

FOCUS

CHANGE AND CONTINUITY: 100 YEARS OF STATEHOOD

Ben Makhoswze Magubane
RW Johnson, John Higginson,
Ivor Chipkin

Beyond Patriarchy and Militarisation

Nozizwe Madlala-Routledge

On South African Identity

Charles Simkins

**The Polity and
the Market: 100
years of struggle**
Jesmond Blumenfeld

**A Century of
the Press**
Raymond Louw

**Fixing the past:
Constitutional
Challenges**
Amanda Reichman

**Land, Liberty and
Compromise**
Merle Lipton

Reviews:
Leon Louw, Na-iem Dollie,
Antoinette Handley, Ann
Bernstein, Anthony Egan,



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CONTENTS

Editorial: Francis Antonie	2
From Union to a Democratic South Africa: Change and Continuity? – Bernard Makhoswze Magubane	5
1910 and All That – RW Johnson	9
The Past Meets the Present: Picking the Eyes Out of The Country – John Higginson	15
Recalling 1910: A bridge too far – Ivor Chipkin	23
Beyond Patriarchy and Militarisation – Nozizwe Madlala-Routledge	26
Reflections on a 100 years of struggle between the polity and the market in South Africa – Jesmond Blumenfeld	32
Reflections on a Century of the Press – Raymond Louw	47
Fixing the Past: Constitutional Challenges – Amanda Reichmann	54
On South African Identity – Charles Simkins	64
Land, Liberation and Compromise in southern Africa – Merle Lipton	70

REVIEW FORUM

Ann Bernstein: The Case for Business in Developing Economies	
• Leon Louw – <i>The Real Agenda</i>	76
• Na-iem Dollie – <i>In the Service of Capital and Ayn Rand</i>	78
• Antoinette Handley – <i>Elusive Truths</i>	81
<i>Right of Reply: Ann Bernstein</i>	84
David Welsh: The Rise and Fall of Apartheid	
• Anthony Egan – <i>Beyond a Manichean View of South Africa's Struggle</i>	86

OBITUARY

• Frederick Van Zyl Slabbert	89
• Sheena Duncan	91
• Count Otto Lambsdorff	92



Francis Antonie

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This edition of *Focus* is dedicated to a series of reflections about 100 years of statehood in South Africa.

In my invitation to contributors, I pointed out that the political events which led to Union are well documented and widely known; so was the deliberate marginalisation of the majority of South Africans during the deliberations that led to the establishment of Union in 1910. Indeed, it was this marginalisation which led to the formation of the ANC in 1912, and it was only after some 84 years after the foundation of the state, that a constitutional and political ‘normalisation’ and legitimacy were achieved. In 1910, the hope for a non-racial franchise (insofar as the Cape vote was formally colourblind) glimmered weakly. By 1936 African males were removed from the common voters’ role and, 20 years later, Coloured males in the Cape were also removed. After that, it would take a long generation, some 38 years, for the emergence of a universal democracy which would finally bring to realisation the liberal hopes of 1910.

The inauguration of Union on the 31 May 1910 was a muted affair given the death of King Edward VII earlier in the month. Nevertheless, there was a cautious optimism that the subcontinent could ‘move on’ from the legacy of the bitter imperial war which had only been concluded eight years earlier. The issue of ‘race’ – not as we think of it today – featured prominently in thinking at the time. As the South African Union Souvenir (1910) put it:

“One great lesson stands out from the record; union was only realised at last, and could only be realised by the cordial and honest co-operation of both races, and only by the same spirit can its success be assured. The immense responsibility for making it a success rests upon the people themselves, and it will be the earnest hope of all who love this great country and who realise its marvelous possibilities, that this responsibility will be faithfully and solemnly recognised.”

The ‘races’, here, were Boer and Brit – Blacks simply didn’t exist in this world view.

Ben Magubane reminds us, trenchantly, just what this ‘marginalisation’ entailed, and why we should still consider our transition to be a work in progress.

One of the striking features of current reflections on the South African state and society is how change and continuity are intimately and, perhaps, inevitably linked. Reviewing this history is important, especially insofar as it may help us to understand the immediate and long-term challenges that South Africa currently faces.

Jesmond Blumenfeld’s thought-provoking reflections of 100 years of economic development and growth capture succinctly the theme of change and continuity in the struggle between the polity and market in South Africa. His observation - that the first 60 years of Union were, by conventional standards, relatively prosperous, but that the ensuing 30 years, until the millennium, brought almost unremitting decline – brings into stark relief the challenges which contemporary South Africa faces. His conclusion – that the historic struggle between the (broadly liberating) market forces and the (broadly stifling) hand of the polity appears to be continuing – is, as he puts it, ‘a matter of grave concern’.

What makes his conclusion so startling is that there is nothing ‘inevitable’ about the policy options which we have chosen in our endeavours to achieve greater growth, reduce joblessness and create a more just and equitable society.

Commemorating the occasion of 100 years of statehood is thus also an opportunity for taking stock and reviewing not only where we have come from, but also where we are trying to get to, and how we are to get there. But there are other reasons for remembering this centenary.

Bill Johnson argues that, in a sense, South Africans celebrate 1910 every day because they are glad to live in a united country: in effect, we are the beneficiaries of that act of Union. But he points to two 'great matters' which still loom over us, namely, our relations with our immediate neighbours, and the federal impulse which was so thwarted in 1910. He sketches an alternate federal history which is both alluring and persuasive, especially his claim that the new democratic settlement would be better guaranteed under federalism.

...that no society can surely be flourishing and happy, of which the far greater part of the members are poor and miserable — is a timely reminder of the immediate and long-term challenges South Africa faces.

John Higginson's overview of South Africa's "past meeting its present" weaves a narrative which takes in historical dispossession and revolt – both black and white and, as with Magubane and Johnson, he argues that the new South Africa is still in the making. Skills transfers, infrastructural development and improved delivery of public services are central to a national project of (re)construction. Higginson's quote from Adam Smith – that no society can surely be flourishing and happy, of which the far greater part of the members are poor and miserable – is a timely reminder of the immediate and long-term challenges South Africa faces.

A curious feature of this year, which has as its focus the World Cup celebrations of 2010, is just how uncommemorated this 100 year milestone of statehood has been. The President, in his State of the Nation Address, did record this fact, but it appears that there is very little enthusiasm in society to celebrate, or even commemorate, this occasion.

Ivor Chipkin also wonders about the absence of any centenary celebrations, and whether or not this tells us something about how modern South Africa situates itself relative to its past. While observing that the pace of 'memorialisation' in South Africa has increased, he raises the question of whether or not 1994 really represented the bridgehead to the 'post colony' that many, including in the ANC, had presupposed. If this is so, there would be no desire to be reminded of the imperial birth of modern South Africa. But why this

should be the case is still not clear. Chipkin may be right in his interpretation of Pallo Jordan's 1997 paper on Affirmative action, corrective measures and the Freedom Charter - that national unity would be delayed as long as racism continues to be institutionalised; but the forging of a national identity presupposes that there really isn't a current one.

I suspect that Charles Simkins, in his discussion on South African identity would disagree. For Simkins, identity, like patina, both individuates and embodies the conditions of survival. By this account, South Africans have an identity, and he cautions about the often "frantic and highly normative debates of the moment about identity". He suggests that disappointment and anxiety drives these debates, and his counsel to us - to imagine just how incoherent the South African project was at Union - is wise. He concludes his essay on Identity by suggesting four policy options which are currently available to government. This is indeed sober territory.

In his speech on his Budget Vote earlier this month, the President touched on this question of identity-through-belonging when he quoted Chief Albert Luthuli, who had declared more than half a century ago that:

"(there) is a growing number of people who are coming to accept the fact that in South Africa we are a multi racial communality – whether we like it or not. I am not prepared to concern myself with such questions as: 'Where have you come from?', 'Do you come from the North?', or 'Did you come from Europe?' It is not important. What is important for our situation is that we are all here. That we cannot change. We are all here and no one desires to change it or should desire to change it".

The President went on to add that the acceptance of common citizenship and equal claim to this country is our nation's greatest achievement.

This inclusive identity is celebrated in Nozizwe Madlala-Routledge's contribution which speaks both to the progress the state and society have made since 1990 and, more especially, since 1994, but also to the challenges and problems we currently face. Her call for a leadership with integrity (in both the public and private spheres) is both timely and apposite. In her pointed critique of the relationship between patriarchy and militarisation, she is also aware that "despite all the gains and achievements of the democratic order, we are still racially divided, and women are the poorer for it." Perhaps nowhere is this more evident than in her observation about government acceding to demands

by traditional leaders to maintain (existing) patriarchal forms of land ownership in South Africa.

The question of land ownership (and reform) is central to Merle Lipton's Review Article of Alden and Anseeuw's *Land, Liberation and Compromise in Southern Africa*. The starting point is obviously Zimbabwe, and Lipton's reporting of this is both even-handed and incisive. But it is the regional effects of this crisis which engage one, in part, because of the absence of clear policy directions and, in part, because of the level of cynicism which clouds whatever policy approach may have been introduced ('...the land issue is not a top priority because every Minister has already got his farm').

Amanda Reichman also takes up the issue of land ownership in her reflections on the constitutional challenges which South Africa currently faces. Beginning with the 1913 Land Act, her thoughtful review of the legislation used to dispossess, control, marginalise and exploit the majority is an important reminder of where our society has come from, and why so many social challenges still remain to be addressed. She argues, convincingly, that the basic principles for a post-apartheid legal system have emerged in a series of important Constitutional Court cases, beginning in 1995, with the abolition of the death penalty (Makwanyane), forced removals and land dispossession (Richtersveld), the state's socio-economic obligations (Grootboom and the Treatment Action Campaign), and gender and racial discrimination in customary law (Gumede).

These cases and the issues they raise have become household names.

Here the media, especially the press, play an important role in reporting these cases to the broader public. Hence, Raymond Louw's reflections on a century of the press are a timely reminder of the importance which the Fourth Estate plays, both historically and currently, in making possible the democratic project. He reminds us that there are always threats to media freedoms, and that these threats come in various forms and guises. (Most recently, coinciding with World Press Freedom day, the South African National Editors' Forum rejected an ANC proposal to introduce a statutory media tribunal. Given that the World Press Freedom Index, which looks at imprisonment, censorship and harassment of reporters placed South Africa 33rd last year (behind Ghana), any such proposal should be resisted strenuously.)

Louw also points to other challenges which the (print) media currently faces. Here the main driver is technological change. He argues that technological revolution in communications over the past half century has radically altered the media landscape. He observes that the internet, with its "new breed of citizen journalist", and the ubiquitous cell phone, are powerful disseminators of news and information to a national audience.

If technological innovation has been the driver in transforming the media, then it has also been decisive in altering the structure of the South African economy.

