

Johannesburg Bar 100

Chief Justice Arthur Chaskalson delivered the keynote address at the centenary dinner of the Johannesburg Bar on 27 July 2002. It was largely based on his preface to the Johannesburg Bar's centenary publication. This is that preface.

“To have a new vision of future, it has always first been necessary to have a new vision of the past” *Theodore Zeldin.*

This account of the history of the Johannesburg Bar looks back from the perspective of the present, at the role of the Johannesburg Bar in our society during the past 100 years. It is a period in history marked by great social, economic and political changes, by brutal wars, civil conflict and failed ideologies. It has been a period of almost unbelievable technological and material advances and at the same time a period during which more people have been killed or suffered at the hands of others than ever before in history.

For almost the whole of this period the social, economic and political order in South Africa promoted white privilege. Beginning with colonialism and ending with apartheid, white supremacy relegated those who were not white to inferior positions in society, and caused poverty, degradation and unconscionable suffering. Yet, almost miraculously the period of 100 years ends with a commitment made in 1994 to building an open and democratic society based on human dignity, the achievement of equality and the advancement of human rights and freedoms.

What was the role of the Johannesburg Bar during the past 100 years, and what role does it have in our future? The first enquiry is addressed in this book; the second enquiry depends upon our vision of the future which in turn will be influenced by how we see our past.

The story of the Johannesburg Bar during the past 100 years is shaped by our history. It is the story of an institution which had its origins in England, where most of the early

education. It is an institution, transplanted from England into South Africa, which has remained profoundly influenced by its English roots. In dress the same gowns are worn, silk and stuffed gowns; in the mode of addressing courts – “my lord”, and “your worship”; and in its ethical code and manner of practice the English influence is still apparent.

With few exceptions, for there were few exceptions, the story of the people of the Johannesburg Bar for most of the 100 years, is a story of white advocates; for the same reason it is also, with few exceptions, the story of white men – a group of highly skilled professionals including many great advocates who had an important influence on the way law is practised in South Africa and the high professional standards to which the Bar aspires. They were, as we all are, people of their times, influenced by the social and political order in which they lived.

Some of the stories, though shameful, should therefore come as no surprise. The internal quarrels over the admission of black advocates, the initial exclusion from the common room of those black advocates who were admitted as members, the striking off of Bram Fischer, and in general, the passive acceptance by most of the members of the Bar of the way our society was structured and privilege dispensed, are part of the history of, and reflect the attitudes common within the institutions of the legal profession in colonial times and under apartheid.

The Johannesburg Bar, though part of the white establishment, was, however, never seen as a bastion of apartheid. It retained a concern for the rule of law, protested against some of the worst

laws that were passed, supported members who defended those charged with political offences, and was viewed with suspicion by those who ruled the state. Part of that story is told by George Bizos who characteristically mentions others and not himself, though he probably spent more time in court challenging apartheid and defending its victims than any other member of the Bar. That story could never have been told if the Johannesburg Bar had not supported those of its members who undertook that work.

I was a member of the Johannesburg Bar for almost forty years. I learnt a great deal about the law and about people during that period. I value that association and have benefited in many ways from it. At a personal level I owe much to the assistance that the Johannesburg Bar gave to me and my colleagues in the Legal Resources Centre. It amended its rules to make it possible for its members to join the Centre and work there, and gave support and encouragement to those who did.

The Johannesburg Bar has always instilled in its members the importance of being independent. That is a valuable quality particularly for those who aspire to become judges. Traditionally, the Johannesburg Bar has promoted a sense of collegiality among its members. That is important in a profession in which people practice on their own and not in association with others. Junior members have had access to senior members for guidance concerning professional and ethical problems and that guidance has been given willingly. That collegiality and mutual support was enhanced by the fact that members of the Bar had chambers in adjacent buildings, shared a common room in which they gathered for meals and exchanged views with one another, and shared a well-resourced library. That has changed. New chambers have been established in different buildings in Sandton but some remain in the old buildings in central Johannesburg. There is a danger that the Johannesburg Bar will fragment into different units and lose the cohesion and collegiality that were once its strength.

What is important now is how the Bar manages this change and how it involves

itself in the great issues of the present raised by the political revolution that has taken place and the social and economic changes that will inevitably follow the political. Its part in those events, and possibly its continued existence as an important institution of our society, depends to a large extent upon its vision of the future. How will it retain the cohesion and collegiality that are an essential part of the institution? How will it, formerly composed almost entirely of white men, manage the tensions inherent in the transformation of the non-racial and non-sexist institution that our new society demands? What role does it see for itself in helping to build the open, fair and democratic society to which we aspire? How will an institute contribute to the new legal

order in which there is to be respect for the rule of law and for the values of human dignity, equality, and freedom? If it is to survive as an institution these are issues that it must address and in which it must be involved.

A new age has only just begun. It is important not only for us, but also for our continent, that we should achieve the aspirations that we have set for ourselves in our Constitution. A society is created partly by the actions of individuals who influence one another and in doing so influence the society in which they live. Each of us has that potential, and no matter how insignificant a contribution may seem to be, it is part of the totality that ultimately shapes our society for better or worse. The same is true of institutions within society.

Actions of individuals within the institution influence others and the institution is shaped by that interaction. That we can see from the history of the Johannesburg Bar.

The Johannesburg Bar has valuable skills that can be harnessed to make a meaningful contribution to our new society. It is important that it should see itself as an institution that has this capacity and that it should be willing at an institutional level to make that contribution. To do so it must have a vision of the future. That vision will depend to some extent on its vision of the past. This book invites reflection on the past, and if it is to be of value, it must serve as a stimulus for the larger debate concerning the future. 

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