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LIBERALISM IN A DIVIDED SOCIETY

A Response to the LDA's policy suggestions.

The Liberal Democratic Association recently published four articles in *Reality* which were described as "part of a series of policy suggestions". It is a pity that they were not accompanied by a clarifying statement defining the purpose of their publication because their effectiveness and the discussion they are designed to stimulate will depend on this purpose. Is the L.D.A. attempting to define, for its members, a late 20th century "liberal philosophy" which is designed to bring together, into an active political party, a sufficient number of 'liberals' to make its representation in a parliament possible? Or is the L.D.A. intending to remain a Fabian-life group with its major purpose to preserve some elements of a "liberal philosophy" by their inclusion in the policies of the existing political forces in South Africa? If it is the former, then "the series of policy suggestions" need to be widespread and sufficiently accurately defined to determine the boundary between those who belong within the L.D.A. and those who do not. If it is the latter the series can be more selective, focussing on particular issues which liberals would define as being particularly necessary in the envisaged new society. Once these have been clearly stated, the value of the discussion would be largely concerned with the possibilities of their incorporation, either *in toto* or in some adapted form into the policies of groups other than the L.D.A. itself. In the current polarization of the South African political scene the latter path seems to be the only feasible one with the L.D.A. acting as a catalyist which would function by influence only.

Irvine and Maasdorp

Irvine's paper on Civil Liberties tacitly sets out the problem that liberals must face and put to those they wish to influence. He states, on the one hand; "Liberals are not committed to extreme individualism and recognise the need to reconcile liberty with other claims and values such as the respect for human welfare" and then, on the other hand "liberals are, however, utterly opposed to any ideology or policy (left or right) which makes society or the state everything and the individual nothing". It is fundamental to 'liberalism' that a liberal society would provide a balance between the protection of individual civil liberties and the level of societal intervention and limitation of these liberties which is needed to preserve "the other claims and values such as respect for human welfare". Historically, liberal political actions have been essentially "reformist" and the powers of government have been used to adjust the societal/individual rights balance toward what is deemed to be a more just society. The measure that is used to determine the "greater justice of the society" produced by a particular state intervention is a reassessment of the balance between the increased

welfare and freedom of all the individuals and the limitation of fundamental civil liberties for some individuals. Maasdorp argues cogently that "centrally planned systems" with public ownership of almost all enterprises are not only, "the antithesis of liberalism" but also prove to be economically unsuccessful. But social engineering is not "the antithesis of liberalism" until it reaches proportions which subjugate individual civil liberties almost entirely to the society or the state. Indeed liberalism has outgrown its original 'laissez faire' to such an extent that those who now advocate a totally free market economy cannot claim to remain within the liberal camp. They have rejected Irvine's first condition of reconciliation of the individual liberty with the preservation of "other claims and values such as the respect for human welfare".

Mathews and Cowling

The papers by Mathews and Cowling are most useful in pointing out two ways in which the balance of the freedom for individual and societal claims for overall justice can be policed and maintained, and from time to time adjusted. But it seems wrong to suggest as Cowling does that the two should be contrasted. As Mathews so clearly establishes, the "rule of law" precludes arbitrary governmental action by those who deem themselves to be above the law. Without the rule of law no civil liberty is protected from arbitrary limitation; not even if it were a civil liberty protected within a constitutionally accepted Bill of Rights. The protective powers of a Bill of Rights are themselves entirely dependent on the governors recognising that they themselves are subject to the rule of law, and that there is a method of testing their actions by an independent body. Rather than contrasting the two ways of providing against arbitrary governmental or administrative actions, it would seem better to regard the introduction of a Bill of Rights into a new constitution as an extension of the protection provided by observation of the Rule of Law. This is achieved by placing certain rights in a position of heightened protection - requiring of the law makers special and difficult mechanisms that they must, under the Rule of Law, observe before they can alter those rights. It does not remove from parliament the right to change the balance of individual and societal rights. It merely imposes upon the governors the necessity to do so legally and not arbitrarily or by some sleight of hand.

The four published articles do much to present a framework within which a liberal philosophy for a new South Africa could be developed. They remain, however, too far removed from the existing South African society to

be directly useful in defining the limits of the balance between individual rights and those societal controls which could result in a society acceptable to a liberal philosophy. They, therefore, cannot yet serve as "policy suggestions" but must remain guidelines to be used in the formation of policy suggestions.

