Book Reviews

The Politics of South African Legal Scholarship

Human Rights and the South African Legal Order, by John Dugard. *Princeton: Princeton University Press*, 1978. Pp. xix, 470. $30.00.

Reviewed by Randall L. Kennedy†

> *"Reduced to its simplest form the problem is nothing else than this: We want to keep South Africa White . . . 'keeping it White' can only mean one thing, namely White domination, not 'leadership,' not 'guidance,' but 'control,' 'supremacy.'"*
>
> Hendrik Verwoerd: former Prime Minister of the Republic of South Africa[1]

> *"We are looking forward to a nonracial, just and egalitarian society in which colour, creed and race shall form no point of reference."*
>
> Stephen Biko: founder of the Black Consciousness Movement[2]

The Republic of South Africa is a rigidly stratified pigmentocracy where whites occupy the top of the social pyramid while blacks are pinned to the bottom.[3] What dis-

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† A.B. 1977, Princeton University; J.D. candidate, Yale Law School. Mr. Kennedy is a frequent contributor to The New Republic.

1. Reply of Ethiopia and Liberia, 4 South West Africa Cases, I.C.J. Pleadings 220, 264 (1966) (quoting South African Parliamentary Debates 2d Parl. 2d Sess. 1963), *quoted in* M. McDougal, H. Lasswell & L. Chen, Human Rights and World Public Order 529 n.433 (1980).

2. S. Biko, Black Consciousness in South Africa at v (M. Arnold ed. 1979).

3. According to apartheid's strict racial hierarchy, whites (also popularly referred to as Europeans) occupy the first rank, followed by "coloureds,"--persons of mixed racial parentage where the mixture includes white blood--Asians, and Africans. The nature of South Africa's racial conflict is submerging differences separating groups oppressed by white domination. Coloureds and Asians are increasingly

tinguishes the South African situation from racial discrimination elsewhere is that it reflects official government policy. The Republic of South Africa is the only government in the world that makes racial domination the foundation of its philosophy and racial separation the basis of its conduct.[4] The Afrikaaner regime coined the term "apartheid" to describe its vision of social organization. It is a term so associated with calculated cruelty that in many quarters of the international community apartheid has superseded nazism as the exemplar of state-organized terrorism. As the United Nations has repeatedly declared, apartheid is "a crime against humanity."[5]

In *Human Rights and the South African Legal Order*,[6] John Dugard presents a comprehensive analysis of the laws of apartheid. Blacks are the group most victimized by these laws. An encyclopedic array of controls clamp narrow restrictions upon practically every aspect of their lives. Job reservation laws restrict blacks from performing many kinds of skilled and semi-skilled jobs--"civilized labour"--and permit them to staff only the undesirable, lower-paying positions--"uncivilized labour." Moreover, as Dugard notes, "there is an unwritten law that no white employee shall be subordinate to a black...."[7] Education for blacks is separate and unequal; on the average the government annually spends 654 Rand for each white child but only 49 Rand for each black.[8] Blacks are prohi-

3. (Continued)
referring to themselves as blacks, aligning themselves with the most numerous and most oppressed group, the black Africans. For the purposes of this review, however, black is used only to describe Africans. The South African population numbers an estimated 37 million: 19½ million black, 4½ million white, 2½ million coloured, 765,000 Asian. South African Institute of Race Relations, Survey of Race Relations in South Africa 1978, at 49 (1979).

4. M. Moskowitz, The Politics and Dynamics of Human Rights 177 (1968).

5. *See, e.g.*, 29 U.N. GAOR, Supp. (No. 31) 38, U.N. Doc. A/9631 (1974). *See also* M. McDougal, H. Lasswell & L. Chen, *supra* note 1, at 535 n.467 (enumerating more complete list of U.N. condemnations of apartheid).

