

22. South African Tragedy - Donald takes up the cudgels

We are unable to find a draft for this chapter either... However, here are Robert's Notes which give an idea of how he planned to structure it.

Where to deal with Donald Molteno, and over how many chapters

New Decision, 31 August 2015: I have decided to abolish this chapter. INSTEAD roll it into Ch 21, *End of an Era*. This expanded chapter will tell story of end of the tight extended family maintained by Percy and his brothers and sisters. And then look forward to the future with an extended treatment of Donald Molteno as continuing Percy's life of political commitment, but in a totally different context.

31.10.2016: I am not sure the above decision should stand. I want to deal with Donald Molteno at length. And I don't want to spoil the neat tightness of the *End of an Era* chapter. **Latest thinking: 2.1.2017: Retain this Ch 20.**

If I do keep this chapter, it must follow *End of an Era* chapter. Donald is the next generation. And his story mainly takes place *after* the 1930s.

Another new decision: Where to treat Donald Molteno: Do not try and deal with his life in one chapter. Instead spread over 3 chapters:

- **Chapter 21 (as was): *End of an Era*:** Donald's time at Cambridge (mention that Percy got him a place at Pembroke, Cambridge, in summer 1926 – Hirst 582); return to South Africa c. 1931; involvement in the 1936 constitutional case; becoming an MP. Plus something of his personal circumstances. And how highly, Hirst says, Percy thought of him (Hirst, p. 582)
- **Ch 22: 2nd World War:** Focus on his role as an MP (and mention why he could not volunteer, and feeling guilty about not doing so). Rest of this chapter focuses on those members of the family who were militarily involved. And **Viola Molteno** as a Japanese prisoner.
- **Ch 23: Modern World:** Major section (inspirational) on Donald's roles politically post-1948, notably the Liberal Party, constitutional cases, Black Sash and Molteno Commission.

These 3 chapters run neatly on one from the other; so a real continuity in his story across the 3 chapters.

1.1.2017: Possibly revised decision re in which chs to deal with his life: EITHER deal with Donald entirely in a separate chapter (Ch 20) OR Spread it across Ch 20 and Ch 23, *the Modern World*.

Title: *Politics again – Donald Molteno takes up the cudgels*

Theme: The courage to be politically involved where the forces of the time are pitted against you.

Main focus: Donald Molteno. But probably deal with May Murray Parker. And mention other members of the family also pulling their weight – e.g. Major Stanford MP; Sandie Stretton (I think) formed a group of Progressives in the E. Cape. Frank Morris Mayor of Kokstad. Etc.

Opening paragraph

I am inclined to start with a short para saying:

We now come to another member of the family who played a major role in the politics of South Africa, but one that was totally different from his forebears even if he remained loyal to, and became by far the most clear-sighted proponent of, the Cape liberal tradition of non-racialism. His grandfather, John Charles Molteno, spent almost 20 years pressing for full self-government (albeit within a wholly parliamentary context – making speeches to educate the public outside Parliament, introducing motions to put some gentle pressure on the British colonial authorities, trying to persuade successive Governors of the wisdom of this course of action by means of evidence and argument. And JCM had the positive experience of winning the day, commanding widespread public support, being asked to become Prime Minister and have 6 years of office in which to give practical effect to policies that he regarded as beneficial to all the people of the Cape Colony.

Three of his sons followed him in entering politics, two in the Cape and one in Britain. Charlie and James both served as MPs for many years, in James's case for a quarter of a century. But the nature of political conflict changed radically from their father's day. In place of the central issue being autonomy from the British Government, two new social forces increasingly took over Cape politics – the beginnings of Dutch/Afrikaner nationalism (the Afrikaner Bond formed in the 1880s – CHECK) AND big business, and with it big money, in the form of Rhodes, the mining magnate, forming its own political party that, for various reasons, neither ever held increasingly articulated a jingoist position – namely anti-Dutch, and pro the use of military force by Britain against both Boers and Africans. Charlie and James, having grown up in an age of Dutch/English harmony, and with farmers the main players, and rejecting both nationalisms, and both the use of money power and military force in resolving political questions, were squeezed out any possibility of ministerial office.

