

22nd Alan Paton Lecture 2015

Vakasha: Alan Paton and Justice for Child Offenders

by

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Alan Paton – famous for his writing and for his work in the Liberal Party, was also a passionate reformer in the field of justice for children.¹ His experiments with justice and freedom as the Principal of Diepkloof Reformatory School, were based on his theory of punishment. He was of the view that, beyond the two general approaches to punishment, which he identified as retributive and deterrent – there were two further approaches to punishment. The third approach to punishment was what he called “reformatory”, in which the word “punishment” would be replaced with “treatment”. This was not Paton’s own idea, – he ascribed to a broader movement, popular in his time, which is often called “rehabilitative”. The rehabilitative approach arose at the same time as the rise of social work, probation work and psychology. The fourth approach to punishment explored by Paton was a radical one: Namely, “that there need be none at all.”² According to this view, steps are taken against the offender for the sole reason to protect society. If society does not need protection, then the person need not be punished.

¹ See, however, Chisolm’s criticisms of Paton ((1989) 371-375). She points out that the scheme of graded freedom was not his own brain-child, as it was standard penal strategy in other parts of the world. He also remained a strict disciplinarian, despite his claims to be anti-authoritarian.

² (1993) David Phillip: Cape Town 101.

Paton experimented with his ideas at Diepkloof Reformatory. Interestingly, he did not really want the job at Diepkloof. He certainly **was** interested in working at a Reformatory. He had studied what was then called 'juvenile delinquency' in his M.Ed course.³ In 1934, at which stage he had been teaching at Maritzburg College for six years, he had a bout of serious illness which apparently caused him to consider a life change.⁴ He wrote to his friend Jan Hofmeyr (who was a rising figure in the United Party and later became Smuts' deputy Prime Minister). Hofmeyr had just been appointed Minister of Education. Paton wrote "I see that the Dept of Education is taking over reformatories. Do you think there is anything for me in this line?" Subsequent letters indicate that the position he wanted was head of a reformatory primarily for white boys in Tokai, which was in a picturesque setting not far from Cape Town.⁵

His letter to Hofmeyr in May 1935, responding to the job offer, shows that he was rather disappointed. "My dear HOFFIE", his letter read, "Your letter this morning came like a bolt from the blue. Diepkloof had not entered my calculations; & its name in the third line of your letter rose up and hit me." However, he seemed to see this as a

³ Alexander P Alan Paton: Selected Letters (2009) Van Riebeeck Society for the Publication of Southern African Historical Documents 57.

⁴ Alexander (2009) 4.

⁵ This position went to WB Marais, also a reformer who did similar work at Tokai to the work that Paton did at Diepkloof. L Chisolm (*Reformatories and Industrial Schools in South Africa: A Study of Class, Colour and Gender, 1882-1939* (PhD thesis 1989 University of Witwatersrand)) says of Marais and Paton: "Both were inspired by the goals and methods of the prevailing child-centred pedagogy" 340.

sign, perhaps a test of some sort – he ended the letter saying “I go to the task with a full realisation of its magnitude as well as of its romance”.⁶

Paton’s reforms were developed around a system of the boys being encouraged to take personal responsibility, being granted rewards and “graduated freedom”. Linda Chisolm has pointed out that this idea of rewards and graded freedom was not Paton’s own ‘brain child’ but rather part of a child-centred pedagogy growing in popularity at the time, which stressed the relationship between pupil and teacher, emphasised the individual psychology of each child, promoted the creation of a community and family setting instead of a vast ‘borstal’ or prison type of approach.⁷

Certainly Diepkloof had been a prison. When Paton was appointed as the “Head Warder” - his title was later changed to “Principal” as the prison was transformed to. At the time when he took over, the main building was a huge structure made of wood and corrugated iron. It had heavy iron bars at the windows and was surrounded by a 12 foot high barbed wire fence complete with armed guards.⁸ Order was maintained through a military style approach, and the use of force – sticks and sjamboks - were frequently wielded to keep the 360 black inmates under control. All of them had been below the age of 18 years at the time they committed their offences.

Paton introduced a series of incremental changes. He improved the conditions by introducing better sanitation, building a laundry and extending the hospital section. He improved the diet of the boys by introducing fresh fruit and vegetables, and

⁶ Alexander (2009) 58.

⁷ Chisolm (1989) 340 and 371.

