

## THE 2017 ALAN PATON MEMORIAL LECTURE

# Limitations On Liberalism: A Tale Of Three Schreiners



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*I am greatly honoured to have been invited to present the 2017 Alan Paton Memorial Lecture at my Alma Mater and in a venue that brings back so many memories of my student days. The newly published Volume 2 of Bill Guest's history of the University of Natal contains two episodes from the early 1970s which occurred in this hall. They both have a slight bearing on the topic of this lecture. There was a Rag Variety concert held on this stage where Michael Lambert composed the lyrics parodying Gilbert and Sullivan's operettas, particularly *The Mikado*. He lampooned three major campus personalities of the day: Professors Colin Webb, Colin Gardner and Deneys Schreiner: 'a giggling tall historian, an English Pwof who lisps and a bearded scientist'; an indication that there was a liberal tolerance of criticism of the university by students.*

The second was a University Dramatic Society (DRAMSOC) production of Shakespeare's *Anthony and Cleopatra* that was so bad that Professor Francis Stock, the University Principal, walked out during the performance and terminated the funding for DRAMSOC, an act which clearly demonstrated the limitations to the liberalism of Francis "The Laughing" Stock as he was known to students.

Alan Paton was a presence at the University of Natal during those years in the 1970s. He was an honoured guest at anti-apartheid meetings and marches, a speaker at public lectures and rallies and he was looked up to as a political and cultural icon. His step-daughter, Athene Hopkins, was also a student so he appeared on campus every now and then in a parental capacity as well. He was a local boy whose whose novel *Cry the Beloved Country* had gained fame across the world. He is linked in my memory with another great South African liberal icon, Edgar Brookes.

The Hon Senator Prof Dr Revd Mr EH Brookes was entitled to every honorific in South African state documentation, except Mrs and Miss (Ms was not officially used then). Paton and Brookes were close friends and veterans of many political struggles. They shared many platforms together and often joked at each others expense. There is a story, told by the late Tim Dunne, a former SRC President, that at some meeting in the early 1970s, Edgar Brookes (born in 1897), referred to Alan Paton as a dinosaur and Paton (born in 1903), retorted that he may be a dinosaur, but at least he was born in the 20th Century.

Paton and Brookes were both leaders of the Liberal Party and, the more research one does, the more one realises that Pietermaritzburg was a major centre of South African political liberalism in White (but almost entirely English-speaking), Indian and African communities. In addition to Brookes and Paton, there was Peter Brown, who led the Liberal Party and who was banned for many years by

the Nationalist government. There were several members of the Indian community (such as Pat Poovalingam), who were active liberals and, in Edendale, H. Selby Msimang, was a leading figure. Uncle Selby had been both a founding member of the South African Native Congress (the predecessor of the ANC) and the Liberal Party and he saw no contradiction between the two.

In this lecture I will briefly describe liberalism in South Africa, its strengths, its weaknesses and, of course, its limitations. I will do this by examining specific aspects of the careers of three members of the Schreiner family who played significant roles in the evolution of South African liberalism, its defence against apartheid assaults, and eventually its role in setting foundations for its resurrection in the new South Africa.

They are – WP Schreiner, OD Schreiner and GDL Schreiner, (grandfather, father and son). This will take us chronologically from the 1890s to the 1980s through a judicial pit-stop in the 1950s. We will then take a final peak at the 1990s and the then “New” South Africa.

The meaning of liberalism need not detain us very long. The origins of the concept can be traced back to the 17th Century philosopher John Locke who articulated the notion that government requires the consent of the governed. While the 17th Century poet John Milton argued for the importance of free speech and prized, ‘...the liberty to know, to utter and to argue freely according to conscience above all liberties’.

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In South Africa the African concept of “*ubuntu*” (A person is a person through people), has similar connotations of community, mutual tolerance and support. However, governmental structures in a colonised state were inevitably authoritarian and illiberal. So much so that historians have characterised late 19th and early 20th century South Africa as a ‘conquest state’.

