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Commitment, Compassion, Conviction and Courage

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Commitment, compassion, conviction and courage

Citation on conferring the degree of Doctor of laws, *honoris causa*, on Justice Richard Goldstone, Tilburg University, December 4, 1997

by Marc Groenhuijsen, Professor of Criminal Law at Tilburg University

The basic biographical data on Richard Goldstone are well known. Born in 1938 in Boksburg, he graduated from law school in 1962, *cum laude*. Typically, he was the joint winner of the Society of Advocates prize for the most outstanding law graduate. If that was a fitting start of a promising career, he most certainly lived up to that promise. He practised as an Advocate at the Johannesburg Bar from 1963 until 1980, when he was appointed to the Transvaal Supreme Court at the relatively early age of 41. He was elevated to the position of Judge of the Appellate Division of the Supreme Court of South Africa in 1989. He became truly famous as a symbol of judicial integrity between 1991 and 1994 when acting as chairperson of the Commission of Inquiry regarding Public Violence and Intimidation. In 1994, he was appointed Justice in the newly established Constitutional Court of South Africa. Before actually taking up this position, he served as the first Chief Prosecutor of the United Nations International Criminal Tribunals for the former Yugoslavia and Rwanda. Apart from these very prestigious and time-consuming responsibilities, Richard Goldstone works as President of the National Institute of Crime Prevention and the Rehabilitation of Offenders; he heads the board of the Human Rights Institute in his country; and he acts as Chancellor of the University of the Witwatersrand in Johannesburg. This enumeration is but a special selection from a much longer list of outstanding accomplishments.

If ever there has been a distinguished career in the legal profession, Richard Goldstone set the example. In each and every one of his assignments, he performed with distinction. Yet, it is not only this uninterrupted rise to prominence which has led to our University's decision to award him an honorary degree today. The main reason why we admire your work, Justice Goldstone, is that you have consistently dedicated yourself to the administration of justice with commitment, compassion, conviction and courage. The four C's.¹

You have demonstrated an unusual *commitment* to the ideals and values embodied in the concept of law. Commitment means: moving beyond the confines

¹ Marleen Young, The Victim Assistance Movement: The Search for a Promised Land, in: Sara Ben David, Gerd Ferdinand Kirchoff, *International Faces of Victimology*, Mönchengladbach 1992, pp. 459-466.

of legal provisions when they would lead to injustice.² In your case, it also leads to the determined attitude that judges have to speak out when they are faced with serious instances of injustice. Let me just cite one example. You were responsible for the landmark decision in *The State v Govender*, which has been hailed as one of the most significant judgements in the field of human rights in the 1980s. You in effect put an end to the implementation of the notorious Group Areas Act by holding that no person might be evicted following conviction under the Act for occupying premises in the 'wrong' racial zone unless the State could prove that accommodation was available in the convicted person's 'own' group area. In order to really appreciate the historic dimensions of this decision, it is useful to quote its reasoning at some length:

'(...) it appears to have been accepted by all the participants in the trial that, the appellant having been found guilty of contravening s 26 (1) of the Act, an ejection order under s 46 (2) of the Act would follow automatically as part of the sentence (...). (...) If indeed such a practice does exist, in my opinion, the sooner it ceases the better (...).

(...) The power to make such an ejection order is a wide one. It is one which may, and in most cases will, seriously affect the lives of the person or persons concerned. It may, and frequently will, interfere with the normal contractual relationship which exists between landlord and tenant. Such an order should not therefore be made without the fullest enquiry. Whether such enquiry takes place before or after sentence does not appear to me to matter. However, a court should not make such an order unless requested to do so and there appears to me to be no *onus* upon the convicted person to dissuade the court from granting the order.

The prosecutor, if requested by an interested party to seek such an order, would be obliged to place material before the court to justify the exercise of the court's discretion to grant the ejection order. I cannot imagine any circumstances which would justify a court making such an order *mero motu*. Many considerations may be relevant to the exercise of the court's discretion, for example the nature of the area concerned; the attitude of the neighbours; the policy and views of the Department of Community Development or any other interested Department of State; the attitude of the landlord; the prospects of a

2 E.G. Richard Goldstone, *Do Judges Speak Out?*, *The South African Law Journal* 1994, pp. 258-269. On p. 266 Goldstone notes that 'if a judge is to err, it should be on the side of defending morality'. He then moves on to quote Mr Justice Rand of the Canadian Supreme Court: 'The courts in the ascertainment of truth and the application of laws are the special guardians of the freedom of unpopular causes, of minority groups and interests, of the individual against the mass, of the weak against the powerful, of the unique, of the non-conformist - our liberties are largely the accomplishments of such men.'

permit being issued for continued lawful occupation of the premises; the personal hardship which such an order may cause *and the availability of alternative accommodation* (emphasis added, MSG). I cite these merely as examples of the magistrate's discretion.

