

FOCUS

IMAGES OF JUSTICE

Sen and Justice

Raphael de Kadt

Procedural Justice: The Thread that Weaves the Fabric of Justice in Society

Praveena Sukhraj-Ely

Pervasive Impunity

From Amnesty to the Apartheid Lawsuit and Beyond

Claudia Braude

The State and Transformation

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Social Welfare: Social stasis

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Anthea Jeffery's
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William Gumedede's
'Poverty of Ideas'

Eusebius McKaiser,
Chris Saunders



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A note from the Commissioning- Editor

‘Justice’ is a protean concept. ‘Law and order’ are maintained by governments and ruling elites in its name. Revolutions and popular insurrections are conducted under its legitimating aegis. Wars are waged in pursuit of ‘justice’, and they are deemed to be waged justly or unjustly under the rules of war conventions. Justice is construed by some as embracing a commitment to equality, as seeing diverse individuals ‘under the aspect of equality’, and treating them each in the same way. The image of justice that communicates this view is that of the Goddess – sometimes identified as *Themis* – blindfolded, with scales in one hand and sword in the other. Yet others see justice as responding sensitively to diversity and ‘difference’. The image that construes this interpretation is of the ‘seeing’, not the blindfolded, *Themis*, again with scales and sword in hand. This, alternative, image adorned, by design, the dust jacket of *Beyond Justice*, Agnes Heller’s great, synoptic, treatment of the subject.

The blindfolded *Themis* is an apposite image for John Rawls’ *A Theory of Justice* – the work that, perhaps more than any other, re-cast political philosophy in the late twentieth century – with its attempt to ground universally valid principles of justice in a ‘bargaining game’ that takes place, appropriately, behind a ‘veil of ignorance’. The veil of ignorance, of course, as may happen with a blindfold, is gradually lifted. For even that image of *Themis* is not of a blind Goddess, but of a blindfolded Goddess. More recent concerns with the circumstances of differently situated categories of people, such as women or ethnic minorities, invite representations of *Themis* as seeing but without a blindfold.

The protean character of justice is reflected not just in these alternative, iconic, representations. Justice is, as thinkers such as Michael Walzer and, more recently, Amartya Sen have reminded us, complex. The complexity reflects, in part, the variety in the kinds of goods that are to be allocated and distributed. This is one of the principal points made by Michael Walzer in *Spheres of Justice*. It reflects, too, the range of meanings that ‘justice’ carries. For, when we speak of justice, we often mean something broad along the lines of ‘justice in general’ or the ‘good society’. At other times, our meaning is confined to matters of retribution and ‘just desserts’. On yet other occasions, we mean to restrict the term to rules of resource distribution or ‘distributive justice’. ‘Justice’, too, has its place in the lexicon of legal practice, with emphasis placed not only on just or fair outcomes, but on procedure as well.

Each of these dimensions of justice is addressed, directly or indirectly, in this edition of *Focus*. The centrality of justice to the political and philosophical discourse of our times is addressed in an opening review essay on Amartya Sen’s major new book, *The Idea of Justice*. Indeed the principal lines of argument in Sen’s book resonate powerfully with several of the contributions to this edition of *Focus*. The concern with justice is not, however, the exclusive preserve of political philosophers or of historians of ideas. It informs – and indeed should inform – the most richly self-reflective contributions of social scientists, citizens and public servants to the description, understanding and critique of societies.

For, when we speak of justice, we often mean something broad along the lines of ‘justice in general’ or the ‘good society’. At other times, our meaning is confined to matters of retribution and ‘just desserts’.

South Africa's transition to democracy in 1994 brought with it the promise of a just society, or certainly of a vastly more just society than that crafted under the crass custodians of the Apartheid order. This promise was prefigured in the *Freedom Charter* and in the actions and writings of the great liberal scourges of the racist order, including, of course Helen Suzman. It was, too, elaborately – if necessarily controversially – articulated in our Constitution of 1996.

We are now, as a polity, in the fifteenth year of our post-Apartheid dispensation. The question inevitably arises: how have we fared against the various criteria and visions of justice that informed the actions of those who – often bravely – fought to throw off the yoke of oppression? How well have our governments served the people under the rubrics of 'justice' and 'right action'? If justice is, as many argue, principally a property of institutions, how well have our institutions fared, and how well have we been their stewards and guarantors? Have our collective practices and their outcomes served the objectives of justice? May our citizens, for instance, reasonably expect a fair hearing before the courts of law? Will our children be able to fulfil their creative potential and realise their capabilities in light of the education they receive? Are we doing the right things to address and alleviate the ravages of poverty on present and future generations? Have we done enough to avenge the iniquities perpetrated in the past, or has our admirable preference for 'reconciliation' – as emblematically and famously expressed in the proceedings of the Truth and Reconciliation Commission – paradoxically marred progress towards a decent and caring society, and embedded instead a political culture of impunity and improper immunity?

Each of these questions is posed, and answered – often controversially – in the pages that follow. For the vision of justice that informs this edition is one of discursive rationality, of public argument and debate where difficult questions are not avoided and uncomfortable truths are not disavowed. In this sense, this *Focus* is consistent with the endorsement of deliberative reason that is so central to Sen's embrace of the virtue of political participation and debate in piloting us towards a more just society.

Procedural Justice

Praveena Sukhraj-Ely argues that procedural justice is the thread which holds the various aspects of justice together. However, it is not a forgone conclusion that what is prescribed as a just process will result in a just outcome. If a person is afforded various rights then there has to be a legitimate and workable process available for that person to exercise and enforce those rights. That workable process is procedural justice. There is a large body of legislative and common law principles which makes up the civil and criminal justice systems. Procedural justice is then, simply, the process by which substantive justice is translated from theory into practice. Sukhraj-Ely, however, notes that in some cases where there have been processes that have been deemed fair, there have been miscarriages of justice.

This can be attributed to many factors; chief among them is that in many developing countries – including South Africa – citizens do not know which prescribed processes to follow. In many incidences the bureaucracies responsible for administering and enforcing justice are inaccessible and lack qualified and trained personnel. The reasons for this state of affairs are numerous: the high illiteracy rate, the urban-rural divide, limited resources and the over-burdened

... how have we fared against the various criteria and visions of justice that informed the actions of those who – often bravely – fought to throw off the yoke of oppression? How well have our governments served the people under the rubrics of 'justice' and 'right action'?

justice system. Sukhraj-Ely also notes that the high cost of employing legal practitioners and the often lengthy time delays are key factors that frustrate and hamper procedural justice and consequently substantive criminal and civil justice as well. Our challenge is to address these shortcomings and devise better ways in overcoming the challenges which exist.

Poverty, policy choices and injustice

Johannes Fedderke argues that with the birth of democracy in South Africa, the way in which economic policy was framed changed fundamentally. South Africa's government placed social welfare intervention at the centre of the economic policy agenda and made the formulation of an economic growth strategy secondary at best, and one which has never really been proactively pursued.

Generally speaking, economic growth is the surest way for a Nation to achieve a long term improvement in its average level of welfare. Economic growth is a catalyst for higher aggregate – and hence per capita – levels of output, the amelioration of poverty and income inequality as well as improving human development indicators.

His paper seeks to answer the question: has this strategy been successful? Generally speaking, economic growth is the surest way for a nation to achieve a long term improvement in its average level of welfare. Economic growth is a catalyst for higher aggregate – and hence per capita – levels of output, the amelioration of poverty and income inequality as well as improving human development indicators.

Fedderke points out that those countries that have moved to higher levels of per capita income have done so through periods of sustained economic expansion. In the case of South Africa, the approach to developmental challenges has been dramatically different. Economic policy since 1994 has focused on the development of a social welfare system, and has not pursued the core elements of a growth strategy. South Africa spends more than 4 percent of GDP on social welfare. This is reflected in a dramatic and sustained proportional increase over time, matched by no other category of government expenditure, including defence spending. This can be attributed to prudent monetary and fiscal policy creating the fiscal space which has allowed the government to develop a welfare system. This has had trade-offs. The dramatic expansion of the social welfare payments has meant that other forms of expenditure have been constrained. In this regard Fedderke highlights the low expenditure on public order and safety, the fact that proportional expenditure on health has remained constant since 1994 and the steady decline in proportional expenditure on education. This has begun to bear fruit throughout South African society in the form of service delivery protests, school dropouts, high levels of crime, increasing unemployment and rising energy costs.

If South Africa is compared to China, South Africa's economic policy failures are stark. By pursuing an aggressive growth policy, China has successfully and quite significantly been able to reduce poverty. South Africa's poverty count on the other hand has remained static at best – and has possibly even worsened. Essentially, the argument made, and the evidence marshalled, suggest that simply paying attention to social justice is no substitute for addressing the hard supply side issues that determine the productivity of factors of production in the long run – i.e. the pursuit of an effective growth policy. Critical to this are investment in infrastructure and, not least, in the formation of high-quality human capital.

Education and Injustice in South Africa

If Fedderke's article highlights the importance of human capital formation to economic growth, and the importance of growth to the alleviation of poverty, Julia de Kadt homes in on specific failings of the South African education system.

De Kadt identifies the three key factors of the South African education system that significantly contribute to skewing the distribution of resources, delaying development, and preventing the effective participation in democratic governance. Low quality, high inequality levels and deep segregation all play a part in the continued injustice being borne by the youth of South Africa. The article notes that identifying the myriad problems which exist in the education system is the simple part. Finding the solutions is the real challenge. In light of this de Kadt argues that the endeavour to reform the education system 'must be guided by an open, explicit and honest examination of the implications for justice, at the societal and individual levels, and over both the short and long terms, of any policy decisions'. In conclusion to her article de Kadt argues that low quality, high inequality and deep segregation work in conjunction to reinforce societal injustice and create a self-reinforcing poverty trap which ensures that South Africa's most disadvantaged members of society remain the most disadvantaged members.

The state, justice and transformation

Praveena Sukhraj-Ely, Johannes Fedderke and Julia de Kadt each advert, in different ways, to the challenges confronting the realisation of a reasonably fair and just society in South Africa and to the shortcomings and inadequacies of specific policies and practices. This raises the matter of 'state capacity'. Ivor Chipkin's article identifies a number of reasons for the failure of the South African state to effectively deliver on its mandate. Chief among these is the argument that the de-bureaucratisation of the state, under the auspices of the New Public Management, was ill suited to the South African context. Skills shortages and political appointments have taken their toll on the overall capacity building initiatives outlined in New Public Management. The people who comprised the new managerial class have shown themselves to be incapable of doing the job. Instead of trying to train more people for these types of positions, the government has simply left them vacant, destroying institutional capacity even further in these departments. It has also helped to magnify the incapacity of state departments across all levels and has bred a culture of incompetence and corruption. The erosion of state capacity has revealed a predatory aspect of the South African state, which aspect is, itself, a massive constraint on the ability of the state to deliver on its mandate. The erosion of state capacity, and the constraints being

imposed on the state by its internal problems, has prompted South Africans to ask questions about the character of transformation as a movement towards new public management.

Justice, Forgiveness and a Culture of Impunity

Tracing possible connections between the template of forgiveness central to the Truth and Reconciliation Commission and contemporaneous attitudes to amnesty and the rule of law, Braude considers the implications for South Africa's constitutional democracy of the TRC's failure to close the door fully on apartheid's criminality and lawlessness. For Braude, contemporary South African society is characterised by a juridical and political culture of impunity and forgiveness that evolved from the TRC amnesty and its aftermath. She discerns continuity, for example, between the logic governing the TRC amnesty process and the events relating to the dropped corruption charges against President Jacob Zuma. She argues that the apartheid law suit brought in the New York courts by Khulumani Victim Support Group against companies it believes aided and abetted the apartheid regime could have significant implications in South Africa. By holding perpetrators to account rather than granting them impunity for their deeds, Khulumani's case counters the culture of impunity.

Peoples' War, Political Culture and the Role of Intellectuals

Claudia Braude's contribution invites us to look much more closely at the political culture that we have crafted and, indeed, continue to craft in South Africa. This edition of *Focus* concludes with a series of book reviews that address this task. Pallo Jordan, Patrick Laurence and William Gumede separately review Anthea Jeffery's recent, provocative book, *People's War*. Jeffery, in return, responds, in particular, to Pallo Jordan's especially sharp critique. This exchange speaks to the spirit of *Focus* as a journal in which the spirit of politics as 'civilised', if often sharp – and sometimes even acrimonious – debate and disagreement, is guarded. For it is through the protection – and indeed encouragement – of such a dialectical practice that democracy is underwritten. Finally, Chris Saunders and Eusebius McKaiser review the new book, *The Poverty of Ideas: South African Democracy and the Retreat of Intellectuals*, edited by William Gumede and Leslie Dikeni.

Universalising the Enlightenment: Amartya Sen's politically savvy *'The Idea of Justice'* – A Review Essay¹

Raphael de Kadt



Raphael de Kadt is Professor of Political Science at St Augustine College of South Africa. He is a former Head of the School of Politics at the University of KwaZulu-Natal, with which institution he still has an honorary association. He has also been, for twenty years, Editor-in-Chief of "Theoria: A Journal of Social and Political Theory"

Amartya Sen, the Nobel Prize winning economist, has recently – to wide and highly influential critical acclaim – published *The Idea of Justice*, a major, brilliant, book of great erudition and scope. It is a work of formidable analytical power and of rich and sweeping historical content. Its command of intellectual history, on a global scale is, for want of a better way of putting it, awe-inspiring. The eminent philosopher, Hilary Putnam, has declared it to be '...the most important contribution to the subject since John Rawls' *A Theory of Justice* appeared in 1971.' Kenneth Arrow, himself a Nobel Laureate in economics, and one of the most profoundly original and creative economists of the twentieth century, declared it 'a major critical analysis and synthesis', and has unequivocally sung its praises. G.A. Cohen, the late left-wing Chichele Professor Emeritus of Social and Political Theory at the University of Oxford, endorsed the book, shortly before his own untimely death, with generous, indeed almost boundless, acclaim. Philippe van Parijs, the distinguished holder of the Hoover Chair of Economics and Social Ethics at Louvain University, has called it 'an invaluable compass for all those who fight injustice around the world.'²

Why has this book met with such resounding approbation from some of the most illustrious and celebrated thinkers of our time? Why, in light of the present reviewer's dissatisfaction with the philosophical arguments that underpin the book, does it speak so eloquently to such sharp-minded critics? And why – in a curious way – do so many of its motifs resonate with the content and purpose of this edition of *Focus*?

Three themes are broadly common to the refrains of Sen's praise-singers. The first alerts us to the intellectual power and stylistic felicity of the book: its 'lucid and vigorous prose', the 'formidable skills of argument' and the author's 'deep and unbounded erudition' (Cohen); its 'intellectual depth and breadth' (Arrow), and 'its wonderfully lucid presentation' of its author's approach to justice (van

Parijs). This theme – invoking style and intellectual power - does not, however, fully explain the book's appeal. Many books are elegantly wrought and display formidable intellectual talent. And Sen's book is really not even that well written and does not make for easy reading – even though the erudition and intellectual force are formidable.

A second theme, however, holds a key: the book speaks to a sense of an absent pragmatic, comforting, normative compass in a world marked by poverty, disease, often violent conflict, and many other widespread, visible, markers of injustice and suffering. It speaks prudently and pragmatically to a deep, profound, and widely shared sense of injustice that spurs decent men and women to action and to the remediation of social ills. In particular, it speaks to the need to revive the normative basis of political action. More specifically, the book fills a void: the social fantasies and fictions of utopian socialism have been permanently laid to rest by the well-rehearsed knowledge of the brutality and dysfunctional character of twentieth century experiments in 'social engineering on a grand scale'. The idea that 'History' is on the side of the downtrodden and dispossessed has been, for most thinkers, terminally discredited. Intellectuals no longer embrace seemingly credible and compelling 'grand-narratives' to provide moral comfort, political succour and existential hope. One is reminded of versions of a popular slogan that marked the end of the starry-eyed 'resurrection of left-radicalism' of the late 1960s student revolts, and the subsequent rise of the 'new philosophers' in France: 'God is dead, Marx is dead and I'm not feeling that good myself'.

Thus Cohen: '*The Idea of Justice* gives us a political philosophy that is dedicated to the reduction of injustice on Earth, rather than to the creation of ideally just castles in the air'. Cohen, the erstwhile Marxist, in saying this, invokes an almost theological, if secular, sermon to act justly - but to act only and necessarily in ways that are feasible and practicable. Sen, says Arrow, writes a work that is of importance to 'the world of policy formation'. Van Parijs adverts to Sen's 'direct impact on world affairs' and identifies the book as 'an invaluable compass for those who fight injustice around the world.' Putnam says that Sen reminds us that 'what we need in our world is not a theory of an ideally just state, but a theory that can yield judgements as to comparative justice, judgements that can tell us when and why we are moving closer to or farther away from realising justice in the present, globalised world.'

The third theme is, perhaps, more implicit than explicit. Sen speaks to our sense of a 'globalised world'. To put it more sharply: Sen invokes the need for 'inclusivity' – a point that Putnam makes – and to engage with our current concern with 'cross-cultural' dialogue and interaction. I shall argue that it is this – together with the emphasis on 'realisations of justice' – that makes the book so compelling as a political intervention, even as it fails to break genuinely new philosophical ground. Indeed, the book is much more a political and moral treatise for our times than it is a path-breaking philosophical intervention. Specifically, and significantly, Sen disconnects 'ownership' of theories of justice from the West and, indeed, from any geographically defined zone. In doing so, Sen draws on contributions from thinkers writing in traditions other than those of the West, not least in times prior to the West's much celebrated 'Age of Enlightenment'. In an intellectually shrewd, erudite, and politically astute, move, Sen 'universalises' the European Enlightenment by dissecting it and re-interpreting it, and by demonstrating its congruence with similar trajectories of thought elsewhere.

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The subject of social justice has, since the publication of John Rawls' seminal *A Theory of Justice* in 1971, been at the very heart of the revival of normative political theory. The vast body of literature that has been spawned on the topic has, for the most part, been occasioned by the desire to engage, directly or indirectly, with Rawls' extraordinary legacy. In short, Rawls has defined the principal terms of reference for work on justice for over thirty years. The impact of his work – including subsequent writings such as *Political Liberalism* and *The Law of Peoples* has not been confined to the Anglo-American world. Its intellectual reach and influence, within the academy and beyond, has been global.

Amartya Sen, in *The Idea of Justice*, articulates a deep, complex and wide-ranging critique of the Rawlsian project and its broader, underlying, philosophical template. The very title of Sen's book signals a contrasting vision of justice to that suggested by the title of Rawls' treatise. In particular, it adverts to the *idea of justice* and not to the crafting of an alternative *theory of justice*. This distinction – entailed in the title – is important.

The very title of Sen's book signals a contrasting vision of justice to that suggested by the title of Rawls' treatise. In particular, it adverts to the *idea of justice* and not to the crafting of an alternative *theory of justice*. This distinction – entailed in the title – is important.

Sen's book is of course not the first major challenge to, or critical engagement with, Rawls. Robert Nozick in *Anarchy, State and Utopia*, Brian Barry in *The Liberal Theory of Justice*, Robert Paul Wolff in *Understanding Rawls* and Michael Sandel in *Liberalism and the Limits of Justice* all crafted significant critical accounts, rejoinders or alternative perspectives. So, too, did Michael Walzer in *Spheres of Justice*, a work rich in historical allusion and complex in its conception of the nature and meaning of the kinds of goods that are to be distributed. Most recently, in 2008, the late G.A. Cohen published his own masterpiece, *Retrieving Justice and Equality*, which is a profound, deep and – at least philosophically – an arguably more impressive critique of Rawls than is Amartya Sen's.

I mention some of the significant and better known responses to Rawls in order better to locate Amartya Sen's magisterial meditation on the topic. I use the term 'meditation' deliberately. For, in proposing an alternative way of viewing justice, Sen wishes to dispense not only with some of the substantive arguments that inform *A Theory of Justice*, but with the entire social contract foundation on which it rests. Sen correctly reads *A Theory of Justice* as Rawls would doubtless have wished: as a 'procedural re-casting' of the contract theories of Rousseau and Kant. The contract tradition has as its exemplars, among others, Hobbes' *Leviathan*, Locke's *Second Treatise on Government*, Rousseau's *The Social Contract*, Kant's *The Groundwork of the Metaphysics of Morals* and, of course, Rawls' *A Theory of Justice*. This tradition, which is perhaps the 'core' or 'mainstream' tradition of modern, Western political philosophy, is termed, by Sen, 'transcendental institutionalism'. It is also, arguably, the West's intellectually most powerful tradition of political philosophy.

The principal claim of 'transcendental institutionalism' is that the solution to the problems of human cooperation and coordination lie in the structure of institutions. Furthermore, the institutions that constitute the solution have their origins in reason. They are specified so as to reflect the universal nature of rationality. Justice, especially, is on this view a property of institutions and, in particular, of institutions that reflect the actualisation of rational choice. Justice is thus realised through the construction of institutions that satisfy its principles. In Sen's view, transcendental institutionalism 'should be replaced by an appraisal of social realisations', that is, based 'on what really happens', rather 'than merely on the appraisal of institutions

and arrangements' (p410)³.