In broad terms, during the past half century, the sectoral composition of the economy has changed, in that we are decreasingly producers of goods and increasingly providers of services. At the same time, the level of skills required of the labour force has increased on average, with the shares of both highly-skilled and skilled workers increasing and the share of unskilled workers declining. Behind both the sectoral shifts and the intra-sectoral changes in skills requirement, are changes in technology.

How well, then, does South Africa meet the challenges which the technological revolution has introduced? And, mindful of our past, and of our current and future engagement with the global economy, how can the society (and economy) accommodate the legitimate expectations of its people?

These, no doubt, are some of the questions which Minister Manuel's National Planning Commission will seek to address. If we are permitted one last look back to the creation of the Union in 1910, it may be more than mere whimsy to recall Milner's Kindergarten - largely forgotten, or simply ignored as part of our (embarrassing) imperial history - and the extraordinary task they faced in helping to lay the foundations of the state. Perhaps future generations may recall, with more regard, Manuel's Kindergarten who helped build the modern South Africa.

This edition of *Focus* continues our innovation of the Review Forum, with reviews of Ann Bernstein's book on *The Case for Business in Developing Economies* and David Welsh's book on *The Rise and Fall of Apartheid*.

We finally record, with sadness, the passing of three public figures whose contributions to public life did so much to enrich liberalism in South Africa.

Ed

From Union to a Democratic South Africa: Change and Continuity?

The question mark on the topic which is the subject of this issue of *Focus* is quite deliberate. In the commissioning editor's introduction it is said that the political events which led to the Union are well documented and known, events that saw the 'marginalisation' of the majority that led to the establishment of Union in 1910. It was this marginalisation which led to the formation of the ANC in 1912 et al. I honestly do not think that the political events that led to the marginalisation of the Africans, Coloureds and Indians (generically now known as blacks) are that well known.

It is further stated that in 1910 the hope for a non-racial franchise (in so far as the Cape vote was formally colour blind) 'glimmered' weakly. To say that Africans from 1910 to 1994 were marginalised and that 'hope glimmered weakly', indicates a gross misunderstanding of the agony Africans experienced from 1910 to 1994. The 1902 Native Affairs Commission inserted cheap African labour as a foundation of the profitability of diamond and gold mining. Not surprisingly the Mines and Works Act, one year into Union, was piloted by General Smuts as Minister of Mines. Sir Keith Hancock, his biographer refers to the rapid rapprochement between Smuts and the mining capitalists. Hancock wrote:

"In the debate on the Mines and Works Bill, which Smuts himself piloted through Parliament, Clause 15 of the Bill, when one views it in the long perspective of South African history, was explosively political, for it provided the means of embedding the industrial colour-bar in the law of the Union. Yet Smuts told Parliament that the Bill was purely technical. That, no doubt, was how he saw it. No speaker arose to point out his mistake. It may well be that members of the other provinces looked upon this Bill as the domestic concern of the Transvaal, while the Transvaal were so used to the colour bar they took for granted. The clause which Parliament did not think worth debating contained the seed of revolution."¹

Two years later, there followed the 1913 Land Act which made Africans foreigners in the country of their birth and facilitated their recruitment to the white farms and mines as cheap labour. In 1924 the Civilized Labour Policy followed with a slew of other laws entrenching white privileges. What hope 'glimmered' after the token franchise of the Cape was wrenched away? In effect, the Cape liberal franchise was the most unconscionable hoax ever perpetrated on the British public and on the victims of colonialism and imperialism. The fact that liberal historiography continues to make so much noise about it tells us something.

One of the great perpetrators of this liberal myth is Professor Leonard Thompson,



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the doyen of liberal historiography. In Volume 2 of the *Oxford History of South Africa* he writes in 1910 that British policy makers achieved their primary goal in South Africa—the unification of the two white races, Boer and Briton.

But in attaining this primary goal of its South Africa policy, Britain had sacrificed the secondary goal. That goal had been set by Lord Stabely, Colonial Secretary (1842), when he had instructed Sir George Napier that in annexing Natal it was “absolutely essential...that there shall not be in the eye of the law any distinction of colour, origin, race, or creed; but that the protection of law, in letter and substance, shall be extended impartially to all alike”.²

...it would be a calamity if South Africa were added to the list of the regions in which the utter extermination of the aboriginal races had taken place.

The British usurpation of the Cape in 1806 meant not only the acceleration of their conquest and dispossession of the San and the Khoi-Khoi of their lands but their exploitation, and in the case of the San, their extinction. Both Boer and Briton pursued policies that were tantamount to genocide against the indigenous peoples in the lands where they wanted to establish white settlements.

After the abolition of slavery, fearing the repeat of what was happening in Australia and New Zealand, the British Foreign office formed the Aborigines Protection Society, and the British House of Commons appointed the Select Committee on Aborigines to investigate what was happening in the frontier regions of the British Empire. Lord Glenelg, a humanitarian, appointed Colonial Secretary from 1835 to 1839, expressed concern about what was happening in frontier regions of the empire. It was his strongly felt belief that it would be a calamity if South Africa were added to the list of the regions in which the utter extermination of the aboriginal races had taken place. In a communication with Sir Benjamin D’Urban on 26 December 1835 he put it as follows:

“I know not that a greater real calamity could befall Great Britain than that of adding Southern Africa to the list of regions which have seen their aboriginal

inhabitants disappear under the withering influence of European neighbourhood. It is indeed a calamity reducible to no uncertain standards or positive measurement, but invokes whatever is most to be dreaded in bringing upon ourselves the reproaches of mankind and the weight of national guilt.”³

He sent this memo to object to the aspersions cast by Governor D’Urban who had described Africans as “irreclaimable savages”. He even ordered the abandonment of Queen Adelaide Province (located around King Williams Town and East London) that D’Urban had added to the Cape Colony. The indictment of Boer/British colonialism by the Reverend Philip in his *Researches in South Africa* is well known. In one of his analogies he said:

“The Spaniards offered the South Americans their religion and death. The English hold out no alternative but death to the Caffres.”⁴

With the arrival of British settlers in 1822 and 1840, the Cape frontier was locked into a vicious circle of war from which there seemed to be no possibility of escape. More and more the discourse on the fate of the indigenous people was said to be writ large in the history of Native Americans, Australians and other aboriginal peoples. The question, therefore, that should be posed is, why the indigenous peoples of South Africa survived and in 1994 assumed the control of the country after being marginalised for almost eighty-four years? Margaret Perham in her book: *The Colonial Reckoning* provides interesting insights:

“In the Age of Discovery most of the discoverers were men of violence. So there was wholesale plunder, slaughter, and enslavement of peoples of these fascinating, but fragile civilizations. Yet, for the first time in history, colonisation had to meet the challenge of Christianity. A great Christian, Las Casas, who went to America, came back, as many missionaries since have done, to report appalling cruelty of his own countrymen...They were seizing the stored-up treasures of the Amerindians civilization, mutilating prisoners, taking the lands, and turning inhabitants into slaves.”

She then goes on to say:

“Before we leave the rest of the colonial world to concentrate upon Africa, we must remark a striking contrast between the natives of that continent and

those of other lands the Europeans opened up. The world hears nothing at the level of international affairs of Red Indians, Maoris, or Australian aborigines. Why has so little been heard of them as a political problem or a political force? One answer is that the Iberian Roman Catholic Latins who went to southern America, though they might repress and exploit, never placed an unbridgeable gulf between themselves and the natives. Now although the original natives constitute the lowest class, they are not officially distinguished as such. Very different has been the record of Africa in relation to European settlement. The British immigrants, like the Dutch but unlike the Spaniards and the Portuguese, drew a rigid racial line between themselves and the natives. Their aim was to retain not only their political control and the purity of their blood, but also more importantly their economic control derived from their exploitation of the indigenous peoples. Hence, they blocked and humiliated every African who tried to make the first grades in the new Western civilisation. The African saw himself treated as a despised inferior, discriminated against, his social life disrupted by labour migration and other forces. This was done to him, not in Europe, but in his own country.”⁵

Finally Perham asks: Is it unfair to the settlers to remember these things now, when relations are so different and so difficult? Is it fair for Africans not to remember that this was the atmosphere in which their first bewilderment could harden into the resentment of an incurable humiliation?

In the South African colonies, British policy had always been ‘white’ unity against the ‘natives’. Lord Grey Governor of Cape Colony from 1851 to 1861, in 1858 advocated white Federation of Boer and Briton because:

“They have the same feelings regarding Native races.... The smallness and weakness of the states, the knowledge that they are isolated bodies...has encouraged Natives to resist and dare.”⁶

The discovery of diamonds in 1867 accelerated the idea of White unity: Diamonds, prophesised the Cape’s Colonial Secretary, Richard Southey, were “the rock on which the future success of South Africa will be built”.⁷ Lord Carnarvon, British Colonial Secretary from 1874 to 1878, sounded the Boers through his emissary, the eminent historian, James Anthony Froude. In January

1874, Disraeli, his Premier, called for the confederation of the British and Boer Republics. Some Boers like J.H. Hofmeyr, De Villiers and Brand were keen, but the Boer Republics were not. He tried to force the federation by Shepstone’s 1877 annexation of the Transvaal.

Carnarvon’s reason for forming the federation was the fear of the Natives: “The most urgent reasons for general union is the formidable character of the Native question and the importance of a uniform, wise and strong policy in dealing with it.”⁸

Lord Carnarvon, who had successfully confederated the Canadian colonies, divided British South Africa into provinces, suggested two Houses, a Governor General, and ‘due representation for the Natives’. It was the precise preview of the Act Of Union adopted in 1909. Much was made of the fact that in the Cape, no distinction was made and franchise was bestowed on all, irrespective of race or colour. However in the context of the wars of conquest in the frontier zones, the Cape franchise served very cynical motives – it offered a safety valve from racial tension for the beneficial political gradualism it represented, and not least for the moral worth that the very principle endowed upon all.