⁸ Alexander (2009) 60.

provided them with warmer clothing and footwear for the winter months. He then gradually began to move towards the idea of a 'contract' of freedom for the boys whose behaviour earned rewards. A "prefect" system was introduced. He established a "village" model consisting of rondawels, to which boys could graduate from the main buildings, if their behaviour was good. Only five boys lived in each rondawel, and these were clustered around a cottage. The village was designed this way to evoke African traditional living, and to encourage "self-governance". Towards the end of his term there, the education on offer at Diepkloof went beyond the basics that would equip the boys only to be domestic workers and gardeners, towards more technical training which would qualify them as machinists or artisans.

A unique feature of Paton's approach was the importance he placed on public ritual and ceremony.⁹ The ritual related to "*vakasha*" which means "going for a walk" was a central theme. A boy who had earned his gradual freedom would be given a shirt, the pocket of which had been covered with a piece of green cloth, which became known as a *vakasha* badge. Paton explains in his autobiography that:

'On Fridays at evensong these chosen boys would be paraded before the whole congregation, and facing me. As the names were called out each boy in turn would come and stand in front of me. I would say to him, 'Today you are receiving your *vakasha* badge. What do you have to say? The boy would then turn to congregation and say:

"Today I receive my *vakasha* badge

I promise not to go beyond the boundaries of the farm

I promise not to touch anything that is not mine

⁹ Chisolm (1989) 348.

I promise to obey the rules of the school

He would then turn me again and be given a shirt with the green badge. When all the badges had been given, I would say to the congregation, 'Today these boys you see before you have received the *vakasha* badge' and the congregation would applaud."¹⁰

Breaches of these and other rules were also met with public rituals of confession and apology. Public shaming he considered to be an important corollary to public award giving.

The idea was to shift control from physical containment, to each boy taking personal responsibility for his own behaviour. To a great extent it was a success. The number of abscondments did drop considerably over the years. Paton was deeply disturbed by abscondments, seeing them as a failure of his system, and even of his own trust relationship with the boys. He talks about these anxieties in a short story called "The worst thing of his life", which opens with the words: "You never get used to absconding. I remember we once went for sixty-one days without an absconder ... Then on the sixty-second day a boy ran away, and we were as downcast as though sixty-one days had never happened".¹¹

Paton certainly caused some consternation when he took down the fences at the reformatory school. As Paton himself recalled: "Not all were impressed by this change. One of our critics was Dr Hendrik Verwoerd, the editor of *Die Transvaler*, who described Diepkloof as the place where one said 'Please and Thank you to the

¹⁰ Paton A *Towards the Mountain: An Autobiography* (1980) David Phillip: Cape Town 174-175.

¹¹ Paton A *The Hero of Currie Road: Complete Short Pieces* (2008) Umuzi: Roggebaai 60.

black misters', who dismissed the educational programme, the system of increasing responsibility and freedom as *vertroeteling* (pampering)."¹²

Whilst Paton's reforms undeniably brought about general improvements for all the boys, there were some aspects of his work that remain questionable, especially when judged from a modern viewpoint. The most of puzzling of these was his continued use of corporal punishment at Diepkloof, especially for those who had not earned their rewards. I say puzzling because Paton detested the corporal punishment inflicted on him by his own father when he was a boy. Of his father's authoritarianism he said: "His use of physical force never achieved anything but a useless obedience. But it had two important consequences. One was that my feelings towards him were almost those of hate. The other was that I grew up with an abhorrence of authoritarianism of the State, and a love of liberty, especially liberty within the State." How then, do we square this with Paton's use of corporal punishment at Ixopo High School where he was known as a master who used the cane frequently, and later at Diepkloof. Peter Alexander suggests that, at Ixopo High School he might have been "mirroring the treatment that his father had given him".¹³ A little known fact is that Paton had to have a finger amputated in 1938 after he punched a "recalcitrant inmate" of Diepkloof in the mouth – a wound made by the youth's tooth became infected and the finger would not heal.¹⁴

¹² Paton (1993) 32. See also Sargeant *The Principal: Alan Paton's Years at Diepkloof Reformatory* (1997) Penguin Books: Parktown 238-242.

¹³ Alexander (2009) 3.

¹⁴ Ibid 76.

