The 1981 Springbok Tour of New Zealand

by

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I. Introduction

International concern with fundamental freedoms or human rights has grown dramatically since the end of World War II. Numerous international agreements have been drawn up in attempt to prevent abuse of these 'rights'. Apartheid is one of these abuses, and the elimination of racial discrimination has been the subject of a number of inter-state and international Conventions.

On the 12th of September, 1980, the New Zealand Rugby Football Union issued an invitation to the South African Rugby Football Union to send its country's team to play in New Zealand. As a result of the invitation, and its acceptance, considerable controversy arose within the country and the Commonwealth as to the propriety of the proposed tour.

The Springbok Rugby team arrived on the 19th of July, 1981, for a 57 day tour. Unprecedented scenes of protest and violence ensued. The Springbok's played most of their scheduled games amidst intense security, they encountered or provoked over one hundred separate demonstrations, and on 13th September finally left for America.

II. Legal Consequences of the Tour

Was it worth it?

The tour seems to have brought out of the darkness and into the light many controversial issues, which have now been debated rather than having been forgotten or ignored. Racism and apartheid, law and justice, rights and other people's viewpoints have been thought about, argued over and acted on.

The resolution of these competing views and philosophies has escaped many individuals, and at a personal level, lack of under-

standing and tolerance has heightened differences. At another level, the institutions of our democracy have *had* to face up to the challenge presented by the issues. The Government, the police, Parliament and the judiciary have all had to make some form of decision on how to act. From the point of view of a lawyer it is of importance to consider the way in which the courts tackled the problems, and how in fact they, like the Government, redefined the problems to become justiciable or non-justiciable. It is at this level that our "rights" and their protection find or fail to find legal recognition and expression. As will become apparent the method by which the courts operate dictates their form of resolution, and the analysis of their final decision necessitates a consideration of their constitutional status.

One of the first decisions by an official body was that given by the Human Rights Commission in a Report dated 25 June, 1981. The Commission was requested by the applicants, who made representations, to express the opinion that:

> The proposed Springbok rugby tour beginning on 22 July 1981 would violate New Zealand's international legal obligations.[1]

The Commission accepted as a fact that the Springbok team would not be selected on merit, a point also accepted by the Government.[2] The same point, however, was not accepted by the Rugby Union.

The Commission felt that it was the role of the NZRFU to administer the game of rugby and not to make political decisions. The latter was the responsibility of the Government. The question of who should be entitled to enter the country is also a political decision. In this case, it was more than an issue of sports alone.

> It is the unique nature of apartheid as a human rights violation that makes the possibility of a Springbok rugby tour an issue that completely transcends any simple question of sporting preferences.[3]

The responsibility for allowing the Springbok team into New Zealand was that of the Government. The legal arguments centred around the Gleneagles Agreement and the International Convention on the Elimination of All Forms of Racial Discrimination 1965, ratified by New Zealand in 1972, and in particular articles 2 and 3.

The *essence* of the Gleneagles Agreement was the duty to take "every practical step" "to discourage" contact with South African sports teams. The *catch* was, that it left each government to determine the methods best suited to achieve this end. It was conceded by the

[1] Human Rights Commission Report (Springbok Tour), Human Rights Commission Act 1977. The Ministry of Foreign Affairs and the Rugby Union were informed as to the general nature of the representations, but declined, when invited, to make any comment, *N.Z. Herald,* August 4, p. 3.

[2] As evidence for this assertion, the Commission quoted a letter from Mr Talboys to the N.Z.R.F.U., 29 September, 1980, where he said, "the multiplicity of rugby associations in South Africa—surely in itself a demonstration that apartheid exists", *ibid.,* p. 5.

[3] *Ibid.,* p. 5.

Commission that the Prime Minister had said shortly after the signing of the Agreement, that it was not the practice of his government to refuse entry permits (visas), and this had not been challenged.[4] Nevertheless, there *was not anything in the Agreement to stop the Government from refusing visas,* in fact the strong language indicated that this form of action *was* required. In the words of the Commission, to give Gleneagles any real meaning requires the "strongest action" by the government.[5] The government was under no constitutional or legal obligation to allow people entry to New Zealand, matters of immigration were always the subject of ministerial discretion.[6] In short, stopping the tour would have been consistent with the general purpose and sentiment of the Gleneagles Agreement.