Liberalism has a bad name these days in South Africa. It is equated with neo-liberalism, which is not quite the same thing, being an economic theory advocating privatisation and the free market and the free market can be very illiberal in its treatment and exploitation of workers and the poor. Some local demagogues have even equated liberalism with racism, which is a complete contradiction; and with colonialism, with which liberalism has had a complicated relationship.

In South African history, liberalism is linked to the Cape Liberal tradition. This evolved from British liberalism, the Enlightenment and the ideals of the French Revolution. The one important aspect for us to note about British Liberalism is that there was a top-down approach. Whig aristocrats conceded rights to the wealthy middle classes; middle classes conceded rights to established working classes and eventually the franchise became universal, including women and the young, above the age of eighteen.

This process moved into South Africa via the Cape Colony. Two strands of liberalism were imported. The first was the structural component, namely an elected legislature, independent courts and the rule of law. The second was the humane, the ideological, or theological strand, as it was propagated by missionaries, one of whom was WP Schreiner’s father, Gottlob. This focused on freedom of speech and human dignity.

When self-government arrived at the Cape, there was a colour-blind, qualified, male-only franchise. This was, more or less, in line with international norms. In Britain, at the same time, there was a qualified franchise and women were not to get the vote until after the First World War. In the other local British colony, Natal, the franchise may have been nominally colour-blind, but it was deliberately devised to maintain the control of white colonists who were in an extreme minority of the population. Derisory numbers of Africans and Indians qualified for the votes.

For over three generations, the Schreiner family fought for both strands of liberalism: structural and humane.

### WP Schreiner (1857 – 1919):

William Philip Schreiner was the son of a German missionary, Gottlob Schreiner and his English wife Rebecca Lyndall. There were many siblings, but the most prominent of whom was his sister, novelist Olive Schreiner, who wrote *The Story of An African Farm*. This book became the Victorian equivalent of a best seller and made Olive's name and placed South Africa on the English-speaking world's literary agenda. Olive lived an independent life and espoused views on social conventions, marriage, race relations and sexuality that were far in advance of her times.

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Despite his parents' financial difficulties in the Eastern Cape, WP Schreiner acquired a good education in Cape Town and went on to Downing College, Cambridge, to read law. His academic results in Cambridge were brilliant and he loved the university, for him it was ever a place apart: 'Jerusalem and Athens in one', as he described it.

After admission as a barrister to the English Bar, he returned to the Cape to establish a practice and soon became close to the Governor and the leading politicians of the day. From there it was a quick jump into the political area and in 1893, he became Attorney General and in 1898, he became Premier of the Cape Colony and fought hard to prevent the outbreak of the Anglo-Boer War.

WP Schreiner was married to Frances Hester Reitz, a sister of Orange Free State President F.W. Reitz. He was therefore opposed, emotionally and in principle, to the war-mongering policies of Sir Alfred Milner (Governor and High Commissioner), and Joseph Chamberlain (the Secretary of State for the Colonies). Milner manoeuvred and eventually managed to undermine Schreiner and his ministry and forced them out of office in June 1900.

WP was not a liberal when he became Prime Minister: in fact, he echoed the casual paternalistic and disparaging remarks of colonists about Africans, to the annoyance of his sister, Olive. His first election manifesto in 1893 had contained 'a robust keep-the-native-in-his-place; effusion'. WP later attributed his 'Damascene Moment' to a visit to the Transkei and a meeting with John Tengo Jabavu, a pioneering early African journalist, intellectual and philosopher.

It was this meeting that began the process of turning WP Schreiner into a liberal. He was talking to an educated, intelligent man who was being discriminated against. WP's period in the political wilderness, from late 1900 until 1908 also gave him time to reflect and rethink his casual and ignorant bigotry. The war being fought so

savagely between the two so-called ‘civilised’ white groups in South Africa, while the black communities by and large conducted themselves in a more civilised manner, also had a profound impact on him. Then, as he began to look to fight for a seat in parliament again, he realised that Jabavu could mobilise those black voters on the roll in support of him; after all, he was a politician.

