

BOOK CORNER

HUMAN RIGHTS AND THE SOUTH AFRICAN LEGAL ORDER, John Dugard

This book is one of the most interesting I have read for a long time. It is exciting because of its comprehensiveness, cogency and scrupulous fairness, and it was hard to put down.

John Dugard, Professor of Law at the University of the Witwatersrand, examines the legal order which gives legal and institutional form to the policy of apartheid. His approach is historical and comparative, and he continually evaluates the South African position in the light of British and American law and thinking. He never makes a statement which he does not back by example, and the foot-notes at the bottom of each page bear this out.

Part I describes how Parliament has come to be the supreme institution in South Africa, its power above that of the judiciary, and how the Rule of Law, which has virtually disappeared, is now erroneously equated by whites with rule *by* law whose purpose is to maintain the *status quo*.

Part II looks at the loss of human rights under the law of apartheid and the concomitant disappearance of what are generally regarded as basic democratic freedoms: the freedom of person and its many corollaries and the freedoms of speech, association and assembly. This part made salutary reading for one who imagined that, having worked in the Black Sash Advice Office, she knew something about the extent of discriminatory legislation in this country. Professor Dugard illuminates every cranny, and allows the legislation to speak for its sickening self. Particularly revealing is his observation that the official opposition retains its freedom of expression at the Government's discretion. In terms of the Internal Security Act the Government could prosecute a political party which furthers an object similar to one of the ANC or PAC. In fact the abolition of certain discriminatory legislation which is endorsed by the Proffeds, such as the abolition of the pass laws, was one of the objects of the ANC. To date there has been no such prosecution and Professor Dugard hopes there will never be, but the possibility of it exists.

Part III looks at political trials in South Africa. These are a part of our way of life, 'legal fictions' to the contrary notwithstanding. Professor Dugard is illuminating on how they serve to authenticate Government action in the eyes of the public in a way in which extra-judicial action, like banning, does not. He explains how the authentication process has been undermined by such factors as the increase in mandatory minimum sentences, the inapplicability of the principle of double jeopardy to charges under the 'Sabotage' and Terrorism Acts, the compelling of witnesses to give 'evidence for the prosecution and the new system of pre-trial procedure, sometimes known as the 'drastic process'. He explains and illustrates all these terms so that they are made wonderfully clear to the non-lawyer. He is particularly interesting on the disturbing resemblances between the 'drastic process' and the Dutch inquisitorial Code of 1570. Such legislation is alarmingly regressive, all the more so in comparison with, say modern American legislation.

Part IV, which makes up nearly a quarter of the book, is perhaps the most innovative and the most constructive. It studies the judicial process and human rights. The judiciary's reputation for independence and political neutrality was built up during the early 1950's when it took a firm stand against both the legislative and the executive. This reputation is no longer undisputed. Professor Dugard freely admits that this is partly due to the Government's reconstitution of the Appellate in the mid-1950's and to the fact that judges known to have been opposed to the Government before their appointment are seldom given political cases to judge. With wry fairness he adds: 'This may have been pure coincidence, but it is a matter that has not gone unnoticed'.

Moreover the positivist tradition of South African law can be blamed. Positivism holds that the law as it is must be considered divorced from the law as it ideally ought to be. Professor Dugard explains with a compassion and understanding typical of him that judges have often preferred the positivist approach because 'it is... comforting for the judge opposed to the laws he is required to enforce to seek refuge in the knowledge that his rôle is purely declaratory and mechanical'.

However positivism does not invariably govern judicial behaviour. Judges *have* made critical comment on politically colourless legislation which has resulted in desirable reforms, and Professor Dugard believes that this attitude could profitably be extended to statutes affecting civil liberties. By means of specific examples, he shows that in the interpretation of security laws, judges have generally — although not invariably — been pro-executive rather than pro-individual and such a decision was the definition of 'gathering' in *S. v. Wood*: it was ruled that any meeting of a banned person and one other constituted an unlawful gathering. He does not claim that judges could have changed legislation, nor are they responsible for the system of apartheid. He does believe, however, that

they could have ameliorated and softened such legislation had they made a different choice, but one equally valid from the legal viewpoint.

The points I have mentioned are merely a few plums pulled out of an exceptionally rich pudding. As well as being constantly fascinating, the whole work is characterised by moderation, fairness and understanding and is lightened by touches of irony and wry humour. Professor Dugard is never snide.

The writing is limpid and beautifully logical. Jargon — legal or otherwise — is refreshingly absent, and the author has a happy instinct for the right word.

The critics quoted in the blurb do the book an injustice. It is not of great interest only to legal scholars and students of South African affairs. It is imperative reading for anyone — lawyer or not — wanting a coherent and unemotional picture of the South African legal order.

Princeton University Press, hard cover, R17,95

SOWETO — BLACK REVOLT, WHITE REACTION, John Kane-Berman

This is an exceptionally vivid account of Soweto and the events preceding and following June 1976. The author's aim is to elucidate the coherent purpose behind the system of apartheid, which makes of black daily life 'a Pilgrim's Progress through a world invented by Kafka'.

The reader is made to see how blacks interpreted events, and accounts given in the 'white' press, even the English press, are frequently readjusted and counterbalanced. One is directly confronted with black bitterness and black anger. One telling placard protesting against Dr Kissinger's visit to South Africa in 1976 read: 'Kissinger, your visit to Azania is bullshit. Even animals are angry'.

One of the best chapters in the book is chapter 5 which searchingly and movingly conveys the taste and texture of life in Soweto. In other chapters Mr Kane-Berman is not afraid to analyse such sensitive subjects as the motives behind the burning of libraries and clinics. He is particularly interesting on the poor record of the South African business community in rectifying the situation, despite its protestations and material gestures of concern.

This is a vigorously written book which should not be missed. It forces even the 'liberal' to recognise the futility of merely tinkering with and speechifying about change. At our peril do we hide behind an unwillingness to face unpleasant but fundamental facts, an unwillingness based on 'the fear that any real attempt to respond constructively to the totality of black demands for change would involve great material sacrifices'.

J. S.

Ravan Press, soft cover, R8,50

LETTERS TO THE EDITOR

Perhaps this poem should have been called 'Ag shame!'. I wrote it in mild amusement because Sash is so often accused of Northern Suburbery or else told to get out of things it doesn't understand and get back to its kitchen.

Eleanor Anderson

small talk

(on the impossibility of pleasing everyone)

*Each day I took a cheering pot of soup
And fed it some hungry kids
Who seemed to like the stuff.*

*Then someone said, 'But don't you see
That tiny, single schemes like this
Are nothing like enough?'*

*And so I sought the company of those who strive
to sooth,
As best they can, the road for those
Who find the laws too rough.
Till someone told us, 'When a nation's heart
grows cold
No strivings of a group like this
Can ever be enough.'*

*Oh well. Ah well. I guess I'll take my pot of soup
And feed it to some hungry kids
Who seem to like the stuff.*