

MC H 91-10-6-5

February 12, 1993

To: A. Sachs
From R. B. Seidman

A possible alternative judicial review constitutional provision:

Article xx. 1. An official shall make a decision only in accordance with law. A decision shall have support in evidence.

2. The state shall provide an independent forum in which a citizen aggrieved by an official decision that violates section 1 may receive an appropriate remedy.

"Failed to follow the principles of good administration."

- not pejorative formulation.

Judges must acknowledge that they are part of govt, with the role of ensuring that govt. is principled.

This means less use of contempt of court proceedings when criticised, scrutiny of appointments.

* and part of a system of responsive democracy.

Moment - massage Alex
Chino 20-30
to
for
↑

Drink

Bed

~~Soul~~

But
Love

Eyes
iron board
table
under
water

Happy to be ourselves
as we are. then -
not all our time
Women

Shirts
Moment
of coming
out.

Boyboys
the cry

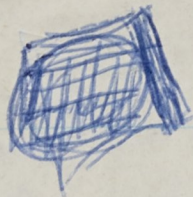
Problem

if we mobilise

- re-educate

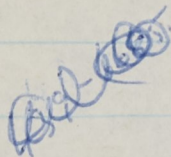
no target groups

We kind of have
on in there. Dream...



6 Bishop

Oberlin



Amalgam Nest Apr

Rashid

4394920

Howard

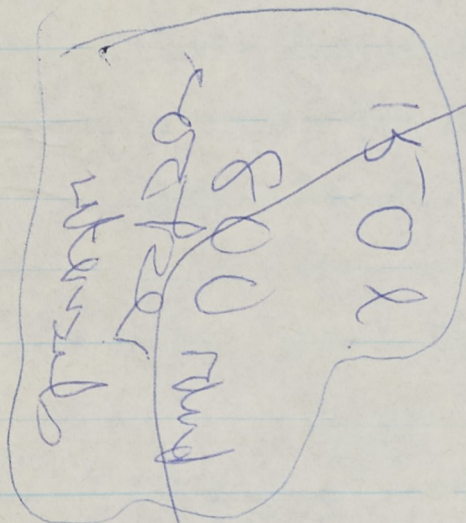
4345953

Beach Rd.

106

203

4385-203
Joy

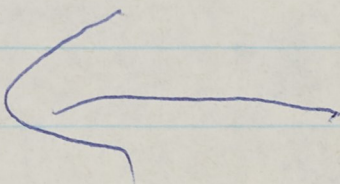


Thomas Perwell
July 788 2833

Steph.
Joy - Jan

Beryl
4349330

Wolfie called
Tilly cremated
9:00 am
Wednesday
Jill Marcus
by P
01-330 7196





E. Non-racial democracy
Non-racial democracy presupposes

Whether or not it is correct that those of us with a long association with the ANC should talk more about people's rights and less about people's power,

INDIA

"Taking"

Act of Eminent domain - state public purpose
[compensable]

Police power - citizen v citizen
deprivation mediatory, regulatory
[not compensable]

Police power
Tascaton power

must be reasonable!

CANADA

① Problem of subject matter of property

Range of rts. in property.

② Law continually generates new forms
of rty. rts.
Constit - preserves future.

③ What is meant by due process?

Govt/ reasonableness; or - procedure.

④ Indirect: security of persons; premises;
equality.

Zone of inviolable privacy for individuals.

④ Provincial (not for corps) gov't - leaders against laws preventing
outsiders owning land [Pr. Id. Island] Natural resources

Pragmatism is one thing; ad hoc-ism is another.

National framework for economic policy.
Macro-economic forum.

Some people must be a security must look distribution of wealth a econ. opportunities.

Quotably emphasizes
the rocking
the boat!

You can't say don't rock the boat when people who were hanging over the sides are now taking their rightful place on board. But you can arrange for an orderly entry, and ensure that not everyone falls to one side or another.

Pragmatism is one thing; ad hoc-ism is another.

National framework for economic policy.
Macro-economic forum.

Some people say the emphasis must be on preventing collapse or securing growth; others that we must look to ensuring a fairer distribution of wealth and econ. opportunities.

You can't say don't rock the boat when people who were hanging over the sides are now taking their rightful place on board. But you can arrange for an orderly entry, and ensure that not everyone piles to one side or another.

These were new problems
For many whites - fear = process of
change would result in collapse of
whole econ. & breakdown of govt.

Two ways of keeping
ethnicity alive - encourage

its

self

may

rule -

not its guarantee.