Article 3 of the International Convention provided for an undertaking by governments:

> To prevent, prohibit and eradicate all practices of this nature [i.e. of apartheid] in territories under their jurisdiction.[7]

The Commission reasoned that, as the Springbok team was a national rugby team, and its country of origin practiced racial segregation in the form of a legally enforced policy, the team reflected that system. Therefore:

> The mere existence of that team . . . means that if N.Z. grants entry permits, it is failing to prevent and prohibit a *practice of apartheid in N.Z.*[8]

It was not the personal motives but the fact that, collectively, the individuals were national sports representatives of an apartheid nation that was relevant.[9] The fact that other governments had refused visas to South African sports teams lent support to the argument.[10] As a result, to grant visas would be inconsistent with New Zealand's international obligations. The granting of visas amounted to a positive act on behalf of the Government which also amounted to support for the principle of racial discrimination under Article 2.[11]

The Commission concluded that as a matter of human rights protection and in accordance with our international obligations:

> . . . the Government should take all necessary steps and administrative action to prevent the proposed Springbok tour from taking place. . . .

By necessary implication such action included the refusal of visas.

From the point of view of the majority of other Commonwealth countries:

[4] *Ibid.*, p. 6.
[5] *Ibid.*, p. 7.
[6] *Ibid.*, p. 11. There exists no right of entry into another country in municipal or international law.
[7] On the Elimination of All Forms of Racial Discrimination, emphasis added.
[8] Human Rights Commission Report, ante, p. 8, emphasis added.
[9] A U.N. Committee in 1975 had interpreted Article 3 to mean that any sporting contacts had the effect of supporting, sustaining, or encouraging the racist regime in South Africa, *ibid.*, p. 9.
[10] For example, Australia, Canada, France, Fiji, *ibid.*, pp. 9, 11.
[11] *Ibid.*, p. 10; Appendix.

> The issue is about the application of the agreement—*it is not a question of meaning, or of law—it is a question of policy and of will.* At its heart, it is about apartheid and human rights in South Africa.[12]

Accordingly, our Government's policy was out of line with the spirit of Gleneagles, a conclusion also reached by the Human Rights Commission. The Government flatly rejected the Commission's recommendation to stop the tour, it would not reverse its longstanding policy of non-interference, 'reaffirmed' and 'endorsed' at two general elections.

However, on other occasions the Minister of Immigration had refused the issue of entry permits on the grounds of diplomacy and other selective criteria.[13] It did not seem very convincing that visas could not be blocked when genuine 'high' issues were at stake.[14] For those who feared that the Human Rights Commission Act 1977 was mere "window dressing" and of no real effect, their fears seem to have been justified.

> Ironically, while the Government is moving to publicise violations of rights in other countries,[15] its own Human Rights Commission adivses it to stop the tour to ensure better compliance with international standards on human rights. . . .
> Doubly ironically, the Government has said it would refuse visas to a Soviet friendship delegation evidently for the political reason that it dislikes the invasion of Afghanistan. Apparently the equally political reason of disliking apartheid is not sufficient, despite the Gleneagles Agreement, to stop a visit by a South African rugby team.[16]

The point at issue is not the human rights of other countries in general, but the legal system of apartheid in South Africa and whether or not New Zealand is prepared to actively discourage such practices.[17]

The Human Rights Commission was 'out of line' with government policy. Appealing to the Minister of Immigration would be to ask him to go against government policy, which he had said he would refuse to do.[18] The next approach would be to take the matter before a court of law and seek to enforce our international obligations through the judicial branch of our democratic institutions. Up to this point, both request to, and executive and legislative requests for action had failed.[19]

[12] Such policies had not hitherto concerned Immigration Ministers, P. S. O'Connor, 'Keeping New Zealand White, 1908-1920', N.Z.J. History (1968) 41; *N.Z. Herald,* June 27, p. 1, emphasis, added.

[13] For example, the visas were not granted to: Mandy Rice-Davies, a figure in the Profumo scandal; a delegation from the U.S.S.R.-N.Z. Society and a Russian cosmonaut after the Afghanistan invasion. *N.Z. Herald,* June 27, p. 5.

[14] *N.Z. Herald,* June 26, p. 6, Editorial.

[15] For examples, see *N.Z. Tablet,* July 29, p. 5.

[16] *N.Z. Herald,* June 27, p, 6. Editorial.