Following hard on the diamond discoveries, British and colonial troops made war on the Hlubi in 1873, the Gcaleka and the Pedi in 1877, the Ngqika, Thembu, Pondo, Griqua and Rolong in 1878, the Zulu in 1879, the Sotho in 1880, the Ndebele in 1893, and the Boer Republics in 1899. The Cape absorbed the Transkei and its people in 1879-94, it annexed Basutoland in 1868, Griqualand West in 1871, the Zuid Afrikaanse Republiek in 1877, Zululand in 1887, Matabeleland in 1894 and the Boer Republics in 1900. The Bambatha rebellion of 1906, in which nearly 4,000 Africans were killed, marked the final phase in 250 years of colonial conquest and dispossession.⁹

The urgent question in the aftermath of all these wars, and it came with indecent and alarming haste after the Anglo-Boer War, was whether from the liberal and philanthropic point of view, the conquered and defeated Boers would emerge triumphant. In the closing stages of the war one of the great fears of the republican Boers was that the victorious British would enfranchise blacks in the new state. That this would be the case was taken for granted by the Africans. It was widely and confidently assumed that the Treaty of Vereeniging, by which the terms of peace were agreed, would make some provision for Africans, hopefully

on the Cape model. Under the Treaty, the two Boer republics would be allowed Responsible Government¹⁰ as soon as possible. When Smuts sat down with the British High Commissioner in South Africa, Sir Alfred Milner to discuss the draft of the Treaty, he asked that the question of the African franchise be deferred until after the granting of Responsible government. Milner agreed. “On this question I am at one with you. It must stand over for Responsible government”. That is, it would be decided by the Boers themselves after they had recovered their constitutional independence and that as surely as anything could be sure, meant they would veto it.¹¹

Following the signing of the Treaty of Vereeniging, between 1903 and 1910, the fate of the so-called non-whites of South Africa had already been sacrificed on the altar of diamonds and gold. Looking back, it is clear that Boers, because of their primitive racism, would offer a perfect foil. Their policies would prevail over the so-called liberal policies of the Cape. There were already strong pointers working in this direction, typified by a remark made by one of the British Government’s most influential advisors, Lord Milner, the former Governor of the Cape Colony, who said in 1909: “The ultimate end is a self-governing white community, supported by well-treated and justly governed black labour.” For all their liberal principles, eminent Englishmen were so intent on the object of Union between the Cape, Natal and the two former Republics, that they seemed to see nothing of the implications of their actions. When the all-white National Convention, representing the four (white) colonies met to propose the Union, their deliberations were not recorded so as to avoid embarrassing Cape liberals. Olive Schreiner, the writer, gave a moving warning of what was to come if white South Africans “blinded by the gain of the moment” saw nothing in the “dark man” but “a vast engine of labour”.

With astonishing foresight Schreiner envisaged a South Africa in which the white man disposed the African of

his land and forced him “permanently in his millions into locations and compounds and slums of our cities, obtaining his labour cheaper”. She foresaw that if “uninstructed in the highest forms of labour, without the rights of citizenship, his own social organisations broken up, without [our] having aided him to participate in our own...if the Whites reduced this vast mass to the conditions of seething ignorant proletariat” — then she would rather draw a veil over the future of this land.¹²

The Union of South Africa, the last White Dominion of the British Empire was baptised in blood and hypocrisy. Africans, the *Star* newspaper would observe, had no value in the community except as the equivalent of so much horsepower. They were both indispensable and expendable. In the mines, deep underground accidents and disease maimed and killed thousands every year. Employers set up agencies which recruited fresh supplies of sturdy young men from villages south of the 28th parallel. This curious and exceptional situation, the SACP would describe as ‘colonialism of a special kind’, that is a key constituent that makes the modern world capitalist system.

The transition from eighty four years of minority misrule is still a work in progress. It still bears all the birthmarks of the old corrupt order. White supremacist rule cum-apartheid was inherently corrupt as it was a gross crime against humanity. The entire accumulation process of the beneficiaries of white supremacy was founded on a corrupt value system that spawned and sustained corruption. The 2007 ANC Strategy and Tactics states that there is an existent value system within our society, deriving from past and current social relations of capital that encourages greed, crass materialism and conspicuous consumption. Among the off-springs of this value system and strongly embraced, is corruption in business practices, corruption in state institution and society, as well as the get-rich-quick ethic. How to cleanse our society of corruption at every level as we enter our next century will be a monumental task!

NOTES

1 W.K. Hancock, Smuts 1870-1919, vol. 1, Cambridge University Press, 1962, p320.

2 Oxford History of South Africa, vol. 2, p364.

3 Quoted in R.G. Mellor, British Imperial Trusteeship 1783-185, London, Faber and Faber, n.d. p125.

4 Cited, in Noel Mostert, Frontiers, The Epic of the South Africa’s Creation and the Tragedy of the Xhosa People, Alfred A Knopf, 1992, p741.

5 Margaret Perham, The Colonial Reckoning, Alfred A. Knopf, New York, 1962.

6 Cited, Hosea Joffe, European Colonial Despotism: A History of Oppression, Resistance in South Africa, Karnak History, London, 1994, p125.

7 Cited, H.J. and R.E. Simons, Class and Colour in South Africa, 1850-1950, Penguin Africa Library, 1969, p34.

8 Cited Joffe, op. cit, p125.

9 Cf. Simons and Simons, op. cit, p31.

10 An elected government with jurisdiction over internal affairs, but whose foreign affairs would be left in the hand of the Imperial Government. Ed.

11 Cf. Mostert, op. cit pp1264-5.

12 Cited, Mary Benson, The African Patriots: The Story of the African National Congress, Faber and Faber, London, 1963, p21.



R.W. Johnson, a former director of the Helen Suzman Foundation, writes for many international publications and is also the author of ten books, of which the latest is *South Africa's Brave New World: The Beloved Country Since the End of Apartheid* (Penguin). He taught for many years at Oxford, Stanford and the Sorbonne, and is an Emeritus Fellow of Magdalen College, Oxford.

1910 and All That

South Africa is making a huge song and dance over 2010 as the year it hosts Africa's first soccer World Cup. Oddly, the fact that this is also the centenary of the Act of Union, which made South Africa into one country, has been wholly neglected. Of course, the ruling ANC, conscious that it owed its own birth to the angry reaction of African chiefs excluded from the negotiations which led up to Union – a wholly white affair – still feels bitter about that exclusion. Odd, though, to still be sulking a century later over the decision to unite, of which it in fact wholly approves. Odder still of the whites not to celebrate their own handiwork since they all grew up celebrating the day of Union (31 May) as their national day.

Extraordinarily, most whites have accepted the ANC line that history only properly began in 1994 with the arrival of democracy, and that the whole preceding period since 1652, when white settlement began, is a single disgraceful epoch of colonial oppression ("400 years of colonialism", as it is often put, with some generous rounding up) not to be mentioned in polite company. One can sometimes hear both blacks and whites refer to 1994 as "independence", thus assimilating South Africa to the general African model where majority rule and independence were rolled into a single event.

History in limbo

But, as I have pointed out elsewhere¹ such a view is, like all forms of mythical history, false and dangerous. As late as 1800 there were only 26,000 whites in the whole of today's South Africa, far too few to constitute a nation-wide oppressor class. Even in 1891 there were only 255,000 whites in the South Africa outside the Cape, most of them concentrated in a few large towns while most blacks lived in the countryside. That is, outside the Cape – and most blacks were outside the Cape – the full realities of colonial oppression were suffered for barely a century. Secondly, South African history is about all

sorts of other things besides colonial oppression – the construction of the world's deepest mines, the continent's greatest network of trains, ports, airports and roads, Africa's largest manufacturing and commercial agriculture sectors, the fighting of two world wars, the Korean war etc. The facts of oppression and exploitation are bad enough if looked at truthfully: they do not need to be massaged to last longer than they did. And while racial oppression was an inevitable part of most of what South Africa did, there was a long and distinguished history involving much else besides. It is simply peculiar to want to wipe out a pre-1994 history which includes such facts as General Smuts' contribution to both the League of Nations Covenant and the UN Charter, the heroism of South African troops in North Africa or the world's first heart transplant. South Africa is surely the only Allied country where the names of Second World War heroes have been obliterated from street signs because they are now regarded as disgraceful.² For the moment, though, there is no black intelligentsia capable of trying to devise a fresh interpretation of history which would allow the re-incorporation of this pre-democratic past into the national discourse, and nor is there a white intelligentsia brave enough to attempt the job for them.

The almost surreal result is that the whole of South African history from 1652 to 1994 now exists only in a sort of strange limbo. South Africa's whites are a generally philistine lot who waste little time reading or thinking about history, but they have the distinct impression that making favourable references to anything which occurred pre-1994 is not exactly a good career move. On the ANC side the only subject of interest is ANC history and even that is often simply invented on demand: recently Gwede Mantashe, the party's secretary-general no less, attempted to insist that Mkhonto we Sizwe dissidents tortured in Quatro were all given legal representation and a fair trial. Perhaps good Nazis believed that people only died in Auschwitz because they didn't use their holiday entitlements. In any case the net result is to leave history aside completely. Such obvious anniversaries as Da Gama's naming

...the whole of South African history from 1652 to 1994 now exists only in a sort of strange limbo.

of Natal in 1497 have been wholly ignored. Even a world historical date like that of the Anglo-Boer War would probably have been overlooked, too, had not a few white historians brought to the government's attention the fact that many Africans had also been victims of the war – after which the war was commemorated as if it had had only African victims.

The difficult unification of South Africa

The country's centenary falls squarely into this vast limbo, although 1910 was arguably of more fundamental importance than 1994. Ever since Sir George Grey's schemes for closer union in the 1850s, Britain had dreamt of uniting the scattered settler settlements of southern Africa into a single state under the Union Jack, and the discoveries of diamonds and gold had only increased the determination to achieve this. It was an extremely tall order. Natal was already a well developed colony with its own prime minister and saw Cape Town as Durban's deadly rival. It was entirely happy to continue on its own. The Orange and Transvaal republics were even more determined to remain independent of both Cape Town and London and increasingly they had the money not only to go it alone, but, ultimately, to become the dominant voice in the region. British Kaffraria – the Eastern Cape and Transkei – was still barely conquered territory, containing but few white settlers and many chiefdoms which wanted to throw off the British yoke. Meanwhile the power of the Zulu kingdom remained disturbingly intact, a constant source of anxiety both to Natal and the Transvaal. All these varied elements would in their own way resist any proposal for unification.

There were, however, only two elements which would actually fight rather than accept unification, the Boer republics on the one hand and the Zulus on the other. They were dealt with seriatim. First, the Zulus were provoked into a wholly unnecessary war in 1879 and the power of the Zulu monarchy smashed forever. Then, twenty years later, a similar war was provoked with the Boers, who proved an immensely tougher nut to crack. Three years, over half a million troops, hundreds of millions of pounds and the use of concentration camps and mass deportations were all necessary to achieve this end. By 1902 the job was done and the victors began to sing the siren song of reconciliation: Boer and Brit must unite to build the united country now in prospect. This was essentially bogus³ for what the imperial interest wanted was a jingo state ruled by English-speakers as a loyal white dominion alongside Canada and Australia. But the Boers had proved such doughty opponents that it seemed only politic to offer them full recognition and full participation provided they would accept the new state. The key assumption of the imperialists, particularly Milner and Churchill, was that the English-speaking

Uitlanders in the Transvaal, once given the franchise, would sweep away the last remnants of Boer rule and ensure that the Cape, Natal and the Transvaal could all advance together under English-speaking leadership towards Union.

This hope was shattered in the Transvaal elections of 1907 which returned to power the Het Volk party under Louis Botha and Jan Smuts. Milner and especially Churchill had anticipated that the Uitlanders would form a solidary group, bound together by a triumphant jingoism, and thus outvote the Boers. In fact the English-speakers were undone by their own individualism and by the fact that so many were Irish or Scots or nascent socialists: they simply could not be corralled behind a single party. They split their votes, the Boers won and suddenly the jingoes found that they were going to have to mean a lot more of their promises of reconciliation than they had ever intended. The country then advanced rapidly towards the National Convention of 1908-09, attended by 12 delegates from the Cape, 8 from the Transvaal and 5 each from Natal and the Orange River Colony.