6. J. Dugard, Human Rights and the South African Legal Order (1978) [hereinafter cited by page number only].

7. P. 86.

8. Figures quoted are for 1976-77. *See* South African Institute of Race Relations, *supra* note 3, at 399. One Rand is currently equivalent to 1.3 United States dollars.

bited from buying land outside "homelands" set aside for them by the government. Although blacks constitute seventy percent of the population, the homelands constitute only thirteen percent of South Africa's territory. Lands outside the homelands that are owned by Africans are labelled "black spots" and subject to government expropriation. As a result, hundreds of thousands of Africans, described officially as "surplus population," have been forcibly resettled in or near the homelands, land that is generally of poor quality and far removed from sources of employment. Statutes restrict the rights of blacks to travel within South Africa. Except in certain narrowly defined circumstances, it is a crime for an African to remain in an urban area for longer than seventy-two hours unless he has been issued a permit. But even an African who qualifies for legal residence within an urban area is not entitled under law to move freely within it. In 1977 the State President imposed curfews in over 300 cities and towns prohibiting Africans from being in any public place during specified hours at night. And the Minister of Bantu Administration and Development is given wide powers to forbid blacks from attending churches, hospitals, or places of entertainment outside African residential areas whenever, in his opinion, "the presence of Bantu ... is causing a nuisance to residents in the vicinity of those premises."[9]

These and other humiliating deprivations are imposed by a parliamentary regime totally closed to black participation. South African law denies the vote to blacks, and in 1968 Parliament proscribed multi-racial political parties.[10] Under this statute no person belonging to one racial group may join a political organization of which a person belonging to another racial group is a member, or address a meeting of persons of whom the majority belong to any other racial group in order to further the interests of a political organization. To further undermine the potential for any semblance of organized black political power the government has banned every significant black opposition party--from the African National Congress and the Pan Africanist Congress in 1960 to the South African Organization and the Black Peoples Convention in 1977.

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9. Pp. 74-75.

10. Prohibition of Political Interference Act, Act 51 of 1968, Statutes of the Republic of South Africa (1968).

To protect apartheid the South African government has enacted statutes to repress dissent. Salient features of these laws include vagueness and the delegation of virtually unlimited authority to officials in the executive branch. To take but two examples: The Internal Security Act[11] prohibits the advocacy of communism and its objects and was extended in 1976 to cover organizations and individuals who engage in "activities which endanger the security of the state or the maintenance of public order."[12] Under the Terrorism Act[13] a person commits the capital crime of "participation in terroristic activities" if, "with intent to endanger the maintenance of law and order in the Republic, he commits *any act* in the Republic or elsewhere"[14] that had or was likely to have any of a long list of effects mentioned by the statute. Among these effects are those likely:

> (a) to hamper or to deter any person from assisting in the maintenance of law and order;
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> (b) to promote, by intimidation, the achievement of any object;
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> (c) to cause or promote general dislocation, disturbance or disorder;
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> ...
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> (h) to cause substantial financial loss to any person or the State;
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> (i) to cause, encourage or further feelings of hostility between the White and other inhabitants of the Republic;
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> ...
>
> (l) to embarrass the administration of the affairs of the State.[15]

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11. Internal Security Amendment Act 79 of 1976, amending Section 2(2) of Act 44 of 1950, Statutes of the Republic of South Africa (1976). *See* p. 155.

12. *Id.*

13. Terrorism Act, Section 2 of Act No. 83 of 1967, Statutes of the Republic of South Africa (1967) [hereinafter cited as Terrorism Act].

