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***A COMMUNITY OF CHARACTER:
CONSTITUTIONALISM IN MALAWI***

PAPER BY

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“A Community of Character: Constitutionalism in Malawi”

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A Community of Character¹: Constitutionalism in Malawi

New nations do not spontaneously rise from the ashes of the past on the day of political transition. South Africa is likely to continue to live 'between the times' for several decades beyond its day of liberation. The old will die over many years. The birth of the new will take time. It is the task of those who share in the creation of the new to ensure that great chunks of the past remain dead, and that the spirit of the quest for justice and democracy that has survived the tyranny of the past, is able to shape the new age.²

Theology has an obligation to contribute towards the creation of a culture and praxis within which the state aspires towards these ideals and honours its own constitution.³

Introduction

I am a religious person; a Christian to be specific, and I make no apologies for being Christian for that is what I am and it is from that standpoint that I speak. So would like to begin with the Good Book: 1 John 3:1-2.

How great is the love the Father has lavished on us, that we should be called the children of God! And that is what we are! The reason the world does not know us is that it did not know him. Dear friends, now we are children of God, what we will be has not yet been made known. But we know that when he appears, we shall be like him, for we shall see him as he is.

Paul puts it more clearly when he says “And we, who with unveiled faces all reflect the Lord’s glory, are being transformed into his likeness with ever-increasing glory, which comes from the lord who is Spirit.” (2 Corinthians 3:18)

This suggests that we are a certain kind of people. I suppose I am not claiming too much. Some may even wonder whether I am suggesting that all Malawians are Christian. Not at all! However, I know that close to 80% of us claim to be Christian and Moslems 15-20% with just below 5% being traditionalists of one form or other. What that means is that Malawi is deeply religious: based on a belief in One God the creator of all whose desire is peace, justice, prosperity and well being for all his creatures: humanity being at the pinnacle of that hierarchy. What adds to my audacity is that 95% of Malawians are of the Abrahamic faith – Christianity and Islam. As such there is a commonality at the root of these religious persuasions: they both have a strong belief in the Goodness of God and an imperative for goodness on his people. The imperative is based on the likeness of human beings to God. This, in Christian terms is called the *Imago Dei* – the image of God. This suggests a certain type of state of being or shall we say, character. That character is the character of God himself. However, what happened to humanity is that the *imago dei* has been affected by sin and the consequent proclivity to sin. This in Christian terms requires restoration and that is what Jesus Christ came to do – give life and that more abundantly and a vision

¹ Borrowed from Stanley Hauerwas’ book, *A Community of Character*.

² Villa-Vincencio, C., *A Theology of Reconstruction*, Cambridge: Cambridge University Press, 1992, p.75 my emphasis

³ Ibid., p. 52

of the future where all things will be back to the state God intended it to be – the Kingdom of God. Both Jesus and the prophets before him talk of salvation and *Shalom*. Shalom is more than just peace: it is the fullness of life, prosperity and peace under the sovereignty of God – Heaven itself! “Dream on”, some may say. “Isn’t that what we know to be ‘pie in the sky by and by’?” Yet others may scoff. Heaven or the Kingdom of God is not just about the future: it is also about the present. Jesus said that the Kingdom of God was among us. He also talks about it as one that comes in its fullness in the future. Confusing, one might say. The Kingdom is here and is to come, so Christians say. We are part and parcel of its realization as we pray, “Let your kingdom come on earth as it is in heaven”. As such there is thus a political character to this state of being. Jesus came for the restoration of the Kingdom of God. That restoration continues in those that are called by his name. It is in this sense that we understand democracy. Democracy is both a system and a vision. Something we create and live and also something whose full realization is always in the future. It is something we work towards, something we perfect as we go along. This is what Karl Mannheim, has called a “concrete utopia”. By this he means that it engenders socially transformative action and enables the achievement of penultimate anticipations of what may ultimately be unattainable. John de Gruchy, in his *Christianity and Democracy*, has described this as relating ultimate hopes to penultimate struggles. This is the struggle of a people who espouse and uphold a democratic ethos. They need to be a people who have the ability to do it, to bring it about and work towards that concrete utopia. God given, the character may be, but sin has dimmed it. It thus needs to be restored. The restoration comes, not so much from without as from participation in the process and formulation of that process. This is the stuff of politics and political activity. This is the aim of constitutionalism – building a community of justice and peace. The constitution thus serves as the rules by which that process happens but also a reflection of the character of that community and the vision of where that community wants to be. It sets out the hope, the obligations of the nation and helps build a community that can bring about the realization of that hope. This, for me, is the Christian imperative. This I would say is the political and moral imperative for all Malawians. Jesus through the Holy Spirit was and is building such a community of character: politicians and all. Stanley Hauerwas once said, “All politics should be judged by the character of the people it produces”!⁴

