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BRAM FISCHER MEMORIAL LECTURE



First Bram Fischer Lecture - Nelson Mandela (1995)

We here present and many thousands elsewhere are grateful to the Legal Resources Centre for taking the initiative in establishing a Bram Fischer Memorial Lecture. I thank you for asking me to deliver the first. I am confident that there will be Bram Fischer Memorial Lectures for as long as South Africans yearn for freedom in a non-racial democratic South Africa.

Bram Fischer was a great advocate and a great patriot. The lectures that will follow this inaugural lecture will provide opportunities for lawyers and others to address fundamental issues relating to law and society with which Bram Fischer was deeply concerned, and which are also concerns of the Legal Resources Centre. But as this is the first Bram Fischer Lecture I have chosen to talk about the man rather than the law.

The last time that I saw Bram Fischer was on Robben Island about two weeks after we had been sentenced to life imprisonment. It was in June 1964. He came with our attorney Joel Joffe, to see how we had settled in and whether or not we stood by our decision not to appeal. I was restrained by the Major from hugging him. Though he was strongly of the view that we should appeal he resigned himself to our decision. He and Joel wanted to know how we were being treated and we told them. I then asked Bram about Molly, his wife. No sooner had I pronounced Molly's name than Bram stood up, excused himself and abruptly walked out of the room. A few minutes later he returned, once again composed, and resumed the conversation but without answering my question. On our way back to the cells the Major asked me whether I considered Bram Fischer's behaviour strange. I said yes it had been. He told me that Molly had died in a car accident the previous week.

We were devastated by the news. Molly was a wonderful woman, generous and unselfish, utterly without prejudice. She had supported Bram in more ways than it was possible to know. She had been a wife, colleague and a comrade.

The refusal to talk about Molly and what had happened was typical of Bram's character. He was a stoic, a man who never burdened his friends with his own pain and troubles. He had come to advise us and to express concern for our predicament; he did not want to become the focus of our concern.

Bram was a courageous man who followed the most difficult course any person could choose to follow. He challenged his own people because he felt that what they were doing was morally wrong. As an Afrikaner whose conscience forced him to reject his own heritage and be ostracised by his own people, he showed a level of courage and sacrifice that was in a class by itself. I fought only against injustice not against my own people.



LEGAL
RESOURCES
CENTRE

BRAM FISCHER MEMORIAL LECTURE



Shortly after his arrest that led to him being sentenced to life imprisonment, Bram Fischer was asked whether his sacrifice of family and legal practice, being hunted as an outlaw and the inevitable harsh punishment that was to follow, was worth the gains of leading the underground struggle for less than a year. He was offended by the question. He replied sharply “Did you ask Nelson Mandela, Walter Sisulu, Govan Mbeki or Kathy Kathrada or any others that have already suffered this punishment? If not, why do you ask me?”

I waited for over 70 years to cast my first vote. I chose to do it near the grave of John Dube, the first President of the ANC, the African patriot that had helped found the organisation in 1912. I voted not only for myself alone but for many who took part in our struggle. I felt that with me when I voted were Oliver Tambo, Chris Hani, Chief Albert Luthuli and Bram Fischer. I felt that Josiah Gumede, G M Naicker, Dr Abdullah Abdurahman, Lilian Ngoyi, Helen Joseph, Yusuf Dadoo, Moses Kotane, Steve Biko and many others were there. I felt that each one of them held my hand that made the cross, helped me to fold the ballot paper and push it into the ballot box.

Even his political opponents would agree with us his comrades that Bram Fischer could have become prime minister or the chief justice of South Africa if he had chosen to follow the narrow path of Afrikaner nationalism. He chose instead the long and hard road to freedom not only for himself but for all of us. He chose the road that had to pass through the jail. He travelled it with courage and dignity. He served as an example to many who followed him.

Many have asked what in his early life led Bram to choose between the privileges offered to him by the system and the imprisonment and the harsh condemnation that he knew he would suffer.

His grandfather, Abraham Fischer, was a close confidante of President Steyn of the Orange Free State at the turn of the century and particularly during the Anglo Boer War. He became Prime Minister of the Orange River Colony when the bitter pill of defeat had to be swallowed. Leadership was needed to help rebuild the country and heal the ravages of war. His grandfather offered that leadership. His father, Percy Uhlrig Fischer, in his youth, was more militant than his grandfather. He identified himself with Hertzog's brand of Afrikaner nationalism and even organised an ambulance service to help those who in 1914 rebelled against Louis Botha's South African Government.