The continuing legacy of 1910

Many of the debates which most preoccupied the Convention seem arcane today – the franchise, the weighting of seats in favour of the countryside, the quarrels over which city should be the capital – but two great matters still loom over us. First, express provision was made for the accession to the Union of present day Lesotho, Botswana and Swaziland as well as Zimbabwe and Zambia; that is, South Africa was a work in progress (hence its peculiar name) and many thought it might one day stretch as far north as Kenya. Second – and very much at odds with such expansionist notions – South Africa was to be a unitary state, not a federation.

As we look back we can see that both these themes are common to all three waves of nationalism which have washed over South Africa – British imperial jingoism, Afrikaner and then African nationalism. All three were instinctive centralisers, anxious to deny their opponents any redoubts within a federal system and determined to stamp their own image on the country. And all three quickly found themselves dreaming Rhodes's dreams of imperial expansion. Afrikaner prime ministers repeatedly pressed London to be allowed to absorb the three High Commission territories and recently voices within the ANC have again raised the question of the incorporation of

Lesotho and Swaziland. With typical grandiosity, Thabo Mbeki had even bigger ambitions – heading the AU, hoping to persuade the rest of Africa that South Africa might be their permanent representative on the UN Security Council, funding (and housing) the Nepad secretariat, and setting up the Pan-African Parliament in Midrand. All these overblown ambitions have crashed to the ground along with the African Renaissance, but they will come again. If South Africa ever gets serious about African unity it has merely to give the South African Customs Union (SACU – SA, Namibia, Botswana, Lesotho and Swaziland) a political constitution and then allow neighbouring states who comply with that constitution to accede to SACU's free trade area in the same way that new states are admitted to the EU. The result would be a rapidly growing trading bloc with a real economic and political coherence under South African leadership.

Smuts and the unitary state

It was, however, surprising that South Africa became a unitary state: a country of such size and variety was a "natural" federal state. The prestige of the United States – then clearly becoming the leading world power – might alone have achieved this and the success of Canadian federation (1867) had just led Australia to plump for the same system in 1901. These were clearly South Africa's comparators and they all pointed one way. Yet in South Africa the two strongest advocates of federalism, Jan Hofmeyr and W.P. Schreiner, did not attend the Convention – Schreiner was defending Dinizulu and Hofmeyr thought the case for a unitary state was doomed anyway, leaving only the Natal delegates to argue the case. They exhibited the central weakness of Natal federalists down the century: their case was really a special plea for Natal rather than a reasoned proposal for another form of state. But, above all, the Convention was steam-rolled by Smuts. He had squared the Het Volk and Progressive Party, so the Transvaal bloc was united and it alone brought a team of constitutional experts and advisers to the talks; he had spent a lot of time wooing Merriman, the Cape leader, who was entirely charmed; and he had simply done the work, arriving with a complete draft constitution which provided the basis for discussion.⁴ And Smuts was determined to have a unitary state:

...the great difficulty with federation is this, that it assumes that a number of independent parties come together into a compact...which is binding for the future. Is that the sort of Constitution we

want for South Africa, a country in its infancy? Do we want a Constitution which will lead to civil wars as the American Constitution led to? No.⁶

This was, of course, absurd – and unworthy of a man of Smuts' intelligence. Smuts' real reason lay in his tremendous anxiety about the deep divides within Afrikanerdom which he was desperately trying to breach. He could already sense the potential for a much tougher, more extreme Afrikaner nationalism which would threaten the existence of moderates like Louis Botha and himself. If a federal South Africa gave strong provincial powers to the Transvaal and OFS, they might easily be captured by such Bittereinders, turned into bastions and even attempt to become independent Boer republics again. Already in 1907 Smuts had been deeply shaken by separatist stirrings within the Transvaal, with farmers and industrialists demanding protectionist barriers against the rest of South Africa.⁶ In fact Smuts had made a cardinal error. Not only could he not prevent the triumph of successive waves of ever-more extreme Afrikaner nationalism, first under Herzog, later under Malan, but because South Africa was a unitary state, they were able to stamp themselves not on two provinces but on the whole country. Under a federal system the moderate opposition to such extremism could have hoped to build redoubts in Natal and perhaps also the Cape. Quite likely both the universities of Natal and Cape Town would have been able to refuse racial segregation in 1959. Without doubt the Cape would have been able to keep and defend its non-racial franchise and in the 1980s, KwaZulu-Natal would have been able to move to majority rule under a non-racial government, just as the locally dominant Indaba movement⁷ wished to. The whole course of South African history would have taken a different and fundamentally more moderate turn. Moreover, as in the US or Canada, federal habits of mind and behaviour would have become ingrained so that the populace, whether governed from right or left, would demand local control. Instead, the new state started out undemocratically over-centralised and, such is the dynamic set in motion by such arrangements, each new government has sought to centralise it further. The process continues.

The great achievement of 1910 was that South Africa became one country. The struggle to achieve that had been so costly in lives and treasure that it was only possible because the world's greatest empire was driving the process: neither Afrikaner

Quite clearly, a settlement on American or Canadian federal lines would have been far preferable, with the provinces being largely self-governing, raising their own revenue ...controlling their own police forces and operating their own courts.

nor African nationalism would have been strong enough to achieve such a thing on their own. But at the same time a hideous wrong turn was made, mainly thanks to Smuts' foolishness – though behind him, of course, stood the full weight of the imperial interest, determined to consolidate the gains of the Anglo-Boer War. Quite clearly, a settlement on American or Canadian federal lines would have been far preferable, with the provinces being largely self-governing, raising their own revenue (even if there was a revenue-sharing device similar to SACU's between the provinces), controlling their own police forces and operating their own courts. As in any such system, the reality of local power at province and city level would have attracted a much greater share of the available political talent and led to an accompanying growth of local institutions and culture.

The 1910 settlement lasted effectively unchanged through the transition to republican government in 1961 and the new democratic constitution of 1996. Inevitably, what it meant was that the representatives of the strongest province, the Transvaal, gained power over the central government and, just as Prussia prussianised Germany, so South Africa was Transvaal-ised. Territorial segregation came naturally to Transvaalers, for the Transvaal was starkly divided between white and black. Hardly accidentally, six of apartheid's ten homelands were in the Transvaal and that divide was then stamped on a country which it fitted ill, especially in the Western Cape and Natal where it necessitated huge population transfers of Coloureds and Indians – groups who simply had no place within the original Transvaal template. But the provinces simply lacked the power to resist. Even after the advent of democracy, provincial powers remained so weak that there were repeated ANC demands to do away with the provinces altogether. Early on the ANC talked of moving Parliament away from Cape Town but this soon fell away and the

1910's division of powers between Pretoria, Cape Town and Bloemfontein remained intact. But under the ANC, Parliament has atrophied to the point where few foreign embassies remain in Cape Town, while the ANC voted to remove the Supreme Court from Bloemfontein without even considering the old balance it was disturbing. Under Mbeki, the President began to choose provincial premiers and city mayors and even individual councillors were, if they failed, threatened with removal by the President – a degree of hyper-centralisation which would have staggered Smuts. Faced by its own falling popularity the ANC has now decided to have every provincial parliament, every city and even the smallest town council elected at the same time as Parliament and the President – a move which would be unthinkable in a federal system or, indeed, in almost any other democratic system. It is all part of the same logic of hyper-centralisation. You begin by denying local autonomy and rights, you stamp the template of just one province onto the country, you curtail provincial powers wherever you can, and you end up economising even on elections.

The existence of a centralised unitary state enabled the apartheid regime to rule monolithically, but a federal system would have produced a much more pluralist situation with far more local accommodations to pressure and a more organic growth of the major alternatives.

An alternative federal history

Had South Africa been provided with an appropriate federal constitution in 1910 this would not, of course, have prevented the struggle for democracy from succeeding – but it would have profoundly modified it. The existence of a centralised unitary state enabled the apartheid regime to rule monolithically, but a federal system would have produced a much more pluralist situation with far more local accommodations to pressure and a more organic growth of the major alternatives. No doubt the bantustans would have had to be incorporated as proper consolidated states within the federal system, which might have forced their more equal treatment. The continuation of the Coloured vote on Western Cape rolls would have seen a natural growth of multiracial politics in that arena, just as non-racial universities in Natal and Cape Town

would have greatly increased the size of the educated black middle class inside the country. The emergence of a KwaZulu-Natal provincial government under Buthelezi by 1986 would have provided an important exemplar both of black leadership and multi-racial functionality, which would undoubtedly have had significant effects across the board, increasing the (perhaps successful) demand for provincial fusion by other bantustans, causing other provinces to move towards their own local multi-racial accommodations and so on. The ANC in turn would have had to cater for these new realities and would also have had to deal with a far stronger and better ensconced internal black opposition.

Most strikingly of all, the nature of the new democratic dispensation would have had to be federal from the outset. Federations tend to grow over time – the USA started with 13 states and has 50 now; Canada started with four provinces and now has ten – so a federal South Africa would probably have had more than four provinces by 1990 and these would all have needed reassurance that their place within the new dispensation would be no less than before. Second, the delegations at Codesa would all have been provincially constituted, for it is in the logic of federalism that no party can afford to disregard the call for states' rights and local patriotism that are intrinsic to it. Just as both Democrats and Republicans in, say, Tennessee, must vie with one another in their determination to stand up for Tennesseans and to keep power in Nashville from slipping away from Washington, so the ANC and DA would have to compete in the same way for the loyalties of the North West or Mpumalanga, as the case might be, even if, like Democrats and Republicans, they felt a national party loyalty too.

The new democratic settlement would also be far better guaranteed under federalism. Naturally, any scheme for nationwide proportional representation would be anathema under federalism and the electoral system would have to be one which allowed for the inevitably much looser party discipline in a federal system so that, for example, the representatives of all parties from low rainfall areas would probably vote for federal aid for irrigation schemes while the representatives of higher rainfall areas would be more concerned to get a proper price for their water. As in the US Congress, considerable tact and skill would be necessary to put together shifting coalitions of interest behind each issue and plan. Inevitably, many

of the worst features of ANC rule – the central nomination of provincial premiers and mayors or the deployment of cadres from the centre all over the provinces – would have been simply anathema under a federal system, where patronage has to be local and local elections have to matter. It is also extremely doubtful if the ANC could have got away with denying ARVs to the HIV positive citizens under a federal system: provinces would have competed with one another to make them available to locals. No NPA could have been set up since provinces would have jealously guarded the powers of their own attorney-generals. As in the United States, there would be no national police force other than a small specialist FBI.

...neither the constitution nor the constitutional court have been any use in holding the ANC to its original stance.