In the present case the prosecutor did not expressly seek an order of ejectment and no proper enquiry was instituted by the court into the question as to whether such an order should have been made or not. On behalf of the State it has been submitted that by clear implication the prosecutor did in fact request that such an order be made. The implication is sought to be drawn from the fact that the prosecutor opposed the basis upon which the defence sought to have such an order suspended. In my opinion, this submission cannot be upheld. It follows from what I have already said that the request on behalf of the State for an ejectment order under s 46 (2) of the Act is not simply a formality. The representative of the State must be properly instructed to request such an order and be in a position to justify that request upon evidence properly presented to the court. That did not happen in the present case. The order was therefore, in my judgement, made irregularly and should be set aside. (...)'

The eloquent wording of this judgement shows a profound commitment to essential legal and humanitarian values. As the State authorities were unable to prove the availability of alternative accommodation because of acute housing shortages in the black group areas, the prosecuting authorities were compelled to abandon prosecutions under the Group Areas Act.³ Consequently, after thirty years, a conspicuous source of social inequality was virtually eliminated by your single brave show of judicial activism.

Compassion is obviously one of the driving forces behind your career. You sympathise with the underprivileged citizens of the world and act accordingly. In your own country, you used to visit political detainees in the Transvaal prisons. Few have laboured like you have for the cause of crime prevention and rehabilitation of offenders. Both in South Africa and in the international arena, you have stood up for the rights and interests of victims of crime and abuse of power. Your early support for the TRC⁴, as well as your pioneering efforts as first chief prosecutor of the ICTY⁵ have primarily been inspired by a deep sense of compassion with the large number of victims involved.

3 Although the decision was delivered in 1982, it was only reported in 1986. The mystery as to why it was not reported more promptly has never been solved.

4 The South African Truth and Reconciliation Commission.

5 The United Nations International Criminal Tribunal for the former Yugoslavia and Rwanda.

Conviction is the third of the four C's. As the old saying goes: 'Virtue is so much easier when duty and self-interest coincide'.⁶ Nowadays, it is easy as well as expedient to condemn the evils of the system of Apartheid. But how different was the situation during the long decades when you protested against racial inequality. Even as a student leader you were involved in the fight against introducing apartheid into the so-called 'open universities'. Later on, as a member of the establishment, you personally had little to gain, and much to lose, by advocating points of view which were - to say the very least - highly unpopular with those in power. This commendable conduct can only be appreciated in the light of your firm conviction that some basic moral and legal values are worth fighting for, no matter the consequences.

Conviction also is a dominant force in connection with your determined belief in the beneficial effects of the operation of the ICTY. Many sceptics have consistently argued that the Tribunal is more or less futile because it would only be able to catch and punish 'small fish', while letting the major war criminals off the hook. You have never allowed yourself to be dissuaded by this powerful opposition. On the contrary: based on deeply ingrained personal convictions you have never ceased to claim that an institution like the Tribunal is - by its sheer existence - a formidable deterrent in the fight against illegal conduct in the course of armed conflicts.⁷

Which brings me to the final C: *courage*. You have never hesitated to engage in a course of action which might even jeopardize your personal safety. I recall the investigations by the Goldstone-commission, leading to the conviction of police officers who had participated in the illegal shootings of unarmed demonstrators in the 1980s. And I refer to your uncompromising stand on the need to arrest the major war criminals from the armed conflict in the former Yugoslavia. You have strongly condemned the inactivity of the United States and other powers participating in the UN forces in Bosnia.⁸ You have repeatedly criticized their apparent reluctance to use force in apprehending those responsible for massive victimization. Acting like that, and always refusing to be intimidated by countervailing powers, shows you have executed many of your assignments with remarkable courage.

Commitment, compassion, conviction and courage: these are the properties we admire you for. You deserve the honorary degree conferred by our University

6 Quoted from L.B. Johnson, *Vantage Point. Perspectives of the Presidency 1963-1969*, New York/Chicago/San Francisco 1971, p. 440.

7 E.g. Richard Goldstone, *Prosecuting War Criminals*, Annual Memorial Lecture of the David Davies Memorial Institute of International Affairs given in London on 6 June 1996, London 1996; idem, *Human Rights, Peace and Justice in Europe*, Europalezing in Utrecht on 18 September 1996, Utrecht 1996; and idem, *Assessing the Work of the United Nations War Crimes Tribunals*, 33 *Stanford Journal of International Law* (1997), pp. 1-8.

8 For sources, see footnote 7.

for exceptional merit in your efforts to strengthen the rule of law in South Africa and to promote international humanitarian law throughout the world. One of the aspirations of the Law faculty of our University is to foster respect for human rights on a national and an international level. So we are proud to confer on you the highest honour at our disposal, the degree of Doctor of Laws, *honoris causa*. The great American abolitionist president Lincoln once observed: 'As a peace-maker the lawyer has a superior opportunity of being a good man.' Justice Goldstone, you have seized that opportunity like few others have.