By the time he was re-elected to Parliament in 1908, Schreiner was already an elder statesman, South Africa was moving swiftly towards Union and a National Convention was planned to be held in 1909 in Durban and Schreiner was nominated as a member of the Cape Delegation. However, he was also approached by Sir Matthew Nathan, Governor of Natal, at the behest of Winston Churchill, to undertake the defence of Prince Dinuzulu ka Cetshwayo, son of the last independent Zulu King Cetshwayo, against the rather spurious charges of treason that had been levelled against him in the aftermath of the Bambatha Rebellion.

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Here was the liberal dilemma: structural liberalism versus the humane impulse. Schreiner desperately tried to do both and the Natal Government desperately tried to outwit him as schedules changed and court dates were postponed.

WP Schreiner took the humane course and defended Dinuzulu to the best of his not inconsiderable ability at the special trial in the Greytown Town Hall, while the National Convention deliberated on the future of South Africa in the Durban City Hall. Dinuzulu was acquitted on most charges, but it really was an “Alice in Wonderland” case of “Sentence first and verdict afterwards”. Dinuzulu was jailed against protests from the imperial government in London and from Louis Botha in Pretoria, as well as from the usual liberal suspects, such as Harriette Colenso. Reporting the conclusion of the trial, the London *Spectator* (6 March 1909), described WP Schreiner as, ‘The ablest counsel in South Africa’.

The driving forces of the National Convention were Generals Louis Botha and Jan Smuts, who favoured a close union of the two former Boer republics and the two British colonies. The Natal Government, basically led by political nonentities, favoured federation and the least possible rights for Africans and Indians. The leaders of the Transvaal and the Orange Free State favoured Union and the least possible rights for Africans and Indians. Most of the Cape delegation wanted to retain its own franchise arrangements.

WP Schreiner was one of very few politicians of stature who favoured both federation and political rights for all ‘civilised’ men, regardless of race. The manipulation of court and convention dates meant that Schreiner was unable to argue for the causes he believed in, and for their inclusion in the South Africa Bill, which became the constitution of the Union of South Africa, after it had been passed by the Imperial Parliament in Westminster. Those Cape liberals present at the National Convention managed to preserve the colour-blind voting and civil rights within what was to become the Cape Province, but these could be removed by a two-thirds majority vote in the Union Parliament. Schreiner fired off a telegram from Greytown describing the South Africa Act as:

Narrow, illiberal and short sighted in conception of the people of South Africa. The great majority are not of European race or descent and their rights and future are not adequately safeguarded or provided for by maintaining temporary privileges of Cape natives or coloured electors.

He went to Britain with the blessings of Cape liberals, coloureds and Africans to try to persuade the Imperial Parliament not to pass the South Africa Bill. It was a forlorn hope.

When the Union Parliament was formed, Schreiner was nominated as a Senator with the responsibility of representing the views of the 'Non-Europeans', or Africans, which he was proud to do. His alarm over the direction of the incoming Union Government was alleviated by his contacts with Louis Botha who he admired and respected and who promised to release Dinuzulu. A promise which Botha kept, releasing the prince on 31 May 1910, the very day the Union was formed and Botha's first day in office.

Dinuzulu was delighted by Schreiner's new role:

Friends I might have, but there is no man like you since Mr Colenso is dead. All my trust is in you... May the Lord keep you and give you power to fearlessly advocate for the just and equitable treatment of the Natives of South Africa.

However, the political tide was flowing swiftly in an illiberal direction. All the old battles fought out in the Cape had to be re-fought in the Union Parliament, and with less prospect of success. Olive Schreiner described the sad process best:

The waggon (sic) of South Africa is beginning to make a long slide backward on the muddy road of time.