The room for constitutional back-sliding would also diminish. De Klerk and others have loudly insisted that they would never have assented to the new dispensation had they known that it would be used to enforce demographic representivity/affirmative action across the board, but neither the constitution nor the constitutional court have been any use in holding the ANC to its original stance, and complaints by Coloureds and Indians that they are being discriminated against in favour of Africans, cut no ice. In a federal state the Western Cape (and perhaps KwaZulu-Natal as well) would have long since signalled that they could not accede to anything which discriminated against Coloureds or Indians. In the last analysis, the Western Cape could say: "You are moving the goal posts. Three quarters of our population is white or Coloured and if you introduce measures which discriminate against them both we will inevitably secede." Except, of course, the law of anticipated reactions means that one would not need to go so far. It would be overwhelmingly cheaper and more convenient if Canada could just use English, but since it is known in advance that this would provoke Quebec's secession, the suggestion is never made. Over time this morphs into the more general proposition that one should not even propose measures which are bound to alienate important minorities, a key cultural condition of a multiracial or multicultural state – still lacking in South Africa.

In a sense South Africans celebrate 1910 every day for, irrespective of party, they are glad to live in a united country. But we missed a vital step in 1910 and this was not remedied in 1961 or 1996. We have a nice constitution but it's useless, and the Constitutional Court more so. To create the sort of pluralist democracy we want – and which the country needs – we need to be a proper federal state. No matter: it's early days yet and we are still a young country. We'll get there in the end.

NOTES

- 1 R.W. Johnson, *South Africa's Brave New World. The Beloved Country Since the End of Apartheid* (Allen Lane/Penguin, 2009) pp573-582.
- 2 The most striking example is perhaps the obliteration of Edwin Swales VC Drive in Durban.
- 3 See R. Hyam and P. Henshaw... *The Lion and the Springbok. Britain and South Africa Since the Boer War* (Cambridge 2003) esp. pp57-75.
- 4 See E. Walker.. *A History of Southern Africa* (Longmans, 1962), pp530-8 and W. Hancock, *Smuts: The Sanguine Years, 1870-1919* (Cambridge, 1962), pp246-68.
- 5 Hancock, *op.cit.*, p253.
- 6 Hancock, *op.cit.*, p251.
- 7 The KwaZulu-Natal Indaba movement of the 1980s envisioned the fusing of the KwaZulu bantustan with Natal to form a single unit under multi-racial control. The movement, led by Prince Buthelezi, was enthusiastically supported by a majority of local whites and Indians but was stymied by the refusal of the National Party either to participate in the Indaba's negotiations or to allow its plans to happen.

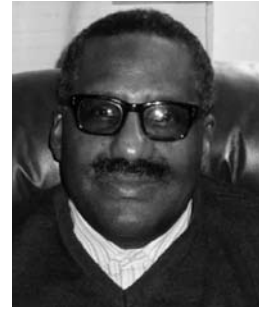
The Past Meets the Present: Picking the Eyes Out of The Country

No society can surely be flourishing and happy, of which the far greater part of the members are poor and miserable.

Adam Smith¹

Many observers have claimed that the “master narrative” of South African history “is the violence of conquest, the violence of the frontier wars, the violence of apartheid and of the struggle against apartheid, the criminal violence of gangs and the ritualised violence of the faction fights”². But the current patterns of violence in South Africa need to be understood against the background of local struggles against private and government attempts to contain and manage the aspirations and expectations of the African majority.³ Today the lack of redress in these areas accounts for much of the black indifference to the outcomes of a new, more democratic post 1994 political dispensation. Getting to the root of political violence in South Africa thus requires a healthy dose of skepticism about the apparent certainties of the master narrative. As James Scott suggests, economic and political conjuncture often creates desires and aspirations among otherwise marginal protagonists that the state cannot easily cater for, or even anticipate.⁴

Power and violence have played an integral role in shaping the lives and expectations of South Africa’s population for more than three centuries. Now, however, its population is struggling to make popular elections and the drafting of new laws and constitutions the only legitimate means of political contest. But as the recent murder of Afrikaner Weerstandbeweging leader, Eugene Terre’Blanche, the 2003 actions and trials of Boeremag assassins and saboteurs and the sharp spike in *plaasmoorde* or murders of white farmers in North-West Province between 1997 and 2003 suggest, violent forms of contest can, on occasion, assume renewed vigour and thus reprise earlier periods of state terror and mass civil disobedience.⁵ In fact, many people remain confused about whether South Africa’s respective eras of segregation and apartheid were coincidental misfortunes or deliberate instances of social engineering. This confusion turns largely on a general misunderstanding of how official and unofficial forms of collective violence weighed in to shore up the previous social order.⁶



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...it [the law] is just like a river in full flood...you've got nothing in your hand with which to stem them.⁷

Kas Maine circa 1984

Few, if any, of the black witnesses from Rustenburg and Marico for the South African Truth and Reconciliation Commission (TRC) suffered from this kind of confusion. In mid 1997, L.S., or Lizo Makganye, testified at one of the TRC's public hearings in the town of Zeerust on 6 May 1997. He came as an unassuming peasant farmer who took the purpose of the proceedings at face value. He had come from his nearby village to talk about how he and his fellow Bahurutshe had resisted incorporation into the apartheid regime's fictional nation-state, Bophuthatswana, even though the Commissioners wanted him to talk about how his son and other young people from his village had been arrested and tortured in 1993. At one point, the conversation between the elder Makganye and the Commissioners took a turn that was reminiscent of William Faulkner's claim that "the past is never really the past":

CHAIRPERSON: You said earlier on...that there was a struggle of the people of Braaklagte against incorporation but that was around 1989...but this happened in 1993. What was happening in 1993 that made the police come back in such large numbers, back into the community and take such action against the people?

MAKGANYE: *They did so because we did not want to be incorporated in Boputhatswana.*

CHAIRPERSON: But incorporation had taken place already. We're talking about 1993, we're not talking about 1989. Incorporation had taken place already.

MAKGANYE: *Do you say we were incorporated in Boputhatswana?*

CHAIRPERSON: Yes.

MAKGANYE: *Do you say we were incorporated in Boputhatswana in 1993? We didn't agree. When they, immediately they said we were incorporated, we did not agree. We continued with our struggle, because we knew that there was nothing called Boputhatswana; it's part of South Africa.*

When Makganye had completed this portion of his testimony, the Commissioner mildly admonished him by saying: "We just wanted to hear about what you have written in your statement, but now you are telling us about the land"⁸. Of course, Makganye was at pains to see how one could separate the two so

neatly, for why else and at whose behest had the soldiers come? Unlike the TRC's commissioners, Mr Makganye understood that South Africa would never be secure as long as it ignored the aspirations of a significant portion of its people, or worse, identified them as potential enemies of the state.

Equally contradictory public conversations had taken place at the outset of South Africa's protracted transformation into a high modernist interventionist state.⁹ On the afternoon of 20 April 1914, less than hundred miles from where L.S. Makganye had testified in 1997 and less than a year after the infamous Natives Land Act had been promulgated by the Union Government, a prominent Afrikaner farmer from the Hex River Ward of Rustenburg, C.J. du Plessis, declared to a district court:

The natives in the Hex River Ward I think should be treated just the same as other natives, but they have got ground, in that Ward, and it is very difficult for me to state what should be done with them ... In the long run they will have to be shifted. They must realise that they cannot go on as they are at present. If Hex River were left as it is, where a white man or Kaffir could buy where he liked, it would result in war.¹⁰

War did come but not as du Plessis imagined. In mid October 1914, over twelve thousand men like du Plessis and their families participated in or gave passive support to a rural rebellion against South Africa's entry into the First World War on the British side and the realisation that the 1913 Natives' Land Act would not give white farmers complete control over the lives and expectations of their African tenants and labourers. A pogrom against the persons and property of many Africans and nonwhites in the Hex River, Zwartuggens, and Dinokana wards of Rustenburg and Marico ensued.¹¹ Government forces and rebels alike participated in the spoils and carnage.

Despite looting by both the rebels and government forces, the machinery of African expropriation continued to move much too slowly for most white farmers.¹² After 1924, Prime Minister J.B.M. Hertzog sought to calm the fears of these farmers by increasing the number of days that an African labour tenant was obliged to work on his landlord's farm from 90 to 180.

He also appointed one of the principal leaders of the 1914 Rebellion, General J.C.G. Kemp, as Minister of Agriculture and Minister of Justice. But the pace of African land dispossession outside the designated reserves did not accelerate. Nor was there any appreciable decline in the number of Africans having direct access to productive land.¹³

White farmers felt particularly aggrieved about African landowners in their midst.¹⁴ As long as white farmers, African share and labour tenants, and smallholders made use of the same technology—namely the wagon, draft animals and the plow—force and coercion remained the most palpable means of subordinating the rural black population.¹⁵ However marginal some African holdings might have been, neighbouring white farmers claimed that African landowners and share tenants had “picked the eyes out of the country”, right up to President J.B. Vorster’s christening of the fraudulent “Bantustans” in December 1977.¹⁶

The Past Meets the Present

Between the Great Slump of the latter part of the nineteenth century and the Great Depression of the 1930s, because of the lag between the production of gold and commodities, access to hard cash became a chronic source of potential impoverishment for farmers, workers and indeed, for poorer countries.¹⁷ Once the commercial exploitation of the Witwatersrand’s gold reef commenced, especially acute periods of economic downturn in the South African countryside and the devastation of war, periodically turned thousands of small and middling white farmers into paupers. Between the 1922 recession and the 1926 collapse of global agricultural prices, more than a third of the white population of the Western Transvaal experienced such a fate.¹⁸

Up to the 1930s, after the worst effects of the previous depressions had subsided, industrial entrepreneurs viewed these developments more confidently. They imagined them to be a means of disciplining wages and “correcting” the relationship between the real economy and its financial structure.¹⁹ But South Africa’s white farmers did not share the confidence of the investment groups that controlled the country’s mineral wealth and the new industrial entrepreneurs that import substitution and the dramatic economic conjuncture of the First World War had spawned.²⁰ Many white farmers believed they saw real enemies in the midst of their economic difficulties – Jewish cattle auctioneers and general dealers, Indian store owners and traders and accumulating African

smallholders and labour tenants. In their estimate, after Louis Botha’s death in August 1919, Jan Smuts’ government had directly handed the country over to the former two and, by 1920, was rapidly making provisions to accommodate Africans in what they perceived as a triumvirate of misrule.²¹ The increasing numbers of impoverished rural Afrikaners throughout the 1920s “irrevocably politicised the ‘poor white question’”, while constraining the state’s ability to depict white poverty as a consequence of moral or personal failings.²²

Middling and poor Afrikaner farmers continued to press for a solution that would result in a *boerestand* or economic safety net. They saw themselves as white republicans with a small “r”. Their ideal republic would have been composed of independent, self-employed communities of white people who worked with their hands. A white farmer from Lichtenburg, G. A. van der Walt, expressed their sentiments shortly after the election of 1920: “The government unwisely allowed the banks to issue more paper money than there was gold to back it, and the banks pushed this paper money into the country with all their power... Speculators—the gentlemen—ruined Afrikaner farmers, while Smuts did nothing”²³. Another put it more bluntly: “Our products are their property before we even sow... and you and I are their servants, who must be sure that it goes in the bag for them.” Falling prices compelled all farmers to maximise production while holding down costs. These situations were made doubly tragic by the frequent flight of adolescent children from the households of white farmers and African labour tenants alike, because of the fury of their fathers over highly leveraged crop yields, indebtedness and fluctuating agricultural prices.²⁴

There was fear, victimisation, entitlement of students, a new type of selfhood, anger at the malaise,...