In contrast to the 'transcendental institutionalist' tradition, Sen marshals and mobilises an alternative, more complex and more diverse, modern Enlightenment tradition. This tradition, as Sen lays it out, is more plural and differentiated in its intellectual perspectives. It embodies a wide array of thinkers: these include Adam Smith, Mary Wollstonecraft, Borda, Condorcet and, in the twentieth century, Kenneth Arrow. Indeed, there are 'heroes' in Sen's preferred strain of modern Western, enlightenment thought. They are especially, among others, Condorcet – an early 'anticipator' of social choice theory – Mary Wollstonecraft, who was so driven by moral outrage and a sense of social justice, and Adam Smith – especially the Adam Smith of the *Theory of the Moral Sentiments*. These, and especially Adam Smith and the crafters of the social choice perspective, are the intellectual giants upon whose shoulders Sen elects to stand. More specifically, Sen chooses to rest his case for the preference of 'social realisations' over 'institutional arrangements' on a foundation of social choice theory.

The questions that Sen has to address are: why does social choice theory do a better job than contract theory? And is Rawls, indeed, quite so vulnerable to the critique that he, Sen, articulates? The first challenge that one might wish to put to Sen is that his representation of Rawls' account of the Original Position and of the 'bargaining game' that leads rational agents to choose the two principles of justice is misguided. Sen's critique of Rawls is that he is unable to avoid parochialism in his account of the 'Original Position' (a latter day revision of the 'state of nature' in seventeenth and eighteenth century contract theory) and that, in effect, the values and presuppositions of modern American liberalism or European social democracy inform the theory of Justice that flows from the deliberations that take place behind the 'veil of ignorance'. This, of course, is not a new line of attack on Rawls. It is, however, perhaps a more fully articulated critique in Sen's hands, not least because Sen deploys a reading of Rawls' subsequent writings to reinforce his principal claim. The critique rests on the claim that there is no one set of principles of justice, nor one theory of justice, that rational agents deliberating under the conditions that Rawls specifies will unanimously, and necessarily, agree upon. The deeper philosophical argument is, in effect, that the 'unencumbered' (Michael Sandel's term) selves that reach a rationally grounded consensus are a fictional and illusory construct. We cannot, on this view, see persons as anything other than 'situated' and thus as inevitably 'embedded' in their historical contexts.

It could be argued that Sen misses the real force of the philosophical move that is made, not only by Rawls but, especially, by his precursors Rousseau and Kant. That move privileges equality over partiality and universality over particularity, in the construction of universally valid principles of right action and justice. It is a move that not only emphasises and privileges 'impartiality' and 'disinterestedness' (a quality that Sen acknowledges the significance of when invoking Adam Smith's 'impartial observer'); it is a move that invites us to see all individuals under two aspects: that of their partiality and that of their universally rational natures. Most famously, perhaps, this distinction is captured by Immanuel Kant in his distinction between the 'autonomy' and 'heteronomy' of the will. Heteronomy connotes the contingent, autonomy the necessary. And, in a procedurally specific way, that is what Rawls attempts to do in *A Theory of Justice*. The point, precisely, of Rawls' move is to 'control' for chance, contingency and the vagaries of good or bad fortune. Indeed, and interestingly, modern rationalist critiques of modern

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society – including Marx’s – have been concerned to limit the force of chance and circumstance in determining the fate and prospects of people.

While there may be grounds to debate the claim that rational agents under the conditions of the bargaining game that Rawls describes would indeed choose the particular principles of justice, with the specific prioritisation, that Rawls argues that they will, there is no compelling reason to claim that the *method* that Rawls deploys will not, if scrupulously and carefully applied, yield the outcome that Rawls believes it will. That is, none of the arguments pressed by Rawls’ critics, including Sen, necessarily demonstrate that the fundamental philosophical move made by Kant, and procedurally re-cast by Rawls, is untenable. Furthermore, there is no reason to think that the deliberations under Rawls’ specifications will be parochial or issue in outcomes that are parochial.

Sen, of course, greatly admires Rawls. *The Idea of Justice* is a testament to Rawls’ greatness and is dedicated to the memory of John Rawls. And, as with almost all the most substantively important contributions to the discussions on justice, Rawls’ is the ‘presence’ who, in a manner of speaking, really presides over Sen’s attempt to revisit the matter of justice, to reflect on how we might think about it and how we might better act in accordance with what it requires. And, indeed, there are many key respects in which the ‘distance’ between Rawls and Sen is not great. Certainly, they share a broadly similar, compassionate, sense of the ‘good society’ and of what the substantive requirements of decency and justice are. They are both moved by the plight of the worst off and by the misfortunes of those who have not been well served by the vagaries of history and the force of circumstance. It is not accidental that Rawls is especially concerned with, and exercised by, the circumstances of the ‘worst off’ category of people, and it is not accidental that Sen’s work as an economist and as a social philosopher has placed so much emphasis on the ravages of famine and the development of the capabilities of all members of society.

So what is the special achievement of Sen’s book? The answer, I think, lies partially in Sen’s avowed cosmopolitanism and in the book’s self-consciously ‘globalising’ import. It lies, too, in Sen’s sensitivity to the ‘politics of identity’ and the importance of inter-cultural exchange and communication. In this, it ‘speaks to our times’. For Sen is sensitive to the importance to learn from the intellectual contributions of, and reasons given by, those who hail from diverse backgrounds, and who have different cultural heritages and histories. For Sen, it is important to think about justice in comparative perspective. Indeed, there is a sense in which, in Sen’s reflections on justice, the great empirical social scientist trumps the normative social and political philosopher. And, whatever the philosophical limitations of Sen’s work, this is not necessarily a bad thing.

In part, the strength of the book lies in the way in which it underwrites the virtue of democratic participation and of democracy as an exercise in public deliberation and reasoning. For Sen’s own empirical work has demonstrated the importance of the character of political institutions for human well being: democracies do better in averting and managing famines than do dictatorships and totalitarian regimes. This, I think, is where the real power of Sen’s intervention lies: it points to the significance of policies, practices and the refinement of institutional forms. It alerts us, too, to the crucial roles that tolerance and informed debate plays. It thus connects the realisation of justice intimately with a broadly liberal,

They are both moved by the plight of the worst off and by the misfortunes of those who have not been well served by the vagaries of history and the force of circumstance.

pragmatic and non-doctrinaire politics in a manner that is empirically richly informed. The connection between liberalism and democracy on the one hand, and just ‘realisations’ on the other, is perhaps more readily grasped through an engagement with Sen than through the more ‘austere’ philosophical manoeuvres of Rawls and even, perhaps, of his more self-consciously ‘cosmopolitan’ interpreters and defenders such as Thomas Pogge. For it is not clear that either social choice theory or an invocation of an Adam Smithian ‘impartial spectator’ do better *philosophical* work than do Rawls’ participants’ deliberating behind the ‘veil of ignorance’. And it is not clear that Sen is able to avoid the need to establish some kind of ‘benchmark’. Indeed, on that score, ‘transcendental institutionalism’ arguably fares better than does Sen’s appeal to open, real-world, discursiveness and deliberative engagement.

But to return to a point that I have already made: Sen’s compendious erudition and deep and genuine multi-cultural awareness and cosmopolitanism, his sense of the signal role of institutional arrangements and of the possibility, at least, of improving the lot of the downtrodden and weak, have great resonance. So too – and this flows directly from his cosmopolitan sensibility – does his ability to draw on the intellectual riches of many and diverse traditions and civilizations. Tolerance and, if I may so put it, a ‘liberal sensibility’ is not the exclusive preserve of the modern ‘West’. It is to be found in many places and times, in Islamic thought and practice and in geographical spaces, such as India, far removed from Europe or the North Atlantic world.

Thus, to take just one instance: the Mughal emperor Akbar, as Sen points out, promoted religious tolerance in India at the time that ‘[t]he Inquisitions were in full swing and Giordano Bruno was burnt at the stake for heresy in Rome’ (p.37). Akbar, notes Sen, ‘laid the foundations for secularism’ and for the ‘religious neutrality of the state’ (p.37). In this regard, Sen draws on, among other sources, the impressive scholarship, insights and reflections that informed his earlier *The Argumentative Indian*.

The larger point that Sen makes is that the deliberative and discursive rationality, the conventionally invoked

‘moniker’ of the European Enlightenment, is not unique to the intellectual history of that continent. The ability to deploy reason, and to reason deeply, to determine rules of conduct and to assess validity claims, is a generic property of humankind. No one time or place or ‘people’ are its unique location or bearers. The spirit of John Stuart Mill, it might be put, is to be found within the domains both of Islam and of Hinduism, within the precincts both of Konigsberg and of Mumbai. And Akbar would likely have been intellectually at home in the realm of liberal, religiously tolerant, modern European society. In this regard, there is at least some similarity between Sen’s advocacy of discursive reason and Habermas’ notion of ‘communicative competence’ and the model of an ‘ideal speech’ situation.

To conclude: Sen presents, in his own words, a ‘theory of justice in a very broad sense’ (p.ix). He is thus principally concerned with the task of ‘enhancing justice and removing injustice’ rather than with constructing models of ‘perfect justice’. One might cavil and ask how one can know that one is ‘removing injustice’ if one does not have a model or vision of ‘perfect justice’ to assess one’s progress? But Sen, of course, is far too smart not to be aware of that challenge. His real project is the identification of ‘redressable injustices’. Thus transcendental institutionalism, in Sen’s view, should be replaced by an ‘appraisal of social realisations’. We should focus ‘on what really happens’ rather ‘than merely on the appraisal of institutions and arrangements’. For, ‘what moves us, reasonably enough, is not the realisation that the world falls short of being completely just – which few of us expect – but that there are clearly remediable injustices around us which we want to eliminate’ (p.vii).

This assertion is what has given this large and impressive book its appeal. And it is this assertion that has also helped to set the terms of reference not only for the book itself, but for the debates and discussion that it has already occasioned, and will certainly continue to occasion.

It has also helped to set the terms of reference for several of the substantive contributions to this edition of *Focus*.

NOTES

¹ Sen, Amartya. 2009. *The Idea of Justice*, London: Allen Lane

² The references to the positive endorsements are all to excerpts cited by the publisher on the dust jacket

³ All page references are to the hardcover first edition of *The Idea of Justice* published in 2009

Procedural Justice: The Thread that Weaves the Fabric of Justice in Society

“Not only must justice be done, it must also be seen to be done.”



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This article focuses primarily on procedural justice with particular reference to the Constitution of the Republic of South Africa of 1996 and the justice system in South Africa. The object, scope and functionality of procedural justice regarding its implementation and impact on just outcomes are discussed. Some examples where the judicial process has impacted on just and fair outcomes are highlighted with an aim to understand the role and current state of procedural justice in South Africa. This analysis does not aim to level criticism at any authority or stakeholder but, rather to stimulate debate and dialogue in this area.

The ambit of justice extends from substantive justice to questions of distributive, restorative and retributive justice. The thread however that holds the various aspects of justice together is in fact procedural justice. The notion that fair procedures are the best guarantee for fair outcomes is a popular one. Many scholars believe that procedural justice is not enough, and reaching fair outcomes is far more important than implementing fair processes. Others maintain that insofar as fair procedures are likely to “translate” into fair outcomes, they are of central importance.¹ Procedural justice is concerned with making and implementing decisions according to fair processes.² Whether designated processes are always fair, and whether they are always available and applied, are however different issues entirely.

John Rawls is widely regarded as one of the most important, if not the most important political philosopher of the 20th century.³ His primary work *A Theory of Justice* and his later work *Political Liberalism* received high scholastic acclaim and demonstrated a shift from the metaphysical to the political realm of the principle of “justice as fairness”. For Rawls the process used is pivotal to the outcome reached. He argues that if fair processes are utilised, principles of justice based on fairness and equality will be an inevitable result. Rawls believes that because the conception of justice he advocates results from an extravagantly dressed family of ideas involved in a particular procedure of construction, all reasonable people in society will unquestioningly accept and honour it. The problem with Rawls’ portrayal of justice as fairness is that both the political constructivist process and the resulting outcome he proposes are highly idealistic, albeit in a society with modern liberal democratic values.

Prescribed processes involved in meting out justice is the tool which allows persons

to access justice. The Bill of Rights in Chapter 2 of the South African Constitution grants individuals certain enshrined rights. These rights must be upheld and have vertical and horizontal application. It follows that where persons are given rights, there must be workable and legitimate processes in place to enable them to enforce these rights. Similarly, the civil and criminal justice system consists of a body of legislative and common law principles. For these principles to be binding on persons there must be processes in place to allow substantive justice to be translated from theory into practice.

There is often however a mismatch between what is in the content of the law and how justice materialises once legal processes are attempted or applied. There is little correlation between what should in fact occur and the length of time in which it should occur, and what actually happens in the justice system. This dismal situation is not specific to South Africa, but is also a feature of other – both ‘first’ and ‘third’ world – countries. Examples like the number of years it takes for deceased estates to be wound up, the number of criminals who go unpunished and slip through the justice net, the millions of children who do not receive child support from parents, and the high number of inexperienced and untrained judicial officers, are but only a few.

Where processes of law are not adhered to by persons requesting decisions and decision makers, a fair outcome with regard to justice is unlikely. It is difficult always to monitor and to ensure that designated processes are followed to secure just outcomes. It is also unfortunately the case that very often legal processes are abused by both the State and its citizens resulting in what only appear to be ‘fair’ and ‘just’ outcomes. Although impressive vehicles are designed to ensure that fair outcomes are achieved to give effect to substantive justice, these vehicles are not adequately structured, equipped and maintained on an ongoing basis. The phrase “the wheels of justice turn very slowly” has become a well known cliché in both developed and developing countries, with South Africa being no exception. Further, it is not uncommon for participants to breach rules on how the vehicle should be driven and thereby prevent its smooth and uninterrupted operation.

What makes processes fair involves numerous factors including: consistency, transparency, legitimacy, and impartial and neutral decision makers.⁴ The problem however is that in most instances what are deemed to be fair and legitimate processes often result in a miscarriage of justice. In several developing countries – including South Africa – it is immensely difficult for citizens to follow prescribed processes. The unwieldy bureaucracies responsible for the administration and enforcement of justice are often inaccessible and their personnel inadequately trained. Most people just don’t know where to go, what they need to do, and how to do it to enable them to achieve a just outcome. This may be attributed to numerous factors including, but not limited to the high illiteracy rate, the urban-rural divide, limited resources and the over-burdened justice system. The cost of employing legal practitioners and lengthy time delays are key factors that frustrate procedural justice and consequently substantive criminal and civil justice as well.

An example of inexcusable delays in justice being served due to procedure was reported in the Cape Times on 18 August 2009. ‘Daniel Hoffman lodged his appeal 11 days after he was sentenced to 10 years’ imprisonment for theft of goods valued at about R1 000, but it was to take six years for his appeal to be heard. When the now 50-year-old’s appeal was finally heard in the Western Cape High Court

What makes processes fair involves numerous factors including: consistency, transparency, legitimacy, and impartial and neutral decision makers.⁴

and his sentence lowered to five years, Acting Judge Hansie Botha and Judge Lee Bozalek expressed shock over how long Hoffman had to wait. He is due to be released immediately, having already served a year too much. Quoting from case law, Judge Botha said it was “outrageous in a constitutional democracy” that someone who may have been acquitted had to spend years in prison waiting for the finalisation of his case. This made a “mockery of the constitutional rights of accused and detained persons”.⁵ This is but one of the thousands of cases that plague the criminal justice system in South Africa.

Section 35 of the Constitution states that an accused must be given a fair trial. Where a trial is procedurally unfair, due to an entrenched right not being protected or a procedural step not being adhered to, the accused person, the victim, or society at large has to pay the price. This sort of situation often occurs where police officers fail to follow correct procedures when taking confessions from accused persons, or fail to obtain necessary warrants to conduct searches and seizures and the like. Where criminals are able to escape the clutches of justice due to erroneous actions of law enforcement personnel, it is inevitable that fair and just outcomes will not result despite the fact that procedural justice has at least notionally, been done.

An example of how processes of law frustrate substantive law and where the judiciary displayed its dissatisfaction towards this non-adherence to fair legal/administrative processes can be seen in the case of *Treatment Action Campaign v Minister of Correctional Services and Another* (case no. 18379/2008). Southwood J in the North Gauteng High Court held: “The papers in this case demonstrate a complete disregard by the Minister and his (sic) department of the provisions of the Constitution and PAIA which require that records be made available. There is no indication in the first respondent’s papers

that the Department complied with its obligations under PAIA at any stage. ...only after proceedings were instituted did the Minister and the Department attempt to justify failure to hand over the report and then on spurious grounds. It is disturbing that the first respondent has relied on technical points which have no merit and instead of complying with its constitutional obligations has waged a war of attrition in the court. This is not what is expected of a government Minister and a state department. In my view their conduct is not only inconsistent with the Constitution and PAIA but is reprehensible. It forces the applicant to litigate at considerable expense and is a waste of public funds.”⁶

Glaring gaps, especially within the criminal justice system cannot be ignored. The process involved with utilising interpreters in criminal courts is an example where although the accepted process appears to be fair and legitimate, it does not give the accused, the legal representatives and the Court, the opportunity to grasp an exact account of the various communications. The negative impact that time delays between questions and answers, legal jargon, the loss of tone and inflections and rephrasing has on proceedings and on the final outcome is highly undesirable.

It cannot be a foregone conclusion that what is prescribed as a just process will result in a just outcome. Like the highly idealistic process of Rawls’ political constructivism which would have ideally resulted in an overlapping consensus, processes involved in meting out justice do not necessarily unfold in a just and fair manner. It is clear that the undeniable and often inescapable challenges faced by law enforcement officials, the judiciary, officers of the Court and citizens cannot be left unresolved. The task before us is how best to address these challenges pragmatically.

NOTES

- ¹ Nelson W, "The Very Idea of Pure Procedural Justice," *Ethics*, vol. 90, no. 4 (July 1980): 506
- ² Deutsch M, "Justice and Conflict," in *The Handbook of Conflict Resolution: Theory and Practice*, ed. M. Deutsch and P.T. Coleman (San Francisco: Jossey-Bass Inc. Publishers, 2000), 45
- ³ Sukhraj-Ely P, 'John Rawls, From the Metaphysical "A Theory of Justice" to the Quasi-Political "Political Liberalism"', Masters Thesis, 2002, University of KwaZulu Natal, Durban, 4
- ⁴ Maiese M, "Procedural Justice: Beyond Intractability". Eds. Guy Burgess and Heidi Burgess. Conflict Research Consortium, University of Colorado, Boulder. Posted: January 2004 <http://www.beyondintractability.org/essay/procedural_justice/>
- ⁵ Breytjenbach K, "Cape Man's Prison Ordeal", *The Cape Times*, 18 August 2009 page 1 at: http://www.iol.co.za/index.php?set_id=1&click_id=15&art_id=vn_20090818031759436C862678
- ⁶ *Treatment Action Campaign v Minister of Correctional Services and Another* (18379/2008) [2009] ZAGPHC 10 (30 January 2009) paragraph 36) at: <http://www.saflii.org/za/cases/ZAGPHC/2009/10.html>

Social Welfare: Social stasis



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South Africa's democratic transition in 1994 was not only a transformative change to political institutions and political process. It brought with it a fundamental change in the way economic policy has been framed. The change is dramatic enough that we might term it a virtually untested experiment in how to approach the problem of long term economic development. In a nutshell, the experiment placed the targeting of social welfare intervention in order to redress what were perceived to be fundamental social inequities at the centre of the economic policy agenda. The formulation of an economic growth strategy has been of secondary importance at best, and realistically has never been proactively pursued.

In this sense the policy framework of South Africa over the past one and a half decades might be argued to be consistent, though not coterminous, with Amartya Sen's conception that development, equality and justice are not separable.

The question addressed by this paper is 'has this strategy has been successful?'.

The general prescription for achieving a long-term improvement in the average level of a nation's welfare is to realize economic growth. And growth is the key not only for the realisation of higher aggregate – and hence per capita – levels of output, but also for the amelioration of both poverty and income inequality, as well as improvements in human development indicators more broadly defined.¹ Growth is simply the *sine qua non* for any developmental goal if sustainability is part of the objective.