*In 1914, at the outbreak of the first World War, WP Schreiner was in London and was asked by Louis Botha to take over as South Africa's High Commissioner and he remained in this post until his death in harness in 1919. Olive died a few weeks later.*

Schreiner vigorously, but unsuccessfully, opposed the 1913 Native Land Act and continued to advocate liberal causes, including votes for women, a popular cause in the Schreiner family. In 1913, he submitted a petition from the African women of the Free State against the imposition of the pass laws on them. The petition was received in the Prime Minister's Office and instantly consigned to the files.

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WP Schreiner did not begin his political career as a liberal, but his liberalism developed out of the contacts he had with African men of western education and his realisation that a political system which gave a vote to an ignorant white wagon driver or a back farm bywoner, but not to a black graduate, was seriously flawed. He was also stimulated and sometimes inspired by other family members, particularly his sister Olive. In addition to the stimulation, he was driven by a sense of duty, a sense of service and a sense of purpose.

Whether WP Schreiner's presence at the National Convention would have made much difference to the constitution of the Union is debatable. There were powerful forces aligned against him: not only Smuts and Botha, but the economic interests of the all powerful mining industry. These were indeed dominating limitations on any liberal expectations in 1909 and 1910.

WP Schreiner felt that he had ultimately taken the right decision in defending

Dinuzulu. He had taken on Dinuzulu as a client before the date of the convention had been set and he felt that white-black relations were so fraught that it was better for a white man of standing to make an unmistakable gesture of principle and goodwill at a time when civil rights were being generally curtailed. Perhaps the only thing his presence at the convention would have ensured was that a more powerful minority dissenting report would have gone to Westminster with the draft South Africa Bill.

The limited voting rights for coloured people that were part of the South Africa Act came to haunt the next generation of Schreiners.

### OD Schreiner (1890 - 1980):

WP was survived by his wife, two daughters and two sons. One of whom was Oliver Deneys Schreiner who has been described by Ellison Kahn as 'the greatest Chief Justice that South Africa never had'.

Oliver Deneys [OD] had been born in 1890 and witnessed his father's political progress to liberalism. OD's growing understanding of these events influenced throughout his life and informed the philosophical influences he was subjected to in England where he went to complete his education, at Cambridge. According to Alan Paton, OD could have had the Rhodes Scholarship to Oxford, but given his father's feud with Rhodes, this would never happen as, 'no Schreiner took such a gift from such a man'.

Whilst still at Cambridge and close to the conclusion of his studies, World War I broke out. OD trained as an officer and saw active service in France, during which he was both wounded and awarded the Military Cross. After the war, he qualified for the bar in both England and in South Africa and practised in Johannesburg. In 1923 he was part of a small group of advocates fighting to open membership of the bar to all races. On 12 December 1923, while OD was a busy young advocate, his youngest son, George Deneys Lyndall, the third Schreiner of this narrative, was born.

*I have the clear impression that he would have been appointed had he not been a Jew. If this is so it would be extremely distasteful to me to commence my work as a dispenser of justice by being, in effect, a party to an injustice' (Schreiner Letters: 10 February 1937)*

In 1937 OD was appointed to the Transvaal Supreme Court bench. However, he hesitated before accepting the appointment, writing to General Jan Smuts, then Deputy Prime Minister, to protest that the position should have gone to Advocate Philip Millin, the husband of writer Sarah Gertrude Millin, biographer of both Rhodes and Smuts:

I have the clear impression that he would have been appointed had he not been a Jew. If this is so it would be extremely distasteful to me to commence my work as a dispenser of justice by being, in effect, a party to an injustice' (Schreiner Letters: 10 February 1937)

On receiving the requisite assurances from Smuts, OD took the post and Millin became a judge a few months later. Eight years later, in 1945, OD was elevated to the Appellate Division in Bloemfontein (now the Supreme Court of Appeal), where he spent the rest of his judicial career and faced the greatest judicial challenge of his life, requiring as much courage as he had shown under fire during the First World War.

