

A Law Unto Ourselves

A filmmaker friend told me a story recently. One evening he and two lady friends were relaxing over drinks and conversation in a bar in Melville, Johannesburg.

The ladies' bags, perhaps rather carelessly, were placed close by. Amid the drift of relaxed conversation, and in a sudden flash, two figures emerged and grabbed the bags.

But it turned out to be a bad day for the thieves. My friend, recognising immediately what was happening, instinctively pursued the fleeing thieves, roaring invective and summoning all to stop them.

One thief slipped, fell on his face and was captured by my friend, who is fairly well bodied. He turned the youth round and grabbed him by the collar of his shirt.

It was in this position, shivering with anger, that he stared at the frightened face of a boy shivering with fear.

It was inevitable that my friend became an eyewitness for the prosecution at the Johannesburg Magistrates' Court in the trial of an 18-year-old boy who, on the day he was apprehended, was expensively dressed.

The other hapless thief, who turned out to be 16 years old, was tackled to the ground by a burly rugby player. A police car on patrol stopped.

The two police officers jumped out of their vehicle, whipped out their service pistols and pointed them close to the faces of thieves dead with fright.

So far, the details of this story are not that interesting. What draws my attention is the courtroom scene that follows four months later.

The magistrate, an Afrikaans-speaking woman, begins the trial, first in Afrikaans and then switches to English, "broken English", according to my friend.

The man captured by my friend has been awaiting trial in prison for four months. He appears alone. His friend, legally under age for arrest, has absconded with his mother.

So says the prosecutor, and they are highly unlikely to be traced, he tells the court. He is upset by this situation as he had prepared a case for two accused.

The now sole accused opts to conduct his own defence. A good portion of the courtroom audience breaks into laughter at this choice. This puzzles my friend, the eyewitness.

The accused speaks in "broken English" and avers that there was no way my friend could claim to recognise him. He, the accused, was walking alone in the street when my friend just pounced on him without reason.

The courtroom audience has another good laugh. This again puzzles my friend. One of the two arresting policemen speaks more than the other and seems to have more authority as he gives evidence that corroborates my friend's account.

It is at this point that something remarkable begins to happen. My friend begins to change his attitude towards the accused.

This change of attitude has nothing to do with the crime the accused had sought to commit, for which my friend remains clear that the young man should face the consequences of his actions. But not at all cost.

My friend is agitated by his impression that the accused is not receiving a fair trial. It was all about language, it seems.

The magistrate had asked if there was a translator for the accused who used a language my friend thought was one of the Sotho languages, but couldn't be sure. No translator was available.

The magistrate ruled that the case should proceed, presumably in the languages that were available by default, which included the Afrikaans she began with, the English she switched to, the English of the prosecutor, the African language for which there was no translator, and two "broken Englishes", hers and that of the accused.

It is this situation of languages that seriously compromised communication.

It is this that distresses my friend on behalf of the accused. It disempowered the accused and reduced the fairness of the justice process. My friend's reaction moved me. "You are a remarkable citizen!" I exclaimed.

At first I thought he had surmised I was making fun of him as someone who was showing undeserved sympathy for a thief. To be fair, I admitted to myself that a part of me wanted a thief to be punished regardless.

But it was another side of me that expressed admiration for my friend. It was the side of me that responded to a man who lived honestly with his thoughts, his feelings, his intuition and his conscience.

He was prepared to review his thoughts and inclinations in light of the unfolding experience. He does not doggedly hold on to positions that no longer make sense.

The message from my friend is that the citizen of a constitutional democracy abides by the requirement that the law must be fair to all.

This requirement is more testing, and therefore more valuable, where a perpetrator is the immediate beneficiary of it. But the true value of this requirement accrues to the real, ultimate beneficiary: the South African public.

In the total scheme of things, the law that protects the perpetrator also protects his or her victims.

The law is primarily motivated by fairness rather than vengeance. Vengefulness is a very human and personal emotion. But it often exists in a tense relationship with the rest of rational public society.

Emanating from within the individual or a wounded group, vengefulness can exert an enormous effect on the larger society, which was not immediately involved in what may have triggered it.

That is why society will subject vengeance to rational testing. It is in this testing that the law emerges to attempt to safeguard the broad public interest.

Otherwise, vengeance and laws that indulge it would consume us all. When tyrants make bad laws, they seldom imagine that they could ever be victim to their own laws.

Tyrants, dictators and political parties that behave like them, respond primarily to inward, personal interest rather than to a broader social interest.

They do not agonise over victims of unfair legal processes. In my friend's change of attitude towards the accused, I thought I discovered in our Constitution an enormous potential for public community and solidarity.

It emerges when we are able to see in the other's plight the prospect of our own misfortune should we ever be in a similar situation.

Social good in our kind of democracy is fundamentally an awareness of the rights and responsibilities of others on the basis that all citizens of South Africa must be treated equally before and by the law.

This awareness may lead us back towards public sensitivity and solidarity of the

kind that led South Africans to the democracy we yearned for and got in 1994.