To give but one striking example of the centrality of growth: world income inequality had been steadily widening over the 1800-1950 period. Since then it has stabilised at worst, and shows at least some signs of improvement – thanks substantially to the growth performance of the Chinese and Indian economies.²

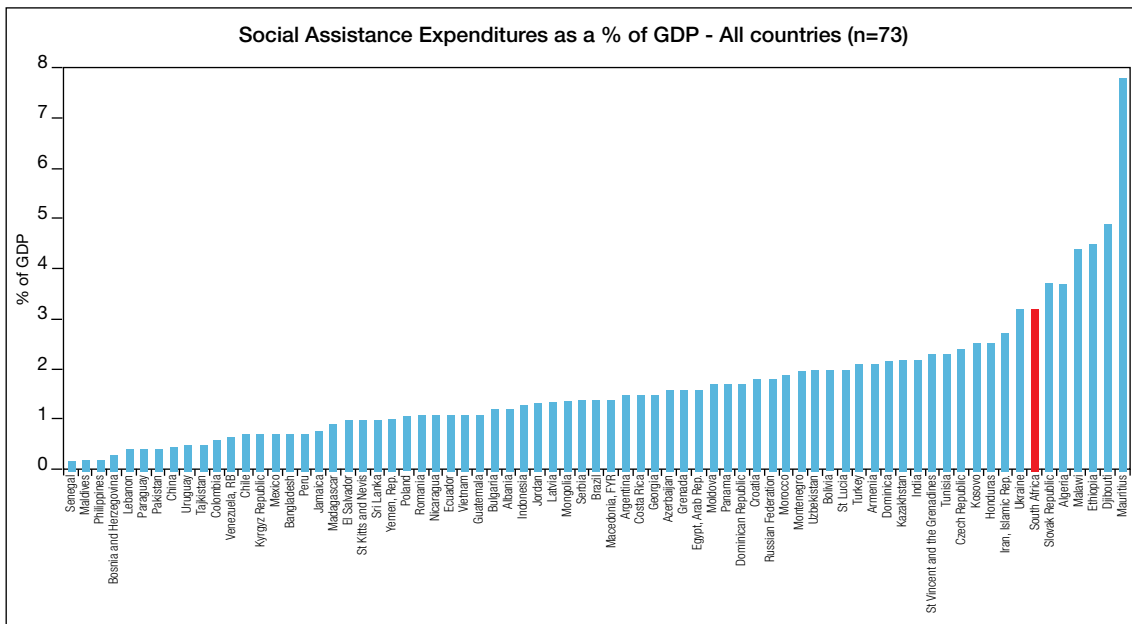
Countries that have successfully moved to higher levels of per capita income have done so through sustained periods of economic expansion. This is as true of Western Europe and North America in the nineteenth century, as it is of the newly industrialised nations of East Asia.

In the process, the developing nations relied on the three pillars on which growth rests – capital accumulation, expanding the demand for labour to maintain as close to full employment as is feasible, and a steady growth in technology and the efficiency with which the factors of production are employed. Typically, the growth

strategies of developing nations target sustained capital accumulation (investment) – financed by substantial savings and foreign capital inflows in the first instance – in order to raise the capital – labour ratio of production, and hence the productivity of labour. Once the capital labour ratio of the developing country approaches that of already industrialised nations, greater emphasis is then placed on technological advancement.

In South Africa, the approach to the developmental challenges has been dramatically different. The focus of economic policy since 1994 was not the pursuit of the core elements of a growth strategy, but instead the development of a social welfare system. In short, the economic strategy of South Africa’s first democratic government placed the attainment of greater equity and redistribution ahead of the achievement of faster economic growth. Ironically enough, consideration of the public debate surrounding economic policy in South Africa would have one believe the opposite: that economic policy has been characterised by the ruthless pursuit of the neoliberal agenda of the Washington Consensus. As the evidence below indicates, this is empirically false, and simply ignores the evidence.

Figure 1: Social Safety Net Expenditure (% of GDP, Selected Countries and Years)



Source: World Bank (2009), Weigand and Grosh (2008).

Note: Social safety net expenditure defined as sum of social insurance and social assistance payments

The results of this policy orientation have been a dramatic transformation of the policy landscape. In Figure 1 we report the proportion of Gross Domestic Product (GDP) spent on social safety nets, which in the case of South Africa are made up largely of pensions, child grants, disability payments, war veterans’ grants, foster care, grant in aid, care dependency and the unemployment insurance fund (UIF). What emerges is that South Africa now spends slightly more than 4% of GDP on social welfare. This expenditure places it amongst the most generous of all developing countries in terms of social welfare payments.

What is more, this level of welfare expenditure is the result of a dramatic and sustained increase over time, matched by no other category of government expenditure. In Figures 2, 3 and 4 we report the proportion of GDP spent on defence and public safety, social infrastructure and welfare expenditures, and a range of economic and cultural services, respectively.

The evidence is startling.

First, the category of expenditure that has attracted the most dramatic and sustained public scrutiny in terms of wastefulness, Defence, has been subject to a strong decline after the highs of the 1980s, from approximately 3.5% of GDP, to 1.5% of GDP, with no sign of revival despite the much debated arms deal. Such a level of expenditure places South Africa easily amongst the best-practice countries in terms of military expenditure.³ (See Figure 2).

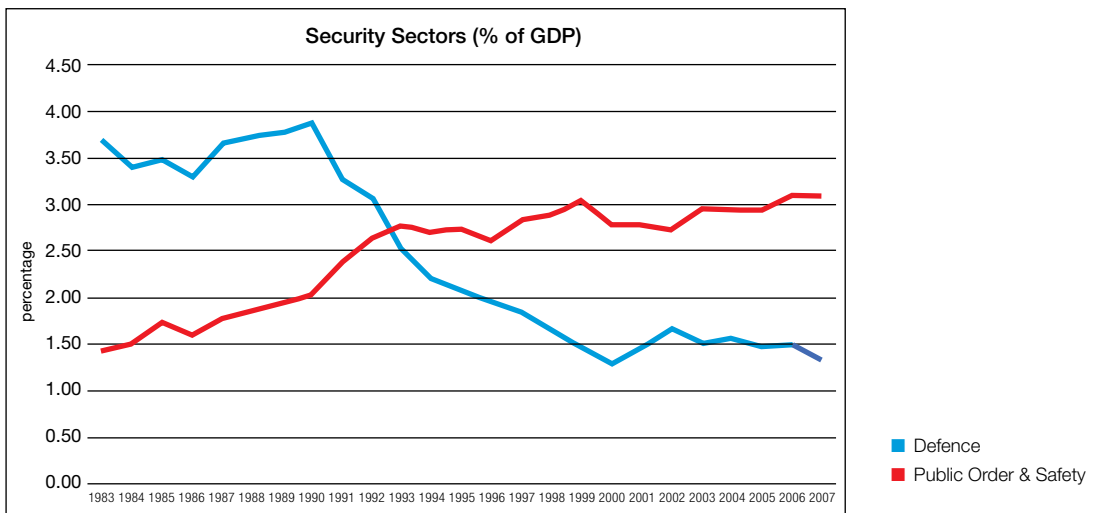
Second, the most dramatic single increase in government expenditure is attributable to social security and welfare, which shows a fourfold increase from approximately 1% of GDP to the more than 4% of GDP already noted in comparative terms above. (See Figure 3).

Third, it is worth noting that the fiscal space for this dramatic expansion in social welfare has, in substantial measure, been made possible since declining requirements of debt servicing have lowered the proportion of GDP spent on interest payments servicing government debt, from more than 5% of GDP toward the end of the 1990s, to less than 3% of GDP in 2008. Far from impeding the ability of the state to pay attention to welfare, therefore, prudent monetary and fiscal policy has in fact created the fiscal space to be able to develop a welfare system in the first place.

What is more, the choice to prioritise the expansion of social welfare, like any choice, entails trade-offs. The dramatic expansion of the social welfare payments has meant that other forms of expenditure have been constrained.

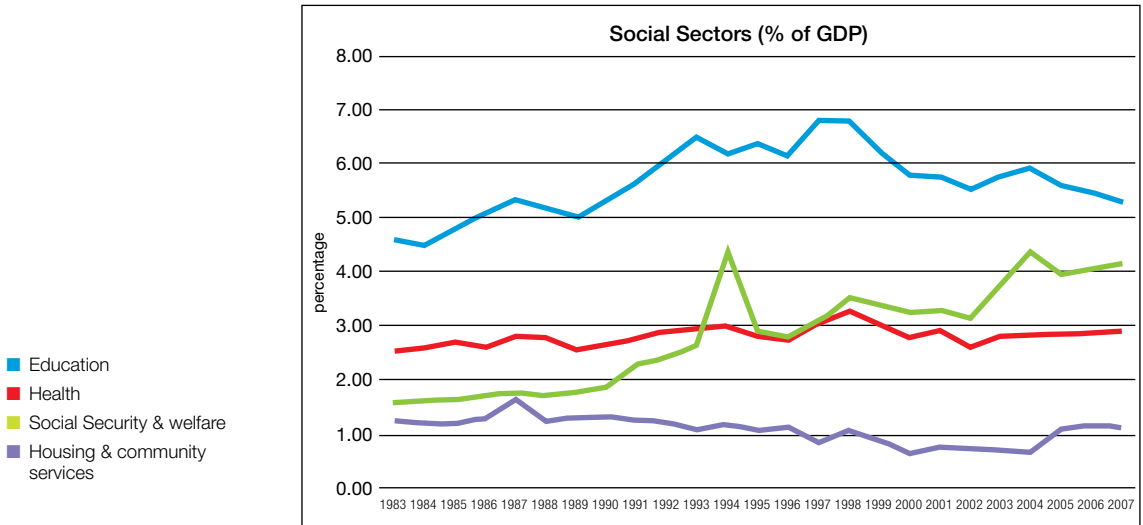
... the most dramatic single increase in government expenditure is attributable to social security and welfare ...

Figure 2: Government Expenditure (% of GDP)



Source: South African Reserve Bank⁴.

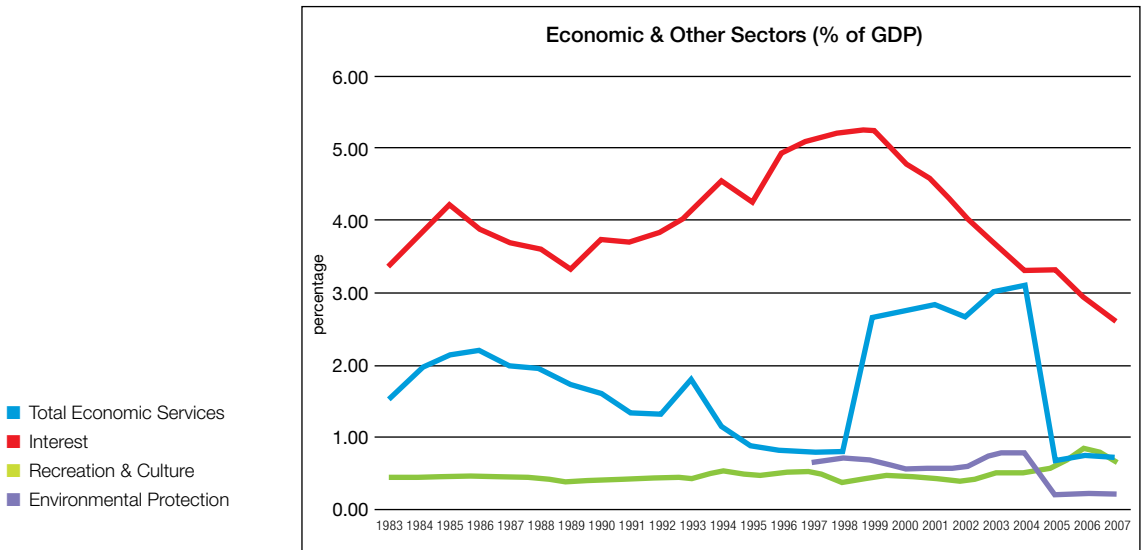
Figure 3: Government Expenditure (% of GDP)



Source: South African Reserve Bank⁵.

Thus, despite the fact that South Africa faces crime at an intensity and a level of violence that places it at the top of any international crime ranking, and despite the fact that it is the poor that face the disproportionate burden of the incidence of crime, expenditure on public order and safety has not increased appreciably as a proportion of GDP (approximately 3%) since 1999, arguably 1997.

Figure 4: Government Expenditure (% of GDP)



Source: South African Reserve Bank⁶.

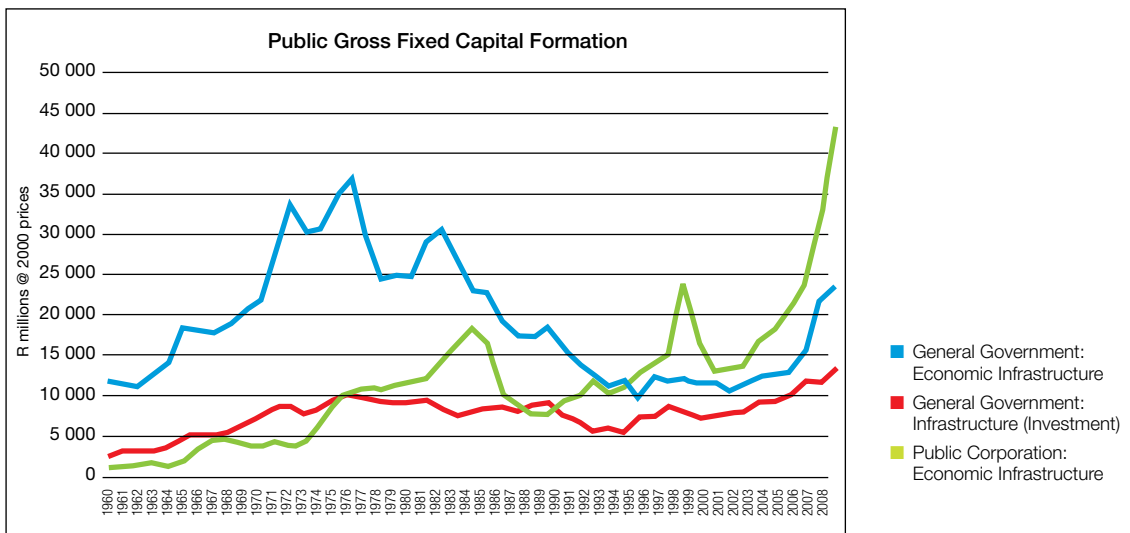
Despite the fact that improvements in human capital are widely recognised to be amongst the single most effective ways of lowering poverty counts, improving income inequality and above all that it constitutes a central platform for the realisation of economic growth, the proportion of GDP spent on education (while high in international comparative terms) in fact peaked only three years into the democratic dispensation at 7% of GDP, and has been on a steady decline over the whole of the past decade, now standing at 5% of GDP.

Despite the fact that South Africa faces serious challenges in the provision of health services, for instance as indicated by the impact of the HIV/AIDS pandemic on the average life expectancy in South Africa (which falls from a 1990-99 average of 57 years to a 2000s average of 46 years) since 1994, expenditure on health has remained essentially constant at 3% of GDP.

Despite the often identified backlog in housing, expenditure on housing services has remained essentially constant at 1% of GDP.

The evidence extends further. One of the now well-documented aspects of the South African growth performance of the last three decades of the twentieth century was a very strong decline in public infrastructure investment, leading to a decline in per capita public infrastructure. This is true for both economic infrastructure, as well as social infrastructure. Figure 5 illustrates.⁷ What is more, it is now well documented that both in aggregate terms,⁸ as well as on sectoral economic data⁹ infrastructure across a wide range of measures,¹⁰ is both an important determinant of economic growth, and itself comes to be driven by demand factors that arise under conditions of rapid economic expansion.

Figure 5: Infrastructure Investment



Source: South African Reserve Bank¹¹.

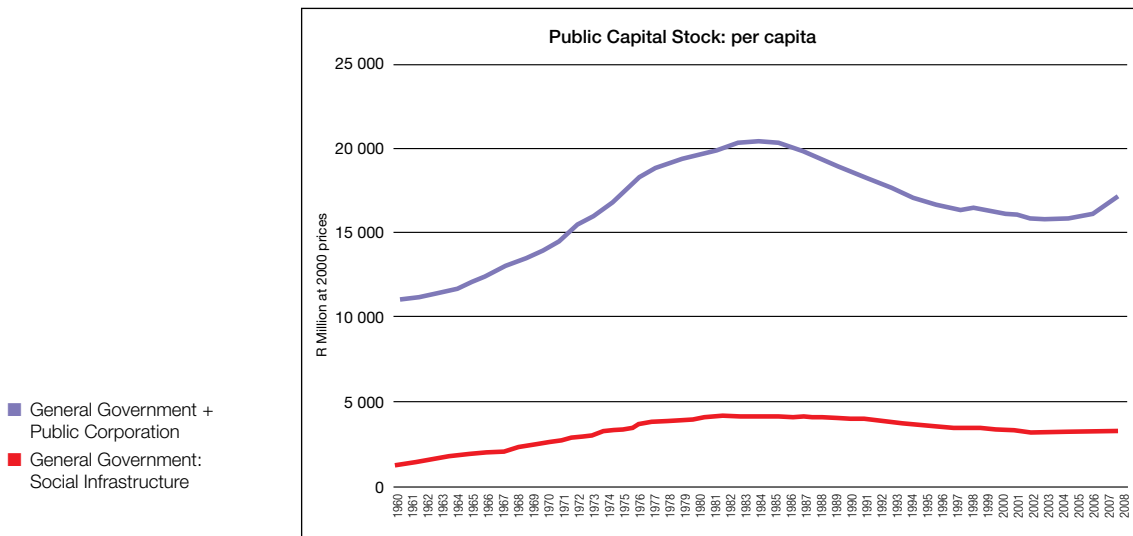
The good news is that the long term decline in infrastructure expenditure that characterised the 1975-2000 period, has been reversed in the 2000s. As Figure 5 illustrates the trend for both economic and social infrastructure expenditure by general government has been upward since approximately 2000. In the case of public corporations, the trend has been sharply upward.¹²

Unfortunately, there is too little by way of good news. The recovery in infrastructure expenditure, as Figure 6 shows, has not been sufficient to do more than generate a small reversal in the steady downward trend in per capita public capital stock in economic infrastructure. In the case of social infrastructure, the increased investment expenditure in infrastructure has not even been sufficient to reverse the negative trend in per capita social infrastructure over time.

The moral of the story is the same as with the preceding evidence. The strong

increase in social welfare expenditure has closed the fiscal space available for an expansion of the core forms of public capital crucially required for sustained economic growth, and hence for a sustainable resolution of the problems of poverty and inequality in the South African economy.

Figure 6: Per Capita Infrastructure Stock



Source: South African Reserve Bank¹³.

One indicator of the ability of the schooling system to generate quality human capital is the performance of scholars in standardised mathematics and science assessments.

Evidence from human capital creation in South Africa tells an even more damning story. We know from empirical evidence that what drives productivity growth in South Africa is not investment in human capital per se, but investment in quality human capital.¹⁴ One indicator of the ability of the schooling system to generate quality human capital is the performance of scholars in standardised mathematics and science assessments. It remains a source of deep concern that the ability of South Africa's schooling system to provide internationally competitive training in mathematics and science remains severely circumscribed. In Table 1 we report results from the ongoing international comparative study in mathematics and science performance (TIMSS) of eighth graders, over the 1995-2003 period. South Africa has consistently ranked bottom of the participating countries, with scores approximately half that of the TIMSS scale average of 500. What is more, South Africa's performance declined on the TIMSS scale over the 1995-2003 period, even though the decrease is not statistically significant.¹⁵

Thus, the South African state is simply not delivering to its citizens what is arguably the single most effective means of addressing long term disadvantage, and poverty in particular.

The significance of all of this evidence is twofold:

Most significantly, the dramatic increase in social welfare expenditure has closed the fiscal space for an expansion of expenditure in other dimensions, such as education, health, policing and housing. Of course, the evidence of Figures 2 through 4 is reported as the proportion of GDP. While this is consistent with real increases in absolute terms in all categories of expenditure, it also serves to highlight the rate and magnitude of increase in social welfare payments even more dramatically.

Second, it serves to emphasise just how disconnected from the fundamental evidence the public debate on economic policy has become. Despite the repeated claims that public policy has been targeted rigidly at the achievement of stringent fiscal and monetary austerity at the expense of the development of an adequate social security system, precisely the reverse is true. The development of the social security system has been possible only because fiscal and monetary policy created the fiscal space to raise welfare payments; and it has been the rising fiscal burden of the welfare payments that has squeezed the ability of the state to address the delivery of vital services in education, health, policing and housing.

Table 1: Trends in International Mathematics and Science Study (TIMSS)

Country	1995	1999	2003	Difference	
				(2003-1995)	2003-1999
Singapore	609	604	605	-3	1
Korea, Republic of	581	587	589	8 [^]	2
Hong Kong SAR	569	582	586	17 [^]	4
Chinese Taipei	—	585	585	+	#
Japan	581	579	570	-11 [~]	-9 [~]
Belgium-Flemish	550	558	537	-13 [~]	-21 [~]
Netherlands	529	540	536	7	-4
Hungary	527	532	529	3	-2
Malaysia	—	519	508	+	-11
Russian Federation	524	526	508	-16 [~]	-18 [~]
Slovak Republic	534	534	508	-26 [~]	-26 [~]
Latvia-LSS	488	505	505	17 [^]	#
Australia	509	—	505	-4	+
United States	492	502	504	12 [^]	3
Lithuania	472	482	502	30 [^]	20 [^]
Sweden	540	—	499	-41 [~]	+
Scotland	493	—	498	4	+
Israel	—	466	496	+	29 [^]
New Zealand	501	491	494	-7	3
Slovenia	494	—	493	-2	+
Italy	—	479	484	+	4
Bulgaria	527	511	476	-51 [~]	-34 [~]
Romania	474	472	475	2	3
Norway	498	—	461	-37 [~]	+
Moldova, Republic of	—	469	460	+	-9
Cyprus	468	476	459	-8 [~]	-17 [~]
Macedonia, Republic of	—	447	435	+	-12 [~]
Jordan	—	428	424	+	-3
Iran, Islamic Republic of	418	422	411	-7	-11 [~]
Indonesia	—	403	411	+	8
Tunisia	—	448	410	+	-38 [~]
Chile	—	392	387	+	-6
Philippines	—	345	378	+	33 [^]
South Africa	—	275	264	+	-11

The development of the social security system has been possible only because fiscal and monetary policy created the fiscal space to raise welfare payments.