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What is often overlooked in narratives of his career, is the fact that he presided over one of the major political trials of the Second World War, the trial of South African Olympic boxer, Afrikaner Nationalist and German spy, Robey Leibbrandt, for treason. Leibbrandt was pardoned and freed by the incoming National Party government in 1948. Perhaps this incident prompted Nationalist hostility towards OD long before his rulings on the issue of the coloureds and the common voters roll.

In 1948, the National Party became the government of the Union of South Africa, having been elected with a small majority, although it received fewer votes overall than the United Party (shades of Trump and Clinton). Prime Minister DF Malan set about entrenching racial segregation, which became known as the policy of apartheid, and entrenching the Nationalists in power. One way of doing both, was by effecting the removal of coloured voters from the common voters roll in the Cape Province. However, this was one of the entrenched clauses in the South Africa Act of 1909 that had established the Union of South Africa and the Nationalists did not have the required two-thirds majority to amend this clause.

Nevertheless, Malan's government rammed a law through parliament, the Separate Representation of Voters Bill, which passed with a simple majority. The matter was quickly referred to the courts and ended up before the Appellate Division where OD Schreiner and his colleagues struck down the act in April 1952 (just as white South Africa celebrated the three hundredth anniversary of Jan Van Riebeeck's arrival at the Cape).

In retaliation, the government passed a new law through parliament, the High Court of Parliament Act, which made parliament itself the highest judicial authority in the country. This new high court then overruled the previous judgement of the Appeal Court. The Appellate Division responded by ruling that this High Court of Parliament Act was as unconstitutional as the Separate Representation of Voters Act had been. But the Malan government was not to be beaten; it resorted to packing the Senate with extra nominated members so that it could secure a two-thirds majority in Parliament. Also, as additional insurance, it increased the number of judges on the bench of the Appellate Division from five to ten, thus enabling it to pack the court with its own supporters.

OD's reaction was resigned. He told his wife, Edna, that the appellate judges first heard about the appointment of the five new colleagues from the court registrar who heard it announced over the radio:

There it is – and the only course is to take things philosophically, reminding oneself of the relative unimportantness of the affair in the general scheme of things. (Schreiner Letters: 26 March 1955)

With the playing field thus tilted, the battle was finally over. In 1956, the bill became law, with the acquiescence of the Appellate Division, and from then until 1994, the coloured people could only vote on a separate voters roll for a handful of white MPs to represent them and later (from 1984), for their own toothless House of Representatives under the Tricameral system.

The last challenges to the legislation failed in the enlarged Appellate Division by nine votes to one. Justice Oliver Deneys Schreiner was the only dissenter. This gallant stand has led to the Law School at the University of the Witwatersrand bearing his name and to a bust of him being unveiled in the Supreme Court of Appeal building in Bloemfontein. It is also why Justice Schreiner never became Chief Justice of the Union of South Africa.

Delivering the annual Oliver Schreiner Memorial Lecture in 2008, Deputy Chief Justice Dikgang Moseneke said he was fascinated by ‘the steadfast stance Oliver Schreiner took in the Trilogy Cases that gave rise to the constitutional crisis of the mid-1950s’. Moseneke emphasized OD’s illustrious family background, his place in ruling white elite and his privileged education:

He did not need a social conscience or public spiritedness. He could have lived his life without the political fallout that led to the stunting of his bright judicial career by political executive disapproval. If he had stayed within his elitist confines he would have risen to become the Chief Justice, which he never was.

### G.D.L. (Deneys) Schreiner (1923 - 2008):

George Deneys Lyndall Schreiner was the second son and youngest child of OD and Edna Schreiner. Born in Johannesburg in 1923, he was schooled at St John’s and matriculated at the age of 15 in 1939 as World War II broke out. Too young to join the army, he went first to Wits University where he completed his BSc degree at the end of 1942. He joined up immediately, but as an ordinary soldier, not as an officer, to the annoyance of the army.

