape, then it was perfectly in order.

But if the decision had been taken by Nusas it would have been suspect, because Nusas only wanted to "undermine separate development, embarrass the Government and promote integration," said Dr. de Wet.

CABINET

"In John Vorster's cabinet, when we have to make a decision, we always ask ourselves:



'Will it bring about greater separation of the races?' If the answer is 'yes,' we go ahead. But if it is 'no,' if it will bring greater integration, then we turn it down."

Dr. de Wet emphasized that in his role as the guide and guardian the White man often had to make contact with the Black man.

"But it must not be contact for contact's sake. It must always be done to bring about greater separation. That is our policy."

"Daily News" report (16-8-1969.)

EDITORIAL BOARD:

Chairman: Mr. A. Paton.
Board: Prof. E. H. Brookes, Mrs. M. Corrigall, Mrs. M. Dyer, Mr. C. Gardner, Miss S. J. Lundie, Mr. L. Marquard, Mr. J. F. C. Mitchell, Mr. J. Unterhalter.

SUBSCRIPTIONS: R1.00 (12/-) for 6 issues.

Send to:--
Miss S. J. Lundie,
Flat 2, Temple Chambers,
Carlyle Arcade,
Pietermaritzburg,
South Africa.