Such sensitivity and solidarity were to be the drivers of our collective effort to remake our country. We did not do enough to allow them to shape our future behaviour.

Many of us, particularly those in power, began to lead a life of hypocrisy, believing and saying one thing, but doing another and wearing the disjuncture as a badge of postured, if sham, principle.

Premier Helen Zille, in her reply to the debate on her state of the province address in Cape Town on February 23, reflected on this kind of disjuncture and its terrible consequences on the public school system.

She drew attention to the phenomenon in which members of the opposition ANC on the provincial legislature continued to give public political support to the teachers' union, the South African Democratic Teachers' Union (Sadtu), a member of Cosatu, in turn a member of the so-called tripartite alliance of the ANC, Cosatu and the SACP.

Sadtu, in the minds of many South Africans, has almost single-handedly destroyed the schooling system across much of South Africa, particularly in townships. "Almost" allows for the fact that the trade union has had the ruling party's political support, making the party complicit in the destruction.

This happens at the same time that the ruling party yearly allocates billions of rands to improve a system that can never be improved under the prevailing circumstances.

The quantum of wasted money is the stuff that causes revolutions. The public drama of postured tripartite solidarities is well known to the South African public. What is of interest to me is something that seldom receives public attention.

It is this: what goes on in the thoughts, feelings and intuition of a member of the ANC in the provincial legislature who listens to Zille, knows that the premier is correct when she says that there are members of the ANC who have taken their children away from township schools, systematically destroyed by Sadtu, and moved them to private schools out of Sadtu's jurisdiction?

Even more, what if the listener is actually one such person?

Does the listener shout down Zille, knowing she is telling the truth? But why would Zille's listener do this?

Is he blind to his own hypocrisy? Is he seeking to divert attention from this hypocrisy, despite knowing that Zille knows about it, and that his immediate neighbours in the township know about it, and that even if he has left the township to live in the suburbs, everyone around him, particularly in his party, know about it, and that these hypocrisies are then shared in an organisational culture of collusion?

Surely he couldn't be convinced by his own deception!

But then this kind of accommodation is well known. You create a "reality" in your mind that offers you a false refuge, but which at that particular moment, you fiercely believe in.

The next moment you don't; the next you do. You oscillate like a yo-yo between truth and deception with such regularity that it all ceases to matter. Or it continues to matter if your conscience retains its resilience, refusing to let you go.

Or, has Zille's listener received instructions from his chief whip to toe the line? Sadtu is the largest union in Cosatu, and Cosatu is a multimillion-member union that can deliver important votes to the ANC.

Or could an analyst have advised the ANC that in the total scheme of things, their vote comes from a large segment of the population that does not have much of an education.

It is therefore not in the party's long-term interest, if they wish to secure a vote and stay in power, to educate "the masses of the people".

Thus, the viral devastations of Sadtu sustain the voting pipeline.

When all these scenarios converge on an ANC member of the legislature listening to Zille, what do they do to the sense of self of the member, both as a citizen and as a party member?

Loyalty to self, by conscience, may be in tension with loyalty to the party by an affiliation that may once have been voluntary but may now have become habitual and uncritical.

This member may be indifferent or anguished, suffering an inner death. Either way, they may have come to lack the energy of public concern that once drove their participation in struggle for liberation.

Could such people have become a predominant character type that gives life to the tripartite alliance and its constituent members, respectively, all standing at

the apex of South Africa's political hierarchy?

Could all these people, a segment of South African society, have become a blind but powerful minority out of touch with new complex sentiments of public aspiration and a desire for deliverance that cuts across the traditional divisions of apartheid and which are now largely meaningless?

Some members of the public may gloat about this and feel superior to afflicted ANC party members.

But consider this. There are legions of citizens who knowingly exceed the legal limit in any speed zone across the country.

They slow down when approaching a camera, and enjoy the soft grating bumps of their tyres over the strips of speed trap, their hearts whiter than snow from the glow of a brief moment of legality.

They will not become photographic evidence at the traffic department. Soon, however, habit is restored.

The driver accelerates once more: beyond the law. Well, how different are these drivers from someone designated a public figure in some high office who, loaded with justifications, has become a hypocritical, habitual thief of public funds?

The point: small infringements accumulate into a widespread social practice. The smaller they are, the more they matter because their cumulative effect may be more lasting, more easily habitual and more devastating than big infringements that occur less frequently.

There are many such accretions of behaviour and conduct – such as spinning a lie needlessly; laughing away almost anything; renaming theft as “redistributing wealth”; desiring more reward for less effort – built over years of personal and social pain.

When are we going to do something about this?

Whatever the case might be, it is tempting to say that neither these speeding members of the public nor Sadtu officials and their members, nor Zille's listeners in the ANC opposition, nor all those whom a plethora of court judgments show they have been appointed or elected more for their party loyalty than for proven competence, are fit to hold public office.

None of them seems to be in a position to care for an accused subjected to an unfair trial.