While he was serving in North Africa and Italy, Deneys joined the Springbok Legion, a fairly left-wing organisation of South African soldiers dedicated to looking after the rights of soldiers of all colours back home in South Africa, but he was a little cautious about its overall orientation. However, he did not return home immediately after the war, but went straight from Italy to Cambridge, where his father and grandfather had studied before him. Post-war Cambridge was austere and Deneys complained about the rationing. His answer to austerity was to marry Else Kops in 1948 after he had completed the Natural Science tripos. He then completed a PhD in Inorganic Chemistry in 1952 a process during which Else produced their first child of two sons and two daughters.

In 1952 the Schreiner family headed for the United States and Deneys took up a visiting professorship at Pennsylvania State College. This was the period of the Cold War and of McCarthyism, and Deneys was required to take an oath of loyalty to the United States. His solution to the problem was elegant: He signed the required document, but appended a letter stating that he would remain loyal to the United States, unless it was at war with the Union of South Africa.

The Schreiners returned to the Union in 1953, as the crisis over the coloured voters roll was building up. It was also the year that the Liberal Party was established and Deneys was one of its founder members. The public faces of the Liberal Party were parliamentarians such as Margaret Ballinger and Edgar Brookes and, of course, Alan Paton himself. The party was resolutely opposed to apartheid, but faced the same dilemma that the Progressive Party was to face a little later: to

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stand completely on principle for what was still called one-man-one-vote and risk irrelevance; or to compromise in the hope of attracting over-wavering white voters.

Many Liberals were also fiercely anti-communist and it was this type of “built-in dither” factor which led to the Liberal Party not attending the Kliptown meeting of the Congress of the People in 1955 where the Freedom Charter was adopted. It resulted in the Liberal Party sitting at one remove from the Congress of Democrats movement despite individual Liberals. Later establishing the Armed Resistance Movement and undertaking anti-apartheid sabotage missions.

However, liberal efforts did not go entirely unnoticed on the other side of the colour bar. As Chief Justice Pius Langa said in delivering the 1999 Alan Paton Lecture:

We did listen intently to what was being said about us in Parliament and elsewhere, the Margaret Ballingers, Edgar Brookes, Helen Suzman and others. I think these, Helen Suzman in particular, were classified as good guys.

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Deneys took up a post as professor of Inorganic Chemistry at the University of Natal in Pietermaritzburg (UNP), in 1959 and almost immediately began his involvement with local liberal politics and the seeking of alternatives to apartheid and the racially exclusive republic being foisted upon the country by the nationalists. He was actively involved in the arrangements for the 1960 Natal Convention, but at a rather junior level. Given that

he was a heavy smoker, the minutes of the organising committee in the Alan Paton Centre refer to the fact that Professor Schreiner was responsible for arranging the ashtrays!

When he became Vice Principal of UNP in 1976, he began organising an academic conference on ‘Constitutional Models and Constitutional Change in South Africa’. Many of the leading academic thinkers and political scientists, from so-called verligte Nationalists to what would now be called the ‘soft left’ (including a few blacks), attended, and an influential set of conference papers was published in 1978. The Soweto Uprising had occurred in 1976 and it was becoming increasingly clear that South Africa was facing a growing crisis and that the policy of apartheid was part of the problem and not part of the solution. PW Botha, the newly elected Nationalist Prime Minister, who had taken over in the wake of the Information Scandal, set about modifying and streamlining apartheid.

The rather strange quasi-legislative, quasi-advisory, President’s Council fleshed out the Tri-cameral Constitution which created talk-shops for Indian and Coloured politicians in an enlarged national parliament. The Tri-cameral Parliament and the unwieldy 1984 Constitution were the result of these endeavours. But no move was made to adapt the fundamentals of apartheid, or address the absurdity that black African South Africans would only have political rights in their independent Bantustans.