Meanwhile, just as some white farmers believed themselves to be acquiring the upper hand by expropriating the cattle and movable property of their African labour tenants, under the nebulous stipulations of the Land Act, banks and general dealers ceased to think of cattle as collateral and a means of settling debts.²⁵ By 1924, once auctioneers acquired a surfeit of cattle, distinctions between breeding cattle and workaday draft oxen became virtually meaningless. Yet the relative worthlessness of cattle did not

prevent creditors from seizing them as surety against outstanding debt. Many local officials thought the spreading financial ruin in the countryside presaged a breakdown of law and order, while many resident white farmers genuinely believed that they were the victims of a cabal of *die meneere* of local Nationalist propaganda (the ubiquitous Jewish cattle auctioneers and general dealers, Indian storeowners and African *bysaaiers* or labour tenants of wealthier farmers). The slogan of *Red Ons Self* or “Save Ourselves” became a cry of defiance against Smuts, the “Kaffir King”, and his alleged paymasters in the mining industry.²⁶ Tielman Roos, the chief firebrand of the Nationalist opposition in the Transvaal, who also dabbled in attempting to bring Afrikaner workers into the Nationalist fold, put it this way on the eve of the white miners’ general strike and rebellion of January-March 1922: “Simply ensure that the Boer on the *platteland* makes friends with the Boer in the towns, and everything will come right”²⁷.

The desire for an economic cushion against hard times often expressed itself violently, and the rhetoric of *oorstroming* (swamping) or *swart gevaar* (black peril) could be mobilised. Various iterations of the Afrikaner Nationalist Party attempted to harness this potential for moral panics and mass hysteria for their own purposes.²⁸ Not only did the fear of being overwhelmed by the African majority animate the public discussion around strengthening the confiscatory features of the Land Act, but it also sought to insure and deepen the disparity between black and white wages and working conditions in South Africa’s cities and towns, even as Hertzog’s Nationalist-Labour Pact administration attempted to cap the number of impoverished rural whites migrating to the cities and towns. The labour legislation of Hertzog’s Pact Government – the Wage Act, the Industrial Conciliation Act, and the Civilised Labour Act – strongly underscored these aspirations.²⁹

The Recent Past

...South Africa, as far as we aboriginals are concerned, is a country perpetually in the throes of martial law, from which there is no escape.

D D T Jabavu circa 1934³⁰

Today South Africa is a moderately industrialised country of 48 million people. It is also a member of the G20 group of industrial nations.³¹ Its great paradox is that perhaps only about 12 to 15 million of its 48 million people live as if it is an industrial country.

Seven million of the 12 to 15 million have only begun to experience a middle class standard of living in the last generation — shortly before the country’s first truly democratic election in April 1994. The social costs of achieving this status have placed a crushing burden on South Africa’s remaining 30 odd million people.

After the Sharpeville Massacre, the South African state was crafted around four major policy objectives: tighter racial exclusion (at least until 1985); anti-black urbanisation (with the recommendations of the 1952 Tomlinson Commissions and the 1923 and 1925 Native Urban Areas Acts as points of departure); “Bantu education”; and finally “separate development”, which combined with the periodic expulsions of hundreds of thousands of people from the cities and towns, just as hundreds of thousands more were finding their way to the cities in defiance of the pass laws. The latter two policies — “Bantu education” and “separate development” — were therefore highly abstract given South Africa’s expanded industrial production. Moreover, they were virtually impossible to enforce in any coherent fashion. However, many of apartheid’s architects, who had hoped for a German and Axis victory during the Second World War, represented some of the last remnants of the kind of authoritarianism that threatened the entire globe after the Great Depression.³²

Apartheid’s legacy gave a particularly perverse twist to the failure to invest sufficient resources in human capital and public education. For example, between 1994 and 1999, during apartheid’s protracted demise under the first and second African National Congress (ANC) governments, South Africa paid off a large portion of its debt. Ironically the governments of PW Botha and FW De Klerk had amassed the largest portion of this debt, after a state of emergency was declared in 1985, and after South Africa had initiated a massive war of destabilisation against Mozambique, Angola, Zimbabwe and Zambia under the rubric of “total strategy”.³³ In fact, the latter war began shortly after the 16 June 1976 Soweto or Children’s Uprising. Hundreds of thousands of people lost their lives throughout the region and over 124 of South Africa’s 129 cities and towns were administered directly by the South African Defence Force (SADF) from the end of 1985 to 1990.³⁴

Meanwhile, in 1993, unemployment was 30 to 40 percent for blacks (42 percent for rural blacks, 35 percent for urban blacks, 44 percent for black males

and 34 percent for black females). By 2005, however, the weighted average for black unemployment had grown to 41 percent. These tragic circumstances have led to a “generational crisis” of daunting dimensions.³⁵

Participants in the “youth revolt” of 16 June 1976 are now middle-aged. This has a number of implications. For example, Orlando East High School in Soweto – “The Rock” as it used be called by many of its students – having been closed for several years for lack of students, has recently reopened with less than 200 scholars enrolled. Yet this was the secondary school that produced the largest number of black doctors and engineers under apartheid.³⁶ Were there comparable schools elsewhere in South Africa? If so, what do enrollments look like now? Would it be worth locating students who attended such schools to see if their views of what happened have changed substantially?

Any discussion of the South African “generational crisis” should also take account of the dramatic increase in HIV/AIDS cases between 1990 and 1994. This increase may have been due to the undercounting of the black population by the previous apartheid governments. The opportunistic nature of the disease would also lend itself to the increase.³⁷ The gutting of South Africa’s textile industry and metals trades and the subsequent loss of nearly 200,000 jobs between 1999 and 2003, and the periodic spot labour shortages in various kinds of mining operations have accentuated the implications of the AIDS crisis and added to the globalising conundrum” and “disabling social actions”.³⁸ But one has to go back to the beginning of the twentieth century to grasp how these apparently South African dilemmas have been aggravated and underscored by the global shift in power and wealth that threatens to short-circuit industrial production in the North Atlantic countries and in South Africa.

From the end of the nineteenth century to the American stock market crash of October 1987, gold and oil were the two great cornerstones of the modern capitalist economy.³⁹ Presently, information distributed electronically and broken down into units smaller than milliseconds has become the third cornerstone of the global economic system – one which combines the mystical and productive capacity of the previous two into one entity by way of micro processing.⁴⁰ The advent of this third cornerstone underscored the shift

of the centre of the financial structure of the global economy from the North Atlantic countries, including the United States, to the countries of the North Pacific Asian rim, particularly China, after the October 1987 stock market crash.

The destruction of the old industrial pattern of work centered on the notion of the job and its replacement by techniques associated with micro processing and genetic engineering has produced a formidable means of challenging continued Western dominance of the global economy.⁴¹ For example, China, with approximately 240 million engineers out of its billion and a quarter people – very nearly more engineers than there are people in the United States – as taken up this challenge in dramatic fashion. How does South Africa fit into this scheme of events, processes and outcomes?

What does this “historic debt” amount to? Essentially it is the result of the unrequited effort of multiple generations of underpaid and underemployed workers going back to the outset of South Africa’s industrial transformation in 1868.⁴³

Against the background of the “generational crisis” and the popular demand for an enlarged and speedier delivery of public services, South Africa’s big multinational corporations and financial houses have experienced fairly high growth rates since 1994. However, these high growth rates have been generated largely by the profits South African companies have made on foreign investments and on the purchase of foreign industrial companies – South African Brewery’s purchase of the Miller Brewing Company in the United States, for example. To their credit, the last two governments compelled private enterprises to pay their taxes at a higher rate and with more regularity than they did under the Afrikaner Nationalist governments, even though it remains to be seen whether private South African companies will at some point pay the “historic debt” that they owe to the society rather than to any specific group.⁴² What does this “historic debt” amount to? Essentially it is the result of the unrequited effort of multiple generations of underpaid and underemployed workers going back to the outset of South Africa’s industrial transformation in 1868.⁴³

The state cannot presently compel any private South African company to pay such a debt. Their line of argument would certainly be that virtually none of them existed at the inception of South Africa's industrial revolution. Yet any attempt to grow the public sector by increasing the income tax on higher real wages would have to be underwritten initially by greater contributions from private enterprises to public education and the fostering of fast track adult education and apprenticeship programmes in basic industry.⁴⁴ The pain of increasing real wages might be offset by distributing increases in such a way that the initial reduction in profit rates would not disproportionately affect labour intensive industries such as construction more than those industries where the cost of hiring labour with certain skills is constantly being weighed against the purchase of labour saving technology.⁴⁵ Moreover, lifetime earnings would increase with a greater investment in human capital and there would be a net gain in terms of creating an expanded pool of labor that was better educated and endowed with portable skills.⁴⁶ Anything short of the latter approach leaves the prospect of improving and expanding public education and targeting specifically troublesome areas such as the first few years of primary education and secondary education at a decided disadvantage. Hence any major improvements in health, public education, public transportation and mass communications must now be effected by cracking down on corruption within the government bureaucracy rather, than by putting a larger number of people to work at a living wage.⁴⁷

Tom Hertz's study on education, which he conducted with a team of researchers at the behest of the Mandela government's Labour Commission, bears out some of these conclusions. Hertz's study did not concur with the outcomes that the key ministers in the first Mbeki government were fishing for. As a result, the government let the study die a quiet death, even though it was funded with a grant of several million dollars from the MacArthur Foundation. The crux of Hertz's argument is that contributions that most black families can make to a child's education are marginal at best, and that unless some nationally standardised outreach program (preferably housed in the National Research Foundation and subsidised by public and private contributions) is put in place and aimed at the primary and secondary schools, rates of attrition among black students will get worse before they get better in the netherworld beyond the Model C schools.⁴⁸

Corporate managers and public officials therefore must now pay particular and meticulous attention to the present as well as the future. They must have a precise sense of just how many people are going without much needed public services in Tongaat and Mogwase as well as in Cape Town's Claremont and Johannesburg's Houghton or run the risk of being engulfed by problems that even the most farseeing manager could not have imagined, much less foreseen.⁴⁹

How much of South Africa's past is embedded in its present? How has its past impeded or advanced its future? The new South Africa is still in the making. Between 1993 and 1997, South Africa's rural black population went from 44 to 51 percent. This amounted to a net increase of the rural black population of more than seven percent in less than five years. The percentage of economically vulnerable black people living in the rural areas has risen faster than the net increase of rural population— to the point that more than 70 percent of this group can now be found in the rural areas. Meanwhile, South Africa's rural white population has shrunk dramatically since 1970, without a concomitant reduction in the amount of private property owned by whites.⁵⁰ Nevertheless white droplets of rural misery

like Bapsfontein have also increased sharply since 2003.⁵¹

The blasted lives jammed into makeshift rural settlements lining the N1 and N4 highways, from Pelandaba, just below the Hartbeestpoort Dam to Ledig, and now in white informal settlements near towns such as Bapsfontein, bear powerful witness to these tragic circumstances. As long as the present South African government continues to describe such people as “gainfully employed,” even though they are buffeted between fitful bouts of employment on farms, mines, textile sweatshops, an increasing number of game and theme parks, and peddling trinkets in the “informal sector,” it will find its economic policies hobbled by those who continue to dispute the official version of the past and the present.

