

John Dugard, THE SOUTH WEST AFRICA/NAMIBIA DISPUTE: DOCUMENTS AND SCHOLARLY WRITINGS ON THE CONTROVERSY BETWEEN SOUTH AFRICA AND THE UNITED NATIONS. University of California Press 1973. March 18, 1974. 605 pp. \$8.95 (paper)

"Namibia" is a dirty word in South Africa, if not actually a treasonable one. A person who utters it may find himself an object of suspicion, possibly of outright harassment.

In preparing his equivocally titled text on "South West Afrjca Namibia" Professor Dugard has necessarily had, therefore, to attempt to protect himself, as far as possible, against charges of terrorism by typewriter. It may, in passing, be noted that his efforts have been just barely successful: Importation of his book into South Africa was held up by Customs—presumably because of the title—until the Publications Control Board decided that it was not "indecent or obscene or on any other -grounds whatsoever [i.e., politically or philosophically] objectionable." ¹

In view of this problem it may be instructive to compare Professor Dugard's approach with that of Dean Mathews of the Natal University Law School, whose recently published Law, Order and Liberty in South Africa also dealt with a very tough subject.

In each case the author appears to have taken a basically impersonal stance, using an "outside" norm to draw official lightning.

Dr. Mathews' lightning rod is the internationally recognized concept of the Rule of Law. (Indeed, the Rule, as he defines it, is reduced to little more than basic procedural due process; nevertheless, he feels compelled to make a long and thorough defense of even that bare bones minimum against the scepticism of South Africa's primitive positivists. He entirely disclaims the political, social, and economic standard which the International Commission of Jurists now

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See Customs and Excise Act, No. 91 of 1964, § 113 (1), (3), and Publications and Entertainments Act, No. 26 of 1963.

includes in its definition of the Rule.²⁾ By measuring South Africa's "internal security" legislation against the impersonal standards of the Rule of Law Dean Mathews insulates himself against direct responsibility for the evaluations he makes: They are, after all, arrived at by juxtaposing the legislation with the Rule of Law; they do not, therefore, depend upon his personal conceptions.

Professor Dugard does not have quite such a concrete standard available in dealing with the Namibia dispute. Generally speaking, the international community expresses its judgments--however imperfectly--through the United Nations. But the UN is South Africa's main antagonist vis-a-vis Namibia. Consequently, Dugard turns to the international scholarly community in much the same way Mathews turns to the Rule of Law. He merely sets the stage, so to speak, by providing background for the documents: mandate agreement, International Court decisions, Security Council resolutions, etc. Then he allows various compulsive commentators on international law to speak their minds concerning the documents. The opinions are theirs, not his.

If Dugard's book indicates the existence of a (probably) conscious protective device in the manner of presenting his materials, what about the materials presented? To answer this question, it seems relevant to compare them with those presented by Slonim, who published his analysis of the Namibian controversy in a book issued at the beginning of 1973.³

Both authors profess implicitly, if not explicitly, not to be advocates; they do not, in so many words, pass on the ultimate moral and political questions from which the Namibian legal issues can hardly be divorced. Slonim, however, appears to accept, at least in qualified form, a number of South African premises. Thus he tends to align himself with van Wyk and some of the other 1962 dissenting Judges as to

² The Rule of Law in a Free Society--A Report of the International Commission of Jurists, New Delhi, India, January 5-10, 1959 (Geneva, 1959).

³ Slonim, South West Africa and the United Nations: An International Mandate in Dispute (Baltimore 1973).

the genesis and nature of the mandate, an issue which he expands on when analyzing the dispute between the Republic and the UN. As for his conclusions, Slonim appears to look to a negotiated settlement for the Territory, impliedly with some amelioration of conditions for the Blacks; his final paragraph quotes as epilogue some lines from the generally biting dissent of Judge Fitzmaurice in the 1971 Advisory Opinion on Namibia. It is perhaps unfortunate that his book was published too soon for him to have been able to take account of developments in and around Namibia which suggest that the balance of power in southern Africa may be beginning to shift significantly.⁴

It is more difficult for the reader to ascribe a particular point of view to Dugard since he eschews personal judgments and allows his commentators to carry any argument. He produces relevant materials from all sources—South Africa, the UN, and academia (including Slonim). Concentrating more heavily than Slonim on the last decade of the Namibian controversy, Dugard prints generous excerpts from the Court's Judgments in the contentious cases and from its 1971 Advisory Opinion. He then quotes critics pro and con—and at sufficient length to represent them fairly—on the various issues raised by the Judges. While South African officials might think the comments somewhat stacked against them, Dugard does no more than reflect the weight of scholarly opinion. It would undoubtedly be salutary for South African Bench and Bar to be exposed to representative outside thought through perusal of Dugard's selections.

In connection with the frequently long excerpts from other books and articles, it may be noted here that Dugard's publisher has failed to completely solve one technical problem. The quoted commentators themselves quote other authorities,

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E.g., the general strike in Namibia at the end of 1971; the report of the Pearce Commission in Rhodesia in 1972; the almost total boycott of Ovamboland elections in 1973; the declining military fortunes of the white Rhodesian and Portuguese governments; and the termination of the UN Secretary-General's mission to South Africa under Security Council resolution 309 (1972).

leading to occasionally complex paragraphing and footnoting. Consequently it is not always easy for a reader opening the book to determine who is the author of the text printed on a particular page nor even, in some cases, where excerpts start and stop.

Slonim puts particular emphasis on the Paris Peace Conference records and UN debates while Dugard, whose book is somewhat longer, presents more diverse documents: e.g., the Odendaal Report, counter memorials in the South West Africa Cases, House of Assembly debates, etc. Dugard also gives substantially more space to events following revocation of the mandate. Neither deals with the recent legislative and administrative consolidation of the Territory as a virtual fifth province of the Republic or with the establishment of the Namibian "homelands." Properly covered, of course, these subjects would require an additional volume.

Despite the restrictions under which Professor Dugard has had to work, he has produced an interesting and very complete source book, to which students of southern African affairs and of the United Nations will refer again and again. By issuing it also in paperback, the California University Press has brought the price down into the realm of the possible, so that Africanists and lawyers may be able to add it to their own personal libraries.

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