Botha would not permit the position of the African majority to be discussed. He regarded the Bantustan policy as settled. In KwaZulu, Prince Mangosuthu Gatsha Buthelezi had refused to move towards independence and claimed that his Inkatha Cultural Movement was supported by the exiled ANC. Buthelezi was incensed that he was excluded from the broader constitutional discussions and

that these discussions were about Africans and not with Africans. He decided to establish his own constitutional commission in opposition to the President's Council proposals.

To lead the Commission, Buthelezi turned to Deneys Schreiner. I have tried to contact Chief Buthelezi and ask him why he selected Schreiner, but without success. It is, however, obvious that the constitutional conference at the university a year or two earlier played its part, but there is another issue: Mangosuthu Buthelezi is the maternal grandson of Prince Dinuzulu and he turned to the grandson of the man who had defended his grandfather from bogus treason charges, to lead his signature commission to transform the country.

Buthelezi came to Pietermaritzburg and visited Schreiner in his office on this campus to ask him if he would chair a larger commission into constitutional options for KwaZulu and the Province of Natal. One of Schreiner's conditions for agreeing to take the position was that the commission should be called "The Buthelezi Commission". Many think that this labelling was a sign of Buthelezi's ego, but apparently, this is not so, Schreiner insisted on it.

Schreiner tried to include as broad a representation of races and parties as possible under the circumstances. This quickly proved to be a bridge too far. The Nationalists refused point blank to participate as they were anxious to paint the commission as purely an internal homeland affair. The left was banned, or in exile, so there was no ANC voice.

The white opposition party then running the Natal Provincial Council, the New Republic Party (the rump of Smuts' once mighty United Party), participated but refused to offer any positive, or even many meaningful, contributions to debates on political issues, such as the franchise, or how to structure representative institutions. However, there was a reasonably wide range of civil society voices from all races and a strong academic contingent.

The Buthelezi Commission report came out at approximately the same time as the President's Council report. Professor Lawrence Boule has compared the quality of the President's Council report unfavourably with the quality of the Buthelezi Commission report. PW Botha also waded in, Trump-like, undercutting the credibility of the President's Council before its report could be properly considered. The Buthelezi Commission report was completely ignored.

Boule made the important point that each report, '...is the issue of a different lineage in South Africa's constitutional history', and yet they both identified common areas of concern and similar 'consociational' forms of government. The Buthelezi report was based on far deeper and wider socio-economic and political analysis and suggested a workable, but complex, power-sharing provincial government for KwaZulu-Natal, based on clearly discernible liberal principles.

The Botha government rejected the Buthelezi report out of hand, but a bowdlerised version of the President's Council report appeared in the ramshackle Tricameral constitution.

Nevertheless, the Buthelezi Commission report did have an influence on constitutional and administrative developments in the province and the country.

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Using the report, Buthelezi pressed for the establishment of a joint authority in KZN. Eventually PW Botha reluctantly conceded that a measure of shared power could be exercised by the KwaZulu-Natal Joint Executive Authority (JEA) recommended by the commission. It was to be jointly headed by the Administrator of Natal, Radcliffe Cadman, and by Buthelezi himself. There was a cascading arrangement of joint liaison committees and shared meetings that went some way to reducing the absurdity of divided administrative control in KZN. In the interests of full disclosure, I participated in the heritage sub-structure in the late 1980s.

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However, what was definitely an unintended consequence for Deneys Schreiner, was that the JEA provided the framework for the exercise of brutal politico-military repression in the province during the last days of apartheid. The shadowy third force hid behind the JEA's veil of secrecy, local authorities could send security personnel into peri-urban and peri-rural areas with impunity. If this puzzles you, think of the Transkei, where Bantu Holomisa overthrew the Matanzimas and was able to use the nominal independence of the bantustan and its fairly logical borders to offer a haven to refugees sought by apartheid security forces and provide an area from within which the ANC and MK could operate. The opposite happened in KwaZulu-Natal: Buthelezi and Inkatha were at loggerheads with the ANC and

the unions, and violence spread throughout the province.