14. Pp. 262-63 (emphasis in original) quoting Terrorism Act, *supra* note 13, at § 2(1)(a), (b).

15. Terrorism Act, *supra* note 13, at § 2(2)(a), (b), (c), (h), (i), (l) *quoted at* p. 263.

Under the security laws, dissidents can be detained and punished by executive action with little or no judicial oversight. Under Section 6 of the Terrorism Act, any senior police officer may order the arrest of a suspected "terrorist" or anyone suspected of withholding any information relating to "terrorists." A suspect may be detained indefinitely without trial or any other judicial restraint and may be interrogated in solitary confinement. The possibilities for using this law as a cover, indeed a sanction, for torture is suggested by the statute's own chilling words: the police may order a suspect's release "when satisfied that he has satisfactorily replied to all questions at the said interrogation or that no useful purpose will be served by his further detention."[16] It should be remembered that Stephen Biko, leader of the Black Consciousness Movement, died of brain damage in 1977 while in police custody under Section 6. Similarly useful as a legal tool of repression is Section 10 of the Internal Security Act. Under this provision the Minister of Justice can issue a "banning order" against someone if the Minister is satisfied that that person is violating the provisions of the Act. Banning orders usually confine the person to a particular area, typically a magisterial district, though some banning orders restrict the person to her home and prohibit the banned person from receiving visitors.

Vague, broadly phrased legislation that ousts judicial oversight of important restrictions on individual rights and liberties is immune to judicial testing. Parliamentary sovereignty is embedded in the Republic's Constitution: "No court of law shall be competent to enquire into or to pronounce upon the validity of any Act passed by Parliament...."[17] As a result, Dugard notes, "Parliament has been able to run roughshod over individual liberty without fear of judicial obstruction."[18] The courts, deeply imbued with a rigidly positivistic legal philosophy, have generally affirmed Parliament's power no matter how destructive of human rights legislation has become. In the words of one court, "Parliament may make any encroachment it chooses upon the life, liberty or property of any individual subject to its sway, and ... it is the function of courts of law to enforce its will."[19]

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16. Pp. 117-18.

17. S. Afr. Const., Section 59(2) of Act No. 32 of 1961, *quoted at* p. 35. Section 59(2) limits judicial review to cases involving attempted repeals of the equal status of English and Afrikaans as official languages.

18. P. 35.

19. Pp. 35-36.

Along with his description of apartheid's legal apparatus, Dugard offers suggestions for reform. In a "Plea for a New Approach to Law" he complains that "[p]ositivism has not served South Africa well as a guide to legal thinking"[20] and urges that it be supplanted by legal realism and certain principles of natural law.[21] Legal realism will be useful, he suggests, because "[i]t aims to strip the law of its harmful myths and fictions, such as that judges do not make law...."[22] Dugard emphasizes that, even within the framework of parliamentary supremacy, judges are presented with alternative courses of action and that the very presence of alternatives reflects the potential for judicial initiatives. Judges do not have to sit by passively while the law is reduced to a mere tool of repression; they can help reform the law by applying it in ways that promote libertarian values. An emphasis upon natural law principles is needed, Dugard argues, to remind the South African legal community of the "intersection of law and legal values."[23] He calls upon lawyers and judges to use natural law principles to restrain the power of parliament. He urges them to recognize that there is a level of repressiveness below which a law ceases to be a law. Finally, he proposes the enactment of an American-style Bill of Rights as an entrenched safeguard to basic individual liberties. As Dugard explains: "Once law is seen as a purposeful mechanism for protecting the individual and promoting enlightened reform, rather than as a command from above to below, a Bill of Rights becomes an obvious requirement."[24]

Human Rights and the South African Legal Order is an impressive indication of John Dugard's commitment to humane values. A white South African lawyer and professor, Dugard has distinguished himself as a critic of his government's laws and the legal community that enforces them. His work not only represents a scholarly venture but is itself a political act: a brief of dissent.