Special Consideration

What are the S.A. circumstances which need such special consideration? First it must be recognised that South Africa is a "deeply divided society" - one which is divided into groups of people who feel, most acutely, a loyalty to their own sub-communities, which may be as deep or nearly as deep as their loyalty to the whole of South Africa. Indeed, in the case of some groups (or is it one group) it may be that group loyalty, for the time being, is the dominant loyalty. The deep divisions that exist and the historical interaction of these separate groups have developed attitudes towards sub-loyalties which cannot be wished away or ignored. It is important to recognise that if each of these groups were to write down, in order of priority, a list of the rights, (the civil liberties), that they would regard as most needing protection in law it is unlikely that the list would be the same. There are those whose main concern would be with property rights and who would place language or religious rights as of lower importance. There are those who would interpret this right of ownership as not just an individual right of ownership but would see it as involving a group right as well. By a combination, presumably, of the right of free association and the right to private ownership there arises a tenuous but strongly held belief in a right to "choice of neighbour". The path to a continuation of apartheid, to a continued belief in "homelands" lies, in such an affirmation of group rights. But, in practice, many societies allow 'group' rights of freely associating groups to be exercised. Even in the deeply divided South Africa of today we are beginning to find acceptance of freedom of worship by voluntary groupings which cut across the legally imposed involuntary group divisions. But it will remain true that because of our history, because of our conditioning towards thinking in terms of groups within our society, "group rights" will occupy a dominant position in any negotiation of a new dispensation; and much of this thinking will be concerned with the existing compulsory groups rather than with groups formed by the exercising of the individual right to of free association. It would seem to be imperative that any liberal association policy relating to "rights" must exclude the existence of group rights for "involuntary" groups. But it is possible that, in stating this as a policy, it may also be necessary to recognise that an interim protection of "involuntary" group rights may have to remain for a while. This is related to another aspect of what should be a target of the new dispensation, namely, an attempt to adjust towards the elimination of past injustices which are built into the present dispensation. It is also related, if slightly more remotely, to the protection of minority groups from possible future actions of the majority. The first problem is well illustrated by reference to wealth distribution and private ownership of land and the second is equally well illustrated by reference to language rights.

Land Ownership

If the new policy were to accept ownership of land as a fundamental right of both an individual and a group and

did not protect in any way this right for those who are presently the impoverished group there would exist the real danger that the attempt to protect the ownership right would be counter productive. The current wealth distribution would allow for the near complete dispossession of the peasant population from land ownership, whether rural or urban land was involved. The right to ownership is of no value to all those whose financial position is such as to preclude ownership. When that financial position has been established in the past by withholding of the development of the necessary infrastructure because that part of the community was excluded from directly influencing such development, the simple acceptance of ownership as an unrestricted right could serve mainly to perpetuate the existing injustices. It follows from this example that any attempt to formulate those rights which might become a part of a Bill of Rights should be treated with some caution. This inclusion of any "right" should be measured not just because it might seem to be widely acceptable but also against the criterion of its effective operation in the present South African circumstances.

Group Loyalties

The problem of "language rights" - the demanded right to education in a particular medium and perhaps a re-echoing in the future of both "white" languages an official languages-raises the problem of minority group rights and whether they require particular protection. It is easy to say "no" - that ideally a liberal democratic society would be tolerant enough to allow societal, if not legal, protection of a group desire for the preservation of their language and through it of their culture. But, if the object of any new dispensation is to enable South Africans to move towards the construction of a less deeply divided society than we now have, saying "No" is not the most propitious beginning. In practice the rejection of a "group right" in respect of language, education in it, and the culture associated with it, is strongly divisive and is likely to prove a serious stumbling block to the growth of an overall loyalty in our multi-lingual society. Here again it may be necessary to have an interim period of formal or legal protection of such a right while the society adjusts to its newfound freedom and reaches a moderation which will allow it openly to accept such "group rights", whether they are protected in law or not.

Most political theorists seem to accept that "group rights" exist only as a consequence of individual rights one of which is the right of free association. The peculiar circumstances which surround attempts to change "deeply divided" or "group orientated" societies have received considerable attention but the resultant political accommodations such as "consociational government" or "consensus policies" have not successfully overcome the basic problem of the fact that sub-loyalties - group loyalties - are often so strong that they override the wider societal loyalties. It should be noted in passing that surely sub-loyalties may well have geographical features and be more developed in some areas than in others. The group areas act exacerbates this further and we have already seen in South Africa a political party, claiming to be dedicated to non-racialism allowing its sub loyalty to the imposed group of "so-called" Coloured South Africans to over-ride its stated national policy in relation to the Group Areas Act. It is unnecessary to add that this action was

successfully taken at the expense of those South Africans who are not represented in parliament.