[17] *N.Z. Herald,* June 26, p. 6. Editorial.

[18] *N.Z. Herald,* June 27, p. 1.

[19] An attempt to make the Gleneagles Agreement 'law' in N.Z. was made by Hon. M. Faulkner (Roskill-Labour). He introduced a Bill on Sept. 12, *1980,* endeavouring to make Gleneagles actionable in our courts. The Bill was debated, read for the first time, and referred to the Statutes Revision Committee. The Bill has been effectively

Unable to rely on the Gleneagles Agreement—as it only amounted to a statement made by the Commonwealth Heads of Government—legal action was taken on the basis of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 2(1)(b) and Article 3.[20] In *Asby and Others* v. *Minister of Immigration*,[21] the applicants sought a declaration to the effect that the then proposed decision of the Minister of Immigration to grant temporary entry permits to the Springbok rugby team was contrary to law, unauthorised, invalid, ultra vires and therefore prohibited. The action was based on the Convention which imposed an alleged obligation on New Zealand to refuse visas in the circumstances of the Springbok tour, and that the Minister of Immigration, in exercising his discretionary powers under section 14 of the Immigration Act, 1964,[22] had to take into account and act in a manner consistent with our international obligations. The respondent argued, inter alia, that the discretion was very wide and the possibility of review was correspondingly reduced; that the discretion was general and each case was considered on its merits, in the public interest and gave effect to government policy; that the Convention was not domestic or municipal law and the Minister is not required to give it any weight or effect; the Convention's obligations had been fulfilled by passing the Race Relations Act 1971 and New Zealand had not imposed any sanctions on any state as it had done against Rhodesia in Statutory Regulations 1966/22, and in any event, the Convention requires the state to put 'its own house in order', and foreign policy, so far as it is relevant to the Minister's decision, was not a matter for the courts.[23]

The applicants' standing was not contested.[24] The Chief Justice found that the nature of the discretion was wide and not subject to any fetters, it was to be used to promote the policy and objects of the Act—and that was the regulation and control of immigration. Nevertheless, the discretion *was* reviewable.[25] Consideration, at some length, was given to the constitutional status of international law and the recent trend of the courts to have regard to treaty obligations which are not incorporated by statute into the domestic law.[26]

disposed of by the Parliamentary procedure after it was read for a second time on August 12, *1981*—the debate was adjourned.

[20] Appendix.

[21] A.169/81, Hearing 9 July, 1981, Judgment 10 July, in the High Court, Wellington before Davison C. J.; oral judgment. Also an article by Associate Professor Brookfield entitled 'Springboks and Visas' in (1982) N.Z.L.J. 142.

[22] Appendix.

[23] *Ashby,* (A.169/81), supra, pp. 4-5.

[24] The Chief Justice did, however, refer to the liberalising trend evident in *I.R.C.* v. *Federation of Self-Employment* [1981] 2 All E.R. 93, 107 per Lord Diplock.

[25] *Van Gorkom* v. *Attorney-General* [1978] 2 N.Z.L.R.387, 390-391.

[26] *Ashby* (169/81) supra, pp. 9-14. *Ibid.*, p. 14; *Ahmad* v. *Inner London Education Authority* [1978] 1 Q.B. 36, 41.

Davison C. J. found no difficulty in distinguishing a number of weighty authorities:

> In all those cases the Courts were dealing with *interpretation* of statutes and were having regard to international obligations for the purpose of such interpretation. In the present case . . . I am asked not simply to interpret s.14 of the Immigration Act but to decide what matters the Minister should take into account in exercising the discretion given to him under that section.[27]

The discretion was wide, and the Convention was only *one* of many things the Minister should take into account, to decide otherwise would be to regard the Convention as if it were domestic law. The Race Relations Act 1971 is:

> An Act to affirm and promote racial equality in N.Z. and to implement the International Convention. . . .

According to the Chief Justice, the Convention is only domestic law *to the extent* that it has been incorporated in this Act. The Convention per se was not municipal law.[28] It thus appears that the Act contains the whole of N.Z.'s obligations under the Convention, and the latter is used only as a background to interpret the Race Relations Act.[29]

Despite the Human Rights Commission's Report, the question of whether or not the Springboks would be "practicing" apartheid in N.Z. was left open to argument. In any event, such issues were ministerial matters and not justiciable. Although N.Z.'s international obligations were relevant, their weight given in reaching a final decision was a matter that was solely in the hands of the Executive. The Court was careful to delimit its jurisdiction and emphasise the constitutional role and status.