You can't have ~~m-rule~~
democracy without maj-rule,
but m-rule itself doesn't
guarantee democracy.

Napoleon: Constitutions should be
short and obscure

Thornberry: Constitutions are the
autobiographies of nations.

Quotables!

X-3.

power, not
effective
power.
We want
to remain
power.

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Two ways of keeping
ethnicity alive - encourage
its mobilisation or try to
suppress it.

Majority rule is a
pre-condition of democracy,
not its guarantee.

You can't have ~~m-rule~~
democracy without maj. rule,
but m-rule itself doesn't
guarantee democracy.

Napoleon: Constitutions should be
short and obscure.

Thoreau: Constitutions are the
autobiographies of nations.

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Insert p. 12

The community courts envisaged here should not be equated with the so-called makgola or with the people's courts which were created or sprang up in various parts of the country in recent years. These types ~~latter~~ of courts operated in conditions of ~~insurgency and counter-insurgency~~ state repression and local insurrection.

We need to study their experience closely, not on the basis of which side ^{of any particular court} ~~they~~ supported, but of how ~~they~~ ^{it} ~~functioned~~ ^{worked} and what ~~that~~ its relationship with the people was.

They manifested the weaknesses of the existing legal system without necessarily pointing to answers.

It is obvious that the courts ~~operated~~ ^{functioned}

some excellent by any standards, some ~~made~~ ^{others} ~~made~~ ^{by} any criteria. ~~Community~~ ^{Community} ~~Populair~~
in many different ways, justice is not in itself more fair or less fair than any other form of justice. Its ambit needs to be clearly defined, its competence limited. While serving the positive function of involving the community in the settlement of disputes, it should never serve the negative purpose of undermining people's constitutional rights and especially ~~never~~ ^{never} diminish every citizen's ~~including~~ ^{including} the right to a fair trial.

The community wants the security of knowing that ~~they~~ ^{its members} have guaranteed legal rights. There should be ^{in principle} no contradiction between community justice and the rights of due process. The problem is to combine the two.

for many of us would

When might arrive at similar solutions by different routes

majority rule and equal individual rights. The Freedom Charter, adopted by the Congress of the People in 1955, sets out a clear programme born out of South African reality which could serve as the fundamental document around which a new Constitution could be developed. But within the basic framework of the Charter, and with a view to making its principles the property of all the South African people, there would be many issues which could be discussed: the internal structure of the government, whether to have a Presidential or Prime Ministerial form of leadership, what the official languages should be, and where the capital should be situated. Perhaps more important, negotiations could play a key role in providing for the orderly transfer of power from a racial minority to the people. Once the principle is accepted that apartheid is to be completely dismantled, and once it is agreed that the only effective and lasting way to dismantle it is to establish a non-racial, democratic society in a united country, the issue of how to proceed most rapidly to the materialization of this solution comes to be placed squarely on the agenda.

rights and freedom set out in the

the role of an upper house the electoral system, the territorial divisions of the country

The ANC has in recent years opted for a Bill of Rights enforceable through the courts and has accepted that there will be a mixed economy in which the state will play an important role. On the other hand, supporters of the 'Hidden/Democratic Apartheid' option, mentioned above, are moving closer to the idea that there has to be some economic re-distribution. Thus the gap between these two options is narrowing. ~~Former~~ supporters of option C are also beginning to accept that non-racial

A Bill of Rights for a Post-Apartheid South Africa: Some Misconceptions

Two views on a Bill of Rights argue in summary that either

widely held and opposed

a Bill of Rights is necessary because if you grant the legitimate rights of the black majority you must also give reasonable protection to the rights of the white minority, or

a Bill of Rights is a reactionary device designed to preserve the interests of whites and to prevent any effective redistribution of wealth and power in South Africa.

The most curious feature about the demand for a Bill of Rights in South Africa is that initially it came not from the ranks of the oppressed but from a certain stratum in the ranks of the oppressors. This had the effect of turning the debate on a Bill of Rights inside out. Instead of being welcomed by the mass of the population as an instrument of liberation, it was viewed by the majority with almost total suspicion as a brake on advance. Indeed, South Africa must be the only country in the world in which sections of the oppressed actually constituted an anti-Bill of Rights Committee.

At first sight, nothing would appear simpler than to adopt a Bill of Rights based upon a universally accepted document

democracy offers a far more secure future for the whites, as for all South Africans, than would any attempt to interfere with rights. The possibility of a democratically based consensus are far stronger than a few years ago; this

and as the revolution becomes increasingly more inevitable and increasingly less impossible, so do the chances of a peaceful constitutional resolution improve.