— Not available.
 + Not applicable.
 # Rounds to zero.
[^] p<.05, denotes a significant increase.
[~] p<.05, denotes a significant decrease.

SOURCE: International Association for the Evaluation of Educational Achievement (IEA), Trends in International Mathematics and Science Study (TIMSS), 1995, 1999, and 2003.

Two obvious questions arise at this juncture:

Has the South African strategy of prioritising its first order objective of lowering inequality and poverty worked? After all, postponement of growth oriented policy interventions might well be eminently desirable if the strong social welfare commitment has served to redress the legacy of strong social inequities as reflected in the levels of poverty and inequality.

Secondly, will the strategy prove sustainable?

In terms of the first question, the increase in social welfare intervention has been dramatic (a fourfold increase) and sustained. So if redistribution is a successful strategy of redress for poverty and inequality, it really should be visible in the South African instance. Yet strikingly, according to South Africa's leading researchers on poverty and inequality, this has not been the case. Instead they suggest that the best inference from the evidence is that inequality has remained constant over time at best, and that it may possibly have worsened.¹⁶ Equally, as of 2005 more than 34% of South Africa's population is claimed to remain below the World Bank's poverty line of subsisting on less than \$2 per day. (See Table 2.) As the comparative evidence makes clear, this places us in the same category as China in 2005.

All this, despite a fourfold increase in social welfare payments.

South Africa has been pursuing an aggressive welfare based programme aimed at redressing inequality and poverty at the expense of an economic growth policy.

Table 2: Poverty Counts in Comparative Perspective

	Poverty headcount ratio at \$1 a day (PPP) (% of population)			Poverty headcount ratio at \$2 a day (PPP) (% of population)		
	1980-89	1990-99	2000-05	1980-89	1990-99	2000-05
Brazil	13	9	8	33	25	22
China	44	24	12	79	61	38
India	46	42	34	87	85	80
South Africa	-	8	11	-	33	34
Argentina	2	2	6	2	9	18
Chile	6	2	2	25	11	8
Mexico	14	7	4	40	26	18
Venezuela, RB	6	11	14	21	28	34

Source: World Development Indicators

The Chinese comparison is instructive both in dynamic terms (over time) as well as in terms of comparisons with other countries. As I have argued above, South Africa has been pursuing an aggressive welfare based programme aimed at redressing inequality and poverty at the expense of an economic growth policy. China, famously, has been pursuing an aggressive growth policy, with welfare interventions as a remedial afterthought at best. Yet as the evidence of Table 2 makes clear, it is China that has been able to reduce its poverty, and dramatically so, over the past two decades. South Africa's poverty count by the official data has remained static at best – and possibly has worsened.

What is more, the comparative evidence further strengthens the suggestive insight. Those countries that have focused on raising growth (Chile, Brazil and Mexico over the period reported) have shown strong decreases in poverty counts. Those whose focus has been in the first instance on redistribution (Argentina, Venezuela,

South Africa) have achieved worsening poverty counts.

This leads to the question of sustainability.

One argument in favour of the strategy adopted by South Africa might be that it is a Keynesian response to what is clearly a disequilibrium in the economy: an unemployment rate that is a significant brake on development prospects, since a large proportion of potentially productive factors of production lie fallow. The obvious means of resolving this constraint is then through standard demand side stimulus, raising demand in the economy in order to bring the factors of production into full employment.

But there are two considerations that render this response spurious.

First, even on its own terms, Keynesian demand management is a short run countercyclical intervention designed to counter temporary deviations from full employment due to a shortage of effective demand. South African unemployment is long-term and structural in nature, and has self-evidently hardly budged despite the substantial stimulus to the demand side of the economy over a fifteen year period provided through the welfare channel of the government accounts. The problem of unemployment is a supply-side one, of a rigid labour market that is unable to show a price response to a substantial market disequilibrium,¹⁷ and of a schooling system that is unable to provide the skills that labour market entrants require in order to be competitive at the prices that are administratively and rigidly set in our labour markets.

Second, it is not a sustainable response. It renders the fiscus vulnerable to external shocks in the extreme. The current world recession is a case in point. The negative shock to the demand side of the economy has immediately opened up a deficit on the government accounts of 7.6% of GDP (on current estimates). Under such a weight of borrowing the fiscal space created by the reduction in government debt of the past fifteen years for the expansion of welfare payments, will fast dissipate, and force the need for difficult choices across spending programmes. And who will front up to the political challenge of making the choice between pensions, schools, hospitals or low income housing?

In short, Keynes is best left out of considerations relating to growth strategy, and should be reserved for where he belongs.

But could a strategy such as that adopted by South Africa conceivably work as a means of sustainably addressing rising and expanding welfare aspirations of an inclusively defined population?

The answer is probably (or perhaps better: possibly) yes, but not unconditionally so. The right circumstances must prevail if it is to have the desired effect of bringing in an ever greater proportion of the population into the formal economy, employment, and hence out of poverty.

But a word of caution is necessary. Reliance on raising the income of the poor and disadvantaged of society to raise the economic performance of the economy as a whole, will be successful if, and only if, the stimulus that the high propensity of the poor to consume¹⁸ will generate for demand, is accompanied by a supply

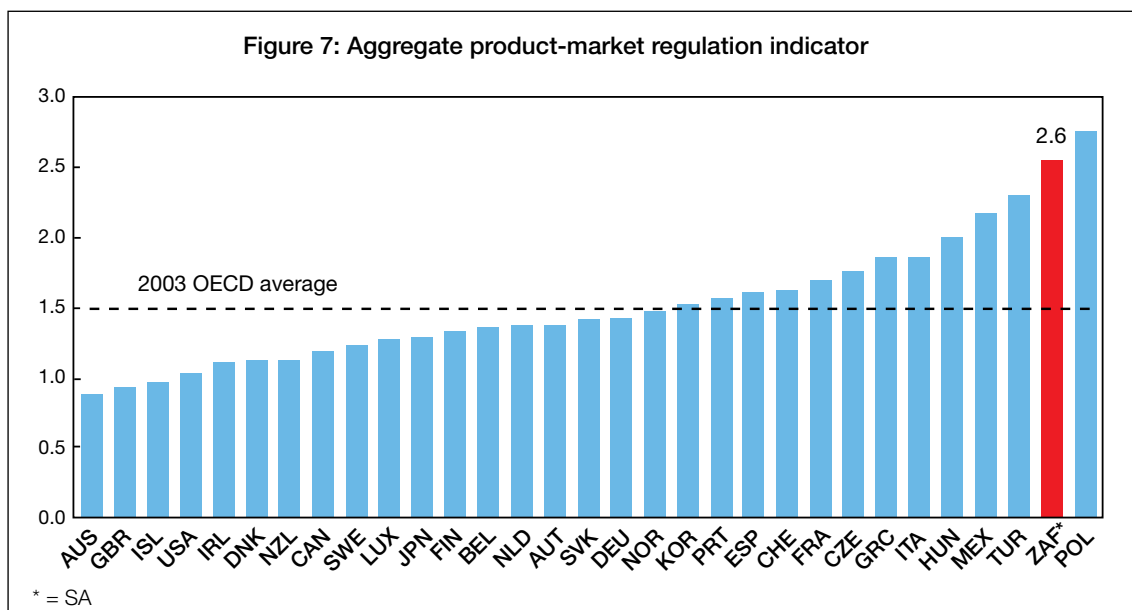
And who will front up to the political challenge of making the choice between pensions, schools, hospitals or low income housing?

side response that allows resources to be allocated efficiently to the productive capacity that can meet the expanded demand. But this in turn requires an increased flexibility of markets, in order to allow an efficient reallocation of resources to their most productive use. This would enable labour markets to allow the creation of jobs across a wide spectrum of skills and experience levels, including low skilled employment in markets that service the part of the economy receiving the strongest proportional stimulus in demand (the poor). But equally, such flexibility would be required in output markets, where the distribution of productive activity in the economy is determined.

Yet for South Africa, policy intervention has pointed in the opposite direction.

Labour market legislation has not only rendered the real wage rigid, but has introduced a wide range of labour market regulation that has raised the non-wage cost of labour in addition to the wage cost.

In output markets, there is evidence of substantial pricing power,¹⁹ which carries substantial costs in the form of foregone productivity growth.²⁰ But significantly, the intensity of output market regulation in South Africa is much higher in South Africa than even developed OECD-type economies maintain (see Figure 7), such that incumbent firms in South African markets have been able to benefit from non-tariff barriers to competition despite a liberalisation of the trade regime.²¹



Source: OECD (2008).

In effect, both labour and output markets are overregulated and too inflexible in order for the reliance on the demand side intervention that is associated with an expansion of the welfare system to stand any chance of success in addressing the demand of long run sustainable development.

Sen's dictum that justice and fairness are indivisible from what it means to realise the development of life prospects, in both the sustainable and the complete sense of the word, is certainly attractive. It may also be true.

However, as South Africa's experience shows, paying attention to social justice is no substitute for addressing the hard supply side issues that determine the productivity of factors of production in the long run. This requires hard choices to forego short term consumption in order to raise productive capacity in the economy sustainably through hard work and investment in the quantity and quality of capital, be it human, physical or financial.

To meet the welfare needs of its citizens and its poor and disadvantaged, it is time that South Africa adopted a growth policy in substance as well as in name.

NOTES

- ¹ The evidence suggests that economic growth is much more effective at reducing poverty than income redistribution. For instance (Ravallion et al, 1997) find that a 10% increase in average incomes per year will reduce the proportion of the population living on less than \$1 a day by 30% per year. For economic growth to worsen poverty, the distribution of income would have to become more unequal as incomes rise. There is no evidence to suggest that this happens, instead (Dollar and Kraay, 2002) find that a 1% increase in the average income of society translates one-for-one into a 1% increase in the incomes of the poorest part of society
- ² See the sophisticated analysis and discussion in Bourguignon and Morrisson (2002)
- ³ This is not to say that the arms deal was not beset by impropriety. But from a fiscal sustainability point of view there is simply no issue here
- ⁴ KBP4371F, KBP4372F, KBP6006J
- ⁵ KBP4372F, KBP4374F, KBP4375F, KBP4376F, KBP6006J
- ⁶ KBP4377F, KBP4378F, KBP4379F, KBP4380F, KBP4381F, KBP4382F, KBP4383F, KBP4384F, KBP4387F, KBP6006J
- ⁷ See also the extensive discussion of the evidence in Perkins et al (2005)
- ⁸ See Fedderke et al (2006)
- ⁹ See Fedderke and Bogetic (2009)
- ¹⁰ The studies employ measures of railway, road, port and air transportation, power generation, as well as telephone communication capacity.
- ¹¹ KBP6101Y, KBP6102Y, KBP6107Y
- ¹² This is predominantly driven by the increase in the investment for power generation by Eskom.
- ¹³ KBP6132Y, KBP6133Y, KBP6135Y and Statistics South Africa for population estimates: medium mid-year population estimates
- ¹⁴ See the extensive discussion and evidence in Fedderke (2006)
- ¹⁵ The discussion of the quality of the South African educational system has been ongoing over the past decade. See for instance Fedderke et al (2000) for an early discussion of concerns about South African schooling quality across a range of dimensions. Simkins (2005b) provides further comparative evidence, while Simkins (2005c) considers evidence from South African household surveys. Fedderke et al (2003) consider further evidence from the tertiary educational sector, while Simkins (2005a) extends the evidentiary base
- ¹⁶ See Bhorat et al (2009), and Leibbrandt (2009)
- ¹⁷ See the clear discussion in Banerjee et al (2008:725) who show that there is no downward adjustment in the real wage of labour in South Africa, despite substantial (and arguably rising) unemployment. This is simply not the response of a flexible market under any characterisation. Current wage settlements, well in double digits, in the face of a world recession, negative output growth rates, continued high unemployment, and an inflation rate fast approaching the upper bound of the inflation target of 6%, similarly speak of very considerable bargaining power on the part of organised labour inevitably leading to yet more pronounced disequilibria in the labour market
- ¹⁸ The poor tend to consume higher proportions of their income as opposed to the rich whose proportional consumption lessens as income increases. Ed
- ¹⁹ See Fedderke et al (2007) and Aghion et al (2008) – the estimate is that the pricing power of South African producers is two to three times that of US producers
- ²⁰ See Aghion et al (2008)
- ²¹ Note that the proportional liberalisation of other emerging markets have been far more substantial – see for instance the proportional reduction in tariff barriers in India and China relative to that of South Africa. In addition, GDP-weighted

reductions in effective protection rates suggest that South Africa's liberalisation has been less complete than the reduction in nominal tariff rates suggest

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Education & Injustice in South Africa



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Education has the potential to play a key role in addressing societal injustice by equalising opportunities, facilitating development, and strengthening democracy. Unfortunately, in contemporary South Africa, this role remains almost entirely unrealised. Instead, three key features of the South African educational system – low quality, high inequality, and deep segregation – combine to further skew the distribution of resources, delay development, and prevent effective participation in democratic governance. This article explores these features of the South African educational system, and how each of them relates to injustice at both the individual and societal levels. While identifying the myriad injustices associated with education in South Africa is relatively easy, finding solutions is not. Particularly over the short term, efforts to address injustice of one type may well incur injustices of another. For this reason, the educational reform that is so urgently needed must be guided by an open, explicit and honest examination of the implications for justice, at the societal and individual levels, and over both the short and long terms, of any policy decisions.

Quality & Justice:

The poor quality of the majority of public education in South Africa¹ is in itself a major injustice. At the individual level, it blocks the formation of skills and capabilities, preventing South African youth from realising anything approaching their full potential. Poor education condemns them to lives with fewer opportunities, lower incomes, and a more limited capacity for self-determination. Low quality education is also an injustice to the broader society, causing the loss of an enormous amount of human potential. This slows development, making the eradication of poverty more challenging, and probably more distant. Over the longer term, it also damages national capacity for the provision of all forms of public services, including education itself. A population with high proportions of people having limited skills and opportunities, economic and otherwise, is also likely to be more susceptible to a range of other social ills such as violence and crime.

Inequality & Justice:

Most would agree that at least some level of equality, defined in terms of either access to opportunities or of outcomes, is essential to justice. However, the nature of the relationship between equality and justice is quite complex. In South Africa, extremely high levels of inequality in both the education system and society at large make equality a pressing issue. While greater educational equality is likely to be



Courtesy of Samancor.

Schoolchildren from Tirelong Intermediate School, North West.

good for development in the long term, in the shorter term it may entail a reduction in quality, slowing the pace of development. In a context of limited resources, the tradeoffs between equality and quality are likely to be particularly substantial, and the full range of justice implications of any decision need to be carefully weighed².

While most public education in South Africa is poor, some is extremely good³. Unlike most other middle-income countries, and particularly those with high inequality, most South African middle-class children continue to attend public schools, and the private sector remains very small⁴. However, competition over access to 'good' public schools can be substantial, and appears to be growing, while 'poor' schools, particularly in township areas, are often undersubscribed⁵. Inequality in access to high quality educational opportunities has harmful long and short-term implications for the individual. Over the short-term, individuals at low-quality schools are likely to receive fewer resources and less effective teaching. They are more likely to be subject to violence or abuse at school, and are more likely to repeat classes, fail, or drop out, and are far less likely to access tertiary education or training⁶. Over the longer term, those who receive poorer education, or spend less time enrolled in school, are likely to have lower incomes, fewer opportunities, poorer health, and shorter life expectancies. At the societal level, the injustice of what is effectively a 'two-tier' public sector, with public resources supporting the persistence of individual inequality, is clear.

Discussions around educational injustice are complicated even further by the question of whether equality in access to educational resources (broadly defined) is sufficient for justice. Genuine educational justice might instead require that all children are provided with opportunities sufficient to enable the attainment of substantively similar outcomes⁷. It is well-established that, all else being equal, it costs more to educate a disadvantaged child to a particular level than it would cost to educate his or her more advantaged peer⁸. Obtaining equality of educational outcomes would therefore tend to require explicitly unequal government spending, with much higher levels of investment in the poorest children. This inequality in public spending would need to be particularly substantial in South Africa, which has extremely high and deeply rooted levels of income inequality. In contemporary

Over the longer term, those who receive poorer education, or spend less time enrolled in school, are likely to have lower incomes, fewer opportunities, poorer health, and shorter life expectancies.

South Africa, despite efforts to introduce a pro-poor bias in public educational spending with the National School Norms and Standards Act (1996), overall (public and private) educational spending remains highest in those public schools educating the most advantaged children⁹.

Neither complete equality in access to educational resources or in educational outcomes are really feasible policy goals, and indeed, societal demands for justice may best be met by finding a balance between the two. Even with a clear understanding of exactly what the pursuit of educational equality means, however, the possibility of tensions between the pursuit of equality and high quality remain. Maximising quality in the educational system would likely require a completely different pattern of investment than efforts to maximise equality. While over the long term, equality and quality are likely to be mutually reinforcing, over the shorter term, tensions are almost certain.

While race remains a strong predictor of educational access in contemporary South Africa, it does tend to obscure an underlying shift to socio-economic status as the major determinant of access to high quality education.

Equality in access to opportunities, equality in educational outcomes, and efficient resource use to maximise quality, are all closely tied to a just society, but appeal to different aspects of justice. In a context of limited resources, decisions inevitably need to be made about how to balance these competing imperatives. The ideal solution is likely to be extremely context-specific, depending on a broad range of economic, social and cultural factors. Arriving at the most just solution for a particular context requires not only a great deal of information, but also broad participation from those who stand to be affected by the decisions made.

Segregation & Justice:

The need for participatory debate and decision making in a just society brings us to a third concern about the justice of South African education: the extremely high levels of segregation. Segregation has typically been understood as racially-based exclusion, particularly in South Africa with its history of defining access to educational opportunities on the basis of race. While race remains a strong predictor of educational access in contemporary South Africa, this obscures an underlying shift to socio-economic status as the major determinant of access to high quality education¹⁰. Understanding that South African educational segregation is now driven by SES, even though racial differences remain substantial, is critical to understanding the interaction of educational segregation with quality, equality and justice. Segregation is deeply linked to both quality and equality, and further deepens many of the concerns already raised about education and justice. One connection between education and justice which has not yet been raised, however, is the role that common education can play in developing democracy and participatory governance.

Much of what children learn about the nature of their country and what it means to be a citizen occurs in school¹¹. This is particularly the case in a country where the large majority of education is provided through the public sector, as is the case in South Africa. While some of this learning may be explicit, much is implicit, occurring through immersion, absorption and observation. When education is segregated, along any line, children obtain a skewed image of who comprises their nation, as well as what citizenship means. By contrast, the mere fact of desegregated education, with children from a diversity of backgrounds integrated on an equal footing, plays an illustrative role in teaching the concept of common humanity, and respect for difference. Similarly, it builds understanding of the fundamental notion that all citizens share certain rights, such as access to education of a particular



Steelport Academy, Limpopo.

Surrounding a child with advantaged peers enhances his or her academic performance.

level of quality, regardless of their backgrounds. These ideas are central to generating a national community which is fundamentally accepting of democratic and participatory decision-making and governance.

Democratic and participatory governance also requires a populace to be well-informed and able to express their views and opinions. This requirement comes back to the need for a certain level of quality in the educational system. Desegregated education ensures that unavoidable variations in educational quality are distributed randomly across the population – that no one group receives a particularly advantaged education. This stands in stark contrast to the South African status quo, where schools serving advantaged children benefit from the additional resources contributed by parents, better qualified teachers attracted by more amenable working conditions, and a student body that is generally far easier to educate¹². By contrast, while segregation is not complete, a large majority of the disadvantaged children whose effective education is most costly, and whose parents have the fewest resources to contribute, are clustered together in those schools with fewest resources, poorest facilities, and weakest staff. This segregation limits the access of these children to opportunities for upward social mobility, and helps to ensure that they remain trapped in poverty.

Desegregated education also ensures that all children are schooled together with similar groups of peers. The socio-economic status of the other children enrolled in a school is one of the single most important predictors of a child's academic outcomes¹³. Surrounding a child with advantaged peers enhances his or her academic performance. By contrast, the same child surrounded by disadvantaged peers will do less well. The impact of these academic peer effects are increased by the opening up of privileged social networks that are associated with socio-economically desegregated education¹⁴. In a desegregated classroom, the social network of an advantaged child becomes at least partially available to his or her less advantaged peers, offering them connections and opportunities that would

otherwise be unavailable. As long as schools remain socio-economically segregated, the education of advantaged children will be further enhanced by their advantaged peers, while disadvantaged children will be deprived of this opportunity.

Educational segregation, particularly along socio-economic lines, clearly has significant implications for justice, as it constrains not only who has access to high quality educational opportunities, but also who has an audible voice in the discussions and debates around the restructuring of public education. However, while educational desegregation would be likely to improve educational equality and even quality over the longer term, in the short term, substantial tensions between desegregation, equality and quality are likely to remain. Once again, identifying the optimally just balance is likely to be extremely context-specific, and will require the involvement of all citizens.

Conclusion:

As illustrated above, the concurrent existence of low quality, high inequality, and deep segregation in South African schooling has serious implications for justice. Particularly alarming is the tendency of these three properties to work together to reinforce societal injustice, creating what is effectively a self-reinforcing poverty trap, ensuring that the most disadvantaged members of society have few ways of improving their situation. Over the longer term, addressing all of these issues is the only way to create an educational system that is itself just, and that supports social justice at a broader level. Our more immediate challenge, however, is to identify, within a context of limited resources and divergent public demands, the most appropriate set of short-term actions to ensure, as soon as possible, an educational system that is perceived as just by all those who it serves.

