

- 5.
- 6.
- 7.
- 8.
- 9.

Can the Rule of Law be reconciled with the doctrine of

Has the Rule of Law ever prevailed in South Africa?
prevail in circumstances of unrepresentative government where
80% of the population is disfranchised and dispossessed of their
land?

Parliamentary sovereignty as espoused in South Africa?
Why should 80% of the population obey laws in whose making they
have had no say by reason of their disfranchisement?
Legality and legitimacy of Wars of National Liberation;
Is South Africa bound by Protocol No.1 (1977) to the Geneva
Conventions (1949) even though she did not ratify it?
Should South African Courts recognise guerillars as Prisoners of
war rather than as common criminals?

Can it ever

,

10. Should post-apartheid South Africa have a constitutionally

Will such Bill of Rights be

Will that be a sufficient guarantee for the

entrenched Bill of Rights?
justiciable?

protection of individuals and minorities (ie. racial, tribal,
religious etc) against arbitrary governmental power?

Are such

paper guarantees worth more than the paper they are written on?

Is it realistic to rely on the judiciary and the Bar to protect
these fundamental human rights and freedoms in the face of
Learned Hand's warning?

contemplation?

rights acquired by the present rulers under apartheid in a
post-apartheid South Africa?

seriously should they be concerned with rights of a rich,
educated etc minority or with rights of a dispossessed
under-educated etc majority?

Will the Bill of Rights not merely perpetuate

Whose human rights are in

If people take rights

11. Can Roman-Dutch law (common law) principles, which proved to

weak to protect the majority of the population under apartheid,
be relied upon to perform miracles in a new society or should
Roman-Dutch law be replaced with a new code (ie. Civil Code,
Criminal Code, Family Law Code, Commercial Code etc) which will
reflect modern democratic Man's ideas of law and society?

Eg'

You may, rightly, complain that this is a rather tall order which
takes us away from the original thinking.
I am sure you would not want the conference to be so remote from the
concerns of the man/woman on the Soweto Omnibus as to be unhelpful
to him/her in his daily struggles for rights, freedoms and dignity.

Of course, it all depends on what it is that we want to come out of the conference.

\$5.1t2a question.worth some thought.

This is true.

Equally, I

Having said all this, I would have no difficulty in using your draft as a basis for discussion.

Yours sincerely

Nathaniel M Masemola

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Professor Ronald Dworkin
143 Chesterton Road

London W10

14 February 1989

Dear Professor Dworkin

Thank you for your fax message of the 10th February.
there is need for an Aide Memoire to be sent to participants aaÃ@caÃ@ï-â\202i
their invitations.
the Meeting.
the following comments to make:

I also agree with Page 1 on the Organisation of
So far as the section on "Topics" is concerned I have

I agree that _

You will recall that we responded to it by suggesting that

Perhaps I should preface my comments to sending you herewith (for
ease of reference only) the original draft you sent me (and others)
in 1988.

the theme of the conferences might be "The Rule of Law in South
Africaâ\200\235 â\200\224 Yesterday, Today and Tomorrow", with some of the ideas
contained in the draft slotted in as appropriate.

draft fit into this mould?

no particular need for such a framework as long as the substantive
issues are addressed.

Would the revised

It may well be, of course, that there is

Let me shift the ground somewhat:

I returned last week from a meeting with 29 South African academic
lawyers (mostly Afrikaners from Pretoria, Stellenbosch etc) in
Harare, Zimbabwe.

The issues that seemed to occupy most minds
included the following:

1.

2.

3.

4.

Apartheid Jurisprudence (1948â\200\2241989) : its aims, characteristics,
methods etc.

The apartheid state and its behaviour;

Illegitimacy of (2) above (ie Legislature and its laws,
Executive and its Orders, Judiciary and its Judgements, Civil
Service and its circularÂ\$,Security Services etc);

Is it really possible to separate the South African judiciary
from the Executive and the Legisgjature in say the American

sense of separation of powers?
parcel of the system with no real independence?
then is its true role within the polity?

Or is the judiciary part and

If so what