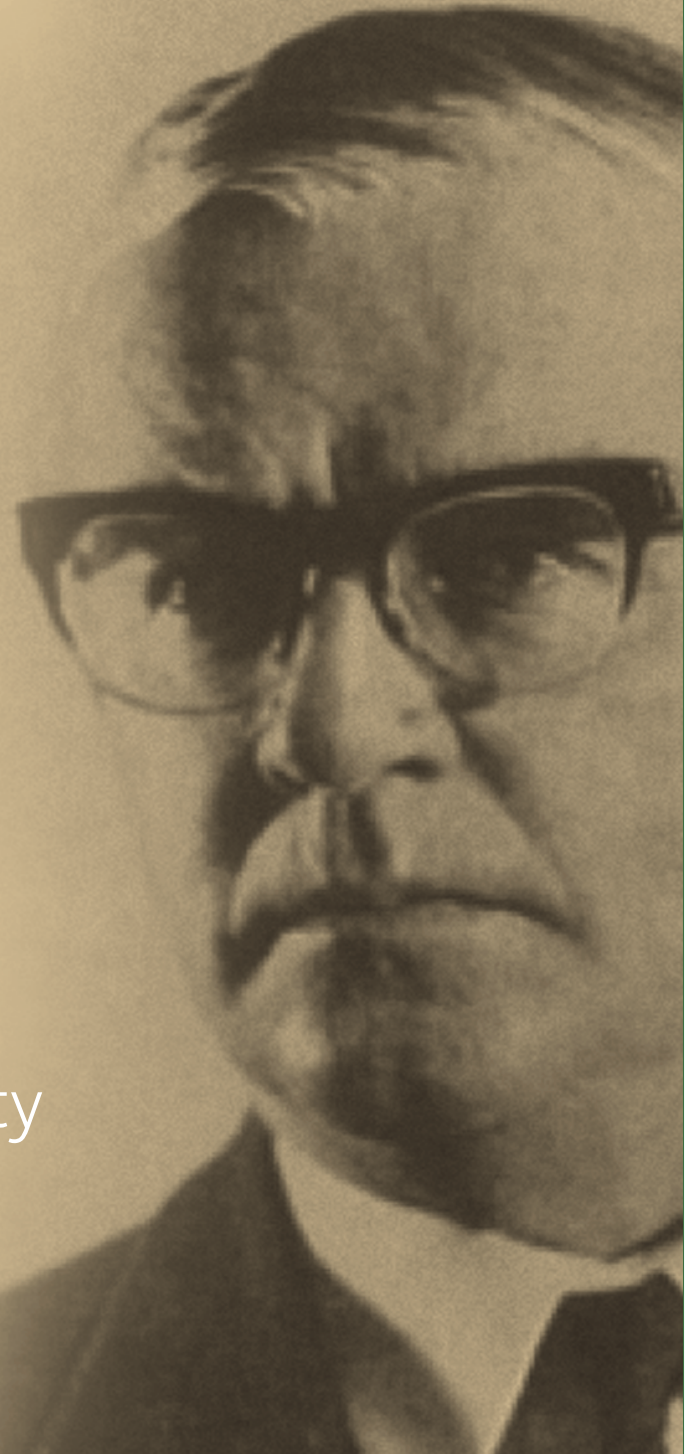


Thursday 26 March 2015

BRAM FISCHER

Honorary Doctorate and
Colloquium at the University
of the Witwatersrand,
Johannesburg



ABRAM (BRAM) FISCHER QC

1908– 1975

Bram Fischer occupies a unique place in the history of the struggle against apartheid and the fight to achieve a peaceful transition to a multi racial democracy in South Africa.

By his conduct of the defence at the Rivonia trial he is widely credited, including by Nelson Mandela himself, as having saved Mandela and the senior leadership of the ANC from the gallows. By his willingness to sacrifice his career, his family life and his liberty in the cause of securing freedom for the majority black population he helped to influence Nelson Mandela to abandon a narrow Africanist approach and sowed the seeds of his magnanimous extension of the hand of friendship and reconciliation to the white population when he was released from Robben Island. And by his shining personal example he showed that there were white South Africans and in particular Afrikaners who were prepared to put the interests of freedom, fairness and justice for all above their own personal interest.

Nelson Mandela said of him:

“As an Afrikaner whose conscience forced him to reject his own heritage and be ostracised by his own people, he showed a level of courage and sacrifice that was in a class by itself. No matter what I suffered in my pursuit of freedom, I always took strength from the fact that I was fighting with and for my own people. Bram was a free man who fought against his own people to ensure the freedom of others.”

Abram Louis Fischer, known to all as Bram, was born on 23 April 1908 into one of the most prominent Afrikaner nationalist families. He was the grandson and namesake of the first and only prime minister of the Orange Free Colony and his father, Percy, a respected lawyer, and Judge-President of the Free State, had been effectively driven from practice at the Bar in Bloemfontein for representing members of the Boer rebellion in 1914. He himself was elected nationalist Prime Minister at a student parliament.

