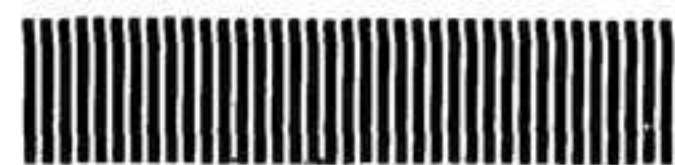




Another Point Of View

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AFTER 40 years of messianic self-certainty, the National Party is at last beginning to struggle honestly, I think, with the central issue of South African politics, which is liberty. It fails because it cannot break out of the South African paradigm: the obsession with groups.

That is why the party leaders, in setting out their five-year plan last week, went to quite unusual lengths to suppress, or even to distort, the findings of the Law Commission on the need for a South African bill of rights.

The problem is that the party's plan of action flies in the face of the central finding of the Law Commission: that rights vest in the individual, not in the group. And the Nationalists remain wedded to "the white group," which is neither culturally coherent, nor linguistically uniform, nor politically united, nor even very religious.

The Law Commission's Working Paper 25, drawn up under the chairmanship of Mr Justice Pierre Olivier, a government-appointed Free Stater, puts forward its own plan, conservative but workable, to take South Africa to democracy. The differences between the NP plan and the Law Commission's plan are illuminating.

The Law Commission calls, first of all, for a statement of policy by Parliament "that it is in favour of the protection, in a bill of rights, of the generally accepted individual rights and cultural, religious and linguistic values"

Then, it suggests, government should embark immediately on the major task of systematically repealing all laws which would conflict with the bill of rights. The effect of this process, of course, would be steadily to widen the area of liberty for those South Africans most deprived of it.

Simultaneously, says the Law

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Commission, there must be a thorough process of education on questions of human rights, followed by negotiations on a new constitution, which should be submitted finally to referendum.

The test of this plan, as of the NP's five-year plan, is not whether it meets some intellectual or moral criterion, but whether it will bring the country to rest. Since it carries the promise of democracy — of equality before the law, liberty and justice — at the end of it, the Law Commission's plan has a chance of success. Probably nothing less can succeed.

The chances of its success lie in the content which it gives to a bill of rights — rights which no legislation or executive act would be permitted to infringe.

At the top of the list, Article 1 of the proposed bill of rights, puts the right to life. Second, in Article 2, comes the following:

"The right to human dignity and equality before the law, which means that there shall be no discrimination on the ground of race, colour, language, sex, religion, eth-

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nic origin, social class, birth, political or other views or any disability or natural characteristic."

The only exception it makes is temporary "reverse discrimination", or affirmative action, to overcome the historical disadvantages inflicted on some people by past discrimination.

The Law Commission distinguishes between political rights, intended to protect minorities against oppression, and other rights. The former, it says, are matters for negotiation, to be incorporated in an agreed constitution; the latter must be protected by the bill of rights, as belonging to the individual.

Its words on this point are worth quoting exactly: "In our society, cultural, religious and linguistic values should not be protected as 'group rights' since a group is not a legal persona. These rights should be protected in a bill of rights by way of individual rights."

"In public law," the commission says at one point, "our courts have never recognised an entity known as a 'group' or a 'minority' which can, as such, enforce rights."

Elsewhere it says: "It is unnecessary to protect the so-called group

interests or minority interests in the sphere of culture, religion or language by trying to define the group concerned and conferring legal personality upon it. All that is needed is to designate the interests in question as interests protected by law and to leave it to any individual to protect the interests through court proceedings where necessary."

This approach — if only the National Party would realise it — takes care of all the legitimate concerns of minorities. Indeed, the commission is emphatic: "The protection of minorities in this country is essential, since to ignore the rights of minority groups would be to invite endless conflict."

Even the right to dissociate, so beloved of Nat politicians, is catered for, subject to the all-important qualification that it will not include practising discrimination on the ground of race, colour, religion, language, or culture if public funds are used. Exclusive groups, whether churches or clubs, wine-tasters or garlic-eaters, will be permitted

provided they pay for their own exclusivity.

With these ideas before them, the National Party leaders have opted *instead to search for a constitutional model* "to prevent domination of one group by another". Instead of accepting the bill of rights put forward by the Law Commission, the NP talks of "considering the advisability" of a bill of rights.

Worse, knowing that the Law Commission has pronounced the idea of "group values," whether cultural or linguistic, to be foreign to our law, the NP still insists on a bill of rights that will protect "both individual rights and group values".

Where the Law Commission calls for a review of the law to purge the *statute book of discriminatory measures*, the NP calls for a law review to contain the costs of litigation, and hunts for ways to preserve group areas without the Group Areas Act.

The five-year plan talks of representation, but not equal representation; of rights, but not of justice; of democracy, but not of equality. The party still hovers at the edge of democracy, *not daring to plunge*.

The breakthrough from group-think to the concept of individual liberty, let us confess, is not easy, especially not when our archbishop struts about like a pre-revolutionary cardinal, proclaiming his lust for power. Even the Progressive Party, it is worth recalling, started out with a qualified franchise which was designed to evade equal rights.

But there is no middle ground. All discussion of democracy begins, it *does not end, with a universal franchise*. The National Party, under a new leader, had the chance to commit itself to a democratic system, to adopt the 10-year plan of the Law Commission and to create a prospect of peace in the 1990s. Instead, it has chosen to continue the vain search for the elusive formula to preserve racism by another name.

By that choice, it has built conflict and turmoil into the next decade.