Towards a Community of Character

Not so long ago I wrote the following in the Lamp magazine:

Surprise, surprise! The UDF, AFORD and MCP have united against the people. This is not a new situation and neither should it be a surprise. It is not the first time this has happened to the people of Malawi. Each time we begin to feel like things are changing for the good of the people, they spring a ‘wormy’ on us. Each time we make strides towards good governance our politicians grow cold feet and/or they get scared of people power. These parties are not new comers to this game. Since independence we have had this happen to us. Is it because they all were once MCP, and old habits die hard? This may lead to cynics like me saying, “What’s new in Malawi politics?” For me the answer has to be “Nothing!” Self interest on the part of our politicians has always been their rule of thumb. “When all else fails push your way through and damn the people!” The politics of the belly, the politics of patronage still rule. We have seen this time and time again.

⁴ A Community of Character, p.51

Back to the issue at hand: Certainly there was need for making sure that there is a provision for the impeachment of the president. If there are to be checks and balances and making sure that the president is beholden to the people it was necessary to make such additions to our procedures. However, to do it because one is looking for something to make one's ulterior motives have some semblance of legality is the height of deception. In fact listening to the debate (and the subsequent action) one could tell that there was no desire to tell the truth. I believe that honesty is a mark of integrity in a politician. If that is consistently a casualty in all matters, we have a serious problem in our hands. If the procedures have been occasioned by seeking a legal backing for an impending impeachment the moving politicians have a moral responsibility to tell the population that and not lie to us. They certainly would need to put their case. But to lie is less than honourable for our honourable members. Our politicians need to learn that honesty wins them votes and the trust and the respect of the electorate. Lying to them tells the people that their politicians take them for ignoramuses and those to be taken for granted. This is a big no, no for any politician who wants to remain in the 'game'. They lied about their intentions in the debates. I still am not convinced that enough consultation on the proposals was done. I, for one, had less than one week to look at the proposals and before I was ready with my reactions, the announcement was made that the process was over. As such I was left feeling that the committee simply wanted to be able to prove that they sent the document to me. I am not alone in expressing this as has been enumerated in other fora by more than one group, including the National Law Commission. This is an important matter for the nation which, I believe, needs to be part of the parliamentary procedures and needs our non partisan support. It is an important matter of principle. But it seems that it was not principle that was the motivation but a partisan agenda. This, to me, demeaned the parliamentary committee that was charged to work on it.

It is not only because of this that I believe the UDF, AFORD and MCP conspired against the people. I suggested earlier that this was not a surprise to me. It is not only because our political pedigree is MCP but also recent history has shown us that. The constitution seems to be tinkered with repeatedly for the benefit of partisan political interests. In the 1960s MCP twice tinkered with it for its benefit. First they outlawed other parties and second, they made the president a life president. All these were said to be what the people wanted! We all know, now, that it wasn't. Power and choice was taken away from the people. In 1993 through 1994 we worked out a proposed constitution. The people wanted to be able to recall their MP. In their first meeting the MPs of MCP, UDF and AFORD (for they were the ones in parliament) removed that provision. They claimed that it would be used for partisan and parochial ends to oust good MPs. The assumption here is that the people do not really know what they want: only the honourable members know what's good for them. "What do the poor ignoramuses know?" they seem to say. Between 2001 and 2004 again there was a desire for another selfish partisan tinkering with the constitution. This was the third term/open term issue. It was again the same three parties in collusion. A lot of energy and resources were spent on this. In 2005 it is de ja vous. The same three parties are at it again! How long shall we have to deal with such behaviour of the honourable members? As they always say, "Politics is a game of numbers". This brief outline of historical acts seems to be a constant game of numbers. Use the numbers to hoodwink the people!

My issue is not that I am defending the incumbent president. I have no need to. My issue with this action is that it does not serve the people at all. Malawians are being held to ransom by selfish people on either side of the divide. Due process is being abused for selfish ends. We continue to want to repeat the mistakes of the past instead of learn from them by ignoring the common good.

Recounting this scenario is not meant to shame anyone. This is our common story whether we like it or not. It is one from which we can learn and build our future. Every party must know that we have been there before, the people are watching and are not the ignoramuses we assume them to be and that processes are not to be flouted. Both the people and the legislature are moral agents, for better or for worse. The purpose of the legislature is therefore for the common good and not the good of any one party.