He attended Grey College in Bloemfontein where he not only excelled academically, but also as a natural leader and athlete. He is the only revolutionary communist leader ever to have played scrum half against the All Blacks for the Free State. After matriculation (first in school) he studied law at Grey University College where he obtained the degrees of BA and LL.B, both cum laude. In 1930 he was awarded the prestigious Rhodes scholarship and attended New College, Oxford, where he obtained a diploma in law and economics.

In due course he became one of the most distinguished and sought after QCs in South Africa, specializing in mining law and mineral and water rights.

CITATION

by SIR NICHOLAS STADLEN
(retired English High Court Judge)

Had he wished he could, by reason of his family connections and his talents, have attained the highest political or judicial office in apartheid South Africa. Instead he turned his back on personal ambition in favour of pursuing the ideal of a fair and just multi racial democracy. President Mandela said of him that although he could have become Prime Minister of South Africa “he became one of the bravest and staunchest friends of the freedom struggle that I have ever known.”

As a young man Bram Fischer had a Road to Damascus experience when he was distressed to feel revulsion at shaking hands with an African. He recalled that, as a child growing up on a farm, his two best friends had been black and he realised that he had become brainwashed with the irrational culture of racial prejudice. Together with his wife Molly he dedicated his life to working for the overthrow of apartheid. This manifested itself in his personal, professional and political life. He was a man of complete integrity who in all areas of his life lived the change he wanted for his people and his country. His house in Beaumont Street became a home to multi racial social and political gatherings, which were unique at the time, Walter Sisulu and Nelson Mandela were frequent visitors and he informally adopted a young orphaned African girl who shared a bedroom with his younger daughter.

He became a prominent member of the Communist Party when it was the only party which was open to all races and advocated an extension of the franchise. When the other members of the Johannesburg District Committee were arrested for inciting the 1946 miners’ strike while he was out of town, he presented himself at a police station and insisted on being charged alongside his comrades. When the party was banned in the 1950s he remained a member of the successor South African Communist Party (“SACP”), in due course becoming acting chairman.

As a QC in the marathon Treason Trial from 1958 to 1961 he played a key role in the successful defence of the leaders of the ANC and other groups fighting apartheid. At the Rivonia trial he led the most brilliant legal team ever assembled in South Africa- George Bizos , Arthur Chaskalson and Joel Joffe (all Wits alumni) and Vernon Berange QC. In doing so he took the huge risk of being identified by prosecution witnesses because he had himself been a frequent participant at meetings at the Lilliesleaf safe house where most of the defendants were arrested. By proving that Operation Mayibuye, the blueprint for guerrilla war which had been discussed at Lilliesleaf, had not been adopted and that the ANC and Umkhonte we Sizwe were separate organisations, he made it possible for the trial judge not to impose the death penalty on Mandela, Walter Sisulu, Govan Mbeki and the other defendants. It was an achievement that changed the history of South Africa.

After the Rivonia trial Fischer’s beloved wife Molly drowned in a freak car accident, a fact of which he made no mention when visiting his clients/comrades on Robben Island to discuss whether they should appeal, so as not to burden them with his personal tragedy. It was typical of his ascetic and self effacing character and his consideration for others.

When Fischer was himself arrested a few weeks later for membership of the outlawed SACP he got bail to argue a case in the Privy Council in London. He refused entreaties to estreat bail and stay in London because “I gave my word” and because he believed it vital for leaders of the struggle against apartheid (particularly white leaders) to make a stand inside the country.

However he then made a further personal sacrifice by going underground in the middle of his trial ,at which he faced a maximum five years in prison, thereby courting a life sentence and possibly even a death sentence when in due course, as

was inevitable, he was captured. In his prophetic letter to the Court he said that any sentence passed on his co-defendants would be punishing them “for holding the ideas today that will be universally accepted tomorrow.” He explained that he

“could no longer serve justice in the way I have attempted to do during the past thirty years. I can do it only in the way I have now chosen.”

By surviving for nine months underground (the Red Pimpernel to Mandela’s Black Pimpernel in his earlier period underground) at a time when the national leadership structure of both the ANC and the SACP had been smashed by the Rivonia and other raids, Fischer raised the defiant banner of resistance and made a symbolic stand to show the world that at least one Afrikaner stood shoulder to shoulder with the non-white imprisoned leaders of the freedom movement.

Despite the fact that, before his arrest, Bram Fischer had been the longest serving member of the Johannesburg Bar Council, and had served a term as its chairman in 1961, the officers of the Bar Council applied for him to be struck off the roll of advocates in 1965 for conduct “unbefitting a member of the Bar and the Society” in estreating bail. This application caused him more distress than any of the privations to which he was subsequently subjected. Like Mandela before him he saw no dishonour in disobeying unjust laws. The application was unsuccessfully opposed on his behalf by Advocates Sydney Kentridge and Arthur Chaskalson, who cited the precedent of Afrikaner rebels after the Boer war and the legal tradition that disbarment did not apply in matters of political conscience. In 2003 he was posthumously reinstated to the roll of advocates by a full (mixed race and mixed gender) bench of the High Court in an application supported by the Johannesburg Bar Council pursuant to a special statute passed to enable this and similar wrongs to be put right.