Some of the burgers of the Orange Free State did not want to go to war against Germany at the invitation of the British Empire but chose to take part in the war on the other side, from which they hoped the Afrikaner people might gain their freedom. As a member of the Bar, Bram's father defended many of the boer rebels and often expressed his disgust at the



LEGAL
RESOURCES
CENTRE

BRAM FISCHER MEMORIAL LECTURE



South African judges who, he said, had sold their souls to the rooinek and sentenced burgers to prison.

When South African judges sent our comrades to prison for 5, 10 or at times 15 years for comparatively less serious offences, Bram would relate how his father had threatened to burn his counsel's robes when a burger was sentenced to 3 years imprisonment.

Bram also spoke about how members of his family visited General de Wet and other rebels in prison. Although he was less than 8 years of age he was taken along to such visits by his father or mother. His father's actions cost him and his family dearly. His support for the rebel cause offended against prevailing values of the time and his practice as an advocate suffered. The family was compelled for financial reasons to live away from Bloemfontein on a farm. His mother sold flowers at the station to supplement their income. Like many of our people do now, she had to get up at 4 o'clock in the morning to manage the home and her other responsibilities.

With that background he could not but have become an Afrikaner nationalist, as we became African nationalists thirty years later as a result of our oppression by whites. Both of us changed. Both of us rejected the notion that our political rights were to be determined by the colour of our skins. We embraced each other as comrades, as brothers, to fight for freedom for all in South Africa, to put an end to racism and exploitation.

In November 1965 Bram was arrested. In March 1966 he explained from the dock how that change came about. He spoke about growing up as a young boy on a farm where he felt no different from the two young Africans who were his constant companions and playmates. Later, in the city at school and at university, there were only masters and servants, not friends across the colour line. Under that influence he came to believe in segregation. He was attracted to the Bloemfontein Joint Council of Europeans and Africans, a body devoted largely to trying to induce the authorities to provide proper but separate amenities for Africans. He still believed in segregation. He found it difficult to touch the hand of a black man in friendship.

At Grey College his history teacher Leo Maquard had an important influence on his life, and broadened his vision. After matriculating he went to the University of Cape Town for a year but returned to Bloemfontein in order to give himself a better chance of gaining a Rhodes Scholarship to Oxford. He could reconcile his anti-imperialism with the acceptance of a scholarship named after this arch imperialist. After all, his father's Afrikaner nationalism had not blunted by his having studied at Cambridge.



LEGAL
RESOURCES
CENTRE

BRAM FISCHER MEMORIAL LECTURE



In 1929 the National Union of South Africans Students – NUSAS – was formed. A mock parliament was established. Political parties reflecting those who participated in the all white parliament of South Africa were established. Bram Fischer championed the cause of Afrikaner nationalism. He was elected the first prime minister of the student body. The ordained path to climb high in political office had been well and truly made. But a new vision for South Africa was beginning to take shape in his mind.

At about this time he drove an old ANC leader home to the west of Johannesburg. He tried to persuade him that friction between the races would only be avoided if they were kept apart. According to Bram the old ANC leader didn't see it that way. He mentioned this incident at his own trial. What the old ANC leader said to him was this:

"If you place the races of one country in two camps and cut off contact between them, those in each camp will begin to forget that those in the other are ordinary human beings, that each lives and laughs the same way, that each experiences joy or sorrow, pride or humiliation for the same reasons. Thereby each becomes suspicious of the other and each eventually fears the other which is the basis of all racism."

Bram came to believe in this himself, and having done so committed himself without reservation to the struggle for a society which acknowledged this. There are still a small number of our people within South Africa who may cling to notions of living in independent homelands but the vast majority have accepted the validity of the words of that old ANC leader. I would urge the rest to follow that majority. Their own culture and heritage will not be compromised when they accept unreservedly that we are one country and that we should all constantly strive to become one nation.

Bram's studies at Oxford, his travels in Europe and especially in Germany and the Soviet Union, brought home to him the ideological divide between Nazism and socialism. The super race ideology of the former struck him as no different from white racism in South Africa. Yet it was not an experience that led him to join the Communist Party in South Africa. He returned from his travels to take up practice as an advocate, and it was only years later that he joined the Communist party. He was apparently influenced by people such as J B Marks, Moses Kotane and Yusuf Dadoo, and by the fact that with the exception of a small number of religious leaders, communists were the only ones amongst the whites who seemed unreservedly to accept blacks as equals.