Only last week we heard the parties with one voice again saying that they do not want to have the recall provision put back into the constitution against the overwhelming call by the citizenry and civil society. This begs the question: “What right have they to refuse to do what the people who put them into power and gave the authority to legislate?” There is, here, expressed a superiority which I believe to be misplaced. Furthermore it suggests a self-mistrust. This comes from the fact that the politicians are afraid that those who would use the provision wrongly are none other than themselves! It also begs the question of whether legislation is passed or not passed simply because it has the potential of being abused. But what legislation carries no such risk?

The legislature’s power has to be subservient to that of the people. Villa-Vincencio says, “But the rule of law itself, the imposing of effective inhibitions upon power and the defence of the citizen from power’s all-intrusive claims, seems to me to be an unqualified human good.”⁵

At the height of the *Third Term /Open Term* debate I had the opportunity of speaking to the then head of state. His argument was that since others around us were doing it there was nothing wrong with following suit. He also intimated that some of them were doing it at the instigation of some super powers. This raises a significant question. Do we do something because others are doing it neglecting our own story.⁶ The story about how we got to where we are. Our neighbours may have their reasons for doing what they do. I am not suggesting that we cannot change our mind about anything. We have our story and if that story is what forms us it is a living story and has to be retold in the ever-changing circumstances of our life. That change or reinterpretation does not happen by decree: it is negotiated. It is that negotiation that was being short-circuited. Our constitution tells our story – a negotiated story. The negotiation requires a context of trust:

Trust is impossible in communities that always regard the other as a challenge and threat to their existence. One of the profoundest commitments of a community, therefore, is providing a context that encourages us to trust and

⁵ A Theology of Reconstruction, p 108

⁶ Stanley Hauerwas’ book, *A Community of Character*, is based on the retelling of the story to build a community of character as he takes off from the book, *Watership Down*. He highlights the dangers of simply borrowing other people’s behaviours and stories. Identity gets lost and the species endangered.

depend on one another. Particularly significant is a community's determination to be open to new life that is destined to challenge as well as carry on the story.⁷

More often than not the citizenry tends to feel impotent in the face of these changes. This feeling of impotence is really an abdication of their role. To be fair on the people this is sometimes done because the people have trust in the systems they have set up. What they do not reckon with in such circumstances is that the other party in the situation may not be acting with integrity. This requires an active citizenry and civil society and political players of integrity. This behaviour has the impression of being based on an understanding of political leadership in the lines of Plato's ruling class. Plato's ruling class was a virtuous lot in contrast to the-not-so-virtuous modern day politician. They were to be people of virtue who saw virtue and altruism as a reward itself. Not those whose mantra is "What's in it for me". This is what leads de Gruchy to observe:

It has been assumed for too long that democratic systems will produce morally responsible citizens as a matter of course, but the reverse is equally, if not more true – only people who have been morally formed and empowered are able to make democracy work. Both the achievement of social justice and fulfillment of human life require participation in meaningful relationships. Hence the need for the creation and sustenance of institutions which enable persons to fulfill their social responsibilities, and without which neither human fulfillment nor democracy is possible.⁸

The debate pitted the citizenry against the legislature. The honorable members in the defence of their activities leading to the vote constantly talked about their duty as legislators and thus empowered to do what they deemed right in the house regardless of what the people were saying to them.

This raises the issue of the supremacy of the legislature. Does it have a right to do what it wants? What are its constitutional limitations if any? Can its actions be challenged? It raises issues of integrity among the honorable members and issues of the rights of the citizenry in constitutional matters. This debate was reminiscent of Sir William Blackstone's (in his 1765 *Commentaries on the Laws of England*) affirmation of the supremacy of parliament:

If the legislature positively enacts a thing to be done which is unreasonable, I know of no power in the ordinary forms of the constitution that is vested with authority to control it. ...To set the judicial power above that of the legislature would be subversive of all government.⁹

In this case the legislature is supreme and above question. The people are left impotent. This would be OK in the Platonic ideal of the virtuous ruling class but not so in the real world. The problem with us is that there may be judicial review but that

⁷ A community of Character, p. 11

⁸ **De Gruchy, J.**, *Christianity and Democracy: A Theology For A Just World Order*, Cambridge: Cambridge University Press, 1995, pp247-248

⁹ Quoted in A Theology of Reconstruction, pp55-56

is frustrated by the length of time it takes and the attendant costs which puts such recourse beyond reach of most civil society organizations. It also raises the question of whether we should have a standing constitutional Constitution Review Court. As a moral community, is it not incumbent upon us to curb the “unruly wills” (to use Book of Common Prayer language) of the legislature? Justice Edward Coke in countering the views of Blackstone (100 years later) talked about the legislature being subservient to the fundamental law of reason and justice:

Common law will control Acts of Parliament, and sometimes adjudge them to be utterly void: for when an Act of Parliament is against common right and reason ... the common law will judge it, and adjudge such Act to be void¹⁰

This presupposes a certain kind of morality on both the parliamentarians and the citizens. This is the kind of trust relationship alluded to earlier. One can add a further challenge to the law society: can't they take constitutional review cases *pro bono*?