As repression in South Africa has intensified, scholars who have dared to publish probing critiques of the apartheid regime have become increasingly prone to harassment. In terms of legal scholarship, inquiry into the judiciary's role in maintaining white domination is a

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20. P. 397.
21. Pp. 392-402.
22. P. 397.
23. P. 398.
24. P. 401.

taboo subject "upon which the academic writes at his peril."[25] Professor Barend van Niekirk, an outstanding dissident figure within the South African legal academic community, has twice been prosecuted, once successfully, for contempt of court. The successful prosecution was based on an article[26] he wrote that demonstrated a widespread belief among advocates that judges impose sentences in a racially discriminatory manner, especially in capital cases. The effect of even an unsuccessful prosecution was so chilling that there have been no further inquiries of the sort initiated by Van Niekirk. Furthermore, private sanctions against dissident intellectuals pose an additional threat to careers and even physical safety. Under these conditions, critical scholarly analysis of apartheid requires courage as well as the usual demanding requisites of intellectual labor.

Nevertheless, without in the least belittling his effort, it must be noted that Professor Dugard has cautiously observed the limits within which the regime allows white critics to roam.[27] This care is undoubtedly due in

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25. P. 301.

26. Van Niekirk, ...*Hanged by the Neck Until You Are Dead*, 86 S. Afr. L.J. 457 (1969), 87 S. Afr. L.J. 60 (1970).

27. Racial discrimination affects the regime's response to dissent; white critics are handled with far more lenience than black critics. Commenting on discriminatory practices in censorship, novelist Nadine Gordimer observes:

> When it comes to literature, and in particular the literature of ideas, there has been precious little tolerance to disguise the repression. Tolerance has operated in one small area only, and provides a curious half-light on the psychology of white supremacy. Literature by black South Africans has been successfully wiped out by censorship and the banning of individuals, at home and in exile. But white writers have been permitted to deal, within strict limits, with the disabilities, suffering, hopes, dreams, even resentments of black people. Are such writings perhaps tolerated because they have upon them the gloss of proxy--in a strange way, although they may indict white supremacy, they can be claimed by it because they speak for the black man, as white supremacy decides for him how he shall live...?

H. Adam, Modernizing Racial Domination: South Africa's Political Dynamics 55-56 (1971) quoting Gordimer, *Censorship and the Primary Homeland*, Reality, Jan. 1970, at 14.

large part to personal, prudential considerations--a desire to avoid banning, jail, or harassment. But his care also reflects a larger, less self-interested purpose: his aim effectively to advocate reform. Effectiveness, in Dugard's view, entails disseminating persuasive arguments in favor of reform to the present managers of the legal machinery. Hence, *Human Rights and the South African Legal Order* is "intended primarily for white South Africans, and especially for white South African lawyers."[28]

Keenly aware of the demands and vulnerabilities of his audience, Dugard employs various strategies to win them over to his views. To convince his readers that reform is urgently needed, he describes in clear detail the baneful effects of the regime's laws. But to win a hearing from whites so that they will at least consider his critique and proposals, Dugard advances his argument in moderate, unthreatening tones. At points, *Human Rights and the South African Legal Order* reads more like the product of a gingerly diplomat than that of a dissident intellectual. Characteristic of Dugard's caution, his insistence on appearing balanced, is a statement he makes concerning academics in the legal community: "Sometimes, cowed by executive and judicial disapproval, they have failed to speak out ... and sometimes, angered by the enormities of recent legislative inroads upon the basic freedoms, they have spoken out too loudly" against the barbarities of apartheid.[29] What Dugard means to suggest is not that loud protest is incommensurate with its provocation but only that strident protest is impolitic insofar as it may alienate some who might be susceptible to gentler persuasion.

