

Tolerance in a Time of Cholera by Albie Sachs

ADDRESS TO THE CAPE TOWN PRESS CLUB

TOLERANCE IN A TIME OF CHOLERA

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The first news I got of the latest outburst of anger against Richard Goldstone came to me as I was buying some homentassen with mon [poppyseed cake] in a well known Sea Point deli. A customer whom I hardly knew rounded on me and asked aggressively: "Are you for or against Richard Goldstone?" I was astonished by his abruptness, but not surprised. Richard Goldstone had been the darling of the Jewish community for decades, an accomplished lawyer with an international reputation, with strong ties to Israel. Until, that is, he issued what came to be known as the Goldstone Report for the United Nations on war crimes in the Middle East conflict.

"Richard is a friend of mine," I replied guardedly. For months I had declined to comment publicly on the Goldstone Report, pointing out that in fact I had not read it and was deliberately refraining from taking a position on its merits because I wished to preserve the possibility of one day contributing to mediation of a peaceful and dignified settlement of the conflict.

On the one occasion that I had been to that part of the world I had attended a conference on the Rule of Law organised in Gaza by the Kennedy School of Government, and found myself being embraced and called a hero by Yasser Arafat one evening, and sitting on the Bench next to Aharon Barak on the Jerusalem Supreme Court the next morning. It occurred to me that as a Jew who had lost great numbers of family during the Nazi extermination programme in Lithuania and who would have been killed if Hitler had succeeded in conquering Africa, as a person who had been through some fire in the struggle for the liberation of South Africa and as a lawyer who had been deeply involved in the process that led to what has been termed the miracle of the peaceful revolution in our country, I might have a useful role to play.

"Well, that's not good enough," my interlocutor insisted, interrupting my silence. "Goldstone has been barred from attending his grandson's barmitzvah. A man called Krengel has threatened to have a posse of twenty Jewish stormtroopers outside the shul to keep him away."

I felt sick. I knew how family-orientated Richard and Noleen were, and how proud they were of their children and grandchildren. I couldn't believe that political anger against him, which people had every right to express, had evolved into an uncontrolled and unconscionable rage that sought to violate the spirit of one of the most sacred aspects of formal Jewish tradition. Non-believers, as secular people like myself are called, tend to fall into two categories... either we aggressively repudiate all religious belief as obscurantist humbug, or we actively acknowledge that people owe much of their dignity and personhood to their consciences and beliefs. I belong to the latter group. It

shocked me deeply that instead of being a sanctuary of spiritual communality that transcended, even if momentarily, the feuds of secular life, the shul was being converted into a trench of partisanship. Above all, I felt for the barmitzvah boy. He had a right to have his grandpa there on his very special day.

But my dismay was personal as well. Last year I received an award from the Jewish Board of Deputies for my contribution to human rights. President Jacob Zuma, who in the struggle days had been one of the first to greet me after I had survived a car bomb that cost me my right arm and the sight of an eye, had delayed his departure from the gathering to see me get the award. It had been a deeply moving occasion, and Mr Kregel had played a prominent part in it. My immediate impulse was to send the medal back to him.

Fortunately, I had the good sense to consult with Arthur Chaskalson before acting on my impulse. As a friend and as Chief Justice of the Constitutional Court on which both Richard and I had sat, Arthur had often caught me in mid-air when I had been jumping to conclusions. Now, in his principled and methodical way, he had collected all the press reports, which he then emailed to me. The first thing I noticed, with considerable relief, was that there were two Mr Kregels, and that the Mr Kregel of the Jewish Board of Deputies had in fact issued a statement that the organisation strongly believed that diversity of opinion in the community needed to be tolerated and respected, wherever it emanated from, and that expression had to be sensitive to the forum and occasion, respecting the feeling of others so as to prevent unnecessary conflict. I was also pleased to see that Chief Rabbi Warren Goldstein had spoken of the human pain of the situation, stating that it was simply a question of decency and compassion to the barmitzvah boy not to ruin his day. He had conveyed this to the shul committee and they had agreed with his approach to keep the shul open to the entire barmitzvah family and strive to make it as joyous as possible. Thus, neither had been complicit in the barring, indeed both had expressed their support for basic principles of tolerance and openness