In 1935 Bram became a member of the Johannesburg Bar. In 1937 he married Molly Krige, a niece of Ouma Smuts. He became familiar with the life of the oppressed through his involvement in the South African Institute of Race Relations, the Joint Council of Europeans and Africans and, more particularly, the Alexandra Health Committee. Bram and Molly



LEGAL
RESOURCES
CENTRE

BRAM FISCHER MEMORIAL LECTURE



served on the district committee of the Communist Party. Molly was almost elected to the Johannesburg City Council as a Communist, a feat later to be achieved by Hilda Watts, the wife of Rusty Bernstein, our co-accused in the Rivonia trial. He recalled the successes of the forces of the Soviet Union against Nazism, and how at that time attitudes to the Communist Party were different, and how it was able to find favour among the white voters of South Africa. It was only later, with the combination of the cold war propaganda and the beating of the tribal drum by the Nationalists, that most whites viewed the Communist Party with hatred. They also believed that by branding anyone who took part in the freedom struggle as a Communist they would discredit our movement.

In 1946 the district committee of the Communist Party identified itself with the plight of the black miners who had gone on a so-called “illegal” strike against the Chamber of Mines. Although Bram was absent when the decision was taken, in a characteristic act of solidarity he accepted legal responsibility and was convicted.

Bram’s commitment to the struggle helped to change many of us in the ANC from being Africanists to believers in a non-racial democracy. The declaration in the Freedom Charter of 1955 that South Africa belongs to all, both black and white, was inspired by many people of all races who had identified themselves with our struggle. Amongst them none were held in higher esteem than Bram and Molly Fischer.

Bram often acted as our legal adviser and defended us in Court. In cases in which he could not appear or thought it advisable for other reasons not to do so, he asked other leaders of the Bar to act for us. Harold Hanson, Isie Maisels, Walter Pollak, Rex Welsh, H C Nicholas, Vernon Berrangé, John Coaker, Sydney Kentridge, Tony O’Dowd, Chris Plewman and many others did so. All had the greatest respect for Bram. Because of this they often acted on our behalf without a fee.

They acted for us when we were charged in the defiance campaign trial, when attempts were made to remove us from the roll of professional organisations, and when we were tried on charges of high treason from the end of 1956 to the beginning of 1961. Bram’s painstaking work on the law and above all his understanding of the vital political issues of those days played a crucial part in the defence, which led to our acquittal.

His integrity and reputation as a great South African of Afrikaner stock was of vital importance to our magistrates and judges. The Magistrate who tried Ismail Meer, J N Singh and me on charges arising out of my having sat on the wrong seat on the tram, when the conductor referred to me as their “kaffir friend”, was overawed by Bram’s presence and hastily acquitted us.



LEGAL
RESOURCES
CENTRE

BRAM FISCHER MEMORIAL LECTURE



But the dark clouds were beginning to gather. Our acquittal in the treason trial was a pyrrhic victory. Our organisation had been declared unlawful a year earlier. The whole leadership including those of us on trial were detained in terms of the emergency regulations. Our attempts to continue the struggle by peaceful means were increasingly frustrated.

Bram like many of us reluctantly came to the conclusion that the State's institutionalised violence against the majority of the people of South Africa, and more particularly the liberation movement, left us with no option other than to turn to armed struggle. Prompted by his humanity he supported the decision that violence was to be confined to attacks on the symbols of apartheid and that great care should be taken that there should be no loss of lives.

During this period he remained in close contact with the underground leadership of the African National Congress and its military wing Umkhonto we Sizwe which accepted political violence for the liberation.

When our leaders were arrested at Rivonia, our families and friends feared that the hysteria created by the Government propaganda machine was likely to lead to death sentences being imposed on us. Naturally, they turned to Bram for guidance in relation to our defence. He did not want to be part of the defence team at the trial, although he was willing to appear in Court on the day that we would be charged and argue for the time that we would require to prepare our case. He had personal knowledge of the decisions which had been taken to turn to the armed struggle and had been party to such decisions. He felt that with such knowledge he could not act as our counsel. But he could not tell our families and lawyers what his reasons were. Joel Joffe, our attorney, and Arthur Chaskalson and George Bizos, our counsel, assumed that he would lead the defence. They put tremendous pressure on him by using the argument that there was no other advocate in the country who could say that we had done nothing more than what his people the Afrikaners had done in 1914, and that despite the loss of life in that rebellion, there were no death sentences; that if people were to die there would never be reconciliation between black and white in South Africa.

Bram knew then that he was at risk, and that he might soon find himself in the dock. He ultimately agreed to lead the defence team and persuaded Vernon Berrangé to join it. His knowledge that the leaders with whom he had been in contact – Walter Sisulu, Govan Mbeki and myself – were not going to put in issue what we had done or the decisions that had been taken, probably helped him to resolve the conflict within himself. We, unlike Joel, Arthur and George, knew why he was reluctant to appear at the trial. We did not press him to do so, and we admired his courage when he accepted the brief.