In addition to moderating his rhetoric, Dugard resorts to other strategies aimed at making his book more widely acceptable. He divests it, for instance, of explicit signs of political partisanship and affects as much as possible the neutral, depersonalized stance characteristic of most academic writers. Taken as a whole, *Human Rights and the South African Legal Order* is clearly an indictment of apartheid and its laws. Yet Dugard writes in its preface that his purpose "is not to judge, but to describe and explain."[30]

Another of Dugard's strategies is to fasten upon insecurities which dwell beneath the collective self-esteem

28. P. xii.
29. P. 302.
30. P. xii.

of a significant number of white South Africans. The existence of this insecurity is reflected by the South African government's insistence upon reminding its white citizens of the kinship that exists between their institutions and those of the other white-dominated nations of the world. In 1977, for instance, in a speech to the Parliament, the Minister of Justice asserted: "Our legal system is held in high esteem in all Western countries."[31] Dugard unmasks this self-congratulatory perception and shows it to be a mere self-delusion. "South Africa's legal system has become," he declares, "more of a rarity in a world increasingly committed to the protection of human rights by legal means."[32] Dugard's debunking of the white's self-image is accompanied, though, by an implicit affirmation that at its essential core, South Africa's legal system aspires to embody certain Western ideals regarding justice and the rule of law:

> The legal values and principles that should be employed to guide judicial policy . . . are those jural postulates that form part of the South African legal heritage and are designed to foster the basic political and legal ideal of modern Western society -- the well-being and free development of the individual.[33]

He thus claims humane values as the heart of South Africa's legal tradition, while excoriating apartheid's "statutory injustices" as an odious departure.[34] He flatters his readers, recalling the finer moments of their legal heritage, as he criticizes them. He attempts to use the spur of pride and the whip of scorn to move them to reconsider their positions as agents and beneficiaries of oppression.

Dugard also tries to claim his audience's attention by appealing to their interest in a stable legal-political system. For in addition to his libertarian argument against repression, he criticizes repression on the ground that in the long run it is ineffective in maintaining order.

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31. P. xi, quoting House of Assembly Debates, col. 439, January 31, 1977.

32. *Id.*

33. P. 382.

34. The phrase "statutory injustices" is borrowed from Gustav Radbruch, who used it to describe the laws of Nazi Germany. *See* p. 399.

He warns, for instance, that denying freedom of assembly is "highly dangerous," for "when groups operating outside the confines of recognized political parties are denied the right of public protest it is not unlikely that they will resort to clandestine political activities aimed at the structure of society."[35] Similarly, when criticizing the special procedural rules governing trials involving the security laws--shifting the onus of proof to defendants, abolishing the rule prohibiting double jeopardy, withdrawing the right to pre-trial hearings, allowing the prosecution to split charges, arranging for pro-government judges to hear political cases--Dugard focuses mainly on the ways in which these procedures "undermine the value of the political trial as a process of judicial authentication."[36] He writes, for instance, that:

> Inevitably there will be some skepticism on the part of the public regarding the political trial. For this reason a government should remove all suspicions of trial 'rigging' by ensuring that there is no relaxation of the procedural standards of fairness required in ordinary criminal proceedings. It should heed the warning ... that 'since the violation of procedural guarantees is visible to all, the image-creating purposes of the proceedings are jeopardized' by any tampering with the rules of due process.[37]

Dugard sacrifices much to advance these and other strategies of persuasion. Indeed, his sacrifices vitiate much of the worth of *Human Rights and the South African Legal Order*. For example, his argument for reforming the procedural aspects of the security laws sacrifices the essential demand that these laws be abolished. This is not to suggest that the procedural rules governing repressive legislation should be considered irrelevant by opponents of the regime. Inasmuch as procedural rules impose some limitation on state power they should be used and extended as fully as possible--provided that reforms of this type do not obscure the ultimate goal: to overthrow white supremacy. While it is true that the extension of procedural protections may serve to add legitimacy to the regime

35. P. 187.
36. P. 274.
37. P. 250.

and its courts, it is also true that stronger procedural protections may serve to impede repression and thus preserve resources--*i.e.*, the lives of dissidents--needed to destroy apartheid.[38]