> If the Government through the Minister decides as a matter of policy on a particular course of action in relation to its international obligations and is in breach of those obligations, then there are ways of enforcing the international obligations between States, but the New Zealand Courts will not do so. The Courts are limited to deciding whether the Minister in this case in reaching a decision under s.14(1) has properly directed himself *in law*; has taken into consideration the matters he ought to consider; and has reached a decision which is reasonable in the sense in which that term is used in administrative law.[30]

It can be seen that the Court steered well clear of policy matters, and in doing so perhaps unwittingly adopted a 'policy-neutral' position of the type that is determined by the 'policy' of the unwritten constitution. In the resolution of legal conflicts, the courts in the context of the common law do not necessarily protect the 'rights' of individuals or the interests of the wider community. The courts, which operate from a supposedly apolitical and acultural basis, have bestowed few legal 'rights' on the minority cultures and anyone other than 'reasonable thinking' adults. A *written* statement of rights has been

[27] *Ibid.*, p. 15, emphasis added.
[28] *Ibid.*, p. 15-16.
[29] *King-Ansell* v. *Police* [1979] 2 N.Z.L.R. 531.
[30] *Ibid.*, p. 17; emphasis added.

advocated so that an individual may be better protected in reality and in law.[31]

The applicant's declarations were refused, and just over a month later the case was before the Court of Appeal, four days before the Springboks were due to arrive.[32] It was found to be unnecessary for the court to determine New Zealand's international obligations for the purposes of the appeal.[33] The Convention was not the law of New Zealand despite the Race Relations Act, 1971. International law would be used as an aid in interpreting legislation, and such interpretations would be consistent with international obligations unless the terms of the domestic legislation are clear and unambiguous. And this was such a case. There was no fetter on the Minister's discretion, and any attempt to exclude from the application of the Act.

> . . . a class of persons whose entry is required to be refused pursuant to New Zealand's international obligations for the time being, would amount to legislating rather than interpreting s.14(1).[34]

Richardson J. proposed three reasons for this finding. Firstly, the already stated category—"prohibited immigrants"—of persons to whom visas would not be issued indicated the absence of any other category. Secondly as the discretion was unabridged before the adoption of the Convention, it remained so now. Thirdly, when the Race Relations Act, 1971, was enacted it did not deal directly with visas and it did not amend section 14. The first reason is simply a restrictive technique of interpretation, the second gives preference to earlier domestic law and tends to neglect changes in international trends and treaties, and the third assumes that the 1971 Act would, considering its broad nature and its concern with employment, legislate amendments to all affected Acts.

With respect to the nature of the discretion, it was one that had to be exercised in line with the policy of the Act. However, in the case of Immigration regulation, there are no clear statutory indications as to the policy which would guide the Minister. Consequently:

> . . . great weight may properly be given to current Government perceptions of the national interest in this respect.[35]

It was quite clear what the Government policies were. Although the Chief Justice found the Convention was a relevant consideration in the exercise of the discretion, Richardson J. thought otherwise. After prefacing his remark with the 'caveat' of the fact that only "limited consideration" was given to the matter, he was:

> . . . not prepared to hold that the identification of considerations relevant to the

[31] Lord Hailsham, *The Dilemma of Democracy* (1978), chapter 15.
[32] C.A. 91/81, Cooke J., Richardson J., Somers J., Hearing: 14-15 July, Judgment 15 July, reported [1981] N.Z.L.R. 222.
[33] *Ibid.*, Richardson J., p. 4.
[34] *Ibid.*, p. 7.
[35] *Ibid.*, p. 8.

