

John Dugard

Human Rights and the South African Legal Order

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The South African legal system affects four million Whites, as first class citizens, two million Coloreds and Indians as second class citizens, and over twenty million Blacks who are not even accorded a class of their own, apart from being a large reserve for cheap labour. John Dugard examines at very great length the legal system reflecting the South African Administration, a legal system pregnant with horrific racial injustices and biases as derived and executed by the ruling party – the Boer controlled National Party. Dugard not only examines the mechanism of the South African legal order, but weighs it against a background of very treasured values, universally accepted as elements of human rights.

If at all there are human rights in the South African legal order, they are for the 'human' part of the population, the four million Whites and perhaps a few elements in the Second class citizenry. The South African Administration, harbours a belief aimed at disarming the morale of the Blacks, that is – their »thought process ist very slow« to understand things. In this case the prejudiced legal system offers the Black community »rights« befitting a criminal, if any.

The South African Legal Order ist based on contemporary Roman-Dutch law. Due to the English influence on the Cape Region, one traces some elements of English law as well. Customary law ist not out of the question for that is the legal system regulating the customary affairs of the black communities, i. e. marriages, succession, guardianship, to mention but a few aspects.

Parliamentary supremacy in this legal order is an iron fist. The South African Parliament can and, does actually, positively enact some laws, some of which could be and are unreasonable, without there being a power in the ordinary forms of the Constitution, that is rested with authority to control it. In this legal order, the Parliament can do everything that is not naturally impossible. Its power is absolute. No wonder, therefore, in South Africa, judicial review on Parliamentary enactment is an unknown practice!

Leading legal doctrines in the Free world have been given a perverse meaning in South African Courts. The good example is the Rule of Law. Dugard quotes a very interesting case – the Case of S v Essop and others. One of the accused in that case commented that the 180 days detention law was contrary to the Rule of Law. Judge Snyman interrupted him – »Do you know what the Rule of Law is, what ist means?« In reply the accused's answer, »that the individual ist protected by the law«, The learned judge stated – »but then if a law is passed, then it is the Rule of Law, isn't it? Or are you using the rule of law in a political sense, because it is for the lawyer quite a stupid expression, the real lawyer. I am not talking about politically minded lawyers« (see page 44). The rule of law in South Africa is no other than Law and Order in the Boer fashion.

Discrimination on racial basis is protected by the legal letter in South Africa, so one notices in Dugard's book. This discrimination is effected through the universally condem-

ned system of Apartheid or »Separate development« as the South Africans fashion it. One sees »Whites only« or in Afrikaans »Sleqs Blankes« signs in toilets, post offices, elevators, restaurants, beaches and other amenities. Discrimination on racial grounds, has thus become part of the cultural tradition of the dominant group. As seen above the legal instruments reflecting the discriminatory expectation of the least enlightened section of the white community and translates popular prejudice into legal norms, are not subject to review. To an ordinary human being the laws in this system serves a totally contrary purpose. The Public Safety Act no. 3 of 1953 which empowers the Government to declare a State of Emergency when it considers necessary, has been invoked more than often with sometimes very sanguinary scenes. eg the Sharpeville Massacre of 1960. The General Law Amendment Act. 37 of 1963 works against black political aspirations and thus administers a heavy blow to whatever political consciousness movement among the blacks and some reasonable whites. The internal Security Act makes it a criminal offence to advocate »Communism«. But it is common knowledge that »Communism« to the South African Administration is equated to universal enfranchisement and, a democratically elected government. The right of self-determination also means that scaring word, »Communism«, as far as South African Administration is concerned. Dugard's book is a study of the South African Legal System and the part it plays in the South African body politic, as he puts it. In fact it is an excellent exposition of the ways legal positivism can be manipulated to attain a legal order that is totally against the wishes of the majority by the institutionalising of notoriously inhuman policies. His emphasis is upon the law and not politics. Still, one can indirectly sense and feel too, the brutality capping the political mechanism that has condemned the majority into a status of semi slaves without any rights at all (Of late, there were elections in South Africa. 20 million people had no right to vote whatsoever, four million had all the rights, and possibly a selected few from the two million). That is the political translation of the South African legal order. Dugard simply describes and explains in a language that is easily comprehensible and devoid of the legal gymnastics prevalent in many other legal treatises. The effect is great. He educates readers, not only white South Africans and white South African lawyers, but people all over, interested to know what is exactly South Africa. He does not make any judgment for the reader, but the reader reaches a judgment himself as a reasonable human being. One wonders, after such an exposé, whether the »thing« called Justice deriving its force from law has a universal aspect. This book is particularly very good for scholars studying trends of human rights, but also the best for the international community as a whole as far as South Africa »as an international problem« is concerned.

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