Dugard, however, does not advance his argument on the basis that reform might contribute to the overthrow of the regime. Rather he suggests that reforms are needed in order to enhance "the image-creating purposes" of trials. This suggestion would be unsurprising if it came from a defender of the regime searching for more sophisticated methods with which to effect and legitimate repression. It is disturbing that it comes from a leading scholarly critic of the regime. Dugard's suggestion evinces more concern with image than substance. Moderating or even eliminating the openly one-sided procedural rules governing political trials will add nothing in the way of real fairness; it will simply make these trials *seem* more fair. Completely missing from Dugard's analysis is a recognition that there can be no such thing as a fair trial in any case founded upon the laws of apartheid. What Gustav Radbruch stated with regard to the laws of nazism is equally applicable to the laws of apartheid: "Where justice is not even an aim, where equality which forms the crux of justice is consciously ignored in the administration of justice, there the law does not merely constitute 'wrong law' but lacks rather entirely the quality of law."[39]

The overall thrust of Dugard's work--its insistent demand that the government recognize basic individual rights--makes it highly unlikely that he actually believes in the program he posits: legitimating the established order by making it merely appear more fair. Rather, as has been indicated above, his willingness to frame his arguments in a manner supportive of conservative purposes is probably a ruse to allow his proposals for reform to have currency among white South African readers. Accommodations of this sort befit the calculations of a politician,

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38. For a sensitive discussion of the dilemmas confronting dissident lawyers who seek to work within the South African legal order without helping to legitimate it, see S. Kentridge, *The Pathology of A Legal System: Criminal Justice in South Africa,* 128 U. Pa. L. Rev. 603, 619-21 (1980).

39. Van Niekerk, *The Warning Voice from Heidelberg--The Life and Thought of Gustav Radbruch,* 90 S. Afr. L.J. 234, 234 (1973).

not the responsibility of an intellectual. The intellectual's role imposes a unique obligation "to speak the truth and expose lies."[40] Dugard's willingness to make statements that are misleading, and that do not reflect his own actual beliefs, represents a misguided evasion of this obligation. He exchanges the one real power an intellectual does possess--his power to tell the full, uninhibited, radical truth--for the vision of exercising influence, a seductive but illusory goal.

Another problem with Dugard's analysis is its tendency to avoid certain key issues and to obfuscate others. This tendency is both caused by his strategies of persuasion and used as a strategy itself. Persuasion presupposes the existence of some common ground, some shared premises. Dugard apparently believes that a small area of fragile consensus exists within South Africa's legal community, an area where it may be possible for opponents and defenders of the regime to begin some form of dialogue in the hope of promoting reform. Preserving consensus entails ignoring certain issues which raise irreconcilable differences. Dugard thus intentionally avoids discussing the ability of legal processes to destroy South Africa's pigmentocracy, to create black majority rule and to redistribute economic resources. Instead he merely asserts, "[F]or anyone who believes that a peaceful resolution of the South African race issue is still possible," reforms in the legal system could forestall "the grim prospect" of violent revolution.[41] The key issue, however, is not whether a reformed legal system can forestall revolution but whether it can radically alter power relationships so that blacks will no longer be forced to slave as powerless serfs for the benefit of the white minority.

Dugard advances his argument regarding the efficacy of legal process by drawing upon an historical analogy between the Republic of South Africa and the southern United States during the segregation era, an analogy popular among liberals in both countries. The experience of the southern United States attests, so the argument runs, to the power of law gradually to dissolve racial stratification. At least two problems erode Dugard's argument.

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40. Chomsky, *The Responsibility of Intellectuals*, in American Power and the New American Madarins 325 (1969).