> determination of the national interest as affecting the exercise of the discretion under s.14 is a justiciable issue.[36]

In certain cases there are considerations that can be identified as relevant to the determination of the national interest, but this case was not one of them.[37] Whether or not the courts will interfere in the exercise of a discretion depends upon the nature and subject of the decision, and a consideration of the constitutional role of the body having the power. If the policy content of the discretion was high and the decision making was in the hands of an elected representative, the courts are less well equipped to weigh the considerations and interfere.[38]

Nevertheless, the courts have refused to review decisions on historical grounds and for policy reasons, most of which have a strong political content.[39] As Immigration policy is such an area of controversy and sensitivity, the national interest is placed in the hands of the Minister and the executive.[40] International obligations are subsumed within the foreign and domestic aspects of "national interest". As a result, Richardson J. concluded that he was:

> . . . not persuaded that the content of the national interest in the present case and in particular the isolation of individual strands and their elevation into obligatory considerations [was] a matter for determination by the Court in [that] case.[41]

Section 14 of the Immigration Act, 1964, requires only that the Minister give due consideration to the Government's perception of the national interest when exercising his discretion.[42] It could be assumed, however, that there may be some matters so obviously necessary to be taken into account that the Minister acting reasonably should take them into account. It could also be assumed that the effect of the tour would be such an obvious matter. These assumptions, according to Somers J., only required the Minister to simply take these matters —international obligations—into account.[43] This much was done, and the Courts would inquire no further.[44] When discussing the reluctance of the court to intervene in foreign policy matters, Cooke J. conceded that there might be exceptional cases:

> . . . even in statutes concerned with immigration and policy . . . I would not exclude the possibility that a certain factor might be of such overwhelming or manifest importance that the Courts might hold that Parliament could not possibly have meant to allow it to be ignored. Such a situation would shade into the area where no reasonable Minister could overlook a certain consideration or reach a certain result.[45]

[36] *Ibid.*, p. 9.
[37] But see *CREED N.Z. Inc.* v. *Governor General and Ors* [1981] 1 N.Z.L.R. 172.
[38] *Ashby*, supra, per Richardson J., pp. 9-10.
[39] For example, foreign relations, *Blackburn* v. *Attorney-General* [1971] 2 All E.R. 1380; compare this attitude with that of the Humans Rights Commission.
[40] This was submitted on behalf of the Solicitor-General, as the term "National interest" is not mentioned in s.14.
[41] *Ashby*, supra, p. 11.
[42] Government policy is re-stated in the Minister's affidavit, Cooke's J. judgment, p. 6.
[43] *Ibid.*, Somers J., pp. 7-8.
[44] Per the Minister's affidavit.
[45] *Ibid.*, per Cooke J., p. 8.

Strangely enough, the Convention in this case did not fall within this category, but the Gleneagles Agreement might well have—the point was left undecided, and the Human Rights Commission's report went unmentioned.[46] The Court had abdicated any responsibility for the social and political ramifications of the tour by re-defining the problem as a legal one, by reasserting its 'limited' constitutional role, and by emphasising the lack of time there was in which to consider the issues.[47] In the end, the applicants lost, the appeal was dismissed.

As the tour proceeded, the fear of violence grew. In an attempt to stop the tour, an injunction was sought against the Rugby Unions, restraining them from holding the second test match.[48] It was alleged that as the fear of damage to persons and property amounted to an unreasonable interference and damage to the plaintiff's property and enjoyment thereof, it constituted a *nuisance.* The judge at first instance was the Chief Justice, and he felt that the defendants may be liable if what the plaintiffs complained of was a natural and probable consequence of the holding of the test match.[49] In such a case, the damage predicted could allow the granting of an injunction. However, the plaintiffs had to also prove a "reasonable certainty of imminent and substantial damage" to themselves.[50] It was on this point that the evidence fell short of the required standard.[51] The Plaintiffs had not proven their case to the point of establishing the reasonable certainty of imminent and substantial damage. The issue was a legal one, and the Chief Justice made this quite plain:

> This case has not concerned the question of whether one side or the other is right over the Springbok tour issue. It is concerned simply with an ordinary question of civil law, namely, whether or not the feared actions of persons on Saturday will with reasonable certainty cause civil wrongs to the plaintiffs, wrongs sufficient to enable them to gain the order of the court to prevent them.[52]

The legal translations of the problem required a certain standard of evidence, *not* an evaluation of the tour issues, as such the issues had been carefully *re-defined* so as not to embarrass the court, the legislature, or the executive.

In an earlier attempt to stop the tour, the application for review of the Attorney-General's decision not to apply the provisions of the Undesirable Immigrants Exclusion Act 1919, to the Springbok team, fell foul of the first legal hurdle, the applicants lacked standing.