Of course, one must judge Paton as a man of his time. The prevailing view then was that it was better for a child or youth to be whipped rather than be imprisoned as a criminal. Writing in 1928, Irene Geffen records without adverse comment the fact that any male child below sixteen years could receive a “moderate correction” of whipping, not exceeding fifteen cuts, or six cuts in the case of children below the age of twelve years. Although she was a reformer and advocate for the rights of women and children,¹⁵ Geffen apparently did not see anything to criticise in a law that permitted corporal punishment on child offenders, giving some indication of how acceptable it was to the general public at that time. In 1947 the Landsdown Commission found that corporal punishment should be retained as a sentence. During the apartheid years it was increasingly used as a method of youth crime control.¹⁶ Indeed, it was not until 1995 that South Africa’s Constitutional Court abolished whipping as a sentence in the case of *S v Williams*¹⁷

Paton did manage to reduce the incidence of corporal punishment at Diefkloof. One of the ways he did so was through a practice that might today raise eyebrows. He encouraged the smoking of tobacco. One of his earliest reforms was to relax the rules on the use of tobacco, and he even used it as a reward. From the health conscious perspective of today, this seems a strange reform, but it was effective, because the boys at the reform school were very keen on tobacco. Paton told an amusing story about the boys in this regard. One Sunday he had invited a Dutch Reformed Church Minister to present an evangelistic sermon. When this was

¹⁵ Irene Geffen was the first woman advocate called to the Bar in South Africa.

¹⁶ There was some criticism of this at least by the 1960s, see Kahn E 1960 *Acta Juridica* 212 : “The Union is equally out of step with the civilised world in the stress it lays on the correction of juveniles with rod”.

¹⁷ *S v Williams* 1995 (3) SA 632 (CC).

concluded the minister asked if they had questions. “When they did not respond, he said to them encouragingly, ‘You may ask anything you wish.’ And a boy stood up at the back and said, ‘Meneer, asseblief ‘n stukkie twak.’” (“Please, Sir, a bit of tobacco”).¹⁸

Paton’s commitment to rehabilitative justice led him to a common error made by proponents of that movement – namely, that the treatment model justified longer residential sentences. In other words, he thought it best that the ‘real’ freedom of the boys be delayed while he experimented with the limited freedom he could bestow on them. Linda Chisolm states that in all this there was a “fine irony, unseen by Paton himself. For he maintained the fiction of ‘freedom as a reformatory instrument’ while training African boys for a poverty, farm labour and ‘unfreedom’ that they did not choose”.¹⁹ In this regard, one must remember that Paton was unable to change the broader system in which he worked. The entire system was based around the production of poor black labourers. Paton experienced resistance from many of the white “wardens” or “masters” at Diepkloof who believed that educating the boys above their “station in life” was a recipe for trouble. They also rejected his upliftment of black staff – notably Bob Moloi – to positions of leadership within the Diepkloof. Ironically, things did not always go well with his black staff either, who experienced him as being authoritarian, despite his avowed anti-authoritarianism.²⁰

Paton was becoming frustrated and isolated towards the end of his tenure at Diepkloof. His close friend and mentor, Jan Hofmeyr, resigned from office. Paton’s

¹⁸ Paton (1980) 105.

¹⁹ Chisolm (1989) 374.

²⁰ Ibid 372.

requests for more buildings, more staff and an after care programme for boys leaving Diepkloof were falling on deaf ears. In 1946 he went on an international tour to look at other reformatory schools in the United Kingdom, Sweden, Norway and the United States. He was unimpressed by most of the examples he saw. However, the journey was important for other reasons. It was during this trip that he wrote *Cry the Beloved Country*. His letters reveal that he had intended to dedicate the book solely to Jan Hofmeyr. He then realised that his wife may be offended by this, and that people would think it odd. He eventually settled on an inscription that read 'To my wife and to my friend of many years Jan Hendrik Hofmeyer'. After his return, in 1948 he resigned from Diepkloof where he had been the Principal for 12 years.

It had been evident for a number of years that while the fences at Diepkloof were coming down, the political walls were going up.²¹ Paton recorded that in 1948 when Verwoerd became the Minister of Native Affairs he had the responsibility for African boys in reformatories transferred to himself and he eventually "closed down Diepkloof altogether, and transferred its boys to different parts of South Africa, depending on their ethnic grouping, where the practice of working for white farmers was reintroduced".²²

Today South Africa's system for child offenders is much improved. The Constitution provides important protections and the Child Justice Act, introduced in 2010, is largely proving successful. The number of children in prison has dropped considerably. However, in child and youth care centres (the new name for reform

²¹ Skelton A The influence of the theory and practice of restorative justice in South Africa with special reference to child justice (LLD thesis 2005 University of Pretoria) 346 ff.