41. P. 400.

In the first place, the United States has been far less successful in erasing racial subjugation than Dugard's argument implies. Anti-discrimination statutes and a reform-minded judiciary have helped to create substantial changes in race relations; discrimination in the public sector and in many areas of the private sector is legally prohibited. Nonetheless, it is clear from casual observation, not to mention statistical indicators of social status, that in many crucial respects American blacks continue to be victimized by racial oppression. A second error in viewing the United States as a model is that the differences between the racial situation here and in the Republic of South Africa overwhelm the similarities. The decisive dissimilarity is that in South Africa the whites are outnumbered five to one; in the southern United States the figures are exactly the opposite. Granting civil rights, including the right to vote, to blacks in the United States involves a far less sweeping redistribution of power than would be the parallel case in South Africa. Whites in the United States could afford to grant civil rights to blacks, for even when fully enfranchised the black minority poses no actual threat to the overall ascendancy of whites in the United States. Similar developments in South Africa, however, would mean the overthrow of white hegemony. The white minority, of course, will not allow legal processes to effect a redistribution of political power that would seriously threaten their place at the top of the social pyramid.[42] Dugard himself acknowledges this. "White South Africans," he notes, "have shown a deep resistance to change and there is little likelihood of a voluntary surrender of power...."[43] On the other side, there is little likelihood that blacks will voluntarily surrender their claims to majority rule. That being the situation, Dugard's search for consensus and faith in legal processes is woefully misplaced. For as Judge Learned Hand once warned: "A society so riven that the spirit of moderation is gone, no court *can* save."[44]

Nor should the Republic of South Africa as it is presently constituted be saved. *Human Rights and the South African Legal Order* shows why the apartheid regime deserves destruction; the descriptive material in the book amply supports the case for revolution. However, the book's prescriptive element shrinks from that alternative. The dis-

42. For an excellent critique of the United States-Republic of South Africa analogy, see Frederickson, *South Africa and the American South*, Inquiry Magazine, Nov. 21, 1977, at 14-16.

43. P. 402.

44. Pp. 387-88, quoting L. Hand, The Spirit of Liberty 164 (1960).

crepancy between description and prescription is partly attributable to the prudential and strategic considerations outlined above. But this jarring contrast is also due to Dugard's paradoxical position as an opponent of a pigmentocracy that benefits the race to which he belongs. Deeply critical of the South African legal order, he is still attached to it. He has not escaped from what sociologist Robert Blauner has called, in a different context, "the iron law of white privilege."[45]

One telling sign of Dugard's entrapment is the constricted nature of even his boldest reformist vision:

> If faith is to be restored in the South African legal system *while there is yet time* sweeping changes will need to be made to the entire edifice of the law. A new Constitution with a Bill of Rights to provide legal safeguards for individual liberty, anti-discrimination laws . . . and a concerned and courageous legal profession committed to the enforcement of human rights, are the very minimum requirements.[46]

This program insufficiently challenges white supremacy. A new Constitution providing for the full enfranchisement of blacks would pose a serious challenge. Yet Dugard is silent on the question of black political power. Instead he focuses on the protection of individual liberties, neglecting the crucial fact that the struggle in South Africa is over group rights.

Another telling sign of his entrapment is his insistence upon forestalling the "grim prospect" of violent revolution.[47] This indicates Dugard's inadequate sensitivity to the immediate suffering of black South Africans. For them, racial warfare is not a grim prospect but a present reality. An intensification of their struggle for power will shift the burden of this ongoing war onto the white population. Heightened conflict does not signal the unmitigated catastrophe Dugard seems willing to avoid at all costs. To the contrary, it offers the possibility for the creation of a truly democratic Azanian republic.[48]

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45. R. Blauner, Racial Oppression in America 23 (1972).
46. P. 402 (emphasis in original).
47. P. 400.
48. Azania is the name used by revolutionaries in the anti-apartheid movement to refer to a future South Africa, governed by majority rule.

With all its contradictions and evasions, *Human Rights and the South African Legal Order* is itself an artifact of apartheid. Viewing the book as an artifact, as a reflection of the politics of South African legal scholarship, allows one to glimpse the dilemmas plaguing white dissident scholars. However much Dugard's work tells us about the laws of apartheid, it also tells us much about the agonizing ambivalences of a South African liberal as he contemplates the crimes of his fellow white countrymen.