Yet while it was important that there had been no official exclusion of Richard from the occasion, their underlining the fact that it had been the family that had decided that Richard should not attend, undermined the moral force of their statements. Similarly, a subsequent bitter attack by the Chief Rabbi on Richard inflamed the atmosphere he was proposing should be cooled. So, on being informed by the shul committee that demonstrations were being planned, the family had no real choice. If it had been his own event, Richard could have braved the threatened demonstration. But it would be his grandchild's day, and the only way to secure appropriate privacy and intimacy for the

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occasion was for him to sacrifice his wish to be there. The defence of tolerance by the Board and the Chief Rabbi would have been much more meaningful if it had included a denunciation of the planned protests and an indication of the steps they respectively took to ensure that any criticism people might wish to make of Goldstone took a more rational and seemly form. I am unaware of any apology having been made to the family for the threats, or of any undertaking to abandon them. As it is, undue pressure has produced an undue result, and intolerance has triumphed, achieving through the back door what it was not able to accomplish through the front.

And so once more, unthought-through emotional rage succeeds because it can rely on the natural decorum and decency of those it seeks to target.

Like Richard's grandson, I had the fortune or the misfortune to be born into a family with a famous figure constantly in the headlines. In my case it was my Dad, Solly Sachs, a trade union leader who was loved by many and vilified by others. The wounds that affected him the most were those inflicted not by his enemies but by persons in his own circles. Just as we can't choose our parents, so we can't choose our grandparents. I only hope that the awkwardness the barmitzvah boy must feel at being dragged into the limelight by the anger directed by some people at his grandfather, is outweighed by the knowledge that the love and concern that Richard has shown for justice for all grandchildren in all countries in no way reduced his enormous interest in and affection for his own grandchildren. What must certainly be puzzling is that the anger is coming from people in the Jewish community, many of whom have been his friends, when so much of the origins of his intellectual and emotional passion comes from the fact that he is a Jew. As Freud explained, however, the intensity of emotion comes precisely from the closeness of the parties, from what he called the narcissism of small differences – it is when people are very much alike in deep ways that their points of disagreement become bitter and magnified.

What does it mean to be a Jew? From time to time I ask myself this question. As long as there is anti-Semitism in the world, I will proudly affirm myself as a Jew. But apart from the fact that I am viscerally anti-anti-Semitic, what does being a Jew signify to me in positive terms? Last year I happened to visit the United Kingdom Supreme Court while a case concerning the right of admission to the Jewish Free school was being argued. I heard counsel suggest as a rule of thumb that there were three characteristics of a Jewish family: it had a tiny scroll in a holder called a mezuzah hanging by the front door, its members went to synagogue regularly, and they contributed to Jewish charities. By that reckoning I failed all three. Yet in a tribute at the funeral of Joe Slovo a decade ago,

despite the fact that Slovo was not the slightest bit religious and had no special links with the Jewish community, Chief Rabbi Cyril Harris stirringly declared that Joe was not only a good Jew but an exemplary one because of his contribution to the struggle for freedom, democracy and human rights in South Africa.

When I was detained in solitary confinement the only reading matter I had been allowed was a book containing the Old and the New Testaments. Rationing myself to two pages a day, I slowly read through the Torah from beginning to end. The parts that reached me most powerfully were the lyrical and beautiful Songs of Solomon and the magnificent poetic visions of the prophets in exile. What they extolled above all was the righteousness of the humble and the oppressed seeking to be free in an imagined new world where all would be free. I picked up similar themes poetically expressed in the Sermon on the Mount in the New Testament. The connection with the past that served as a source of courage for me in prison, came not from the passages exalting leaders who smote their enemies and destroyed every living thing in captured cities, nor from what I perceived as the inward-looking zealotry of some of the scribes. It stemmed from the way I felt myself to be immersed in an eternal striving for the achievement of knowledge that would enable the world to be better understood and human life to be made more perfect.