Donald Molteno, a member of the 3rd generation of South African Moltenos, faced a situation where, post 1910 creation of the Union of South Africa, the key axis of political conflict was between increasingly organized and extreme Afrikaner nationalists and those Afrikaners and English-speaking South Africans who held to the earlier tradition of amity between the two white communities. And an age where the central issue in politics was how to remove any prospect of South Africans of colour -- Africans or speakers of Bantu languages, South Africans of mixed ethnic ancestry (indigenous Khoisan and Khoi-khoi as well as Bantu language speakers, ex-slave, ex-Javanese etc), and Indian South Africans – having any political participation in the country's national institutions, economy and society. Donald lived in an age of a rearguard defence of a Cape political tradition that was steadily removed from the law and democratic institutions to a point where it became almost wholly forgotten.

The last sentence in the chapter:

On Xmas eve 1972, Donald died. Broken physically, depressed in spirit. Thirty years earlier, some Africans had called him *Dilinzintaba*. But it would another nearly quarter of a century before the mountain actually moved and democratic elections, the rule of law, the separation of powers and serious decentralisation would come to the South African people.

Things to say in this Chapter beyond what David Scher says in his book:

1. **A bit more political contextualisation:** less detailed, but more synoptic, and hopefully giving reader a sense of the real significance of the issues being faced.
2. **His first political foray: the 1936-7 Constitutional case:** Hardly mentioned by Scher (but see p. 63).
3. **Stress huge continuity of his political ideas with the political legacies of his grandfather and 3 uncles** (hence my draft Para 1 above).
4. **But he was *not* a politician:** in the conventional sense of making a career of it. He was a lawyer. Only accidentally became an MP as a result of ANC's approach to him as a result of the 1936 constitutional case. This catapulted him into a lifetime of political struggle – 11 years in Parliament; followed by nearly a quarter of a century of engagement outside the parliamentary arena that was closed to him as a result of his beliefs. Involved in the founding of 2 political parties. And various research/public engagement NGOs – SAIRR, Civil Rights League etc.
5. **Also always engaged in helping individual people** – a key dimension of his years as an MP. But also CAFDA, Black Sash etc, and his endless voluntary time devoted to helping oppressed individuals.
6. **The law was hugely important to him:** This is what fashioned him intellectually. And not just constitutional law. Loved legal biographies and autobiographies (I grew up reading his lives of Sir Edward Carson, F E Smith, Patrick Hastings, Rufus Isaacs).
7. **Lots more personal details:**
 - a. **The Karoo:** As a child (until at the age of 10 he was sent to Bishops as a border), he grew up on Nelspoort – the very farm his grandfather had bought in the 1840s – ie 70 or more years before. Probably learned to ride there.
 - b. **Love of the sea:** Parents had seaside cottage at Kalk Bay. His mother spent 3 mths there every year; so he learned to swim there, and here developed his love of the sea. A good swimmer. Hence love of Willowmere and the vlei.
 - c. **Schooling at Bishops:** ruined his digestion; had a cold shower every day of his life.
 - d. **Very able:** unlike his even more brilliant Uncle Percy, Donald did not do a degree in SA before going to Cambridge, but went straight there. And excellent memory.
 - e. **Relaxation: Riding:** learned to ride at Nelspoort. One of the things connecting him to Molly Goldsmith. **Huntsman. Bridge:** played family bridge – esp. with his and Molly's close friends, Inger and Billy. **Reading:** P G Wodehouse. The house had a wonderful host of books for me to grow up on. **Sunbathing on the lawn, interspersed with 'dips' in the vlei.**
 - f. **2 marriages:** both unhappy in significant part.

