

Poles of alienation

John Dugard

Abridged version of a talk delivered by Professor John Dugard to the Northcliff Rotary Club on April 4, 1978

IN this address it seems appropriate to speak about Community Service and the future of South Africa. Community Service is the hallmark of Rotary, and we are all concerned about the future, especially since the events of 1976 which wiped out the apathy of the sixties.

South Africans have shown their concern about the future in different ways. Some have emigrated. Some have bought guns and dogs and gone into a state of siege. But the majority of white South Africans, one hopes, are responding responsibly and trying to direct South Africa towards evolutionary, not revolutionary, change. The success of this response will depend on our ability — that of existing institutions — to make blacks feel that they are part of South Africa.

At present, however, there are two forces of alienation which make blacks believe they have no part in South African society as it exists today, and which make other systems of government and other political ideologies more attractive.

These two forces are discrimination and repression.

The Government itself is on record as being aware of the need to 'move away' from discrimination. One may disagree with its methods of 'moving away', one may object to the homelands policy, the slowness of pace and the failure to abolish immediately laws such as the Prohibition of Mixed Marriages and Immorality Acts. But at least there exists a commitment to moving away from discrimination.

Outside Government more community service programmes are being created to improve the quality of black life. In the business field there is a concerted effort to remove the discriminatory features of employment.

All this does not mean that we do not have a long way to go. But at least we are on the road. We have at last acknowledged that discrimination on grounds of race must go.

Sadly, however, the position of repression is very different. I use the term repression to mean the control or subjection of political dissidents by extraordinary legislative and administrative procedures which exclude access to the courts, and hand over unrestricted powers to the executive and police.

The two outstanding examples of this are Section 6 of the Terrorism Act and the Internal Security Act.

Section 6 of the Terrorism Act allows a person to be held indefinitely without trial — in isolation — for the purpose of interrogation. No court of law may interfere with such a person's detention and no lawyer or doctor of choice may visit him.

This law is freely used by the authorities. The Minister of Justice is no longer obliged to give details about detainees, but private studies, which have not been refuted, show that at the end of 1977 more than 600 people were being held, mostly under Section 6. Among these held there were apparently many children. Almost 100 of the total had been held for a year.

The general white response is that nothing is too bad for terrorists. But the Terrorism Act is in fact so wide that a person whose activities fall far short of terrorism may be held under this law. The Act encompasses not only the terrorist on the border, but also the black politician who operates outside the South African political system because this system is closed to him.

The Internal Security Act allows the executive to take the following actions without recourse to a court of law:

- imprison individuals not suspected of any crime, like Percy Qoboza (preventive detention)
- ban individuals, like Beyers Naudé
- ban newspapers, like 'The World'
- ban organizations, like SASO.

These laws, too, are generously applied. Since 1950 about 1300 people have been banned and since 1976 more than 200 have been held under preventive detention.

Since the first enactment of detention-without-trial legislation in 1963 all those who have died in detention have been black.

These laws confirm the Marxist view of law in a capitalist society. Blacks are increasingly coming to view our legal system as an instrument of repression created by whites to maintain control over them.

Whites have been brought up to respect the South African legal system. They see it as a system which maintains domestic security and promotes economic opportunity, a system which protects individual rights by means of an independent judiciary and which is steeped in justice and tradition. Blacks have a quite different perspective. For them it is a system which pro-

notes personal insecurity and denies material advancement, a system in which they do not participate either as lawmakers or law-appliers, for although there are a few black magistrates there are no black judges.

My understanding of the black mood at present is that repression is as much an issue as discrimination. The recent implementation of the security laws has drawn attention to other, non-political, weaknesses in the system, as it affects blacks. A glaring example is the inadequacies of legal aid.

What few rights blacks have, are generally rendered unenforceable through lack of funds. It is common knowledge that black consumers are exploited by white businessmen, but they often do not have the financial ability to enforce the legal remedy. Except for *pro deo* defence in the Supreme Court, the State-run Legal Aid Board does not extend legal aid generously to persons charged with criminal offences. In 1975-76 only 790 applications for legal aid were approved in criminal cases while more than 10 000 were approved in civil. During this period almost 300 000 persons were imprisoned. Consequently many people are being jailed without legal defence.

Clearly the State Legal Aid Board in South Africa will not be able to extend legal aid adequately. Yet in the US and UK no person may be sentenced to imprisonment unless he has been legally defended, or at least offered a lawyer.

It is here that community service has a role to play. It cannot improve the law, but it could make the administration of justice more even-handed by the establishment of voluntary legal aid clinics. Such clinics could be set up in the precincts of pass courts to assist blacks charged under these laws. A voluntary clinic could be set up for black consumers in central Johannesburg at lunch-time and on Saturday mornings.

A local organization might provide funds for the care and education of dependents of banned people and prisoners of conscience. It might also collect funds for legal aid in political trials.

White South Africans tend to have a great fear of 'meddling in politics', but how can it be meddling in politics to assist a person charged with a criminal offence? Or to provide a black man with advice so that he may sue a furniture dealer for acting unlawfully under the HP Act?

Such forms of assistance would ensure that the legal system works properly, and give blacks new faith in both whites and the system. I cannot promise an organization that embarked on such a course a warm and welcoming response from the Government but it would be acting perfectly legally.

Where the future of South Africa and our children is at stake, we cannot place popularity with Government above our duty to counter repression — this great source of alienation in our society.

OBITUARY

DAISY SOLOMON

DAISY SOLOMON was known to her friends by her first name, and in her public life it was never prefixed by a title. This is indicative both of the warmth and charm of her personality and of the importance of her contribution to the struggle for women's rights.

Born in Sea Point, daughter of Saul Solomon, famous member of the SA Parliament, she was early influenced by the liberal atmosphere of her home. Her interest in women's rights was fostered by her mother who was a forceful fighter for them.

Perhaps the best known episode in their lives was when they were arrested while taking active part in the suffragette movement in London. They were sentenced to one month's imprisonment in Holloway Prison.

Though reticent on the subject, Daisy did admit that forced feeding and other treatment called for great endurance during that time.

Overshadowed by this is the fact of her social work in the East End of London where she taught in girls' clubs.

After World War II she returned to South Africa to live with her brother Judge Saul Solomon in St James, Cape.

During that time she spent two years sorting and cataloguing family papers. Those of historical interest she finally presented to the SA Library.

She will be long remembered by the Black Sash for the balanced judgement she contributed when asked.

In her home she extended a loving welcome to a large circle of relatives and friends.

To all who knew her, her passing is a great loss.

M. J. GRANT