As I lay captive, in my mind the subsequent wandering of the Jews throughout the world could not be separated from the wondering of Jews about the world. If the universe had constantly to be re-understood, re-imagined and re-configured, it was no surprise that three of the most influential and revolutionary thinkers of our epoch had been Jews –Karl Marx, Albert Einstein and Sigmund Freud. A heightened sense of the link between marginalisation, migration and freedom had undoubtedly integrated itself into my Jewishness. My grandparents fled from pogroms in Lithuania, where every Easter they hid in concealed basements or ran into the forests as Cossacks swept through their villages shouting that the Jews had killed Christ, now they would kill the Jews. Many of their generation brought with them to their new country the ideals of a world of equality without oppression and exploitation, ideals which were to engulf my parents and affect my existence from birth. Though none of these ideas were exclusively held by Jews, they lay under my pillow, so to speak, because I was a Jew. And although the majority of Jews in South Africa went along with the privileges that came with their racial classification as white, the small number of whites who joined directly in the liberation struggle included a high proportion of Jews, and many Jews were represented in the larger body of whites who opposed apartheid in quieter ways.

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What worries me now is that it is Jews, and not just anti-Semites, who seek to dictate to Jews how they should behave. The demand is for an uncritical loyalty based on a form tribal self-defence rather than on conscientious adherence to a position. Heaven help Jews, even those whose hearts since childhood have been deeply invested in the idea of a Jewish State, if they dare suggest that the country with which they still identify strongly in many ways, must be measured by the standards of appropriate conduct that apply to all nations. Yet it cannot be right that people are called upon to choose between being a Jew, on the one hand, and being able to express their own sense of justice, on the other. Surely they should not face excoriation and banishment if they answer that in their case it is precisely being a Jew that animates their sense of justice.

For each one of us our Jewishness will have different significance. In my case I cannot separate out the influence of my Jewish origins from the effect on me of growing up in a family involved in the struggle for race and class justice. I was not named after a Biblical figure, but after Albert Nzula, an African trade union leader who died shortly before I was born. Amongst my very first memories is that of hearing my mother Ray saying urgently to me and my little brother: tidy up, tidy up, Uncle Moses is coming. Uncle Moses was not a Jew, but our mother's 'boss,' Moses Kotane, a prominent African leader whose typist she was. And quietly, without realising it at the time or ever saying thank you thereafter, I received the great gift of African humanism, today referred to as ubuntu. As I grew up I discovered in practice rather than through logical disputation that the grand notions about the good and virtuous life are not restricted to any particular culture, religion or tradition, but overlap and fuse and enrich each other. The Prophets, the Sermon on the Mount and ubuntu, feed seamlessly into each other. What little I know of Islam, Hinduism and Buddhism, suggest that they contain much of the same. It is paradoxical but fortunately true that while each of the world's great traditions, including the secular tradition of the Enlightenment, claims to offer a unique set of truths to its adherents, each at the same time contains injunctions to be wise, to listen to others and to welcome strangers.

The world needs tolerance. South Africa needs tolerance. The Middle East needs tolerance. It is especially in areas of actual or potential conflict that tolerance is least found and most required. The true test of tolerance is not how much you are willing to put up with ideas that you might disagree strongly with, but which do not rage against your soul. It is in fact easy to tolerate notions that you regard as ridiculous but which do not threaten your sense of self in any serious way. The true test of tolerance is firstly your capacity to allow space for ideas that shake you up inside and challenge central notions of what you stand for, secondly to think about them and try to understand them and,

thirdly, if you think they are wrong and harmful, to seek to refute them with honest and persuasive argument. The law and the Constitution will place limits on what society will regard as tolerable, but in an open and democratic society such as ours these limits will be based on discernable constitutional harms, and not just on what may be upsetting or unsettling to certain groups. And showing tolerance is not just a matter of good manners or personal propriety. It is central to democratic discourse. It acknowledges that there are different voices in a pluralistic society. Only those afraid of the truth will seek to shut down debate and excommunicate critics.

Bertrand Russell once said that the strongest word in the English language is 'but'. Looking back on my own life I can see how often I adhered to a set of certainties that gave me and my comrades a measure of immediate energy and courage, but which were inflexible, un-nuanced and never allowed for 'but'. And it turned out that although many of our ideas happened to be congruent with reality and produced huge progressive change in the world, mixed in with them were profound and cruel falsehoods that produced much oppression and misery in many countries. We had a simple formula for dealing with criticism: class struggle by its very nature was based on conflict and produced enemies, so attacks on what we defended could not only to be dismissed out of hand because of their very predictability, but by their very intensity actually proved that the path we were following was correct! I later discovered a similar kind of self-protective reasoning in psycho-analytical literature. After I came out of prison I became besotted with the unconscious, and learnt to my amazement how the most erudite and scientific of psychoanalysts would rebut critical assessment of their work by charging unconscious envy to their critics. Truth lay not with proven facts understood in context, but with a fixed emotional position and world view. I took sides, not accepting that 'my side' could do wrong things. Critics never had truth, they only had motives. And it all started when we refused to countenance unpalatable questions, defining them out of the equation as forms of enemy propaganda.