²² Paton (2003) 32.

schools) there appears to be lack of vision that is enormously disappointing and worrying. At the time the new government came to power, a report to the Mandela Cabinet by the Inter-ministerial Committee on Young People at Risk found reform schools to be in a parlous state.²³ This led to legal reform requiring the transfer of such facilities from the Department of Education to the Department of Social Development in 2010.²⁴ However, this process has not gone smoothly. Delays have led to a loss of morale of staff and a loss of direction in purpose. In 2014 a magistrate brought an application to the Eastern Cape High Court to temporarily close the Bhisho secure child and youth care centre. The judge recorded that many of the children absconded nightly from the facility and that the use of drugs was rampant. The building were being vandalised and attempts had been made set it on fire. The care workers were apparently unable to keep control of the facility. The judge observed that the facility was wholly dysfunctional and reminded him of William Golding's 'Lord of the Flies'.²⁵ In the Western Cape there is also a current court case brought by the Justice Alliance of South Africa about the transfer of children from former schools of industry and reform schools. Court papers record an incident of rebellious child offenders at a child and youth care centre for sentenced children being quelled through the use of 'tasers'. Something appears to have gone badly wrong. There is a lack of vision and a need for a serious re-think about the residential sentencing of children.

In conclusion, Paton played an important role in bringing about justice for children. His vision was before its time. In particular, his focus on each child as an individual

²³ Inter-Ministerial Committee for Young People at Risk *In Whose Best Interests?*(1996).

²⁴ Children's Act 38 of 2005.

²⁵ *S v Goliath* 2014 (2) SACR (ECG) par [4].

was an important feature of his work. We know many names of the boys who he worked with – Jacky, Sponono, Spike, Ha’penny.²⁶ He recognised their unique personalities, their strengths and their weaknesses. He cared about them. The UN Convention on the Rights of the Child (1989), which guides the modern approach to children’s rights – enjoins states to treat child offenders in a way that promotes the child’s sense of dignity and worth.²⁷ An individualised approach, that values rehabilitation and reintegration over retribution, is the desired aim.

In one of his letters to Hofmeyr from Diepkloof Paton said: “I am learning here; in dealing with children who lie & commit sodomy & steal & smoke dagga, that I must learn to be absolutely honest & kind & loving.”²⁸ Paton used the words “romance” and “love” liberally. In one of his most quoted – but also most criticized - passages in *Cry the Beloved Country* he feared a future in which, when whites had finally turned to loving, blacks would have turned to hating. What he seemed to convey by this word, “love” – in relation to fellow human beings, in relation to boys at Diepkloof, was a recognition of the humanity and dignity of other people. A kind of “*ubuntu*”.

Let me end by reading Paton’s poem called “To a small boy who died in Diepkloof Reformatory”.

²⁶ Paton *A Tales from a Troubled Land* (1961) Scribner New York.

²⁷ Article 40(1).

²⁸ Alexander (2009) 72.

To a small boy who died in Diepkloof Reformatory

by Alan Paton

Small offender, small innocent child
With no conception or comprehension
Of the vast machinery set in motion
By your trivial transgression,
Of judges, magistrates, and lawyers,
Psychologists, psychiatrists, and doctors
Principals, police, and sociologists,
Kept moving and alive by your delinquency,
This day, and under the shining sun
Do I commit your body to the earth
Oh child, oh lost and lonely one.
Clerks are moved to action by your dying;
Your documents, all neatly put together,
Are transferred from the living to the dead,
Here is the document of birth
Saying that you were born and where and when,
But giving no hint of joy or sorrow,
Or if the sun shone, or if the rain was falling,
Or what bird flew singing over the roof
Where your mother travailed. And here your name
Meaning in white man's tongue, he is arrived,
But to what end or purpose is not said.

Here is the last certificate of Death;
Forestalling authority he sets you free,
You that did once arrive have now departed
And are now enfolded in the sole embrace
Of kindness that earth ever gave to you.
So negligent in life, in death belatedly
She pours her generous abundance on you
And rains her bounty on the quivering wood
And swaddles you about, where neither hail nor tempest,
Neither wind nor snow nor any heat of sun
Shall now offend you, and the thin cold spears
Of the Highveld rain that once so pierced you
In falling on your grave shall press you closer
To the deep repentant heart.
Here is the warrant of committal,
For this offence, oh small and lonely one,
For this offence in whose commission
Millions of men are in complicity
You are committed. So do I commit you,
Your frail body to the waiting ground,
Your dust to the dust of the veld, –
Fly home-bound soul to the great Judge-President
Who unencumbered by the pressing need
To give society protection, may pass on you
The sentence of indeterminate compassion.