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## Conclusion

From the 1890s to the 1990s, the Schreiners exercised a liberal influence on South Africa. In our conclusion we do need to look at the fact that one of the limitations on their liberalism was the elitism inherent in the philosophy.

WP Schreiner grew into liberalism thanks to the influence of John Tengo Jabavu. In the 1900s he faced the dilemma of acting on humane liberal impulses or structural imperatives. He chose the former, which may have been the better moral decision, but it was an exercise in gesture politics.

OD Schreiner fought for black rights from the post-World War I period onwards. His battlefield was legal, his weapons juridical. His aim was to defend the residual elements of structural liberalism in the Union of South Africa constitution. Ultimately he failed, because of the constitutional weaknesses in the law that allowed the protections to be circumvented.

His son GDL (Deneys) Schreiner, had the opportunity to move from reaction to action. Even here the limitations were set by the farcical circumstances of the apartheid system. KwaZulu could not legislate for Natal and the report of his commission recommended a rapidly empowered joint governmental system that let slip the dogs of war in KZN in the late 1980s and early 1990s.

In this case, liberalism was totally limited by the law of unintended consequences.

However, the work of the Buthelezi Commission endured a crucial few years until it was used to underpin a national constitutional settlement that was inspired by liberalism. Wonderful and liberal though the South African constitution may be, its limits are currently challenged by defiant and corrupt top officials. The saying, 'A fish rots from the head' is never so true as it is in South Africa today.

The liberal values in our constitution need to be defended. The limitation of the constitution is that it does not live on paper, it needs active citizen engagement to make it a living document. We have the example of three generations of Schreiners and, indeed, the current generation to inspire us.

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REFERENCES:

- Beynon, John, (ed)., *Constitutional Change in South Africa: Proceedings of a Conference on Constitutional Models and Constitutional Change in South Africa*, (Held at University of Natal, Pietermaritzburg 14 – 16 February 1978) Pietermaritzburg, University of Natal Press, 1978.
- Boulle, Lawrence, 'The Constitutional Law implications of the Buthelezi Commission Report' *Comparative and International Law Journal of Southern Africa* 15(3) 1982: pp 257 – 305.
- De Villiers, Ren , 'Afrikaner Nationalism' in Monica Wilson & Leonard Thompson (eds), *The Oxford History of South Africa: South Africa 1870 – 1966, Vol II* (Oxford, Clarendon Press, 1975), pp 405 – 406.
- Guest, Bill, *Stella Aurorae: The History of a South African University: Volume 2 The University of Natal (1949 – 1976)* (Pietermaritzburg, Natal Society Foundation, 2017).
- Khan, Ellison, 'Oliver Deneys Schreiner – the man and his judicial world' *South African Law Journal* 97, 1980: pp 566 – 615.
- Khan, Ellison, 'Oliver Deneys Schreiner: a South African.' *Fiat Justitia: Essays in Memory of Oliver Deneys Schreiner*. Juta, 1983.
- Langa, Pius, 'Strengthening Democracy', Alan Paton Memorial Lecture, 7 October 1999.
- Locke, John, *Two Treatises of Government* (1690)
- Milton, John, *Areopagitica: A Speech for Unlicensed Printing* (1644).
- Mosenke, Dikgang, 'Separation of Powers, Democratic Ethos and Judicial Function', lecture delivered at the University of the Witwatersrand, 23 October 2008.
- Paton, Alan, Hofmeyr (London, OUP, 1964)
- Selvan, R.L., 'Early Days at the Johannesburg Bar' *Consultus*, Oct 1994: pp 115 – 127.
- Walker, Eric, *Schreiner: A South African* (London, OUP, 1937).