Today I notice self-defences of the same kind in relation to the figure of the so-called self-despising Jew. Any Jewish person who speaks critically of Israel in any way is automatically castigated as having internalised anti-Semitism and incorporated it into his or her system as a form of self-hatred. To escape that accusation Jews are required en masse to display automatic allegiance and suppress any individual consciences they may have. A good argument is seen as one which serves as a plausible weapon to protect a given certainty, rather than as a mechanism of investigation to arrive at truth. And the irony is that what is most put at risk is the sustainability of the inflexible

convictions, because they end up being self-referential and unbuttressed either by external testing or by internal self-examination.

Facing up to uncomfortable truths can be painful. It can also be liberating, as was proved by the manner in which Oliver Tambo dealt with damning findings of a commission he had established to enquire into allegations of serious violations of human rights by members of the ANC. It was during the time when his great friend and legal partner, Nelson Mandela was in prison on Robben Island and he led the ANC in exile. In 1983 when Richard was a judge doing what he could from the Bench to mitigate the effects of apartheid, and I was a law professor helping with the construction of a legal system based on non-racial principles in newly-independent Mozambique, I received a request from Oliver Tambo to visit the ANC headquarters in Zambia. On my arrival he told me that the ANC had a problem, and could I as a lawyer in the movement help find a solution? The difficulty was that the ANC had captured a number of people sent by Pretoria to destroy the organisation, but its Constitution said nothing about how captives should be dealt with. It must be very difficult, he added, to create regulations to deal with how the captives should be treated. In my rather jaunty, lawyer-like way, I answered that it was not so difficult, there were international standards that prohibited the use of torture or cruel or inhuman punishment or treatment. "We use torture," he said to me with a bleak face. I could hardly believe it... the organisation to which I belonged, which was fighting for human rights and for which I was dedicating my life, was using torture!

Some years later I learned that members of Umkhonto we Sizwe [Spear of the Nation], the armed wing of the ANC, had complained to the leadership that captured enemy agents were being brutally treated in ANC camps in Angola. A commission of enquiry had been set up and had reported that there was strong evidence to back up the complaints. It was not difficult to imagine the arguments advanced to explain the use of torture. These were traitors acting on behalf of the apartheid regime which was waging a total onslaught to wipe the ANC off the face of the world [the threat was not imagined but real - I am typing this with my left hand]. The ANC was fighting a just struggle to create a democratic and non-racial society in keeping with the values of the Freedom Charter. The agents frequently had information about imminent physical attacks being planned that could cause massive loss of life. Angola was in a state of civil war, conditions were harsh and potential infiltrators and saboteurs should know what consequences lay ahead of them if they sold their souls to the enemy. Put simply in the language of the time, ours was a revolutionary struggle to create a new society, and you couldn't make a revolution without breaking eggs.

Oliver Tambo clearly did not go along with these arguments. He told me that he had been instructed by the National Executive of the organisation to have a Code of Conduct prepared that would regulate the manner in which captives were treated, in keeping with the humane traditions of the ANC and the principles of the Freedom Charter. And so I came to help draft probably the most important legal document I have produced in my fifty years of work as a lawyer. It amounted to a comprehensive code of criminal law and procedure for a liberation movement in exile. It established that all was not fair in love, war and the freedom struggle. Accusations against alleged agents had to be proved before properly constituted tribunals, with the right to make a defence being guaranteed. The leadership of the security structures was replaced and unambiguous regulations prohibiting torture or any form of inhuman or degrading treatment were adopted.

Oliver Tambo could have decreed that as President of the organisation he was ordering that the new legal regulations be published and immediately put into force. But that was not his way. The question of what standards of treatment should be applied raised deep moral and political questions that should be debated by the whole organisation.