Increasing the portable skills of young people in city and countryside and focusing on the outcomes of education rather than how much money is spent for them should become top priorities for South Africa

if it wishes to avoid the dystopian portents of a generation ago. As a result, the metrics of any new economic policy must now become the extent to which it assists in creating sustainable livelihoods for the greatest number of real people – from small plot farmers who are being urged to increase productivity by making better use of fallow land, to auto workers in Port Elizabeth and East London. And all this has to be done without triggering dramatic inflationary spirals.⁵² As Trevor Manuel said several years ago, “We remain under pressure on the macro side” – that is to say, South Africa is in a race to fill and expand its vast industrial capacity with indigenous resources.⁵³ If government spending to enhance the infrastructure for the World Cup, for example, results in better run cities over the long run and in eradicating circumstances that compel a significant portion of the urban workforce to wake up at two in the morning to get to work by eight, then the current and past inequities might begin to recede into the deep recesses of the public memory. If not, immediate success will translate into long term failure.

NOTES

- 1 As quoted in Tony Judt's *Ill Fares the Land*, in *New York Review of Books*, April 29, 2009, volume LVII, Number 7, 18
- 2 See Andre Du Toit, *Understanding South African Political Violence: A New Problematic?*, UNRISD (United Nations Institute for Research and Development), Discussion Paper 43, April 1993, 6-10.
- 3 See Aninka Claassen, Umhlabla: Rural Land Struggles in the Transvaal in the 1980s (Johannesburg, South Africa: Transvaal Rural Action Committee, 1989); see also André Du Toit, *Understanding South African Political Violence: A New Problematic?*, UNRISD (United Nations Institute for Research and Development), Discussion Paper 43, April 1993, 6-10.
- 4 See James Scott, *Seeing Like A State* (New Haven, Connecticut: Yale University Press, 1998), 5-8.
- 5 See David Smith, *Tension simmers as Terr'Blanche is laid to rest*, Mail and Guardian, April 10 2010 (<http://www.mg.co.za/article/2010-04-10-tension-simmers-as-terrebl...>); Stephanie Nieuwoudt, *The brandy and coke approach*, Mail and Guardian, April 9 2010 (<http://www.mg.co.za/printformat/single/2010-04-09-the-brandy-and...>); Sebastien Berger, *SouthAfrica: Police Use Barbed Wire to Separate Whites and Blacks*, 06 April 2010 (<http://www.telegraph.co.uk/news/worldnews/africaandindia...>); Report of the Special Committee of Inquiry on Farm Attacks (henceforth: SAPS Report, 2003), *The Nature of Farm Attacks (Chapter 1)*, 1-12.
- 6 For example, in a recent interview, David de Gavea, a 24-year old unemployed Afrikaner said of the apartheid era, “*The main thing that was wrong about apartheid was its name. We should have called it ‘diversity’*”: see Richard Lapper, *A People Set Apart*, Financial Times, April 10/April 11 2010, 6.
- 7 Quoted in Martin Chanock, *The Making of South African Legal Culture* (London: Cambridge University Press, 2001), 42.
- 8 South African Truth and Reconciliation Commission (henceforth TRC), Case JB 0716, L. S. Makganye (www.doj.gov.za/trc/index.html).
- 9 See James C. Scott, *Seeing Like A State* (New Haven: Yale University Press, 1998), 5-8; see also David Yudelman, *The Emergence of Modern South Africa: State, Capital, and the Incorporation of Organized Labour* (Westport, Conn.: Greenwood, 1983).
- 10 See U. G. 23 '18 (1918) Report of the Native Lands Commission, Western Transvaal (Cape Town: Cape Times, Government Printers, 1918), *Testimony of C. J. du Plessis*.
- 11 See South African National Archives/ Rebellion Losses Commission (henceforth SANA/RLC), Pretoria, South Africa, SAB JUS S270 (vol. 51), *Statement of Essop Haji* (16/6/15) and *Statement of Abdul Hamid Ameer* (16/6/15); see also SAB, JUS S270, *Sworn Statements of the Mundel Brothers* (Wolf Hermann and Jessel Sam) of farm Tweerivier no. 823 (Rustenburg, Hex River Ward).
- 12 SANA/RLC, SAB JUS S270, 13th January 1916, Sub-Native Commissioner, Rustenburg (Hemsworth), to Rebellion Losses Commission, Pretoria [J. Mahuma, translator].
- 13 See Marian Lacey, Working for Boroko (Johannesburg: Ravan Press, 1981), 194-246; see also U. G. 23-18 Report of the Natives Lands Committee, Western Transvaal, (Cape Town: Cape Times Ltd., Government Printers, 1918), 7-57 (testimonies of G. J. van Tonder, Louis Stephanus Steyn, D. Theron, Heinrich Wilhelm Jensen, Frederik Hendrik Conrad Tonsing); see also *Evidence of Frederik Christoffel Eloff, Inspector of Lands for Rustenburg, Bierkraal 545*.
- 14 See Ernest Thomas Stubbs Papers A954 (Historical Papers, William Cullen Library, University of Witwatersrand, Johannesburg, South Africa), Box 1, folder 4.
- 15 Tim Keegan, *The Origins of Agrarian Capitalism in South Africa: A Reply*, *Journal of South African Studies*, Vol. 15, No. 4, October 1989, 680-681.
- 16 T. G. 11-1908 Report of the Transvaal Indigency Commission 1906-08 (Pretoria: Government Printing and Stationery Office, 1908), *Testimony of Johannes Hendrik Hattingh*, 321-322; see also Yolandi Groenewald, *State changes its tune*, Mail and Guardian, Tuesday, August 12, 2003 (<http://www.mg.co.za/Content/13.asp?ao=18888>).
- 17 Joseph Schumpeter, *A History of Economic Analysis* (New York: Oxford University Press, 1986), 405 and 1075-1079; Elmar Altvater, *Eléments pour une critique méthodologique des theories bourgeoises de la conjuncture*, *Critiques De L'Économie Politique*, avril-septembre 1973, 57-58.
- 18 At the beginning of November 1928, A. Grant, Secretary for the Public Service Commission, sent Lieutenant Colonel J. G. B. Clayton to Rustenburg and Marico because of the alarming number of bankruptcies among white farmers in the two districts. Clayton concluded bankruptcies were bound to increase because at least a third of the white farmers in these two districts were already “over their heads with debt” because they had paid too much for farms they had purchased: see South African National Archives (henceforth SANA) SAB SDK, vol. 103, file 4/13/13-4/13/15, 10-11 December 1928, *Lands: Inspection Report Rustenburg and Marico*.
- 19 W. Arthur Lewis, *Growth and Fluctuation* (Boston: Aldine Publishers, 1965), 28; Pierre Vilar, *A History of Gold and Money* (London and New York: Verso Books, 1976), 330-336; Shula Marks and Stanley Trapido, *Lord Milner and the South African State*, *History Workshop*, No. 8, Autumn (1979), 56-60.
- 20 See Thomas Lamont Papers (Baker Business Library, Harvard University, Boston, Massachusetts: henceforth TLP), file 23 (2) *Correspondence: Thomas Lamont to Jan Smuts, 29th June 1937*; see also Rusell Ally, *Gold and Empire* (Johannesburg, University of Witwatersrand Press, 1994), 12-28.
- 21 Afrikaner farmers were not alone in displaying occasional outbursts of virulent anti-Semitism. John Gaspar Gubbins, a venture capitalist and “progressive” farmer, wrote regularly to his sister Bertha Tuffnell, claiming that he was being gouged by the general dealers Mosenthal and Sons, and that “Jew middlemen