But if “group rights” are to enjoy legal protection in the new dispensation they need to be considered very carefully. They will derive their protection from their embodiment in constitution – type documents and it may be necessary to consider some forms of limitation to the individual constitution of “voluntary groups” which are legally protected. This arises because the principle of the individual right of free association means that the group formed by such voluntary association immediately acquires the right of exclusion of individuals from its membership. This is already embodied in the position of our existing political parties which have the right to expel from their membership those who advocate policies which are not those of the Party. But the criterion which allows this exclusion is that of disagreement with fundamental policies of the original group. It would be contrary to a liberal view of the future South Africa that exclusion from any voluntary group could be based on criteria over which the individual has no control such as race or colour of skin.. It would seem then to be necessary to limit the constitutions of any “voluntary group” which is to be recognised for the purposes of legal protection of its rights, in such a way that no South African citizen could be excluded because of race or colour. In itself this presents considerable constitutional problems and certainly cannot be extended into any sphere which impinges on political or religious views which are voluntarily formed. Nevertheless, in the deeply divided South African society in which many of the deepest divisions have historically been based on “social” classifications, it is necessary that this nettle be grasped. If it is not done the new dispensation may only consist of an extension of governmental power to those who at present do not have it and will not move toward decreasing the present deep division. Certainly the move toward a new and inclusive South African societal agreement should involve a significant change in the “social” thinking of the past but such thinking and even actions based on it will not easily be eliminated and restrictions of freedoms, unnecessary in less divided societies, may be an essential, if temporary, part of our immediate constitutional agreements. It would certainly fit with a liberal philosophy in one sense even if it is repulsive in another.

Immediate Actions

This article will have done little to push further the “policy suggestions” outlined in the four published papers. It may, in fact, be thought to have merely added some confusion as to what the L.D.A. should be doing. It is intended to be helpful and to suggest certain immediate actions that are needed for a practical liberal contribution to be injected into the present South African scene. What has been suggested is that the immediate need is to apply the concepts raised in the four articles to the existing South African political scene. It is further suggested that there exist particular circumstances here which demand particular care in the detailed formulation of the “civil liberties” or “Bill of Rights” so that the possibility of self-defeating expression of a “liberal philosophy” can be avoided. There can be no objection to accepting that the rule of law is essential, that a Bill of Rights may be helpful in protecting, further than the rule of law, the civil liberties that are fundamental to the growth of a liberal society. Nor

can there be any serious questioning that a mixed type economy is acceptable within a liberal society. But there is a level of detail which needs to be written and what appears may well be controlled by the present realities. The pure market forces approach of the “Free Marketeers” might have a claim were it not that it has been launched on a society which has a dreadfully high unemployment level and no infra-structure of a welfare society. As it is the consequences of its acceptance are such as to make it unthinkable as a part of immediate liberal thinking. It is, however, very necessary for liberals to consider how far it is possible to accommodate those who by force of economic pressures have moved toward acceptance of a centrally planned economy. This is a boundary which is of vital importance to liberals because if too extensive an accommodation is made the centrality of the individual to the liberal philosophy is seriously endangered. But equally it is important that the very centrality of the individual be translated into terms which are essentially emancipatory for the whole society and not seen as one of the fundamental pillars of oppression.

Opportunities

Finally let me add a further comment which has not formed part of the articles yet published. A new liberal society, a more just society, must have as one of its properties the opportunity of upward mobility for all its members. This, too, must be a practically attainable mobility available to individuals at all levels. If the new society retains in it the present ossified opportunities for so many of our community it cannot become a society in which liberal concepts can be expected to prosper. The foundation on which upward opportunity rests is education. Not only is it fundamental to an individual's opportunity for self-advancement, it is also essential for a wide societal advancement. The L.D.A. needs to address itself urgently to this matter.

Because of our past misdemeanours and lack of realisation that an expanding society, - expanding in freedoms as well as expanding in material well-being-is based on the capabilities of the people who constitute our society we have again particular and very real problems which have to be faced. South Africa has created a “system” of education which is deeply distrusted by the majority of the people who are involved in it. The L.D.A. cannot escape a responsibility to examine how the distrust can be eliminated and a new “system” – an “uncontaminated” system – can be introduced. It is essential that those who now “distrust” the system are involved in the design of the “new” system. It is also essential that the new system should not focus its attention only on the younger generations who have not yet completed school or even those who have not yet attended school. While they are clearly of vital importance, a significant part of education expenditure and effort must be devoted to improving the opportunities for those whose educational opportunities in the past were inadequate or even non-existent. The illiterate must be provided with the opportunity to become literate. The recently literate must have the means to progress further. The “rights of individuals” must be written with the realities of the present South African educational discrepancies in mind and the L.D.A. should form a suitably wide group to formulate an appropriate policy in this field.□