Up to this point, it appears that those groups who wanted to stop the tour had *exhausted all their legal remedies.* The Courts had

[46] *Ibid.*, per Cooke J., p. 8-9.
[47] For example see Somers J, *ibid.*, p. 8.
[48] *Williams & Others* v. *W.R.F.U., N.Z.R.F.U. & Others,* 234/81 in Wellington; Hearing 27 August, Judgment 28 August, Test match 29 August.
[49] *Ibid.*, pp. 3-4.
[50] *Ibid.*, pp. 4-6.
[51] *Ibid.*, pp. 6-10.
[52] *Ibid.*, p. 4.

carefully retreated from the political furor, and from their assumed apolitical haven they left the most significant policy issues and those in the 'national interest' to the executive. Such topics were not justiciable, except in rare cases, and these of course were not one of those exceptional cases. The courts were content to take a back seat in the tour controversy. Any justiciable issue had to be carefully framed and capable of legal resolution within the context of the supposed amoral and apolitical courtroom.

Parliament had not provided the ability to legally prevent the tour taking place. The Courts would not interpret the legislation or extend existing legal categories to stop the tour taking place or continuing. The Executive, despite the advice of one of its own advisory bodies, had clearly and unequivocally stated that it would not interfere. If one could not agree with the essence of these positions, was one still obligated to abide by them?

The legal system is thought to be fair and neutral, but the adoption of the offence-punishment concept is a conscious acceptance of one form of justice. This 'form' legitimises certain forms of social coercion without question. This concept is culturally determined, and invalidly generalised as an acceptable idea of justice for other cultures. Its imposition represents an ignorance of other cultural perspectives, and a method by which the nature of the legal debate excludes cultural reasons for acting, for such actions are, ipso facto, 'illegal'. Not only cultural, but moral or political reasons are easily defined as irrelevant to the decision at hand. Any threat or challenge to the offence-punishment concept of justice is therefore a challenge to the whole idea of justice and the structure of the legal system. This form of challenge is politically, in the present state of affairs, unpalatable, and consequently the 'rule of law' is reasserted. Other concepts of justice *are* possible, and perhaps desirable. 'Justice' itself is a culturally determined concept. For example, a 'community court' system could embody a different philosophical viewpoint that would—

> . . . see Justice as being fair play in real life and not simply the rights and wrongs of an isolated aspect of life.[53]

All these issues demonstrate the relativity of the concepts of law and justice. They are immensely important issues, for the law fundamentally affects everyone in differing degrees. It may be by mere persuasion or by the use of coercion. In the final analysis, it is a question of freedom. Law can affect ones freedom[54]—a basic tenet of democracy—and, therefore, it is imperative *to question,* and equally it is essential that *those questioned listen and provide answers.*

It is not because law does *not* encapsulate, at least in part, a morality, that it is open

[53] *Ibid.*, also see *Police* v. *Dalton & Others* (unrep. 16 July 1979), Blackwood, S. M.).
[54] Lord Hailsham, *op. cit.*, pp. 93-98.

> to moral criticism. That it *does* always and unavoidably encapsulate some elements of positive morality is a powerful additional reason why it *must* always be subjected to the searching criticism of critical moralists. Positive law is always relevant to morality *both* for that reason *and* for the special reason that the law invokes force and fear, at least in its contemporary manifestations.[55]

If the law and the government are immune to serious critique,[56] if those who criticise have the substance of their argument defined as irrelevant, or find themselves discredited as individuals, then our political philosophy needs an overhaul. Alternatively, if we feel the necessity to align our alleged political philosophy with out political reality, it is the *practice of politics and law* within this country that earnestly requires review.

III. Conclusion

The 1981 Springbok tour has been a unique event in the history of New Zealand. Far more effectively than any other single piece of history, the tour has brought into the open the diversity and the strength of feeling that underlies basic principles and practices of our society.

The physical intensity of the conflict has to a certain extent polarised the opposing groups. It has also made other individuals aware of the significance of the happenings. New Zealanders have had their 'world views' challenged, and some have had to question their own philosophies and "think".

The tour has revealed the nature of some of the fundamental premises of our legal and political existence. Questions of the 'validity' of laws and the nature of our moral, legal, and political obligations have come to the fore. At an institutional level, the legislature, the executive, and the judiciary were confronted with these questions. How they deal with them is of relevance to every lawyer.

The answers given to these issues revealed a familiar constitutional hierarchy, along with all its imperfections. If an individual was not happy with these answers and imperfections, where was the individual to turn?