LEGAL
RESOURCES
CENTRE

BRAM FISCHER MEMORIAL LECTURE



He helped to formulate the nature of our defence. The prosecution expected us to try to avoid responsibility for our actions. However we became the accusers, and right at the start, when asked to plead we said that it was the Government that was responsible for the state of affairs in the country and that it was the Government that should be in the dock. We maintained this position throughout the trial in our evidence and in the cross examination of witnesses.

His carefully prepared logical argument led to the quashing of the indictment against us. This helped to change the atmosphere which had been created by government propaganda, and led to both internal and international campaigns calling for our release.

When the trial proper started he spent many hours with us in Pretoria Prison, helping us to prepare the statements that we were to make from the dock and to prepare the statements from which comrades Walter Sisulu, Govan Mbeki and others were to be led. He led comrade Walter carefully with compassion and great understanding. As a result a confident Walter Sisulu was able to put down the over zealous prosecutor who not only wanted to convict us but also to discredit us. We have always felt that Bram's strategic planning of our defence, the support that we received from freedom loving people in South Africa, and the unanimous call by the United Nations to release us saved our lives.

After Bram had visited us on Robben Island I wrote to him on behalf of myself and my co-accused to express our condolences on Molly's death. I was assured that it would be posted. Apparently it was not, for I have since learned that he did not receive the letter. I deeply regret that he died without knowing what our feelings were and what we had said in the letter. Not long after his visit to Robben Island he was arrested and charged with furthering the objects of communism. He was admitted to bail to enable him to appear in a case before the Privy Council in England. He had promised to come back to face trial. He did so despite pressure put on him by our comrades who were in England, to forego his bail and go into exile.

He returned and attended his trial in which he was the first accused. One day he did not arrive at Court. Instead he sent a letter to his counsel, Harold Hanson, which was read out in court. He wrote:

"By the time this reaches you I shall be a long way from Johannesburg and shall absent myself from the remainder of the trial. But I shall still be in the country to which I said I would return when I was granted bail. I wish you to inform the Court that my absence, though deliberate, is not intended in any way to be disrespectful. Nor is it prompted by any fear of the punishment which might be inflicted on me. Indeed I realise fully that my eventual punishment may be increased by my present conduct..."



LEGAL
RESOURCES
CENTRE

BRAM FISCHER MEMORIAL LECTURE



“My decision was made only because I believe that it is the duty of every true opponent of this Government to remain in this country and to oppose its monstrous policy of apartheid with every means in his power. That is what I shall do for as long as I can...

“There are already over 2,500 political prisoners in our prisons. These men and women are not criminals but the staunchest opponents of apartheid...

“If by my fight I can encourage even some people to think about, to understand and to abandon the policies they now so blindly follow, I shall not regret any punishment I may incur...

“I can no longer serve justice in the way I have attempted to do during the past thirty years. I can do it only in the way I have now chosen.”

He wrote a further letter in less than two weeks, prompted by the over-hasty action of his colleagues at the Bar. He said:

“I have been following the Press and have seen the reports of a decision in terms of which it is said that the Johannesburg Bar Council intends applying to Court in order to have my name struck off the roll of advocates. I assume that the sole reason for the decision is that I deliberately absented myself from my trial and estreated my bail.

“The principle upon which I rely is a simple one, firmly established in South African legal tradition. Since the days of the South African war, if not since the Jameson Raid, it has been recognised that political offences, committed because of a belief in the overriding moral validity of a political principle, do not in themselves justify the disbarring of a person from practising the profession of the law. Presumably this is because it is assumed that the commission of such offences has no bearing on the professional integrity of the person concerned.

“When an advocate does what I have done, his conduct is not determined by any disrespect for the law nor because he hopes to benefit personally by any ‘offence’ he may commit. On the contrary, it requires an act of will to overcome his deeply rooted respect of legality, and he takes the step only when he feels that, whatever the consequences to himself, his political conscience no longer permits him to do otherwise. He does it not because of a desire to be immoral, but because to act otherwise would, for him, be immoral.”

