

George Bizos on Law, Justice and Morality: South Africa is at a crossroad -- again!

At the School of Practical Philosophy Plato week held at Salisbury House, Johannesburg, in April 2013, Advocate George Bizos, lifelong friend of Nelson Mandela and renowned human rights lawyer since the apartheid era, spoke of the constant tensions between law, justice and morality in colonial, apartheid and democratic South Africa.

“Most notably, during apartheid, sophists supporting the regime would rely on what is termed Plato’s “useful falsehood.” In *The Republic* Plato argues that human beings (like the metals gold, silver, and iron and bronze) ‘possess different natures that fit each of them to a particular function within the operation of the society as a whole.’ It is my view that Plato was incorrect when he chose this particular metaphor. Human beings have minds, feelings; they yearn for dignity, equality and freedom-the value that each human being can make to a society cannot, and should not, be pre-determined.”

Socrates himself and Platonists everywhere, including in the School, would be horrified to hear that his teachings could have been used to justify apartheid. They would no doubt argue that such justifications were distortions of what Plato meant. Nevertheless this is but one of the many challenging comments made by Advocate Bizos all of which bear further examination by Platonists and citizens of the New South Africa alike.

After noting that the laws needed to be the product of a fundamentally just society he quoted Socrates' definition of Justice as "not preventing another from doing his job" or taking from him what was rightfully his.

He then noted that Socrates took the definition to a new level when confronted by his disciples' desire to have him escape from jail so as to escape a death sentence which was arguably less than just. Socrates had replied that his detractors would say his lifelong stay in Athens proved his acceptance of their laws and institutions as being just such that to evade them now would render invalid his life's work.

“Therefore, for Plato, just laws are the product of a just society with just institutions. Arguably, morality does not have to reconcile itself with law and justice if democratic institutions have been installed. For it is these democratic institutions that determine just laws that should be

morally unassailable. However in our past, two leading figures in the struggle against apartheid had to fight against an undemocratic system without the benefit of democratic institutions. Both Nelson Mandela and Bram Fischer, without the benefit of democratic institutions, had to try to reconcile the conflicting notions of law, justice and morality.”

Advocate Bizos then showed how, in 1951, the courts, albeit on a technicality, had thwarted an attempt by fellow advocates to have Nelson Mandela prevented from practicing law owing to a conviction under the Suppression of Communism Act. The latter had to do with Mandela’s participation in the defiance campaign of the ANC and South African Indian Congress of “selected laws and regulations which are undemocratic, unjust and racially discriminatory and repugnant to the natural rights of men.” Advocate Bizos said “there was no moral turpitude in the commission of Mandela’s offence.” One cannot help wondering therefore whether or not, albeit unstated, this could have been a factor in Judge Ramsbottom’s decision.

He then contrasted this with the situation arising from the decision of Advocate Bram Fischer in January 1965 to break bail and not appear in court as he had promised. Fischer said in a letter to the court “My decision was made only because I believe it is the duty of every true opponent of this Government to remain in this country and to oppose its monstrous policy of apartheid with every means in (his) power.”

In a subsequent letter he said “When an advocate does what I have done, his conduct is not determined by any disrespect for the law nor because he hoped to benefit personally from any ‘offence’ he may commit. On the contrary, it requires an act of will to overcome his deeply rooted respect of legality, and he takes the step only when he feels that, whatever the consequences to himself, his political conscience no longer permits him to do otherwise. He does it not because of a desire to be immoral, but because to do otherwise (i.e. to appear before court in this case) would be, for him, fundamentally immoral.” In subsequently acceding to a petition to have Fischer’s name struck off the Advocates’ roll, DeWet J., according to Advocate Bizos, “bound himself strictly to the notions of law and justice in what was an immoral system. However Fischer, unlike Socrates in his discussion with Crito, derogated from his adherence to the law because he could not reconcile law, justice and morality within the apartheid system... (He) believed that the apartheid laws were manifestly unjust as they were not the product of democratic dialogue but rather enacted for the benefit of the few, they were, for him, immoral. Three decades after Mandela’s and Fischer’s moral dilemmas, the

democratic institutions that could reconcile the competing notions of law, justice and morality were installed in South Africa.”

Nevertheless, nearly 20 years later the contrast between law, justice and morality continues in a new form. For, as Advocate Bizos noted, “We South Africans stand at a crossroad... The one road, lined with securocrats, the plundering of the public purse and the attack on our democratic institutions, if taken, will create imbalance where law and justice cannot be reconciled with morality as our institutions and the very laws themselves will be perceived to be illegitimate. The other road is harder to follow, it requires all of us to work together with a common purpose to do our job, and to ensure that we bind ourselves to our just laws and act against those who break them....it is the youth who must work to build our country and ensure that morality can be reconciled with law and justice.”

Bizos then went on to note, in a quote by Thucydides from the funeral oration of Pericles praising Athens’ freedom and democracy, that the citizen who stands aloof from public affairs is useless. No doubt this is food for thought for 21st century citizens bearing in mind that Socrates never flinched from exposing untruths even if it embarrassed the wealthy and powerful of Athens. As Bizos said "we would do well to have regard to Socrates, Pericles and Thucydides if we desire, not only law and justice in South Africa but morality as well.”

To address this, he said " Dialogue, or dialectic, is the best possible means to achieving the most favourable balance between law, justice and morality in a given society-should the correct institutions be installed I am of the firm of view that not only is there potential for dialectic in the public life of South Africa but that dialectic between the state and the citizenry, and between the citizens themselves, is fast becoming customary with in our institutions.”

For those who wish to go beyond this sketchy outline of Advocate Bizos’ address, reading it in full on the SPP Gauteng website would be well worth the effort.

(www.practicalphilosophy.org.za)