NOTES

¹ See for example Reddy, 2006; Fiske & Ladd, 2004; Fleisch, 2008

² See Patel & Crouch, 2008

³ See Fiske et al., 2004

⁴ See Hofmeyr & Lee, 2004; Fiske et al., 2004

⁵ See Msila, 2009; Msila, 2005

⁶ See Lam, Ardington, & Leibbrandt, 2008; van der Berg, 2008

⁷ See Fiske et al., 2004, He provides an extremely useful discussion of this issue

⁸ See Reschovsky, 2006

⁹ See Reschovsky, 2006; Fiske et al., 2004

¹⁰ See Fiske et al., 2004; Lemon, 2005

¹¹ See Kahlenberg, 2001

¹² See Fiske et al., 2004

¹³ See Kahlenberg, 2001

¹⁴ See Kahlenberg, 2001

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The State and Transformation



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It is now familiar that under Thabo Mbeki the democratic project experienced several major reversals. While holding on to the formal constitutional architecture, the time of Mbeki is said to have been associated with the hollowing-out of parliament, the demobilisation of civil-society and even the erosion of the separation of powers.

In 2006 the Congress of South African Trade Unions warned that South Africa and the ANC were drifting towards dictatorship. "Dictatorship never announces its arrival," Zwelinzima Vavi told a media briefing in Cape Town. "It won't, like drum majorettes, beat drums and parade down the street to announce it has arrived. The main concern of the (National Executive) Committee centres on signs that we may be drifting toward dictatorship. This appears in the use of state institutions ... in narrow factional fights. We see it in the use of sections of the media to assassinate the character of individuals through off-the-record briefings and the leaking of sensitive information in the hands of those charged to investigate crimes". As early as 2002, Jeremy Cronin worried about the "zanufication of the ANC". It was a term he used to refer to the "bureaucratisation of the struggle"ⁱⁱ. This perspective informed the way that commentators and numerous party members viewed the events at the 52nd National Conference of the ANC.

Several observers welcomed the Polokwane conference as the "day when democracy in the ANC really came of age"ⁱⁱⁱ. Steven Friedman argued, for example, that the events in Polokwane represented a break with the "autocratic" culture of the organisation. "It is not hard to see why the ANC old guard did not like what they saw on day one" he suggested. "They are used to conferences where people keep their differences out of the public eye, when they air them at all, and where leaders are treated with great deference, whether they deserve it or not. They are horrified at the possible birth of a new ANC in which members insist on making their leaders serve them, rather than publicly doffing their caps to those in charge"^{iv}. Likewise, Eddie Webster hailed the election as a democratic break-through. For the first time in postcolonial Africa, he said, a leader of the dominant political party was forced to stand down after being rejected by his comrades in an internal election^v. "And, since the ANC may well dominate our politics for a while yet", concluded Friedman, "whatever happens here at Polokwane, it is not impossible that December 16 2007 could be remembered as the day when our democracy became deeper and more real"^{vi}. The fact that a public domain emerged, even if only for the duration of the conference in Polokwane, is for both commentators a positive sign of democratisation in the ANC.

The lesson of the last ten years, however, should alert even the most optimistic commentator that the democratic project is not necessarily safe in the hands of those that invoke its terms and symbols. In postcolonial Africa this is especially true

of nationalist movements that came to power on the promise of democracy – but that very quickly eviscerated the democratic space. Nonetheless, there is reason for cautious optimism. Mbeki was successfully brought down for his subversion of democratic procedures both within the ANC and generally. There are signs that South Africans, both within the ANC Alliance and without, are rediscovering their taste for dissidence.

If there is reason to be circumspect about whether ‘democratisation’ will constitute a key platform of a ‘left’ government, it is more certain that such a government will rethink the State’s relationship to the market. This is to be welcomed. Despite fairly robust levels of economic growth in South Africa over the last several years, growth has been accompanied by increasing levels of unemployment for South Africa’s historic working class and for poor, new entrants to the labour market, widening inequality and deepening poverty (moderated only by welfare instruments like pensions and the child-support grant). Given this situation, there is a compelling case to rethink the State’s role in the economy and society. What the current situation suggests is that ‘deracialising capitalism’ (Black Economic Empowerment and Affirmative Action) has not borne the kinds of developmental fruits it was hoped it would. The current interest in the notion of the ‘developmental state’ is testimony to the search for a new role for the state. Over the past month, Peter Evans, the Berkeley sociologist whose book *Embedded Autonomy* is a key reference text in this debate, has spoken at two separate events on the prospects of a ‘developmental state’ in South Africa^{vii}.

... far from being weak and amenable to direction from the State, capitalists in South Africa are both confident (bolstered by the ideological crisis of the left) but also increasingly organised in and through global circuits of capital.

Yet there is something naïve about these debates if they are not accompanied by reflections on the nature of the South African state as it is today. Peter Evans has warned that treating the ‘developmental state’ as a model that can simply be emulated is to conjure away the unique historical context in East Asia after the second world-war: the dissolution of land-owning classes and weakly organised capitalists that enabled the state to direct investment in key, strategic sectors. This is not the case today, especially in South Africa. Vishwas Satgar, to his credit, has begun such a reflection by considering how, far from being weak and amenable to direction from the State, capitalists in South Africa are both confident (bolstered by the ideological crisis of the left) but also increasingly organised in and through global circuits of capital. As welcome as such a political-economic reading of the current situation is, we must also ask more prosaic questions about the State as an institution, or complex of institutions.

What has been generally ignored in South Africa regarding the relationship of the state to development is the importance of **bureaucracy**. In the distinction between ‘predatory’ and ‘developmental’ states, ‘bureaucracy’ has pride of place. ‘Predatory states,’ writes Evans, “lack the ability to prevent individual incumbents from pursuing their own goals. Personal ties are the only source of cohesion, and individual maximisation takes precedence over pursuit of collective goals. [...] Predatory states are, in short, characterised by a death of bureaucracy as Weber understood it. The internal organisation of developmental states comes much closer to approximating a Weberian bureaucracy. Highly selective meritocratic recruitment and long-term career rewards create commitment and a sense of corporate coherence”^{viii}.

Focusing simply on questions of macro-economic policy or on the balance of class forces in the current situation detracts attention from the state of the State in South

Africa. Whatever interventions a 'left' government may decide are appropriate, they will necessarily require a well functioning state administration. Such a state is more often than not simply presupposed. Yet the State is precisely what has been compromised over the last ten years or so.

It is simply incorrect to debate the failures of the state as a consequence of affirmative action. Rather, the pursuit of equity in the public sector has coincided with the introduction of a new politics of and on the State. Since, at least, 1999 (the introduction of the Public Finance Management Act) there have been concerted efforts to transform the State away from the model of the bureaucracy (hierarchical, rule-driven, meritocratic) in the direction of the New Public Management (NPM) (manager-driven, high levels of discretion and autonomy, including over financial matters). The NPM was intended both to transform the values of old apartheid-era organisations and to improve their efficiency and effectiveness. In particular it stressed the importance of managers over bureaucrats and valued the application of business principles to the way state agencies operated.

We should be careful before concluding that the rise of managerialism and the influence of the NPM especially after the introduction of the Gear strategy in 1996, are further evidence of South Africa's slippery slide towards 'neoliberalism'. When NPM was first mooted the model was not Margaret Thatcher's Britain or the United States of America under Reagan. The paradigm example was that of France, and in particular, the thinking behind the *Ecole Nationale d'Administration* (ENA). There are two aspects of the French experience that were deemed especially important. In the first place, the ENA model, unlike the British one, privileges the state as the dominant agent of development. In the second place, it relies on the role of a powerful class of senior managers who are given high levels of political autonomy and financial discretion.

It is not difficult to understand why in the late 1990's this model must have appealed to those in government and in policy circles sympathetic to the democratic project. Faced with the legacy of apartheid institutions, the new managerialism created opportunities for high level political deployments to fast-track transformation. Furthermore, in the wake of the collapse of Soviet Communism and, more generally, the inauspicious fortunes of postcolonial African states, New Public Management seemed a way to retain a key role for the State without incurring its costs: wastefulness, inefficiency and massive corruption.

Yet in terms of NPM a public sector manager is expected to have uncanny analytical skills to navigate between complex legal, political, administrative, social and economic environments. In short, it is an unenviable position for even the most highly trained and talented recruit. In the face of serious skills shortage in South Africa, the NPM model was severely compromised. Contrary to widespread public perceptions however, the problem is not that, under the pressure of equity legislation, persons without the appropriate skills were appointed to senior positions. The truth, as evidenced by the statistics, is very different. Rather than appoint unsuitable candidates (both in terms of their skills and in terms of their demographic profile), government departments are simply leaving positions empty. The consequences are devastating.

In research for a book edited by Adam Habib and Kristina Bentley, Vinothan Naidoo found that, on average, 25% of senior manager positions are vacant in

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the public service. In some departments, including Home Affairs, it is as high as 48%^{ix}. Coupled with these extreme staff shortages, government departments are poaching from each other. Together, vacancies and high staff turnover have conspired to destabilise government departments, destroy their institutional memory, demoralise staff and undermine their capacity to perform. Under such conditions it is no surprise that corruption has flourished.

The uneven performance of the public service requires that we begin to ask questions about its institutional character, its systems and processes, its internal culture and its relationship with bodies in society (political parties, social networks, even churches). It is time to stop making affirmative action a scapegoat for all apparent government failure and to start asking questions about the character of transformation as a movement towards new public management. What have been the effects of moving away from the bureaucratic model and from undoing its systems and processes? Has the creation of powerful and autonomous managerial positions not facilitated corruption and made it easier to blur the lines between party and state?

NOTES

- ⁱ cited in Leon Engelbrecht, May 2006
- ⁱⁱ Cronin, 2002
- ⁱⁱⁱ Friedman, 17/12/2007
- ^{iv} Ibid, Friedman
- ^v Webster, 19/12/2007
- ^{vi} Friedman, 17/12/2007
- ^{vii} The first was organised by Vishwas Satgar and Michelle Williams and the other by the Human Sciences Research Council
- ^{viii} Evans: 1995, p. 12
- ^{ix} cited in Chipkin: 2008

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Pervasive Impunity: From Amnesty to the Apartheid Lawsuit and Beyond



Principal defendants at Nuremberg Trials



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Nation-wide reaction to the court proceedings against the 'Reitz four' students, and the University of the Free State's dropping of internal charges against them for their degrading treatment of the University's female employees has recently highlighted the possible connection between the template of forgiveness central to the Truth and Reconciliation Commission (TRC) and attitudes and events shaping contemporary South African society.

Apartheid Law Suit

Post-apartheid, post-TRC South African society is arguably characterised by a culture of impunity. To the extent that this is true, the dramatic reversal of South Africa's long-standing official criticism of the law suit against companies alleged to

have aided and abetted the apartheid regime, which is currently waiting judgment in the New York courts, has potentially far-reaching consequences both locally and internationally.

In his letter to the presiding judge of the US Southern District Court of New York, Minister of Justice and Constitutional Development Jeff Radebe recently affirmed the support of President Jacob Zuma's government for Khulumani Victim Support Group's involvement in the litigation. Confirming its belief in the New York court as the appropriate forum to deal with their claims, Radebe even offered to play a mediating role¹. In so doing, he overturned his predecessor Penuell Maduna's 2003 declaration² to the court that the South African government opposed Khulumani's action³.

Maduna had said that all political parties in South Africa had agreed to avoid "a 'victors' justice' approach to the crimes of apartheid", Nuremberg-style apartheid trials and a New York ensuing litigation⁴. He said that "in order to enable all South Africans to overcome the legacy of apartheid, through the creation of a more just and egalitarian society"⁵, they had instead pursued a "transformative and redistributive" approach "based on confession and absolution, informed by the principles of reconciliation, reconstruction, reparation and goodwill"⁶. According to Maduna, the apartheid lawsuit could destabilise the South African economy⁷ as it would discourage the foreign direct investment the government believed was necessary to drive the country's economic growth and "address high unemployment levels and its by-product, crime". Maduna told the court that the issues raised in the litigation were political in nature and were being resolved through South Africa's democratic process⁸. He requested that, in deference to South Africa's sovereign rights to resolve domestic issues without outside interference⁹, the court dismiss the proceedings¹⁰.

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In writing to the court, Maduna was aware that the apartheid litigation picked up where the TRC left off, simultaneously continuous with and ruptured from the Commission's logic and workings.

Designed to reach a political settlement, the TRC was the product of a significant political compromise between the conflicting parties. Hoping to steer the country away from the civil war, occasioned by a right-wing and military backlash, to arrive at democratic elections, the new leadership put aside arguments in favour of justice in order to offer comfort to members of the apartheid regime who feared prosecution. In the name of reconciliation, apartheid perpetrators received amnesty in return for full disclosure about those of their crimes which were politically motivated and proportionately executed.

The logic of amnesty required several discursive manoeuvres. Since amnesty cannot be granted for crimes against humanity, descriptions of apartheid mutated from being an internationally-recognised crime against humanity into a 'gross human rights violation'. Also, since amnesty for gross human rights violations was to be sought equally on 'both sides' of the apartheid struggle, the activities of apartheid forces upholding the racist state were equated with those of the liberation movements fighting for a democratic society. Absent from the failure both to describe apartheid as a crime against humanity, and the moral relativisation of the past, was any memory of apartheid's fundamental criminality and illegality.



Dissatisfied with the TRC's outcomes, including the woefully inadequate reparations ultimately received by the victims, Khulumani and others turned for relief and reparations to the American courts ...

Amnesty shielded perpetrators from civil and criminal prosecutions on the part of their victims and families of victims. In exchange for this loss of their rights to claim against perpetrators, victims were to be compensated symbolically through the fact of the TRC and materially through the Commission's reparations provisions.

Both before its establishment and after it completed its finding, public acceptance of the impunity provided by the TRC was far from unanimous.

Dissatisfied with the TRC's outcomes, including the woefully inadequate reparations ultimately received by the victims, Khulumani and others turned for relief and reparations to the American courts which, empowered by the American Alien Tort Claims Act (ATCA), enjoy universal jurisdiction over certain violations of international law. These include claims of torture, genocide, crimes against humanity and war crimes wherever they occur.

Khulumani was formed in the run-up to the TRC to support its members testifying to the Commission about their traumatic experiences¹¹. The organisation is currently home to 35 000 victims of various apartheid atrocities including extrajudicial killings, torture, indiscriminate shooting, sexual assault and arbitrary detention. Tshidiso Motasi is among the organisation's ninety-six claimants in New York. He was five when he witnessed the double murder of his parents, John and Penelope Moloko, the night three policemen stormed into their home. They shot his father in his bed before protecting their identities by shooting his mother who had witnessed the slaying. Undetected, Motasi spent the night alone with his parents' bodies before his cries attracted the neighbours the following morning¹².

The apartheid lawsuit originated in information which started to emerge through the TRC process¹³. The TRC found that business played a central role in sustaining

the economy of the apartheid state, including “by engaging directly in activities that promoted state repression”¹⁴.

While drawing on its findings, the Khulumani claim broke in fundamental ways from the TRC’s legal framework.

Crucially, uninhibited by South Africa’s domestic amnesty provisions, it retained memory of apartheid’s status in international law as a crime against humanity. Khulumani attorney Michael Hausfeld relied, *inter alia*, on Article I of the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid which described apartheid as a crime against humanity¹⁵, and the 1986 American Comprehensive Anti-Apartheid Act (CAAA) which prohibited almost all American cooperation with South Africa’s armed forces¹⁶. He also relied on standards set at Nuremberg and the Yugoslavia and Rwanda tribunals which held the aiders and abettors of crimes that violate customary international law to be criminally liable, especially where the criminal act would probably not have occurred in the same way without their assistance¹⁷.

Hausfeld deliberately positioned his pursuit of justice in contrast to the theology and language of forgiveness that cloaked the TRC, where, under Archbishop Desmond Tutu’s leadership, the political compromise underpinning legal amnesty segued into a theology of forgiveness. Instead, Hausfeld emphasised the need for justice for apartheid victims from companies that illegally conducted business with the apartheid state:

“What is the accountability of these secondary actors? Is it moral only? Is their sin or error merely one of misbehaving such that a confession is sufficient to cleanse their conscience and excuse their indiscretion? If they declare they were only doing business or following orders, are they to be forgiven in the name of commerce or trade? Or do they have some obligation to those who were victimised by the crime they knowingly assisted and furthered? Is there a form of justice which holds them accountable in some measure to those they helped abuse?” said Hausfeld¹⁸.

Framers of the TRC were unable to control the process when, in 2002, Khulumani lodged their claim among several consolidated claims in New York against twenty-one non-South African companies. Khulumani’s claims focused on companies that helped to sustain apartheid rule by providing direct aid to the state’s military and security apparatus¹⁹. In papers filed with the US court, Khulumani said, for example, that General Motors (GM) appeared to have profited from disinvestment. When GM stopped selling cars and trucks to the apartheid government for police and military use, it sold its South African motor vehicle subsidiary, GMSA, to local management. Renamed Delta Motor Corporation (Pty) Ltd, the company continued to manufacture its cars using designs and parts provided by GM under license. Free to sell GM cars to the police and military, Delta did better as a subsidiary, nearly doubling sale of GM vehicles in two years²⁰.

The South African government’s belated support has removed a major obstacle to the success of Khulumani’s efforts to hold business to account.

This is excellent news, firstly, for anyone concerned with international human rights. Assuming a life of its own within the US legal system, the Maduna Declaration became the subject of a discussion in another US Supreme Court decision,

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unrelated to the Khulumani matter, where it played a significant role in threatening to limit ATCA's applicability and reduce the space for victims to approach the US court. In that context, the Court counselled caution and serious consideration of the Executive Branch's view of the case's impact on foreign policy where foreign sovereignty was jeopardised.

While seemingly far removed, a successful outcome in New York for Khulumani could also have significant implications for all South Africans.

To understand how this might be the case, it is necessary to reexamine a series of seemingly unrelated events that have arisen out of and since the TRC, and to look critically at South African society and consciousness that has evolved in its wake.

Arms Deal: Charges, Amnesty, Charges Dropped

The events surrounding the corruption charges against Jacob Zuma linked to the fractious arms deal offer one among many possible entry points to consider what might be at stake in the Khulumani case. Their complex relationship, sometimes explicit, to the language and logic of the TRC – including in the calls for an amnesty, in allegations of a political motive, and in the NPA's ultimately dropping of the charges – make it a particularly illuminating study.

In 2002, it was confirmed that Zuma was part of the arms deal probe. In August 2003, former National Prosecutions Authority (NPA) boss Bulelani Ngcuka announced that Schabir Shaik, Zuma's financial adviser, would be charged with corruption and fraud. Saying there was a prima facie case against Zuma, Ngcuka said he would not be prosecuted. Zuma was, however, implicated in Shaik's corruption trial. Found guilty of corruption and fraud related to the arms deal, in 2005 Shaik was sentenced to fifteen years imprisonment. When Zuma was subsequently charged (for racketeering, corruption, fraud, money laundering, with alternatives including tax evasion²¹), his charge sheet disclosed that for over ten years, including as South African deputy president, he or his family received 783 payments totalling R4 072 499,85 from Shaik or his companies²². According to Judge Hilary Squires, during Shaik's trial, these payments were designed to generate "a sense of obligation" on Zuma's part, which he repaid in kind "by providing the help of his name and political office as and when it was asked for, particularly in the field of government contracted work"²³.

According to trial witnesses, Shaik experienced frustration with Zuma's expenditure "without caring where [the money came] from"²⁴, including in 2000 when, without consulting him, Zuma commissioned architects and a builder to design his Nkandla homestead²⁵. Shaik asked Zuma if he thought 'money grew on trees'²⁶. According to the prosecution, payment for the Nkandla homestead was linked to the R500 000 annual payment to Zuma from French arms dealer Thint in return for Zuma's protection in the arms deal investigation²⁷. This agreement became part of the arms deal investigation instead.

NPA boss Vusi Pikoli announced Zuma would be charged with corruption. In June 2005, then President Thabo Mbeki fired him as deputy president. Zuma was charged in October, including for the alleged agreement with Thint²⁸. The Scorpions – the nickname of the NPA's Directorate of Special Operations, the special organised-crime fighting unit created by Mbeki in 1999²⁹ – raided Zuma's home and offices of his attorney, Michael Hulley. (The Durban High Court's

Shaik asked Zuma if he thought 'money grew on trees'²⁶. According to the prosecution, payment for the Nkandla homestead was linked to the R500 000 annual payment to Zuma from French arms dealer Thint in return for Zuma's protection in the arms deal investigation²⁷.

2006 ruling that the Scorpion's search-and-seizure warrants were unlawful was overturned later that year by the Supreme Court of Appeal, a ruling itself upheld by the Constitutional Court in July 2008.) In December 2006, the NPA re-charged Zuma. In the middle of all this, in November 2005 Zuma was accused of rape by the HIV-positive daughter of a family friend. After a highly publicised trial, he was acquitted of the rape charges in 2006.