Bram was underground for almost a year. When he was ultimately arrested and brought to trial he was sentenced to life imprisonment. In his speech from the dock on 28 March 1966



LEGAL
RESOURCES
CENTRE

BRAM FISCHER MEMORIAL LECTURE



he said that apartheid had been in existence before the advent of the Nationalist Government in 1948. The Afrikaners had isolated themselves from contact with black people. The policy had been intensified during the previous 15 years and the Afrikaners were being blamed for all the evils and actions of apartheid. This had led to a deep-rooted antagonism to the Afrikaner. All the wisdom of the leadership and the influence of the Congress leaders who had been silenced and imprisoned would now be needed in order to bring about a reconciliation. He said that he felt that there was an additional duty cast on him, so that at least one Afrikaner should publicly identify himself with the plight of the people. We can do no better than remember Bram's own words:

"... it was to keep faith with all those dispossessed by apartheid that I broke my undertaking to the Court, that I separated myself from my family, pretended that I was someone else, and accepted the life of a fugitive. I owed it to the political prisoners, to the banished, to the silenced and to those under house arrest not to remain a spectator, but to act. I knew what they expected of me, and I did it. I felt responsible not to those who are indifferent to the sufferings of others, but to those who are concerned. I knew that by valuing above all their judgement, I would be condemned by people who are content to see themselves as respectable and loyal citizens. I do not regret any such condemnation that may follow me."

Bram was condemned to life imprisonment. The conditions under which he was held were intended to deny his human dignity by every means his gaolers could imagine. He was not even allowed to attend the funeral service of his only son Paul, the wedding of his daughter Ilse, nor to hold in his arms any of hers or her sister Ruth's children, his grandchildren. His gaolers did all they could to break Bram's spirit, to warn others who might join in the struggle of what was to be in store for them. Their meanness continued almost to the end when a terminally ill Bram Fischer was allowed to go to the home of his brother Paul in Bloemfontein, but still a prisoner, isolated from all except close members of his family. When I heard that Bram was terminally ill, I repeatedly asked Jimmy Kruger, the then Minister of Justice, to be allowed to see him. Kruger found reasons why I should not. They not only feared Bram and what he stood for, they were afraid to release his body for proper burial, they were afraid to release his ashes to his family.

They failed. The contribution of Bram Fischer will live on. Had he been alive a year ago to celebrate with us the freedom we gained for all South Africans he would have been well pleased. The acceptance by the vast majority of his fellow Afrikaners of a non-racial and democratic South Africa would have been a realisation of what he had fought for, for the better part of his life. Bram wanted a better South Africa for all; a South Africa where there is not only political freedom but housing and health services, education and cultural development and a more just distribution of the wealth of the country among all of its people.



LEGAL
RESOURCES
CENTRE

BRAM FISCHER MEMORIAL LECTURE



Please forgive me for quoting myself from the last chapter of my book *The Long Walk to Freedom*, where I said:

“The policy of apartheid created a deep and lasting wound in my country and my people. All of us will spend many years if not generations recovering from that profound hurt but the dictates of oppression and brutality had another unintended effect, and that was it produced the Oliver Tambos, the Walter Sisulus, the Chief Luthulis, the Yusuf Dadoos, the Bram Fischers, the Robert Sobukwes of our time – men of such extraordinary courage, wisdom and generosity that their like may never be known again. Perhaps it requires such depth of oppression to create such heights of character. My country is rich in the minerals and gems that lie beneath its soil but I have always known that its greatest wealth is its people, finer and truer than minerals and diamonds.”

In any history written of our country two Afrikaner names will be always remembered. Happily one is still with us, dear comrade Beyers Naude. The other is Bram Fischer. The people of South Africa will never forget him. He was among the first bright beacons that attracted millions of our young people to fervently believe in a non-racial democracy in our country.

Bram Fischer was a son of the soil. His spirit lives on!

[Following from the part of the scripted speech which said: ‘As an Afrikaner whose conscience forced him to reject his own heritage and be ostracised by his own people, he showed a level of courage and sacrifice that was in a class by itself’, Mandela went on to say:

‘I have said on several occasions that the Afrikaners in this country have given us a lot of pain, a lot of suffering. They have been insensitive beyond words. It is difficult to imagine that human beings could do what Afrikaners have done to blacks in this country. But, as an articled clerk, as a lawyer, as a prisoner, as a politician, I discovered one solid fact: that when an Afrikaner changes, he changes completely, he becomes a real friend. That has been my experience, even behind bars – we developed strong friendships with warders, Afrikaner warders. That is what is happening in this country today. The response of all communities, black and white, and in particular the Afrikaners, is beyond words. And that is one of the factors which gives us strength, which gives us hope in our future. And Bram exemplified that type of Afrikaner.’]



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RESOURCES
CENTRE

BRAM FISCHER

MEMORIAL LECTURE