At his second trial in 1966 Fischer was charged with sabotage and the prosecution called for the death sentence. He refused to testify in his own defence because his loyalty to his comrades would not permit him to implicate others and his respect for the Rule of Law would not permit him to lie on oath. Instead like Nelson Mandela before him he chose to read a statement from the dock to explain the choices he had made. Like Nelson Mandela he was a passionate believer in the Rule of Law but, as he said in this historic speech from the same dock where Mandela had made his famous speech two years earlier,

“...when the laws themselves become immoral and require the citizen to take part in an organized system of oppression-if only by his silence and apathy-then I believe that a higher duty arises. This compels one to refuse to recognize such laws.”

In that speech, which remains one of the most inspiring political speeches of the 20th century, Fischer explained why he had felt compelled to join first the Communist Party and then the underground struggle against apartheid.

“All the conduct with which I have been charged has been directed towards maintaining contact and understanding between the races of this country. If one day it may help to establish a bridge across which white leaders and the real leaders of the non-white can meet to settle the destinies of all of us by negotiation, and not by force of arms, I shall be able to bear with fortitude any sentence which this court may impose on me. It will be a fortitude, my Lord, strengthened by this knowledge, at least, that for the past twenty five years I have taken no part, not even by passive acceptance, in that hideous

system of discrimination which we have erected in this country, and which has become a byword in the civilised world.”

Bram Fischer paid a heavy price for his principled and visionary refusal to acquiesce in what he saw as the evil and unjust system of apartheid. In 1966, at the age of fifty eight, he was sentenced to life imprisonment. His decision to go underground, followed by his life sentence, meant that he was unable to continue looking after his son Paul, who suffered from cystic fibrosis and whom he and Molly had nursed with devotion. When Paul died at the age of 23 he was not allowed to attend his funeral. The prison authorities, who viewed Fischer as a traitor to his people, singled him out for especially harsh and cruel treatment. When he got cancer and suffered a painful breach of the femur he was treated with callous indifference and it was left to Denis Goldberg, his comrade, former client and fellow prisoner, to nurse him as best he could. Even though it was obvious by 1974 that he was terminally ill and had only a few months left to live, the state refused to free him.

He died of cancer on 8 May 1975 at the home of his brother, Paul, which had officially been designated part of the prison estate so that his visitors could be restricted. Shortly after the funeral the prison authorities confiscated his ashes lest his grave should act as a shrine for his many admirers. They were never recovered.

Bram Fischer was a warm, kind and generous man who inspired love and admiration even among many who did not share his political beliefs. Alone of the Rivonia defendants and their lawyers he did not live to see a free and democratic South Africa and the realization of his ideals. But he had a lasting influence on some of those who played a prominent role in shaping post-1994 South Africa. Among them were Nelson Mandela the first President elected by a universal

franchise and Arthur Chaskalson, the first President of the Constitutional Court and later Chief Justice. When he knew he faced a life behind bars Bram Fischer gave him his advocate's gown and his desk, which Chaskalson took with him to the Constitutional Court. Steve Biko, leader of the Black Consciousness movement, stated that he had one hero among whites and that it was Bram. Nelson Mandela declared,

“In any history written of our country two Afrikaner names will be always remembered. The one is Beyers Naude. The other is Bram Fischer.”

Stephen Clingman, in Bram Fischer: Afrikaner Revolutionary wrote:

“He came out of Afrikaner nationalism; he died belonging to the whole of South Africa. He never saw this as a betrayal of Afrikaner identity, but rather as its fulfilment, its extension towards the true meaning of the name ‘African’.”

RECOGNITION OF BRAM FISCHER

Bram Fischer's unique role in the history of South Africa has been widely recognised. In 2004 he was awarded an honorary doctorate by Stellenbosch University in recognition of his "eminent gifts of intellect, character and integrity" and because he "achieved exceptional merit through his courageous and crucial role in bringing about justice and democracy in South Africa." Both the Legal Resources Centre and New College Oxford have established Bram Fischer memorial lectures, which have been delivered by a series of distinguished jurists and participants in the Rivonia trial. The first was given in 1995 by President Mandela. There is a Bram Fischer Drive in Johannesburg, the Legal Resources Centre is housed in the Bram Fischer Building and the airport at Bloemfontein, his home town, has been renamed Bram Fischer Airport.

WHY WITS?

Bram Fischer was a part time lecturer in law at Wits while he was building up his practice at the Bar. Wits has an important place in the history of the struggle against apartheid. George Bizos described it as an oasis in the desert of racialism. Many of the future leaders of the struggle and the lawyers who acted for them studied and formed life long friendships there. They included Nelson Mandela, Joe Slovo, Ruth First, Arthur Chaskalson, George Bizos, Joel Joffe, and Bob Hepple. Wits is a beacon of multi racial equality and Bram Fischer was the most prominent symbol of the contribution made by brave white South Africans to the cause of freedom and equality. His contribution has already been recognized by the creation of the Bram Fischer Chair in Human Rights Law.