Zuma's supporters believed the corruption and rape charges were Mbeki's politically motivated campaign to frustrate his presidential ambitions. Believing there would have been no charges or investigations without political interference, and perceiving the Scorpions and NPA as central parts of Mbeki's anti-Zuma arsenal, they accused these state institutions of being used as political weapons³⁰.

Overturing
Nicholson's
judgment, Judge
Louis Harms in the
Supreme Court
of Appeal said
that a prosecution
was not unlawful
merely because
it was brought
for an improper
purpose⁴⁰ and that
the motive behind
the prosecution
was relevant only
if, in addition to
being wrongful,
reasonable and
probable grounds
for prosecuting
were themselves
absent⁴¹.

These perceptions were bolstered in July 2007 when a copy of the Scorpion's 'Special Browse 'Mole' Report' was leaked to Zuma's supporters. Consisting predominantly of speculative research into the sources of funding for Zuma's legal and political campaigns³¹, it alleged that Zuma's presidential aspirations were financially backed by Libya's Moammar Gaddafi and Angola, and warned of potential insurrection if Zuma failed to become president³².

Scorpion's investigator and report author, Ivor Powell has said its commissioning in early 2006 was not difficult to understand. "Zuma's supporters were growing increasingly militant and threatening violence and mayhem in the face of what they characterised as a vicious campaign of vilification against their leader," he said³³. "Add the curious emergence of a white rightwinger, Jurg Prinsloo, as a self-professed ally and driving force behind the 'Office of Jacob Zuma' and you get a mix that, unsurprisingly, sets off alarm bells in the NPA – and probably also the Presidency," said Powell³⁴, whose report emphasised its inconclusive and unverifiable nature³⁵. Finalising the report in mid-2006³⁶, former Scorpions head, Leonard McCarthy recommended, inter alia, "that consideration be given to launching investigations into money laundering, tax evasion, contravention of exchange control regulations and conspiracy to sedition"³⁷.

Believing it gave them proof that the Scorpions were targeting Zuma far more widely than the legal charges against him, the leaked report was what some observers considered a "propaganda coup"³⁸ for Zuma and his supporters.

Mbeki responded to the resulting scandal by appointing a team in the National Security Council, led by Arthur Fraser³⁹, to investigate the report's production and leaking. The NIA was licensed to secretly monitor McCarthy's conversations.

Perceptions that the Zuma charges were politically motivated were corroborated in September 2008 by Judge Chris Nicholson. Judge Nicholson found that the NPA's decision to prosecute him was invalid and he dismissed the charges saying that Zuma was correct to infer a political conspiracy against him.

However, the NPA successfully appealed against Nicholson's decision in January 2009. Overturing Nicholson's judgment, Judge Louis Harms in the Supreme Court of Appeal said that a prosecution was not unlawful merely because it was brought for an improper purpose⁴⁰ and that the motive behind the prosecution was relevant only if, in addition to being wrongful, reasonable and probable grounds for prosecuting were themselves absent⁴¹. Charges against Zuma were reinstated.

Zuma was elected ANC president at the organisation's conference in Polokwane in December 2007. A week later, the NPA brought new charges of corruption, racketeering and tax evasion against him.

Zuma and his supporters believed these new charges were also part of a political conspiracy, motivated now, they believed, by Mbeki's personal desire for revenge in reaction to his humiliating Polokwane defeat. They believed Mbeki and his supporters were continuing to use state organs to try by whatever new means to prevent Zuma ascending to the position of the country's president.

Secure in his position as ANC president, people started to call for a different, non-legal resolution to the charges against Zuma, including the possibility that he be granted amnesty.

Sunday Times editor Mondli Makhanya prominently affirmed the suggestion, saying he was increasingly "persuaded ... by this proposal for an amnesty"⁴². Describing an open judicial commission of inquiry with the incentive of amnesty as "the moral and logical thing" for South Africa to consider, Makhanya said it would "entail encouraging those who have knowledge of arms deal corruption ... to come forward with information"⁴³.

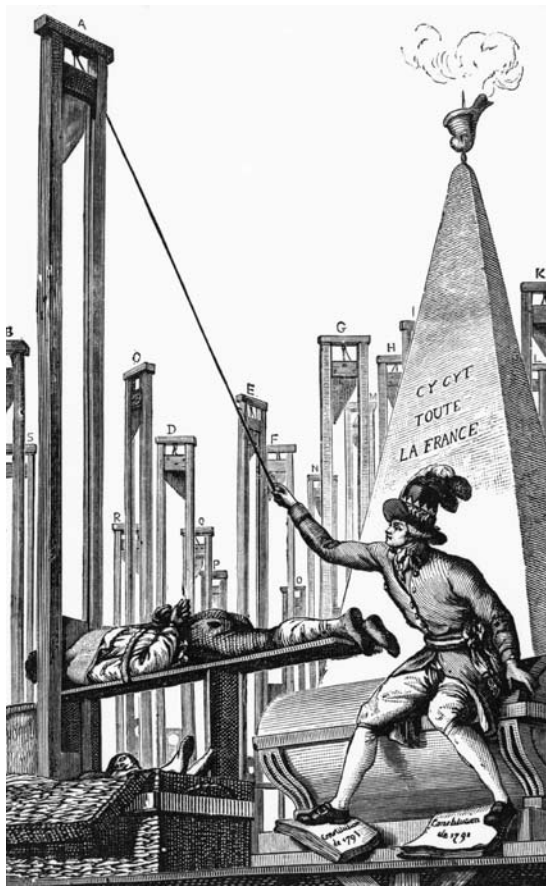
South Africans have become accustomed to amnesties. Makhanya listed amnesties granted and forgiveness given since 1994. These included not only to "tax evaders", "people who had ferreted money in offshore accounts", "small businesses whose tax affairs were not in order" and "even a sort of amnesty for the taxi owners to regularise their operations" and, most obviously, for "apartheid-era crimes"⁴⁴.

The fact, particularly, that amnesty had been given to perpetrators of apartheid crimes made an amnesty for Zuma both imaginable and palatable. "Just as SA had bargained with the devil during the [TRC], there [is] no reason why we [cannot] bargain with present-day perpetrators of the serious political crime of the arms deal"⁴⁵, said commentator Xolela Mangcu⁴⁶. "Many South Africans will find it difficult to forgive past corruption, but has corruption been any more heinous than the crimes that were the subject of the first (TRC)?" said a reader in a letter to the press⁴⁷. "We have seen murderers walk free, on political grounds, time and again ... [and] many other parties cited for crimes and left untouched," said Michael Trapido, Mail & Guardian blogger⁴⁸. All were commenting on amnesty for Zuma.

One particularly high-profile, person left effectively untouched for his actions was Adriaan Vlok, apartheid minister of police. Several months before calls for amnesty for Zuma became mainstream, Vlok had been arrested, charged and given a suspended sentence for his involvement in the attempted murder in 1989 of Frank Chikane. As head of the South African Council of Churches, Chikane had been prominent in the anti-apartheid movement when Vlok's men almost fatally impregnated his clothes with poison. At the time of Vlok's arrest, Chikane was director-general of the Presidency. Washing Chikane's feet in a well publicised act of atonement, Vlok asked for and received his forgiveness.

The TRC process was premised on the principle that those who did not obtain amnesty would be prosecuted⁴⁹. The Chikane murder attempt was one of more than three hundred cases which the TRC's Amnesty Committee had given the

"Just as SA had bargained with the devil during the [TRC], there [is] no reason why we [cannot] bargain with present-day perpetrators of the serious political crime of the arms deal"⁴⁵



“We are a country locked in crime. This is a case where someone is just let off for a vicious attempt of murder. Is it any wonder we have such a high crime rate if we continue to ignore criminal injustice like this?”

NPA when it finalised its own work in 2001. The state had sufficient evidence in these cases to further investigate suspected perpetrators who had failed either to apply for, or to receive, amnesty. The first post-apartheid trial of an apartheid-era government minister for a crime committed in the apartheid era, the Vlok case was also one of only a handful of these TRC-related cases which the NPA has pursued to date. In August 2007, Vlok pleaded guilty to attempted murder charges. Together with Johan van der Merwe and three former senior police officers, he received a ten-year jail sentence suspended for five years⁵⁰.

Protagonists in and observers of the TRC were outraged by the plea bargain, which, in contrast to the TRC, happened behind closed doors. “[T]his wasn’t a court case. There was no cross examination,” said Alex Boraine, deputy TRC head⁵¹. Describing both the Vlok plea bargain process as “farcical”⁵² and justice as “the biggest loser”, Boraine expressed his concern about its impact on the rule of law. “We are a country locked in crime. This is a case where someone is just let off for a vicious attempt of murder. Is it any wonder we have such a high crime rate if we continue to ignore criminal injustice like this?” he said.⁵³

Boraine’s frustration was not isolated. It occurred in the context of the state’s demonstrably listless approach to the TRC’s unfinished business. Rather

than actively pursuing the suspected perpetrators named by the TRC, Parliament amended the NPA Prosecution Policy to allow the non-prosecution of those who met TRC requirements but who had failed to apply for amnesty. The 2005 amendments controversially also provided additional open-ended criteria under which the National Director of Public Prosecutions (NDPP) could decline to prosecute, even where there was sufficient evidence to secure a conviction⁵⁴.

Interpreting the NPA amendments as providing a second amnesty for apartheid perpetrators, critics believed they undermined the TRC’s integrity.

Towards the end of 2007, Mbeki announced the creation of a special pardons process for people convicted of offences committed in the pursuit of political objectives. Parliament agreed to a “special dispensation” so that people “in prison for a politically motivated offence committed before June 16 1999, or released from prison having committed offences of a political nature ... could qualify for a pardon from our State President”⁵⁵. While the special pardon did not initially extend to people for whom amnesty had already been refused by the TRC⁵⁶, Mbeki’s multiparty advisory reference group of MPs “unanimously agreed to ask the president to extend their terms of reference to include pardon applications from prisoners denied amnesty by the [TRC]”⁵⁷.

Opposed to this pardons process, a coalition of NGOs which included Khulumani argued that it both constituted an unacceptable rerun of the TRC’s amnesty

process and failed to adhere to its basic principles and norms⁵⁸.

In the context of the culture of immunity and forgiveness that evolved from the processes surrounding the TRC amnesty and its aftermath – including the Vlok plea bargain, amendments to the NPA prosecutions policy and the ongoing developments around the special pardons process – it is perhaps not surprising that it arguably made little sense to Zuma’s supporters that he should be pursued by the law while they watched apartheid perpetrators walk away immune from prosecution. If perpetrators of heinous deeds who demonstrated neither commitment to democracy nor human decency could get amnesty and special pardons, why not Zuma, a hero of the struggle, for the lesser alleged crime of corruption?

Indeed, calls for amnesty for Zuma were informed by a similar logic to that governing the TRC amnesty process.

Where, in the interests of the social stability resulting from political reconciliation, South Africans had accepted the TRC’s morally unsatisfying legal compromise of amnesty in place of prosecutions; so, too, amnesty was now promoted for Zuma as a way to bring about the political reconciliation (including within the ANC itself) considered necessary to avoid the instability that could accompany the political fallout flowing from a trial⁵⁹. South Africa was, accordingly, described in terms of the social unrest that characterised the violent years of political transition in the early ’90s. Suggesting, for example, that, as in the TRC era, “we [are] still ... in a state of transition”, Trapido’s support for an amnesty was motivated by his desire “to forego the terrible growing pains that this trial will visit upon us”⁶⁰. “[C]an [this country] afford the backlash of the Zuma trial at this point in our development?” he asked⁶¹.

Similarly, just as amnesty was cloaked in a religious discourse in the TRC, so Zuma and others were not shy to evoke religious justifications for calls for forgiveness. For example, in March 2009, shortly before the national elections, when Zuma attended a church service at the Rhema Church, church leader Ray Macauley echoed Tutu when he sermonised on the importance of seeking forgiveness. “Forgiveness frees us; it restores us, and we become leaders in life,” he said⁶².

Most tellingly perhaps, just as in a TRC amnesty application where a political motive was a necessary condition to successfully trigger immunity from prosecution, so too calls for amnesty for Zuma were underpinned by describing his alleged involvement in the arms deal as a political crime. “I call it a political crime because it amounts to nothing less than state-sanctioned embezzlement of public funds,” said Mangcu in calling for an arms deal amnesty to “forg[ive] the arms deal perpetrators”. “It consisted of a deliberate misleading of the nation, and covering up for individual self-interest in the name of national interest. As in all political crimes, the allegations are that it was driven from the highest offices in the land,” he said⁶³.

The TRC’s relativised equation of racist forces with liberation ones assumed a new life in a modified form, revealed in Patricia de Lille’s disagreement with Mangcu. “Corruption is criminal, not political,” she said. “There is no higher moral value and no political cause or struggle involved here. It is simply a crime by those entrusted by the people to represent them. In this instance they are crooks, not freedom fighters, and we cannot provide amnesty for criminal offences, whether they

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have political consequences or not”⁶⁴. In so saying, De Lille implicitly rejected the equation of post-TRC corruption with the amnesty-attracting violations previously committed in pursuit of political causes.

The reanimation in the Zuma context of the TRC notion that a crime associated with a political motive could be overlooked ultimately steered circumstances to the dropping of charges. Recognising perhaps that “going the route of a general amnesty would require some kind of public admission of guilt”⁶⁵, not all Zuma’s supporters had agreed with the call for amnesty. COSATU, for example, demanded that “any criminal charges facing the ANC president be quashed”⁶⁶ instead. They were not to be disappointed.

In February 2009, Zuma’s legal team made representation to the NPA motivating the dropping of the charges. In March, they presented the prosecutors with secret taped National Intelligence Agency (NIA) recordings of conversations between McCarthy, Ngcuka and businessman Mzi Khumalo in which the men discussed the timing of reinstating charges against Zuma⁶⁷. The recordings were legally obtained in the course of the 2007 probe of the Browse Mole report, which now proved to be a crucial turn of events. In the conversations, Ngcuka reportedly told McCarthy that although the NPA was ready to act he did not want Zuma to be charged before Polokwane⁶⁸; that McCarthy was the “only one who could save the country” after Mbeki’s Polokwane election failure; and that Ngcuka instructed McCarthy when to recharge Zuma⁶⁹.

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Zuma’s supporters interpreted the taped conversations as “overwhelming evidence”⁷⁰ of a “conspiracy by the Ngcuka team”⁷¹, proving “serious abuse of the powers of our state institutions”, including the NPA and the Scorpions⁷², and blatant interference in the work of the NPA⁷³.

Presenting the tapes as evidence of this perceived political conspiracy⁷⁴ “during which the head of the Scorpions colluded with outsiders such as Ngcuka and ... Khumalo, who were clearly motivated by ulterior motives and not justice”⁷⁵, Zuma’s team argued there had been political meddling in the NPA’s work⁷⁶.

In April 2009, acting NPA head, NDPP Mokotedi Mpshe dropped all charges against Zuma, ending the eight-year long investigation and leaving Zuma a free man to successfully contest the national presidential elections two weeks later.

Giving the taped conversations as justification for his decision⁷⁷, Mpshe agreed with Zuma’s lawyers when he accused McCarthy of colluding with Ngcuka in a political conspiracy. Describing the tapes as showing such ‘abuse of power’ on the part of former NPA management⁷⁸ and amounting to such political damage that it “render[ed] the high-profile case invalid”⁷⁹, Mpshe said he was forced to collapse the case⁸⁰.

Not all of Mpshe’s colleagues concurred. Billy Downer, leading Zuma prosecutor, categorically denied Zuma’s prosecution originated from a political vendetta or that he’d been targeted for an unwarranted prosecution by the NPA. Downer and other prosecution figures believed a judge should have decided if the case was too compromised to continue⁸¹.

Legal commentators noted Mpshe’s confirmation that he still considered the

case against Zuma to be solid and winnable⁸². “Prosecutors argued that the alleged interference with the investigation did not compromise the integrity of the prosecution ... and the evidence available to the prosecution team was unaffected by the allegations,” said Barney Pityana⁸³.

Faced with what the NPA appeared to consider a winnable case, they were perplexed by Mpshe’s decision to drop charges on account of allegations of politically motivated abuse of prosecutorial process. In justifying dropping the charges on these grounds, Mpshe had used a judgment handed in the Hong Kong High Court by Judge Conrad Seagroatt⁸⁴. Constitutional law experts not only criticised the striking similarities between his decision and Seagroatt’s judgment (Mpshe’s office denied it was plagiarism, describing his failure to credit Seagroatt as an “innocent oversight”⁸⁵); but also his failure to mention or take cognizance of the subsequent overturning of Seagroatt’s judgment by a higher court. They were particularly mystified by Mpshe’s apparent ignoring and contradicting of the legal principle established by Harms in *NDPP v Zuma* that a prosecution was not unlawful merely because it was brought for an improper purpose⁸⁶. According to Harms, the motive behind the prosecution was relevant only if, in addition to being wrongful, reasonable and probable grounds for prosecuting were absent⁸⁷. “With the benefit of the Harms judgment ... [Mpshe] would understand that the wrongfulness or otherwise of the investigation does not vitiate the integrity of the prosecution itself, which was unaffected by the flawed process alleged,” said Barney Pityana, former chair of the South African Human Rights Commission⁸⁸.

What is clear, however, is that the outcome of the Zuma matter represented in an inverted form an extension of and invisible continuity with the logic of the TRC amnesty process.

Constitutional lawyer Pierre de Vos noted that “the act does not empower the NPA to drop charges against an accused in a case where abuse of the process is alleged”⁸⁹. ‘Perplexed’ “that they focused so narrowly on a ground for dropping the charges that is not actually mentioned in the prosecuting policy”⁹⁰, De Vos said Mpshe’s decision may be illegal⁹¹. Differentiating between the political and legal aspects involved in the matter, he also dismissed the relevance of the political motive: “For legal purposes, the question is always: would Mr Zuma be able to get a fair trial? The NPA says, even after the new evidence, that he would. And that is the legal question to ask. The political aspect is not legally relevant and should not be legally relevant,” he said.⁹²

Was Mpshe thinking about the criteria in the context of Mbeki’s special pardons, where he, as the NDPP, could decline to prosecute even where there was enough evidence to secure a conviction⁹³? In any event, commentators believed that political motive had won out definitively over legal merit⁹⁴.

Whether or not the NPA was on solid legal ground or whether its decision was politically driven remains unclear. What is clear, however, is that the outcome of the Zuma matter represented in an inverted form an extension of and invisible continuity with the logic of the TRC amnesty process. Where a successful TRC amnesty application had required a political motive on the part of the perpetrator, shielding Zuma from prosecution – by dropping the charges if not by amnesty – also centred on a political motive, now on the part of the prosecutor. And just as amnesty in the TRC era was justified as being in the national interest, so too, some NPA members justified their decision to drop charges in the name of national interest⁹⁵. They reportedly argued that “millions of ordinary people would be uncontrollably angry about the decision, because of their deep love of the man and their sense of terrible injustice about the hateful way he has been treated. ...

[T]hey would ... take to the streets. There would ... be riots and ... destruction of property. All ... hell would break loose and the police would be forced to intervene. ... [P]eople would be killed in the chaos that would ensue"⁹⁶. (Ironically, in so doing they echoed Powell's elaboration of the motives for the Browse Mole Report.)

Culture of Impunity: Constitutional Democracy and the rule of law

More than ten years after the TRC finalised its Report, and now outside the parameters of its problematic but widely accepted social contract, the reanimation of characteristic features of the TRC has made manifest the dangers latent in its process from the outset.

Observers and commentators were deeply troubled by the implications of the NPA's decision for South Africa's constitutional democracy and the rule of law.

"The credibility of this body ... trusted with the protection of our country [and] unquestionable guardianship of our constitution, has suddenly and unequivocally evaporated ... [S]urely no right-minded South African will ever be able to trust it with so much as the proper prosecution of a parking ticket,"

In a front-page editorial, Sunday Times editor in chief Makhanya, who had previously supported an amnesty for Zuma, said that the NPA had sent a general message to South Africans that "it is fine for the mighty and powerful to bully and intimidate their way out of trouble"⁹⁷ and, particularly, to "corrupt politicians and civil servants that this society has no problem with malfeasance"⁹⁸. Accusing the NPA of having "[struck] a body blow to the constitutional framework that we have so painstakingly built", the Sunday Times said it had opened the door to a lawless society⁹⁹. For de Lille, the dropping of charges altogether was a victory for Zuma and the ANC that had been "won at the expense of the constitution, the rule of law and the principle of equality before the law"¹⁰⁰. She said that, in showing that all were not equal before the law¹⁰¹, the NPA's decision had presented a significant "dilemma" for "crime-ridden" South Africa, "undermining our justice system which is predicated on the principle that criminal activities, no matter who commits them, must be investigated and the full force of the law brought against those responsible", she said¹⁰². The NPA had "sen[t] entirely the wrong message to our people – essentially, the government is saying there is a way out for those who break the law"¹⁰³. Wim Trengove, Senior Counsel advocate who had acted for the NPA as the prosecution's senior council against Zuma, agreed that Mpshe's decision which he described as "incomprehensible", "indefensible" and "ominous"¹⁰⁴, "had undermined the entire judicial process"¹⁰⁵. De Vos also saw "a direct attack on the rule of law and our constitution" in what he considered to be a "strong legal argument" that the NPA's decision was ultra vires. The Mail & Guardian said that "nothing could be more destabilizing than the thorough collapse of the rule of laws that this decision represents"¹⁰⁶. Commenting on "what Zumaism has done to the fabric of our national life"¹⁰⁷, Pityana described Mpshe's reliance on the tapes as "deeply offensive to anyone's sense of fairness and justice"¹⁰⁸ and as having left the NPA "[l]ying in tatters without a shred of credibility in the public eye"¹⁰⁹. The credibility of the NPA was, undeniably, damaged in the public mind. "The credibility of this body ... trusted with the protection of our country [and] unquestionable guardianship of our constitution, has suddenly and unequivocally evaporated ... [S]urely no right-minded South African will ever be able to trust it with so much as the proper prosecution of a parking ticket," said one Sunday Times reader¹¹⁰. Trengove called on all South Africans and particularly lawyers to speak out. "[I]f we don't, we might one day look back at this decision and realise that it was a tipping point leading to the slippery slope of erosion and ultimate destruction of the rule of law," he said.