- g. **Death of his father:** catapulted him into being head of the family; (premature?) return to South Africa ...
- h. **Closeness to Percy Molteno:** During his 3 years at Cambridge and 1 ½ years at Toynbee Hall, he visited Percy frequently. They got on well, I am pretty sure. Also part of the extended family in England – so Painswick Lodge, his first cousin Vincent Molteno, knowing Jervis and Islay etc.
- i. **Personality:** warmth, shyness (so not gregarious in the South African extended family), very hard-working (grossly so, when one looks back on it), very conscientious, courageous. **My memories: 1965 visit to England** (to help me) – Painswick; riverside pubs along the Thames; Flanders and Swan.
- j. **Tendency to great tension, and unhappiness:** clicking his fingers. Smoking. Alcohol. I think his father had this too.
- k. **Modest materially:** Did not join Kelvin Grove. **1947 Royal tour story of the procession with his battered old car coming along towards the end.**
- l. **Some members of the family greatly admired him:** May Murray Parker; Harry Molteno (who provided some financial support – 2 cars); his sons.

8. He lived in the age of despair:

- a. **Great Depression** (saw it first hand in London 1929-31). So at ease with socialism, although he never saw it as a central issue in SA politics. His cousin Peter Molteno more left-wing than he was. But Donald never a Cold War warrior. But no lover of Stalin either – had the important novels of Arthur Koestler on his shelves – because of his profound belief in human rights and democratic institutions.
- b. **Rise of Nazism:** And this was not just something happening 6,000 miles away. Many Afrikaner nationalists were profoundly attracted to Germany (dating back to its opposition to the Boer War) and to Nazism in particular. The SA Prime Minister in 1939, General Hertzog, did not want SA to go to war against Hitler. Donald voted with Smuts to break the coalition and make sure that SA took its place alongside the Allies.
- c. **World War 2:** Many of his relatives fought in it. He could not because of the SA Gov's slender parliamentary majority.
- d. **The successive waves of Afrikaner nationalism** – notably Hertzog becoming PM in 1924; and lasting til 1939; and then Malan in 1948. This meant less and less space for English-speaking South African MPs, and none at all for those South Africans who believed in the Cape Liberal tradition.
- e. **Removal of Africans from the voters roll in the Cape:** a crucial defeat.
- f. **Removal of Coloured voters in 1950s:** ditto.
- g. **End of any realistic prospect of any government that was not Afrikaner nationalist** – the NP made sure it would never lose power after 1948, and turned SA into a de facto one party state for the next half century.
- h. **End of any prospect of evolutionary political change towards non-racialism and democracy:** This became devastatingly clear in the 1950s. Hence his turning in despair, and despite his knowing the electoral futility of the ploy, of creating new political parties that stood for non-racialism – Libs and Progs.

- i. **Rise of the police state and grave weakening of the rule of law** – starting with the bannings of political parties, organizations, individuals in the 1950s; and greatly accelerating from 1960 onwards. **This led him to consider leaving the country:** He visited Southern Rhodesia c. early 1960s (I went with him); Peter Charles (?), a fellow barrister, had re-located there. Decided against it (thank goodness). Then in 1966, Lesotho becoming independent; invited to be its first Chief Justice (Scher, p. 120) – decided not to.

9. **The price he paid:** Multiple. Always put helping individuals (including lots of *pro deo* work) before earning a living at the Bar. So always worried by money problems (Molly provided most of the vegetables, roast chickens and roast duck we ate, as well as feeding the horses). Never offered judgeship (felt he ought to have been, knew why he never was). Raid by the Security Police in 1964. Despair (but never such that it stopped his absolute commitment to continued activism, no matter how bleak the political prospects).

10. **Significance of the Molteno Commission:** 1959-60. Real parallels with the South African constitution of 1993. See Scher p. 110). But of course, the franchise question had moved on; no question of a qualified franchise in 1990s. And federalism not fully provided for in the SA constitution. But he would have been greatly encouraged by the successful entrenchment of the rule of law, an independent judiciary, and holding the executive to account through the courts – arguably the most durable of the legacies of the 1990s transition.

Build the personal into his political and legal story. Important to do this.

This is about the 3rd generation of John Molteno's descendants getting involved. Easy in a way for his sons James and Charlie—party politics had not yet become entrenched (til mid 1890s and involvement of Rhodes); they had the recognition of being sons of the first Prime Minister (and who had only left politics a decade or a bit more before they got involved. And all they had to do was to keep alive values of integrity, non-chauvinism, and acceptance of the ethnic diversity of the Cape political community.

Donald came to political involvement more than 30 years later – and in an era where the whole direction of travel in South Africa was in contrary directions.