As an answer of sorts, I shall leave the final word to Lord Hailsham.[57]

> For the central question both for jurisprudence and for political theory is this. Law is about compulsion. Government is about compulsion, the coercion of men and women to do what would otherwise never have been their choice. What earthly justification has one man to compel another. . . .?

[55] MacCormick, *op. cit.*, p. 156.
[56] The courts in particular, tend to presume that the judicial procedure is intrinsically valid—'pure procedural justice'?
[57] Lord Hailsham, *op. cit.*, p. 90.

APPENDIX

International Convention on the Elimination of all forms of Racial Discrimination, 1965, articles 2(1)(b) and 3.

2. That the Convention provides inter alia in Article 2(1)(b):

Each State Party undertakes not to sponsor, defend or support racial discrimination by an persons or organizations.

In Article 3:

State Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

Immigration Act 1964, s.14

14. Temporary permits may be granted to visitors—(1) Any person to whom this Part of this Act applies (not being a prohibited immigrant) who (lands) in New Zealand without a permit but proves to the satisfaction of the Minister that he desires to enter New Zealand as a visitor only for purposes of business, (employment) study, training, instruction, pleasure, or health may be granted a temporary permit in the prescribed form. A permit under this section may be granted for a period not exceeding 6 months or, in special circumstances, for such longer period in any case as the Minister may, in his discretion, determine.

(1A) Where an application for a temporary permit is refused, the person concerned may be detained by any member of the Police pending that person's departure from New Zealand on the first available ship or aircraft.

(2) Any such temporary permit may be granted subject to such conditions (if any) as may be prescribed by regulations under this Act, and to such other conditions as may in any case be imposed by the Minister. Every person to whom a temporary permit is so granted who fails to comply with any of the conditions subject to which that permit has been granted commits an offence against this Act.

(2A) Every such permit shall be issued subject to the condition (in addition to any condition imposed under subsection (2) of this section) that the holder, while in New Zealand pursuant to the permit, shall not obtain employment, or engage in any activity for gain or reward, of any type without the consent of the Minister, which shall be endorsed on the permit.

(2B) Every person commits an offence and is liable to a fine not exceeding $200, and, if the offence is a continuing one, to a further fine not exceeding $20 for each day during which the offence has continued—

(a) Who, being the holder of a temporary permit that is subject to any condition imposed under subsection (2) of this section, acts in contravention of that condition; or

(b) Who, being the holder of any temporary permit, obtains employment or engages in any activity for gain or reward in contravention of subsection (2A) of this section.

(3) Where (a) temporary permit is granted to a visitor, a similar temporary permit may be granted to the wife or husband and children of the visitor, and any servants, attendants, and employees of the visitor actually accompanying

the visitor.

(4) If a person to whom any such temporary permit is granted desires to remain in New Zealand beyond the period for which the permit was granted, he may make application to the Minister, who may, in his discretion, either grant an extension or extensions from time to time of the temporary permit, or grant to that person a permit in the form prescribed with respect to persons intending to settle permanently in New Zealand:

Provided that a permit in the last-mentioned form shall be granted only if the Minister is satisfied that the person is one to whom the permit in that form would have been granted if due application had been made for the same in the manner and subject to the conditions hereinafter in this Part of this Act provided.

(5) Every person to whom a temporary permit is granted who—

(a) Remains in New Zealand after the expiry of the period for which the permit was granted; or

(b) Having been granted an extension of that period, remains in New Zealand after the expiry of the extended period—

without having applied for and been granted an extension or further extension of that period, commits an offence against this Act, whether or not he knows that the period or extended period has expired, and whether or not he knows that no application for an extension or further extension has been made on his behalf or granted.

(6) A temporary permit granted under this section may be at any time revoked by the Minister. Every person whose temporary permit has been so revoked commits an offence against this Act if he does not leave New Zealand within such time after the revocation of his permit as the Minister prescribes in that behalf by notice in writing to the holder delivered to him personally or sent to him by registered post addressed to him at his last known address in New Zealand. Every such notice sent by registered post shall be deemed to have been received when in the ordinary course of post it would be delivered.

(7) Notwithstanding any of the foregoing provisions of this section, if the holder of a permit granted under this section leaves New Zealand the permit shall, on his departure, be deemed to expire.

Cf. 1920, No. 23, s.8; 1951, No. 14, s.2(4).