Scrap from drafts
for Policy Statement
March 1992

On Property
Rights

Quotables!

We have long opposed the idea of entrenching race or ethnic group rights in the constitution as a perpetuation of apartheid. We feel that the diversity of our population will best be catered for by a system of non-racial democracy with appropriate checks and balances. We accordingly favour a system of voting by Proportional Representation instead of the present system of single-member constituencies. People will vote instead for parties who will list their candidates in order of preference - if a party gets a quarter of the votes it will receive a quarter of the seats. Our proposal is that the lists be organised on both a national and a regional basis so as to ensure that people in the regions have a strong say in the selection of candidates.

...
...
... of
disabled

Property rights of the major have been syst. ignored
& violated. A new system of just & secure
property rights must be created, in which people
must be protected against arbitrary deprivation of their

Although
While we envisage that each region will have some power to raise its own revenue, the key question will be to ensure that steady progress is made towards economic and social equalisation between the regions by means of appropriate transfer of funds from the centre to the regions.

A central place in the C. *The ~~should~~ the ANC will*
~~In April 1991 the Constitution Committee published a draft Bill of Rights which set out fundamental rights and freedoms which all South Africans, irrespective of race, colour, creed or gender, shall be able to enjoy.~~

to be elected was confined to whites and only in two parts of the country were blacks given a limited form of participation in voting.

In 1910 the right

to be elected was confined to whites and only in two parts of the country were blacks given a limited form of participation in voting.

instead of voting for individual candidates in
individual constituencies, people will vote
for parties who will list their candidates
in order of preference - if a party gets a quarter of the votes it gets a quarter of the seats

To

overcome the practical problems of multi-lingualism, it will be possible to designate a single language or group of languages for record purpose or other special use at the national level or in regions. Thus, in parliament everybody would be free to address the house in any of the above languages, but the house could decide to have simultaneous translation into say, English, which could also be the language of record; the languages to be used in the Natal Regional Council could be Zulu, English and Afrikaans. There would also be place for the development of other languages such as Gujerati, Portuguese, Arabic and Hebrew.

The draft Bill of Rights gives special emphasis to the realisation of gender rights.

Emmet,
children

add. the to
groups subject to day to day
must be given to those a abuse in the society
of - charts of
& disabled to
lead active lives
in the com. must
be respected.

is an equal
a law pathway
to equality
the lack of
the most are
by discrimination
the most
rights

The great majority of South Africans have never had their property rights respected. The Bill of Rights should give strong protection for the enjoyment of one's personal possessions such as one's home, household goods, personal belongings, tools of trade or vehicles. All South Africans should be able on an equal basis to own property. There should be no arbitrary taking away of property and the state should only be able to expropriate property according to law and in the public interest and subject to compensation as set out above.

The ownership of property implies obligations. The above will not prevent legislation from dealing with property in the public interest so as to respect the principles of conservation, ^{prevent} ~~undermine~~ monopolies and cartels, ^{from undermining} and impose taxation. The law may also provide for the regulation of the use of property as well as for its acquisition by the public authorities in the public interest and subject to appropriate ^{reasonable} compensation.

The Charter opens with the words: "South Africa belongs to all who live in it" and "The People shall govern". The new constitution for which we have been struggling so long will be based on these two fundamental concepts.

In November 1990 the ANC became the first major political party to declare itself in favour of the system of proportional representation for elections. The Constitutional Committee of the ANC proposed that, for all national elections, PR be used on the basis of voters voting once for a party symbol, and the vote counting for both national and regional lists of the party. We favoured PR because it would enable all significant trends and currents to be represented in the legislature. We also saw it as a means of avoiding fights over constituency boundaries which, in apartheid-ridden South Africa, would inevitably mean constituencies based on racial group areas. We feel that having regional lists would ensure that the people in the regions would have direct say in the selection of half the members of parliament.

In this and in other respects we see the regions as playing a major role in the development of democracy in our country. In our view,

that voting by the system of Proportional Representation

as well as national lists

without entrenching group rights

Love V.

My D.V.

My Joyous Veng.

A bomb and roses

... therefore I am

... therefore I am

Almost Naked

naked at some point

Int. Memoirs of a Bomb Victim

After the Bomb

- Verifian Deeper Image ne
BBC

- Helen Simpson

Sol