Matembo Nzunda¹¹ once observed that there are three types of people in the *polis*: those who would like to keep the status quo, those who would like to change it and those who are indifferent. There is a suggestion in this typology that there is a fluidity about it. Those who want change today may be the ones who do not want it next time or become indifferent. Our moral responsibility in the *polis* is that we do not assume that democracy once established all will be well. However democracy is an ever-evolving system towards the realization of a just order, peace and the rule of law. Since human beings change, their circumstances change and their understanding of their situation is evolving, a static democracy (or the definition of what is democratic) is a contradiction in terms. Constitutional democracy is thus an ever-evolving system. The Constitution is our instrument of choice. Like all instruments, it has to be honed and improved to be useful. This is not a novel idea. A quick look at the development of human rights is a good example of what I am talking about here. The *First Generation Rights* came into being in the eighteenth century through anti-colonial and anti bourgeois revolutions. *Second Generation Rights* were developed in response to the social, economic and cultural situation of our generation. More recently *Third Generation Rights* are being developed in the light of the context of underdevelopment, racial issues, wars and the changing ecology. The thrust in the development of all these is the common good. Obviously it begs the question of whether the common good is a self-evident given or evolves as understanding evolves.

Certainly that is a difficult one to answer but what is evident in this discussion is more on the lines of the *Utilitarian* method of ethics over against the *Deontological* one. The *Utilitarian* position is one in which an action is judged right or good by its consequences. The *Deontological* is where an action is intrinsically right or wrong independent of its consequences. Of course this puts the debate on a different plane: who judges the rightness or the wrongness of an action. Is there an arbiter? My assumption is that the Constitution and a Constitutional Court would be helpful in matters of dispute. However this requires a society that is committed to such

¹⁰ Quoted in A Theology of Reconstruction, p. 59

¹¹ Nzunda, M.S. and Ross, K.R. (eds.), *Church, Law and Political Transition in Malawi, 1992 - 1994*, Gweru: Mambo Press, 1995

processes and has such restraint as to not go on to effect what it has legislated even when it is under review or question.

It is sometimes naively believed that the views of the majority generally represent the common good. I believe that what ever may be perceived as the common good must be measured not only by natural justice but also by distributive justice. It is therefore incumbent upon a moral society to legislate with the vulnerable in mind. The rights of the many may be called to be subservient to the rights of the minority in the service of equity and distributive justice. This is another aspect of the legislative process that demands integrity and altruism over against the partisan numbers' games sometimes played in the honorable house. It is this altruistic community of trust that can and will, on a regular basis and as the situation demands, review our *Constitution* to make sure that it continues to be an effective instrument of governance.

Conclusion

In conclusion I will go back to where I started. What I have been discussing here is a process of the transformation of our society into one that is just and democratically run. I suggested that that process requires a certain type of people – a people engaged in purposeful change and not just change for its own sake or for the sake of partisan ends. All humanity is made in the image of God. Though defaced we are required and empowered by God's Spirit (however understood) to work out our salvation with fear and trembling as we are being transformed from one degree of glory to another. This community is one that is built on trust and integrity as basic virtues. The work of building constitutionalism in Malawi will never be done until we reach perfection, and that is many lifetimes away! Even revolutionaries understand the principle of a revolution within a revolution. A moral community is one that is not afraid to face the mistakes of the past, learn from them and resolve not to repeat them; however challenging the task may be. The easy route and "copycat-ism" will not get us there. A commitment to just processes born out of our context, and certainly not oblivious of others' stories, is required. It would be good to hear Villa-Vincencio's words again (quoted in the prolegomena),

It is the task of those who share in the creation of the new to ensure that great chunks of the past remain dead, and that the spirit of the quest for justice and democracy that has survived the tyranny of the past, is able to shape the new age.¹²

Lest we get derailed a Constitutional Court would act as a good midwife to the processes conceived. This does not mean that we may not be faced with situations where the legal will be pitied against the moral. However as a prisoner of hope I dare to believe that we have in our cultural, religious and political heritage the wherewithal to accomplish this. *Umunthu* abounds in us! As a community of Character we can live the prayer: "Let thy kingdom come on earth as it is in heaven" and take our agency in that enterprise seriously.

¹² Villa-Vincencio, C., *A Theology of Reconstruction*, Cambridge: Cambridge University Press, 1992, p.75

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