There is a much-repeated story that the exiled leadership of the ANC in Lusaka always acted in a top-down way, developing a culture of authoritarian leadership that was quite different from the community-based leadership of the United Democratic Front inside the country. I can't speak about the situation inside the country at the time, but I can report on Oliver Tambo's style of leadership outside. He was a democrat in his heart and soul, a great listener who insisted on speaking last to sum up the discussion rather than first to lay down the line. In his view, openness, debate and dialogue, especially of painful issues, could only strengthen the organisation.

In that sense tolerance was more than just allowing different views to be expressed. It represented an active principle of taking critical ideas seriously and engaging meaningfully with them. He believed strongly in the importance of the written word, for people to be able to debate issues after having read carefully-prepared and non-prescriptive documents in advance. It was not for him to take decisions on crucial policy questions, nor for him to appoint the leadership of the organisation. Only a properly constituted conference, properly prepared and attended by properly-mandated delegates of the different branches and structures of the ANC, could do that. I recall a full day meeting in Maputo when ANC members discussed a conference paper dealing with how to step up the struggle to overthrow apartheid, followed by another on the conditions that would permit negotiations, another on revisions to the ANC Constitution which would allow non-Africans to take top leadership positions and a further one on the Code of Conduct.

The conference was held in a small town called Kabwe, with Zambian troops surrounding the hall to protect us from possible commando raids by Pretoria hit squads. It was my duty to present and explain the Code of Conduct. I was extremely anxious. It turned out that there was no problem with the general structure and values of the document. There was only one potentially contentious issue: could what were termed 'intensive methods of interrogation' be permitted in emergency situations? One by one delegates mounted the platform to say no. One member of MK said that if you gave security any leeway at all in any circumstances, they would never stop there. Another declared in a quiet voice that we were fighting for life, how could we be against life? It was one of the finest moments of my life. There were no headlines to be gained, no posts to be occupied. We were re-affirming the soul of our struggle, the kind of people we were, what it was that bound us together. Unanimously we decided that no euphemism for torture or other cruel form of treatment would be accepted.

I cannot claim that as a result all ill-treatment of captives came completely to an end, but there was certainly a major overhaul. Penuell Maduna, who went on to become the second Minister of Justice in democratic South Africa, told us some months after the conference of how he had been castigated by a member of security for successfully defending an enemy agent, and how he had replied that he had simply been doing his duty under the Code of Conduct. The central fact is that the spirit of openness had enabled the ANC at a very difficult time to face serious forms of misconduct in the eye and deal with them in a principled and effective way. Instead of the crisis leading to cover-ups and denial, it provoked fresh and productive ways of thinking. The ANC re-affirmed that it would not take its moral standards from its enemy and that its just struggle to achieve a just society would be carried out in a just manner.

The consequences were far-reaching. A culture of honest enquiry and a willingness to entertain doubt opened the way for the organisation wholeheartedly to support the notion of entrenching a Bill of Rights in a future democratic South Africa. If one person had to be singled out as the architect of our new constitutional order, it would have to be Oliver Tambo. It was he who inspired us to be on guard not only against our enemies, but against ourselves. Furthermore, by his insistence that the organisation as a whole should think the matter through and accept that no-one should be tortured, whatever they had done, he facilitated our moving away from demonising opponents and turning them into objects to be destroyed. The humanising of the Other, even the cruel Other, paved the

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way for eventual negotiations and the achievement of our basic goals in a relatively peaceful manner.

And, of course, the need to ensure respect for internationally-agreed-upon fundamental rights was to lead to the creation of the Constitutional Court, which, as it happened, enabled me to get to know Richard Goldstone and see at first hand how seriously he took the need to uphold fundamental human rights. Finally, it needs to be recorded that it was internal debate inside the ANC on what to do about the report on torture in ANC camps that was to lead to the decision to set up a Truth and Reconciliation Commission. The eventual outcome was a recognition that the bad had been very bad, but that an enormous amount of good had come from confronting it openly and head-on.

The story of Richard Goldstone effectively being barred from his grandson's barmitzvah is a profoundly sad one. Its one redeeming feature is that it has led many people, myself included, to debate the issues publicly for the first time. The defeat of tolerance in one particular case has led to an outpouring of support for the principle of tolerance everywhere. This is a major blessing that will accompany the barmitzvah in two weeks time.

Albie Sachs,
Cape Town,
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