Donald's life – law, politics, personal. Nelspoort/Bishops/Kalk Bay/Cambridge. Called to the English Bar and Toynbee Hall (evidence of his social conscience) (during the Great Depression). In England connected to his Uncle Percy, first cousin Margaret Murray and Jervis Molteno. So stayed at Painswick (Margaret & Lenox had only settled there a few years before Donald went up to Cambridge), and Glen Lyon, also at Palace Court.

Catapulted back to the Cape by his father's illhealth and sudden death. Lonely. First marriage.

Became barrister in CT. Involved in the 1936 constitutional case – beginning his lifelong focus on public law.

Situation in SA at this time: No Molteno still involved in politics (and had not been since about 1914 – ie some 20 years earlier). In fact, his Uncle James had] ceased playing an active political role since

about 1908. Lost the case. ANC support for him to stand as a Native Representative (itself a travesty of the Cape tradition).

Secondly, Afrikaner nationalism in the ascendant. 1912 NP formed. In 1924 Gen. Hertzog forms government with white working class Labour Party. Forced into coalition with SAP of Gen. Smuts in 1931 because of economic crisis. New NP formed by Malan c. 1934.

Thirdly, the total exclusion of all South Africans of colour from political participation, except in the Cape. This legacy of a non-racial tradition now under siege. Key steps demolishing it – 1910 Act of Union excluded people of colour from standing; white women (not other women) given the vote, thereby diluting in the Cape the vote of all people of colour by half; this 1936 Act (in which Gen. Smuts totally complicit) now removed South Africans of colour denominated as African from voting, except for 3 special seats.

Fourth, the programme around which Afrikaner nationalists and urban white workers in the Labour Party coalesced was using the legislative, budgetary allocations, and policy processes to bolster white privilege and domination. This affected land, access to jobs, quality of services, social segregation, freedom of movement (not just Africans, but Indian South Africans in OFS and Transvaal) etc.

So as Black (especially African) opposition began to organize, they were doing so in an institutional environment where they had no formal access to the political system.

So Donald found himself in the most unfavourable of circumstances – not located in any of the political parties in Parliament (and so unable to have any effect on actual parliamentary votes); Englishspeaking, not an Afrikaner; and espousing values contrary to the tendencies of the time in the white community. Nor could he join ANC by its rules. And the legitimacy of his role always vulnerable to criticism, criticism Donald could see the logic of.

What was his role in Parliament? Critique of the system, and of the specific measures it brought forward – its illogicality, inhumanity, economic dysfunctionality, and longterm political non-viability. An incisive mind. Carefully prepared parliamentary speeches. But an era where logic and evidence almost useless.

His second role was case work. And staying in touch with African opinion and particular injustices in far-flung parts of his constituency.

Then 2nd World War broke out. He supported SA's involvement. And why. So could not join up (Smuts' instruction) in order to keep the government with a majority.

By 1948, his role was increasingly illegitimate in ANC eyes (ANC now radicalised – the Youth League during the War). Made worse by the NP's victory.

Deal with his very different roles in the 1950s and 60s. His conviction: the only non-violent, evolutionary road to political change was to persuade whites to change their minds. Hence involved in the Liberal Party. Then in founding of the Progressive Party. His important contribution – the Molteno Commission which set out in great detail why and how a rigid constitution should replace the current constitution.

Also his work advising Black Sash (in effect, a continuation of his case work role).

His role in the great constitutional cases of the 1950s. And loses.

And his retreat into University life as a lecturer and Professor of Public Law.

Point to make about his role in 1950S & '60s – how boxed in he was re possible audience: Once he left parliament and continued to be active in SAIRR, and then Lib and Prog parties, he ceased to interact intensively with the ANC, trade unions etc (and indeed ANC proscribed in 1960). Secondly, he wrote only in English. So he moved in a narrow circle of largely English-speaking white South Africans who themselves were marginalised politically – partly because the NP set up an Afrikaner political monopoly after 1948, and partly because these liberal intellectuals were themselves largely critical of, and isolated from, the feeble white opposition party, the UP. So a very depressing time for Donald.