

HONORARY GRADUATE

John Mowbray Didcott

Life under apartheid put the lawyers of South Africa, and especially its judges, into a cruel and chronic dilemma. As lawyers they were expected to apply the law; but as lawyers they were expected also to achieve justice. It has often been true, and often seemed to be true, that they could satisfy the one expectation, or the other, but not both. Since his appointment, in 1975, to the Natal Bench, Mr Justice John Didcott has been a light of illumination, and of inspiration, to those bewildered by the dilemma.

The career of John Didcott has been one of distinguished leadership, within the legal profession, and outside of it. He has been President of the SRC at the University of Cape Town, President of NUSAS, an active member of the Liberal Party, and Chairman of the Society of Advocates of Natal. He has been a visiting scholar at the Columbia Law School in New York, and Judge-in-Residence at the University of Natal, Durban. He is an honorary professor in that university, and he is Chancellor of the University of Durban-Westville. At the University of Stellenbosch, Judge Didcott has been the Malherbe Memorial Lecturer. At this University he has given the memorial lectures for Richard Feetham and for Ernie Wentzel. Since 1984 he has also played an important part in the annual seminar for judges and lawyers hosted by the Centre for Applied Legal Studies, which has made a significant impact on judicial attitudes in this country. In these roles John Didcott has made a rich and enduring contribution to law, to education, and to public life. But it is mainly for the lead that he has given to those facing the dilemmas of law under apartheid that he is revered.

To those dilemmas, the response of most lawyers, and especially of most judges, has been to take the will of some authoritative body to be paramount. Most judges have considered it to be their highest duty to implement the wishes of the legislative draftsmen, or of some minister or official. Other judges, however, have tried instead to identify the principles which justify the worthiest features of our legal system, and to develop them into means of restricting the reach of unjust laws and destructive decisions. Among those judges, John Didcott has been pre-eminent.

In 1976, in a judgment given shortly after his appointment to the Bench, Judge Didcott characterized the power of detention given by the Terrorism Act as 'foreign to the ordinary principles of our law', and he spelt out his approach to such measures. The court's duty, he explained, is to construe the measure 'so that it provides for the least amount of interference with the liberty of the individual that is compatible with the language used'. This duty, according to Judge Didcott, derives from a tradition that 'has permeated so many fields of our law, that it is unnecessary to cite authority for its acceptance'. Applying this approach, he held that the embargo in the Act on official information obtained from one detained under it did not preclude the court

from sending a magistrate to visit the detainee and investigate allegations of maltreatment. Judge Didcott's approach in cases such as these, though seen at the time as sharply divergent from the prevailing current of judicial opinion, is now clearly the dominant one.

The same essential approach underlies much of John Didcott's jurisprudence, and especially his defence of the right to legal representation. Two of his decisions in this area are especially characteristic. In the one he struck down an emergency regulation for interfering with a detainee's right of access to a lawyer. In the other he declared it unlawful, in substantial classes of cases, to try an accused without legal representation. In each case Judge Didcott identified and developed the principles which could limit injustice with a cogency that shook those who had taken the opposite conclusion to be obvious. Neither of these decisions survived the judgment of the highest court, but in each case John Didcott's judgments expounded the principles with such power that it is the approach of the highest court, rather than Didcott's, which is becoming ever more conspicuously alien to the trend of legal development. Something similar may well soon happen to Judge Didcott's pathfinding decision, given last year, that a public servant is entitled to be heard before dismissal, even where the dismissal is neither disciplinary nor summary.

The constraints of the law have of course sometimes been too tight, even for John Didcott's fertile intellect, to permit him to achieve justice. On such occasions he has resorted to forthright comment, both on the Bench and off. Judge Didcott has been fearless and eloquent in his criticism of the death penalty; of appointments to the Bench not on merit; of the legislation governing protective custody of witnesses; of influx control; of emergency rule; of the record of the Appellate Division during emergency rule. Judge Didcott spoke out in favour of a Bill of Rights and better legal aid long before it became commonplace to do so. Every stand that he took was a source of comfort and support to South Africans vulnerable to injustice.

So much of what John Didcott has stood for has become part of the South African mainstream that it is easy to overlook the magnitude of his contribution, and the courage that it took to make it, so often alone. Tonight we honour John Didcott for the inspiration that he has been to all who aspire to justice in South Africa.