Read against the TRC, it becomes possible to see the way and extent to which

the erosion of the rule of law that some observed in the NPA decision was, in fact, a pre-existing condition. The rule of law was largely non-existent under the fundamental criminality of the apartheid state and only tentative in its possibility in a constitutional democracy since 1994.

From the abuses of power under apartheid, from the TRC amnesty provisions and from the NPA's failures to act since, South Africans have long known that all are not equal before the law, that it is fine for the mighty to intimidate their way out of trouble, that South Africa has no problem with malfeasance on the part of politicians and civil servants, that criminal activities are not investigated and that the full force of the law is not brought against those responsible, no matter who commits them. The message that there is a way out for those who break the law had long been sent.

The TRC represents the failed chance to close the door on apartheid's fundamental criminality and lawlessness. Having avoided a Nuremberg route in dealing with the crimes of the past, and failing to conduct even a few select prosecutions, South Africa – through the institution of the TRC – squandered the opportunity to draw a line in the sand and mark the beginning of the rule of law.

One doesn't have to look far for evidence of the fact that the fabric of post-TRC South African society is consequently corroded by an entrenched and pervasive culture of impunity. The fact of impunity is a key feature, for example, of assessments of the causes of the xenophobia murderousness that shocked South Africa and the world in March 2007, contained in a report compiled by the Forced Migrations Studies Programme at Wits University¹¹¹. Even in the few cases where arrests were made, suspects were released without being charged, including with the assistance of the authorities¹¹². "Similarly, before, during and after the May 2008 violence, some arrests were made at the different scenes of violence but most of those arrested were released without charges thanks to the mobilisation of communities and their leaders", including protest marches¹¹³. Authorities intervened to secure the release of businesses owners who had been arrested after forcing Somali shop owners out of Masiphumele through xenophobic violence in 2006¹¹⁴. Authorities who were sufficiently aware of who was responsible for stolen goods when they retrieved them, failed to arrest the perpetrators¹¹⁵. It is not surprising, therefore, that the report's first recommendation towards countering xenophobia and reducing the potential for future violence was the development of "interventions to promote accountability and counter a culture of impunity"¹¹⁶. The report pointed to "a worrying culture of impunity with regard to perpetrators of public violence in general and of xenophobic attacks in particular". According to the report, in an environment in which "foreign nationals have been repeatedly attacked in South Africa over many years, but no one has to date been held accountable"¹¹⁷, and in which people "believed that those who attacked and chased foreigners from the area did something good for the community and should not be prosecuted"¹¹⁸, "the actual and perceived impunity with which perpetrators of xenophobic violence are seen to act can only continue to encourage the ill-intentioned to attack foreigners"¹¹⁹.

Apartheid Lawsuit Again

The apartheid law suit counters the wider juridical and political culture of impunity that has demonstrably become entrenched in South African life, both public and private, in the wake of the TRC. At a time when many very committed South Africans

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perceive a body blow to the country's constitutional democracy and the rule of law, when the NPA continues to prevaricate on TRC-related prosecutions, when the culture of impunity is pervasive, the outcome of the apartheid law suit could signal a crucial message. Khulumani's success in New York in holding perpetrators to account rather than granting them impunity for their deeds could have significant implications for all South Africans. Free of political restraints in the name of reconciliation and forgiveness, and operating from a different understanding about the relationship between law and society, the lawsuit presents another chance – while offshore – to communicate the importance of justice, of holding people to account for their deeds.

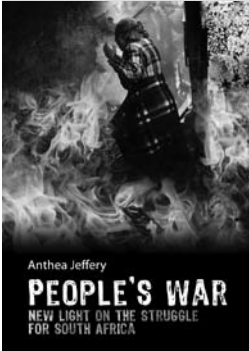
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REVIEW

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People's War: New Light on the Struggle for South Africa

‘History to the defeated, May say Alas, but cannot help or pardon’¹

Revolutionary wars became a feature of modern history after the American Revolution of 1776. It is no accident that the word “guerrilla” – whose original meaning was mini-war – derives from precisely such an experience in the mountains of Spain during the Napoleonic Wars.

The 20th century witnessed literally hundreds of “mini-wars”, some successful, some failures, others ending in stalemates. A number of societies were transformed, and colonial and semi-colonial countries freed themselves through such wars. Every military academy offers courses on the subject and both would-be-insurgents and counter-insurgents give the subject careful attention.

Revolutionary wars are waged to overthrow an incumbent government. In the eyes of the existing government and its supporters, those engaged in it, are involved in treason. They are life and death struggles, with a dark side involving acts of violence, brutality and acts of extreme cruelty. Every state and government faced with the threat of revolution has displayed a far greater capacity and willingness to employ these methods. It is a matter of record that since 1945, counter-insurgency experts amongst governments have networked extensively, exchanging information and teaching each other techniques.

One of the essential differences between revolutionary wars and conventional inter-state wars is that one of the parties to the conflict is a non-state actor. The non-state actor is initially the weaker, whose only hope for success is stripping the state party of popular support.

However arrived at, the outcome entails winners and losers. Inevitably highly differentiated and even contradictory accounts of the same events will emerge when the story is retold.

South Africa is proving no different.

A recently published book, *“People's War – New Light on the Struggle for South Africa”*, authored by Dr Anthea Jeffery, a researcher at the South African Institute of Race Relations, would have us believe that what South Africa has become is the outcome of an elaborate conspiracy, with a cast of thousands of witting and unwitting participants, including Archbishop Tutu, Alex Boraine, and all the Truth Commissioners, van Zyl Slabbert, Idasa, the 1994 Independent Electoral Commission (IEC), virtually every newspaper editor in South Africa, perhaps even the prosecutorial authorities in KwaZulu-Natal (who charged General Magnus Malan and co with incitement to murder) the World Council of Churches and

the General Assembly of the United Nations. All were either duped or otherwise induced to act in a manner that served the interests of the Soviet Union and the ANC/SACP.

'People's war' according to Dr Jeffery, is what an ANC delegation that visited Vietnam in 1978, came home with.

As explained by its theorists in China and Vietnam, 'people's war' entails engagement on a number of fronts among which the military can sometimes assume a lower profile or exist merely as a perceived threat. The war evolves through a number of phases, each designed to draw in wider popular participation, which might or might not culminate in a general military offensive or insurrection. The essential element is galvanising the people into active opposition to the incumbent government. This might commence in small scale actions which gradually escalate into mass actions. The insurgent movement must be familiar with local grievances and knit these into a coherent narrative about the illegitimacy of the existent order and the necessity for a radical transformation.

Rather than referring to the original works of the authors of this strategy, Mao and Giap, Jeffery offers us an account refracted through the eyes of Douglas Pike, delicately described as a US foreign service officer! Sort of like having Osama bin Laden explaining US foreign policy!

She repeats this odd methodology throughout her book! At Page xxxii of her introduction, for example, she writes:

"Said Soviet Premier Leonid Brezhnev on various occasions: 'Our goal is to control the two treasure chests on which the west depends – the energy treasure chest of the Persian Gulf and the mineral treasure chest of central and southern Africa.'"

Being somewhat familiar with Soviet rhetoric, I found the quotation a bit odd. Checking the endnotes, I discovered that in fact she was quoting a witness at the Denton Commission, who claimed to be quoting Brezhnev! Quite extraordinary!

Despite Jeffery being presented to the public as an 'objective' researcher who had one of the most extensive archives in the country at her disposal, the chapters tell a different tale. Dr Jeffery is an extremely partisan researcher. That hits one squarely between the eyes virtually from the first chapter!

I do not object to partisanship. Everything I have written over the last 40 to 50 years has been explicitly partisan. Jeffery's anti-ANC animus persuades her that something very sinister must have been afoot because an ANC, of which she heartily disapproves, is the dominant party in South African politics. To demonstrate this she resorts to some of the more absurd explanations that incumbents facing a challenge from below have fallen back on since the 19th century: The apparently omnipotent and ubiquitous "outside agitator" is trotted out; ordinary people are so very easily "intimidated"; and though their experience runs counter to it, the clever "propaganda" of the insurgents persuades them to support a revolt. And, of course, "violence" assists the hesitant to make up their minds.

No government faced with a revolt has ever bothered to explain why people who are not aggrieved lend an ear to strangers who incite them to do things

Massive propaganda operations accompanied all twentieth century wars. ... Taking exception to the ANC employing accepted methods of waging war is not merely churlish, it is downright silly!

that could put both their persons and their property at risk. Jeffery too could not be bothered. Suspend reason and accept what is self-evidently an extremely improbable scenario, on faith!

The opponents of insurgents invariably speak with forked tongues: While they must represent insurgents as weak and ineffective, they attribute some remarkable powers to them. Thus, even in places where they are unknown, insurgents can talk ordinary people into doing the most dangerous things. Endowed with near diabolic powers, they have an inexplicable capacity to move the political parties and bodies of their opponents and rivals around like pawns on a chess board. Their plans rarely go awry because they also have an amazing prescience that enables them - like the chess-masters they are - to anticipate the reactions of opponents, rivals and enemies. Says Jeffery, after the visit to Vietnam, the ANC too acquired these abilities because until then, according to her, it had been an inept and deluded group of perhaps well-meaning, but cynically manipulated, individuals.

Scholars the world over accept that war is politics, employing other means. The ANC and the Vietnamese proceeded from the same basic tenet. Not surprisingly, they found that the ANC delegation and they were singing from the same score. Except for pathological conspiracy theorists, there was nothing sinister about that.

Though every war since Crimea has relied heavily on communications, Dr Jeffery goes to quite extra-ordinary lengths to convince us that there was something scary about the massive use of communications in the South African liberation

struggle. Yet, since the armies of nation-states came to rely in the main on citizens in uniform, rather than on professionals or mercenaries, communications have played a central role in war. The German Imperial General Staff received an object lesson in this regard at Brest Litovsk, when the soldiers in the Bolshevik delegation began fraternising with the German troops and disseminating anti-war leaflets amongst them. When the German generals objected, Trotsky invited them to distribute pro-war material amongst the Russian troops!

Massive propaganda operations accompanied all twentieth century wars. They targeted combatants and non-combatants, the home audience, the enemy, and neutrals. Taking exception to the ANC employing accepted methods of waging war is not merely churlish, it is downright silly!

The sub-title of this book, "*New Light on the struggle for South Africa*", should read "A Rehash of the former National Party's Take on the Struggle for South Africa". It is replete with all the 'usual suspects' of yesteryear: A malevolent Soviet Union, inciting what would otherwise be merely 'restless natives' chafing under white rule, employing its local agents - the communists - who manipulate inexperienced or else cynical or plainly naive African political leaders, to embark on a violent revolution that bears little relation to its declared aims.

Jeffery recognises that Black anger about the injustice intrinsic to white domination was totally justified. But she disapproves of the means the liberation movement chose to fight it. She presumes she should, and can prescribe how the oppressed should conduct their struggle! So she rubbishes the means, its leading advocates and the only South African movement to apply them in earnest.

Contradictory histories of the struggle for democracy will continue being written. Perhaps they might, in the end, become mutually enriching. Many of them, like this book, will be propaganda for one or the other side of the conflict. But this book comes two decades too late! Dr Jeffery might have found a well-paying job preparing cases against ANC insurgents before 1994. These days? Sorry, No vacancies!

¹ "Spain 1937." W H Auden

REVIEW

Patrick Laurence
is a former political editor of the *Rand Daily Mail*. He is a political analyst.

People's War: New Light on the Struggle for South Africa

The Greek poet Archilochus offers an illuminating prism through which to view Anthea Jeffery's voluminous and illuminating book on the struggle for South Africa that led eventually to the triumph of the African National Congress and its installation as the governing party in 1994, even though Archilochus lived in the seventh century BC.

Archilochus contrasted the knowledge of the hedgehog with that of the fox, concluding that the hedgehog knew only one central truth while the fox, in contrast knew many smaller truths, which, as Isaiah Berlin noted nearly 2 700 years later, implicitly raised the question of whether the hedgehog's one truth was greater than the sum total of the fox's many truths.

Berlin, one of the most insightful of the 20th century historians, extended the thesis by dividing the great thinkers down the ages into hedgehogs and foxes, who, respectively, explain the course of history in terms of one central causal force or interpret it as the product of, and interaction between, many smaller causal forces.

Jeffery, who is a meticulous researcher, is almost certainly an Archilochusian fox by temperament. Yet her account of the rise to power of the African National Congress, from its proscription in April 1960 to its victory in the universal adult suffrage election of April 1994, concentrates largely – though not exclusively – on the ANC-initiated people's war as the single most important factor in its triumph.

The explanation of the apparent contradiction is simple.

While researching the transition of South Africa from a racial oligarchy dominated by whites to a non-racial constitutional democracy in which the ANC seems to be unassailably in control of the commanding heights, she came to the conclusion that the people's war was central to the explanation but at the same time a generally under-rated and unexplored factor.

Hence her decision to concentrate on the people's struggle as a pervading, perhaps even ubiquitous, theme in the ANC's rise to power. Hence, too, the subtitle of her weighty tome: *New light on the struggle for South Africa*. She does not, however, present the people's war as if it was the only component of the struggle that needs to be taken into account and, instead, locates it in the context of a multi-dimensional narrative in which it is, so to speak, a dominant contestant in the historical arena.

Taking a telescopic view of Jeffery's central thesis, three dates are particularly important in the chronology of the ANC's adoption and implementation of the people's war:

- 1961, when Boris Ponomarev, a high ranking official in the Soviet Union, was

assigned to become “the main interlocutor” with the South African Communist Party and the ANC.

- 1978, when an ANC delegation headed by Oliver Tambo, the leader of the ANC’s external mission, visited communist-ruled Vietnam to learn from stalwarts of the successful Vietnamese communist war against the American backed anti-communist regime in Saigon, or Ho Chi Minh City as it was renamed by the victorious communist forces.
- 1985, when the ANC-initiated people’s war began in earnest as its cadres launched a pitiless campaign against those they deemed to be enemies of the people, collaborators and impimpis, a process that included extra-judicial executions by necklacing.

As Jeffery explains, a people’s war consists of two cardinal doctrinal stratagems: first, the belief that the struggle for power must be advanced in tandem on the military and political terrains, that guerrilla warfare must be augmented by ideological campaigning; second, the conviction that “the enemy” has many faces, including, obviously, the incumbent oppressor but incorporating rival political formations seeking to win the support of the populace to secure a platform for themselves in the post-liberation order.

Necklacing is a terrifying form of extra-judicial killing, in which a motor vehicle tyre filled with petrol is hung around the victim’s neck and set alight, resulting in an agonising death from burning and asphyxiation.

To expatiate on the second point: the objective of the strategists of a people’s war is to ensure their political hegemony in the post war society by all means, including the use of coercion and terror to obtain the obeisance of the population as a whole and the submission of ideological rivals.

Jeffery sets the scene in a paper she presented at the launch of her book in Johannesburg.

It is mid-1985 in the Eastern Cape in Uitenhage, near Port Elizabeth. A stayaway has been launched by local leaders of the pro-ANC United Democratic Front, in the face of opposition from the Azanian People’s Organisation (Azapo) and the Federation of South African Trade Unions, both of which feared that the stoppage would result in the dismissal of their members and consequent hardship for their families.

Their fears are well founded. Twelve people are killed during the stayaway. An atmosphere of fear prevails.

But Jeffery adds in her paper: “It is the rising incidence of necklace executions that has sparked real terror.” Her account includes a description of the murder by an enraged crowd of a local councillor, Tansanqa Kinikini and his elder son, who were hacked and burnt to death. Part of the narrative describes how the councillor saved his second son from suffering a similar fate by shooting him before he could be lynched.

Necklacing is a terrifying form of extra-judicial killing, in which a motor vehicle tyre filled with petrol is hung around the victim’s neck and set alight, resulting in an agonising death from burning and asphyxiation. The victims include Pakamisa Nongwaza, an Azapo member, and Nosipho Zamela, a young woman who was convicted by a people’s court of collaborating with the police.

Jeffery comments in her paper: "Few remember Tamsanqa Kinikini and fewer still remember the fate his sons suffered. No one in wider society has any recollection of Noshipo Zamela and Pakamisa Nongwaza. ... These events show the strategy of people's war at work."

But, while focusing attention on the people's war, Jeffery does not exonerate either the security forces of the previous regime or the Inkatha Freedom Party from blame for the violence. In a letter to *The Star*, sent as a riposte to a hostile review of her book, she states frankly that "both the police and the IFP ... were to blame for many of the killings in the period."

Jeffery argues that ANC propagandists, with the help of sympathisers in the media, successfully presented the ANC as a victim of violence rather than a perpetrator of it.

She nevertheless leaves little doubt that the ANC-directed people's war was a major contributor to the violence, whether the violence was perpetrated by the township comrades who served as ANC auxiliaries, members of the self-defence units that the ANC established, or the 13 000 trained and armed Umkhonto we Sizwe combatants that were allowed to return to South Africa after the start of the settlement negotiations.

While the ANC demonised President F W de Klerk for purportedly talking peace while covertly waging war through the putative Third Force, Jeffery argues that the ANC regarded the negotiations as "the terrain of the struggle" and that its manoeuvres there were made in addition to, rather than instead of, the people's war on the ground.

Jeffery argues that ANC propagandists, with the help of sympathisers in the media, successfully presented the ANC as a victim of violence rather than a perpetrator of it. She seeks to correct that view – which persists even today, as comments on her book by prominent ANC veterans Mac Maharaj and Kader Asmal demonstrate – by identifying the ANC as an orchestrating force behind much of the violence in its quest to establish its political hegemony ahead of the 1994 election.

In the final summing up in her book, in which Jeffery identifies the reasons for the ANC's victory, she reveals herself as essentially a pluralist who sees many interacting causes rather than a theoretician who is conscious only of a single central, overriding cause.

The many contributing causes to the defeat at the polls by the ruling National Party that she lists include the legalised system of racial discrimination that the party imposed on the black majority for decades and the loss of confidence by the National Party administration in its ability to rule in the face of the growing resistance from the black majority.

Further factors that explain the defeat of the National Party in the 1994 election incorporate the retreat of the regime's force from Angola and its adverse repercussions on the morale of the white minority, as well as the ability of the ANC to garner financial and moral support from around the globe as it prepared to contest the pending election, its long-standing alliance with dictatorial communist governments notwithstanding.

Another reason can be summed up in a single word: terror. To quote Jeffery: "The terror arising from the people's war was palpable from the start. It was evident from day one in Sebokeng (in the Vaal Triangle) when (in September 1984) four black councillors were attacked and brutally killed."

Jeffery is too conscientious a scholar to deny the ANC's victory was due in part to the messiah-like status attributed to Nelson Mandela before and after his release from prison in February 1990. While Mandela undoubtedly earned his moral authority by his resistance to racial domination before, after and during his 27-year incarceration, it might have blinded many South Africans to the brutalities of the people's war.

REVIEW

William Gumede is Senior Associate & Program Director, Africa Asia Centre, School of Oriental and African Studies (SOAS), University of London; and Honorary Associate Professor, Graduate School of Public & Development Management, University of the Witwatersrand, Johannesburg. He is author of *Thabo Mbeki and the Battle for the Soul of the ANC*, Zebra Press. He is co-editor of *The Poverty of Ideas: South African Democracy and the Retreat of the Intellectuals* (Jacana Press, Nov. 2009).

People's War: New Light on the Struggle for South Africa

Anthea Jeffery's central thesis in her book, *People's War: New Light on the Struggle for South Africa*, that the ANC deliberately killed thousands of South Africans in a scorched earth strategy to capture power at all costs from the Nationalist government in the dying days of apartheid, is simply not true.

I cut my political teeth as an active participant in the school, youth and community politics of the mid-1980s, and in the student and civics politics of the early 1990s. I was also a violence monitor, for the all-party National Peace Committee in the two years up to the first all-race democratic election in April 1994. Furthermore, I also worked as advice office community organiser, mediating in township disputes in the late 1980s and early nineties, and worked for extended periods on community newspapers.

This is the period under review in the book. The absolute terror wrought by third force vigilantes, whether through random attacks on commuters in taxis, trains or buses, or while sleeping at night and aided by the security forces, whether it was in Crossroads in the Cape, or on the East Rand, was very real. But the "killings, the terror, and the destruction that marked the period from 1984 to 1994", was not as a result of a 'people's war' by the ANC, as Jeffery argues, but as a result of a careful campaign by elements of the apartheid state, whether directly or through proxies which could not be traced to the government itself, to destabilise black communities.

In fact, if the apartheid government in the preceding periods had tried to show white South Africans the danger of the 'black peril' (ANC) and the 'red peril' (Communist Party) it wanted now through state sponsored violence directed at the black community to show to these black communities the dangers of the 'red peril' and the ANC. In addition, the Nationalist government and/or elements thereof clearly wanted to prove their thesis to the international community of a so-called phenomenon of 'black on black' violence, to show that without the white government in charge there would be a descent into internecine black violence.

For the period until at least 1990, most alternative media such as South, New Nation and then Weekly Mail were often banned, proscribed or sabotaged by the Nationalist government. Although the traditional media, the liberal English press did expose many of apartheid excesses, it was at best a partial picture. Furthermore, there was still at the time a clear suspicion in many white media establishments and society – even if they opposed apartheid – about the ANC alliance.

Of course, there was counter or defensive violence by local ANC committees, but to say that this was somehow orchestrated as a national campaign from Shell House is really untrue. Certainly, there were excesses by comrades associated with the UDF/ANC alliance in their response to state and state-assisted vigilante

violence. But to say that such regrettable excesses were carefully orchestrated centrally by the ANC as part of a "People's War" is hopelessly wrong. In fact, the leadership of the ANC and mass democratic movement (UDF, civics, trade unions and community groups) certainly went out of their way to urge restraint, often when communities demanded retaliation following extraordinary provocation from state-sponsored violence.

Firstly, in the 1980s the ANC did not orchestrate every single protest action from Lusaka. By the mid-1980s, although the ANC's political guidance was important, the struggle inside South Africa had begun to take on a life of its own. In fact, from the early 1990s onwards, the United Democratic Front (UDF), certainly in the day-to-day struggle politics, was a central driving force in the country. Of course, looking back now, the slogan 'no education before liberation', which was the guiding slogan for my generation, has meant that millions of black youths of my generation forfeited the skills essential to upward mobility. This generation has been let down by the ANC leadership. There should at least have been night schools for the youth on the same scale as those for white South Africans who returned from fighting in the Second World War. Clearly, the exile leadership dominant in the ANC post 1990 did not have sufficient appreciation of the sacrifices of this generation – that, I believe accelerated the momentum of the anti-apartheid struggle by sacrificing all for total liberation – and the future consequences of neglecting them.

For another, to say that apartheid was not "particularly brutal by comparison with undemocratic regimes elsewhere in the world" is silly. Apartheid deliberately deprived millions of black South Africans from gaining education and skills. As Francis Wilson has noted: "The mean-spiritedness which underlay the philosophy of Bantu Education, the inadequacy of the funds made available throughout most of the apartheid years, and the crippling effect of job preservation and the colour bar on the acquisition of skills and experience by the majority of (black) workers, could almost have been designed to prevent them from being adequately prepared for the challenges of the 21st century". The fact that black people could not own property or businesses, and were forcibly removed from their land and properties, also meant that in the era of globalisation, the social capital, whether collateral to take out loans to send their children to school, or for finding the means to survive in the modern world, was also taken from them. Apartheid also broke black families through the migrant labour system and by psychologically breaking the spirit of millions. It undermined the sense of self, whether black fathers who could not support their families or whether mothers unable to provide for their children. These are particularly brutal ways of oppression, whose effects will be with us for generations to come.

In sum, to argue that the ANC was responsible for orchestrating each and every incidence of violence during the brutal period of the early 1990s is to have lived in a different country. The ANC's appeal did not lie in stoking violence, but in whether it could avert or contain the violence. The longer the violence went on, the more the ANC stood to lose. In fact, by the early 1990s, a carefully plotted campaign of terror in black communities benefited the Nationalist government enormously, as they could hold it out to ANC supporters that under the ANC there would be chaos. On that note, the story still to be told in more detail is the extent to which the state was responsible for sponsoring vigilante terror – the accounts so far only scratch the surface.

In sum, to argue that the ANC was responsible for orchestrating each and every incidence of violence during the brutal period of the early 1990s is to have lived in a different country.

RIGHT OF REPLY

Anthea Jeffery

is Head of Special Research at the South African Institute of Race Relations. She holds law degrees from the University of the Witwatersrand and from Cambridge, and a doctorate in human rights law from the University of London. She has written on many different topics, ranging from the rule of law and the horizontal application of South Africa's bill of rights to affirmative action and the fundamentally flawed report of the Truth and Reconciliation Commission.

Pallo Jordan goes round in circles in his caricature of my book, seeking to reduce it to a simplistic conspiracy theory which no one can seriously entertain.

In fact, the book provides a balanced and comprehensive account of the political transition. It deals in full with the killings that were committed on all sides in the period from 1984 to 1994, when some 20 500 people were hacked or shot or burnt to death for political advantage.

What distinguishes my book from others on the transition is that it holds up a mirror to the ANC's callous strategy of people's war. This strategy treats all individuals as weapons of war, regarding them as just as expendable as the bullets and guns of a conventional conflict. It deliberately targets civilians, seeks to eliminate political rivals, and views its own supporters as just as expendable as everyone else.

Jordan's version of people's war is a highly sanitised one which brushes over the key element of violence. If this is really how 'theorists in China and Vietnam' describe people's war, then it is absolutely vital to draw instead on acknowledged experts such as Douglas Pike. For Pike not only provides the theory but also explains how it resulted in South Vietnam in the deaths of 10 000 village chiefs and countless other rivals or potential 'enemies'. As Pike records, these killings were remarkably effective in inducing the ordinary South Vietnamese citizen to do as the insurgents wanted, for 'when death struck in his village against someone he knew, a scar of fear formed in his mind'.

During the ANC's people's war, necklace executions – in which a tyre was hung around the victim's neck, filled with petrol, and set alight – were particularly useful in generating that 'scar of fear'. The necklacing in 1985 of a black local councillor who refused to resign was doubtless effective in persuading others to step down. The necklacing in 1986 of a schoolboy who disobeyed a school-boycott call no doubt helped galvanise others not to do the same. The necklacing of rail and mining workers who disobeyed strike orders in 1987 must have had a similar effect. The necklacing of three Inkatha men in KwaMashu in 1986 was a powerful warning of the dangers of supporting Chief Mangosuthu Buthelezi. The necklacing of an Azanian People's Organisation (Azapo) activist in Soweto that year warned against supporting the Black Consciousness cause, prompting another Azapo member to say of the United Democratic Front, the ANC's internal wing: 'The UDF's game is fear and that's why they're in the majority.'

People are indeed intimidated if terror is acute. This was evident again in 1992 when four people were burnt to death in a Soweto house after one of them had failed to heed a call for a hospital strike. Said a terrified neighbour: 'We are afraid to speak about how we want to live our lives. The only thing left to do is to follow orders. If somebody says don't go to work, don't go. It makes no difference whether you believe it is the right thing to do. Do it to save your skin.'

If reports of this kind had been given major and repeated coverage, this would have damaged the ANC's moral standing and democratic credentials. This made the propaganda element in the people's war particularly vital, for it distracted media attention from revolutionary violence and provided other targets to blame.

The greatest propaganda myth was that regarding the Third Force. The ANC needed to explain the upsurge in violence in the early 1990s, when political killings increased three-fold from their average in the 1980s. For the period from 1990 to 1994 was a time when the National Party government had abandoned apartheid and committed itself to peaceful talks, while more than 13 000 armed and trained ANC insurgents had been allowed to return from exile.

Lest the finger of blame be pointed at these insurgents – whom the ANC refused to demobilise – the organisation and its supporters repeatedly accused former state president F W de Klerk of talking peace while using a Third Force (comprising elements in the police and Inkatha) to wage war on ANC supporters. But no credible evidence of such a strategy has ever been found. By contrast, the ANC itself had an avowed ‘dual strategy’ of using constitutional negotiations as nothing but an ‘additional terrain of struggle’ and thus persisting with its people’s war throughout the talks.

The fact that the police and Inkatha were clearly to blame for numerous killings gave the Third-Force theory a superficial plausibility. But the theory also had major weaknesses, for it could not explain why the Third Force should have killed so many of its own: more than 800 policemen in fewer than four years, along with many thousands of Inkatha leaders and supporters.

It is neither ‘churlish’ nor ‘silly’ (as Jordan alleges) for the book to highlight the extraordinary success of the ANC’s propaganda campaign. But this is also not Jordan’s true gripe. What really concerns him is the book’s effectiveness in stripping away the myths and laying bare what the ANC has gone to enormous lengths – so far successfully – to conceal.

The book comes too close to the bone. That is why Jordan resorts to derision and vituperation; and why he asserts that the book expects readers to ‘suspend reason and accept what is self-evidently an extremely improbable scenario, on faith’.

This is hardly a convincing response to 540 pages of comprehensive and chilling evidence about the people’s war: about the terror and other tactics deployed by the ANC to gain a hegemonic power it could use to advance its further revolutionary aims.

William Gumede attempts to caricature the book in a similar way. He regurgitates the Third-Force theory without attempting to deal with its weaknesses. He also claims the UDF was separate from the ANC when in fact, on the front’s formation, 24 of the 25 people on the UDF’s national executive committee were underground members of the ANC.

Gumede also cites the book as saying that ‘apartheid’ was ‘not particularly brutal’. This is dishonest. For *People’s War* in fact quotes Jeremy Seekings as having written that repression under emergency rule was ‘not particularly brutal by comparison with undemocratic regimes elsewhere in the world’, though it was ‘brutal by South African standards’.

It is Gumede’s critique which is ‘simply not true’ and not the book itself.

What really concerns him is the book’s effectiveness in stripping away the myths and laying bare what the ANC has gone to enormous lengths – so far successfully – to conceal.

REVIEW

Eusebius McKaiser is a political and social analyst at the Centre for the Study of Democracy. He is also an associate editor at *Business Day*, including a weekly column that he pens. He has studied philosophy at Rhodes University and, as a Rhodes Scholar, at Oxford University.

The Poverty of Ideas: South African Democracy and the Retreat of Intellectuals

The Poverty of Ideas is a gigantic failure. It claims to be about intellectuals' retreat within the South African democracy. It is not. Instead, it hosts a number of pieces that do not, as a collection, adequately speak to the book's overall inspiration. This is unfortunate not just because the provocative question that the book seeks to answer is poignant. It is also unfortunate because many of the contributions are excellent self-standing pieces on the issues which they do speak to and so are done an injustice to be located within an anthology about something else. A piece by Mahmood Mamdani, for example, does not address the topic of 'Africa intellectuals' (despite its deceptive title to that effect) but rather narrates elements of broader colonial history (and mainly outside South Africa, the book's supposed locus). Mamdani's piece – like others – is fascinating but misplaced.

The Poverty of Ideas' failure teaches two things. First, the shortcomings are themselves a dramatic expression of the poverty of ideas within public discourse in post-democratic South Africa. It betrays, to be blunt, a lack of conceptual rigour. Second, the role of editor is tougher than might seem the case when thinking about putting together an anthology whilst sipping cappuccino.

If there is a takeaway thought that surfaces consistently, it is the powerful insistence by some contributors (for example, Jeremy Cronin and Dan O'Meara) that public intellectuals should not be preoccupied with mere theorising and conceptual analysis. They should *also* seek to have a practical impact on society. This should be sought, as Jonathan Jansen argues in his contribution, even in the face of institutional and other threats to academic and intellectual freedom.

The conceptual framework: what sub-questions should drive an inquiry about the role of intellectuals?

The authors claim in their introduction to the book that intellectuals in South Africa remain invisible some fifteen years after the birth of democracy. The problem is that they fail to build a conceptual framework that can act as scaffolding for the book's journey.

First, the very notion of an intellectual is slippery. What, for example, is the difference between an intellectual and a public intellectual? Who are intellectuals and by the light of what criteria? What is the relationship between academics on the one hand and public intellectuals on the other? From a normative viewpoint, what ought that the relationship to be, quite independent from what it actually is? Where does public commentary end and (public) intellectualism start? Can the roles of 'analyst', 'commentator' and 'public intellectual' be regarded as pretty much co-extensive?



The Poverty of Ideas: South African Democracy and the Retreat of Intellectuals
 Edited by William Gumede and Leslie Dikeni.

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What is the source – ethical or otherwise – of public intellectuals’ duties? What are those duties at any rate?

The editors do not show enough concern for these definitional debates. This is a fatal weakness of the book since these questions would catalyse more substantive engagement of the issues. This is not a mere plea for conceptual rigour and clarity. These questions constitute the set of sub-questions that any book on the role of intellectuals must engage. This book does not do so.

A diagnosis of the problem: what do public intellectuals (not) do?

Gumede correctly argues that democratic cultural norms are a more important driver of long-term democratic stability than formal rules, regular elections and even the existence of democratic institutions. He repeatedly refers to intellectuals who have failed to help build a democratic culture, allowing themselves to be co-opted by the African National Congress government. But there is not one single illustrative example of this. One is left wondering who Gumede counts as ‘intellectuals’ since the chapter remains stuck at the general level, hardly ever anchoring itself in specificity.

The second chapter, by Leslie Dikeni, represents the poorest contribution to the anthology. It is filled with *ad hominem* attacks rather than rigorous argument, and thereby illustrates the very dangers of poor public intellectual life that he is trying to warn the rest of us against. He spends the bulk of the chapter listing and discussing so-called “celebrity intellectuals”, “commercial intellectuals”, “policy analysts” and “late-coming, new gender activists”. These are all supposed to be pseudo-intellectuals. But not once does he discuss an example of even a media article by a person from any of these groups to demonstrate the impoverished nature of their work. Dikeni comes across as someone who wishes he had more media exposure himself.

At any rate, the chapter’s main claim is not cogent. Rigour and popularity are not mutually exclusive. Intellectuals such as Steven Friedman and Achille Mbembe write countless academic articles, anthology contributions and books while still making useful and regular media contributions to debates. It is lazy, false and dishonest to assume that media appearances constitute the whole of their academic and intellectual life. And even if that were the case, Dikeni should dismantle the content of their work through counter-examples or exposure of poor reasoning rather than bemoaning the mere fact of their media presence.

Dikeni also fails to tell us who should count as public intellectuals and why. He ends off by simply *stipulating* that Walter Sisulu, Govan Mbeki and Nelson Mandela are intellectuals. This stipulation, to the extent that it is an argument, is a circular argument in the context of a book that cries out for a) a list of the criteria to be awarded the title ‘public intellectual’, b) a justification for said criteria and c) an explanation of why, say, Walter Sisulu and not Joe Soap meet the requisite standard. The entire chapter lacks that sort of theoretical rigour and systematic argument.

The saving graces

Some of the contributions, despite not engaging the main theme head-on, are worth reading and engaging. Two examples will suffice.

Dikeni also fails to tell us who should count as public intellectuals and why. He ends off by simply *stipulating* that Walter Sisulu, Govan Mbeki and Nelson Mandela are intellectuals.

Albert Nolan argues that “there is an unavoidable link between intellectual work (the pursuit of truth) and the inner work of spirituality (recognising and coping with the truth about oneself).” It is perhaps unfortunate that Nolan uses the term ‘spirituality’ since many might dismiss the concept’s invocation as a whiff of religiosity. In fact, the essence of what he is getting at has nothing to do with any particular religion. It speaks instead to a certain orientation – a certain attitude – that intellectuals need to have in order to succeed. If one is very intelligent and academically gifted but lacking in spirituality (as defined by Nolan) then there is very likely the possibility of early demise as a public intellectual.

Jansen argues, in his turn, that many former anti-apartheid intellectuals have found it difficult to critically engage the democratically elected government, comprising former friends and allies. Various developments within institutions have reinforced this silencing of intellectuals. For example, there has been – in various senses – what Jansen calls an increased ‘managerialism’ within universities which has contributed to a diminution in academic freedom.

Allowing individual writers to write in their preferred voice should never be at the cost of lucidity.

These contributions needed to be engaged with by the editors. However, they only touch cursorily on the conceptual and definitional complications I sketched at the beginning.

Besides lack of engagement, there was also a failure to reign in poor writing style. Chapter five, entitled *Meta-intellectuals: intellectuals and power*, written by Grant Farred, is easily the most obscure, impenetrable and incomprehensible contribution. It is littered with pseudo-profound post-modern statements. I refuse to believe the editors understood these sentences beyond recognising them as vaguely similar to ones one might find in the English language. Allowing individual writers to write in their preferred voice should never be at the cost of lucidity. Here are three random illustrative gems:

“The state-centred act of thinking is the precondition of meta-intellectuality; it is the performance of thought, the thinking in public of thought, both in the service of the state, that makes the meta-intellectual different from every other functionary of the political.”

And: “It is precisely this powerful sitedness, which, in turn, produces a powerful citationality, so that the meta-intellectual never speaks ‘only’ as an intellectual but as power and for the state, that demands the theorisation of the meta-intellectual within its localisation.”

And, finally: “The meta-intellectual interiorises and animates the state’s power over and of [sic] truth”

Concluding thought

Gumede and Dikeni posed the right question but failed to provide contributors with editorial guidance that could have led to wrestling with the relevant sub-issues that the main question entails. The book cannot be rewarded for posing a sexy question or carrying chapters by well-known folk. It failed to deliver on its promises. It would be intellectually dishonest, and therefore contrary to the book’s spirit, to assert otherwise.

REVIEW

Chris Saunders, a historian, is this year a Mellon mentor at the University of Cape Town.

The Poverty of Ideas: South African Democracy and the Retreat of Intellectuals

The editors of this volume, William Gumede, author of *Thabo Mbeki and the Battle for the Soul of the ANC* (2005) and Leslie Dikeni, a Research Associate at the Department of International Politics at the University of Pretoria, decry what they call the retreat of intellectuals since the advent of democracy in 1994. We all know how in the apartheid years the brave Helen Suzman spoke truth to power and criticised the government of the day.

Gumede and Dikeni detect what they call a 'golden age' in the late 1980s through to 1994 in which there was not only a vibrant civil society but also a culture in which intellectuals spoke out and had some influence on policy-making. After 1994 some intellectuals moved into government while others chose to remain silent rather than criticise the new African National Congress-led government. In the Mbeki years we had a President, called here a philosopher-king, with his own intellectual pretensions but who encouraged the development of an anti-intellectual culture by scorning and casting abuse at intellectual and other critics in his *ANC Today* columns and elsewhere. Now, in a more populist era, Kader Asmal has fallen victim to verbal abuse, while Julius Malema, along with those who should know better, gets away with outrageous comments directed at intellectuals and others. This collection of essays seeks to address what has happened to intellectuals in the new South Africa, and calls for them not to retreat but to be actively engaged and to speak out.

The Poverty of Ideas is an uneven but wide-ranging volume, which is not confined to the post 1994 years. Among its highlights is the chapter by Jeremy Cronin, himself an intellectual now in government, on the young ANC intellectual who in exile wrote, among other things, a book on Mangosuthu Buthelezi entitled *Chief with a Double Agenda*. He wrote under the name Comrade Mzala, and not all will agree with Cronin's conclusion that 'our movement requires tens of thousands of Mzalas, commissars working away in state departments, parastatals, trade unions, branches and communities'. Dan O'Meara writes interestingly about another intellectual-activist who died too young, Harold Wolpe, though not all will agree that Wolpe's published oeuvre was as important as O'Meara suggests. Mandisa Mbali tries to explain in her chapter why Mbeki took his denialist position on HIV/AIDS, while Vishnu Padayachee and Graham Sherbut recount how the influence of academic economists on the making of economic policy shifted in the 1990s, and why they were marginalised as the government moved from the RDP of 1994 to the Gear macroeconomic strategy adopted with so little consultation in June 1996. Among other notable chapters are those on spirituality (Albert Nolan) gender (Shireen Hassim and Helga Jansen-Daugbjerg) and youth (Prishani Naidoo). The contribution by the New York-based scholar Mahmood Mamdani, though entitled 'African intellectuals and identity', wanders from topic to topic and has all too little to say about intellectuals in South Africa. Though some of Jonathan Jansen's chapter was, he tells us, written at 3 am in a hotel room in Chicago, he has a

few good critical points to make about the role of public intellectuals and their relationship to universities.

No-one would surely deny that South African life would be enriched if more public intellectuals were willing to criticise the actions of the government of the day, or that intellectuals can and should play a vital role in the building of a democratic culture. Yet some of the argument presented in this volume is overdrawn, and to the extent that it provides a history of our recent intellectual life it is extremely sketchy. It is hard enough to define or categorise intellectuals, and one has only to think of such people as Rhoda Kadalie and Mamphela Ramphela, or say the lively columns by Eusebius McKaiser in *Business Day*, to realise that not all of them have retreated into silence. A recent academic visitor to the University of Cape Town from London was surprised to find intellectual life in Cape Town so vibrant. There the Wolpe Forum, UCT's Centre for Conflict Resolution and the Helen Suzman Foundation, along with other organisations and such places as the Book Lounge, help to keep intellectual debate alive, and should be given as much support as possible to continue their work. Is it not time, one wonders, for intellectuals to spend less time writing about, and bemoaning, the poverty of ideas, and instead to come up with fresh thinking on the pressing issues of the day? How then to ensure that such thinking feeds into policy remains a challenge. This book raises important issues, even if it does not get as far as one might wish in tackling them.

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