- and auctioneers" were making excessive profits from the sale of meat: see John Gaspar Gubbins Papers A1134 (Historical Papers, William Cullen Library, University of Witwatersrand, Johannesburg, South Africa). Correspondence: 12.V.1914 to 6.XI.1918, Gubbins to Tuffnell, Otshoop.
- 22 Timothy Paul Clynick, *Afrikaner Political Mobilization in the Western Transvaal: Popular Consciousness and the State* (unpublished Ph.D. dissertation, Queen's University at Kingston, Canada, 1996), 16-24.
 - 23 Timothy Paul Clynick, *Afrikaner Political Mobilization in the Western Transvaal: Popular Consciousness and the State, 1920-1930* (unpublished Ph.D. dissertation, Queen's University at Kingston, Canada, 1996), 92-93.
 - 24 SANA, SAB SDK vol. 103, file 4/13/13-4/13/15, Lands: Inspection Report Rustenburg and Marico; see also Charles van Onselen's magisterial *The Seed is Mine* (New York: Hill and Wang, 1996), especially the chapters entitled *Consolidation and Struggle*.
 - 25 Solomon T. Plaatje, *Native Life in South Africa* (Johannesburg, South Africa: Ravan Press, 1982), 79-81; see also.
 - 26 Timothy Paul Clynick, *Afrikaner Political Mobilization in the Western Transvaal: Popular Consciousness and the State, 1920-1930*, 100-101 and 108-109; see also.
 - 27 Roos's speech was entitled *Boerestand en Arbeiderstand*: see Timothy Paul Clynick, *Afrikaner Political Mobilization in the Western Transvaal: Popular Consciousness and the State, 1920-1930* (), 104-105.
 - 28 See Helen Bradford, *Mass Movements and the Petty Bourgeoisie: The Social Origins of ICU Leadership, 1924-1929*, *Journal of African History*, Volume 25, no.3 (Oct., 1988); see also Helen Bradford, *Lynch Law and Labourers in Umvoti, 1927-1928*, *Journal of Southern African Studies*, Vol. 11, no. 1 (Oct., 1984), 128-149; Martin J. Murray, *The Natives Are Always Stealing: White Vigilantes and the 'Reign of Terror' in the Orange Free State, 1918-1924*, *Journal of African History*, Vol. 30, no. 1 (1989), 107-123.
 - 29 See Marian Lacey, *Working for Boroko* (Johannesburg, South Africa: Ravan Press, 1982).
 - 30 Quoted in Martin Chanock, *The Making of South African Legal Culture* (London: Cambridge University Press, 2001), 42.
 - 31 Anon, *Africa's great black hope: A survey of South Africa*, *The Economist*, February 24th 2001, 2-16.
 - 32 See Michael Mann, *Fascism* (London and New York: Cambridge University Press, 2008); see also Patrick Furlong, *The Crown and The Swastika* (Manchester, New Hampshire: Wesleyan University Press, 1992).
 - 33 See Lionel Barber and Alec Russell, *Transcript of Interview with Trevor Manuel*, *Financial Times*, April 10 2007 (<http://www.ft.com/cms/s/0/b87e6d40-e765-11db-8098-000b5df>), 1; see also Robert Davies and Dan O'Meara, *Total Strategy in South Africa: An analysis of South African Regional Policy since 1978*, *Journal of Southern African Studies*, 11,2, (April 1985), 183-211; Brian Wood, *Preventing the Vacuum: Determinants of Namibian Settlement*, *Journal of Southern African Studies*, 17, 4 (December 1991), 742-746.
 - 34 General Magnus Malan put it succinctly—and bluntly, "The territory of the Republic of South Africa became an operational area for the South African Defense Force.": see *Statement of General Magnus Malan to the South African Truth and Reconciliation Commission*, 7th April 1997, www.doj.gov.za/trc/pr/1997/p970430a.htm.
 - 35 I do not have a detailed rural/urban breakdown for 2005, but certainly those figures are available in any number of government or Human Sciences Research Council (HSRC) reports. I suspect that subsequent parliamentary discussions around Labour Relations Act 66 of 1995 and various ABET programs that arose in its wake might contain such numbers: see John Higginson, *Making Short Work of Traditions: State Terror and Collective Violence in South Africa*, *Journal of the Historical Society*, III:3-4, Summer/Fall 2003, 319-320.
 - 36 Personal communication with Michael Ndi Mcethe and Ishmael Moroka. According to the Gauteng Department of Education, 27 schools are not operating in Soweto. 25 are primary schools and two are secondary. Ed.
 - 37 E Heston, Barbara Anderson and N. Phindiwe Tsebe, *Sex Ratios in South African Census Data, 1970-1996*, PSC Research Report, no. 01-476, March 2001, 4-7; see also Amadou Noubissi and Tukufo Zuberi, *Household Structure and Aging in South Africa: A Research Note*, African Census Project (ACAP), University of Pennsylvania, 3718 Locust Walk, Philadelphia Pennsylvania, 2-4; Joseph Stiglitz, *Globalization and its Discontents* (New York: Norton, 2005), 9-10 and 245.
 - 38 Ari Sitas, *Voices That Reason: Theoretical Parables* (Pretoria, South Africa: UNISA Press, 2004), 64-68; see also Franco Barchiesi, *Social Citizenship, the Decline of Waged Labour and Changing Worker Strategies*, in Tom Bramble and Franco Barchiesi (eds.), *Rethinking the Labour Movement in the New South Africa* (Aldershot, England and Burlington, Vermont: Ashgate Publishing, 2003), 116-120.
 - 39 See Daniel Yergin, *The Prize: The Epic Quest for Oil, Money and Power* (New York: Free Press, 1990); see also Pierre Vilar, *A History of Gold and Money* (New York and London, 1991), 330-340; A. V. Anikin, *The Yellow Devil: Gold and Capitalism* (Moscow: Progress Publishers, 1978), 74-80.
 - 40 Jeremy Rifkin, *The Biotech Century* (New York: Penguin Putnam, 1999), 175-183.
 - 41 Jeremy Rifkin, *The Biotech Century* (New York: Penguin Putnam, 1999), 180-185; see also Norbert Wiener, *The Human Use of Human Beings* (New York: Da Capo Press, 1988), 45-67; William Bridges, *The End of the Job*, *Fortune*, September 19, 1994, 62-74.
 - 42 Lionel Barber and Alec Russell, *Transcript of Interview with Trevor Manuel*, *Financial Times*, April 10 2007, 1-2 (<http://www.ft.com/cms/s/0/b87e6d40-e765-11db-8098-000b5df>); see also John Iliffe, *The South African economy, 1652-1997*, *Economic History Review*, LII, 1 (1999), 98-99.
 - 43 See David Yudelman, *The Emergence of Modern South Africa* (Connecticut: Greenwood Press, 1984); see also Charles van Onselen, *Studies in the Social and Economic History of the Witwatersrand* volumes one and two (London: Longman, 1982); Rob Turrell, *City of Diamonds: Capital and Labour on the Kimberley Diamond Fields, 1870-1890* (Cambridge and New York: Cambridge University Press, 1987).
 - 44 Lionel Barber and Alec Russell, *Transcript of Interview with Trevor Manuel*, *Financial Times*, April 10 2007, 1 (<http://www.ft.com/cms/s/0/b87e6d40-e765-11db-8098-000b5df>).
 - 45 Samuel Bowles, *Choice of Technology, Sectoral Priorities and Employment: The Challenge of Job Creation in the South African Economy*, unpublished report for the South African Labour Market Commission, December 1, 1995, 2-4; see also Francesco Scacciati's microeconomic study of textile mills in Biella, Italy *The New Economy: Why We Should be Concerned about the Future of Work* (New York, 2001), 1-2 and 12-14.
 - 46 Tom Hertz, *An Educational Poverty Trap: Models and Estimates for South Africa*, unpublished paper for the James G. Catherine T. MacArthur Foundation's Research Network on the Effects of Inequality on Economic Performance, 11/5/00, 15-16.
 - 47 See Tony Hawkins and Alec Russell, *Manuel rejects rethink on SA economy*, *Financial Times*, May 30 2008; Alan Beattie, *Tony Hawkins and Alec Russell, Manuel rejects rethink on the economy*, *Financial Times*, May 31, 2008; Alec Russell and Tony Hawkins, *Transcript: Trevor Manuel interview*, *Financial Times*, May 30 2008 (<http://www.ft.com/cms/s/0/3f3cd9f8-2e72-11dd-ab55-000077b...>).
 - 48 See Bekisizwe Ndimande, *Cows and Goats No Longer Count As Inheritances: The Politics of School "Choice" in Post-Apartheid South Africa*, (unpublished Ph.D. dissertation, University of Wisconsin, 2005), 12-18.
 - 49 James Heintz, *Political unrest, distributive conflict, and investment: the case of South Africa*, PERI workshop on Investment in Africa, October 2000 (also read at South African Trade and Industry Policy Secretariat conference, Forum 2000, September 16-18, Gauteng, South Africa), 3-5 and 12-14.
 - 50 See Pierre Hugo, *Frontier Farmers in South Africa*, *African Affairs*, vol. 87, no. 349 (Oct., 1988), 537-552; Merle Lipton, *South Africa: two agricultures?* and Francis Wilson, *Reflections on farm labour in South Africa* in Francis Wilson, Alide Rooy, Delia Hendrie (eds.) *Farm Labour in South Africa* (Cape Town, South Africa: David Philip, 1977, 72-86 and 195-201; see also Kalie Pauw, *Quantifying the economic divide in South African agriculture: An income-side analysis*, Working Paper 2005:3, PROVIDE (The Provincial Decision-making Enabling Project) PROJECT, Elsenburg, South Africa, September 2005, 3-9, 20 and 27-28 (see particularly Figures 2, 5 and Tables 11 and 12). Approximately 10% of agricultural land has been transferred from White to Black ownership since 1994. Ed.
 - 51 See Richard Lapper, *A People Set Apart*, *Financial Times*, April 10/ April 11 2010, 6.
 - 52 See Zhao Ziyang's *Prisoner of the State* (New York: Simon and Schuster, 2009) for an account of how an analogous set of charges were met in China between 1982 and 2000; see He Chinglian's *China's Listing Social Structure*, *New Left Review* 5, September-October 2000, and *A Volcanic Stability*, *Journal of Democracy*, Volume 14, Number 1, January 2003, for a critique of these policies and what she calls the *marketisation of power*.
 - 53 As late as 2007, South African Coal and Oil (SASOL) was recruiting pipe welders from Thailand to work on its new facilities: see endnote 45.

Recalling 1910: A bridge too far

2010 is not simply the year that South Africa hosts the soccer world cup. It is also 100 years since the founding of the Union of South Africa. It has been 100 years since South Africa emerged as an entity in terms of international law. It is 100 years since the boundaries of the country were fixed. It is 100 years since a single, sovereign state has ruled over a contiguous territory (not forgetting the nominally independent Bantustans of Bophutatswana, Ciskei and the Transkei). It is also 100 years ago that South Africa emerged as an artefact of British Imperial conquest.

Yet nowhere has this centenary been recalled in official functions or capacities. Is this a mere oversight, a function of how preoccupied South Africans are with preparations for the coming soccer spectacle? Or is something more significant at work? Does it tell us something about how modern South Africa situates itself relative to the past?

Over the last several years the pace of memorialisation has increased in South Africa. If the early years of the transition were clearly focused on the future (reconstruction and development), in parts of the government and the ANC there has been a collective turning back. All sorts of renaming projects are underway or have been completed. Pietersburg became Polokwane in 2005. Louis Trichardt is now called Makado and Potgietersrust is now named after a pre-colonial king, Makopane.

What past do these names remember?

Often name-changing in South Africa serves a corrective function: to re-populate the public landscape with the names and figures of a black population largely erased, Pieterneef like, from South African *mise en scene*. This is certainly the intention, for example, behind the renaming of Hans Strijdom Drive. The official Johannesburg press release explained: "At the march on 9 August 1956, where women were protesting against the pass laws, one of the significant slogans was "Malibongwe!" which means 'let it be praised'. This meant "Let women be honoured and praised" and not oppressed by the extension of pass laws to women. The famous song of that time pays tribute to the bravery of the women who said "Strijdom, you have struck a rock, you have dislodged a boulder, your laws will be crushed. The laws enacted by Strijdom have indeed disappeared, and the renaming of Strijdom Drive is a tribute to the role played by women in the struggle for democracy"¹.

It also serves to unsettle or even subvert clichés and/or stereotypes. Consider the ingenious renaming of Hendrik Verwoerd Drive in Randburg. In June 2007 it became Bram Fischer Drive. Fischer was an Afrikaner aristocrat, the son of the last Judge President of the Orange Free State and grandson of a prime minister of the Orange River Colony. He committed himself to the struggle against apartheid; both as a lawyer in the defence of Nelson Mandela during the Rivonia Trial and as a communist leader. He received the Lenin Peace Prize in 1967. What we are asked to recall here



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is nothing less than an alternative history of Afrikanerdom than that associated with the 'architect of apartheid'.

Sometimes, however, the names of towns or streets or places have not so much been changed as transcended. In a manoeuvre made possible by the peculiar geography of apartheid cities and towns, new metropolitan areas or districts include historically white towns and black townships, often retaining their original names. Yet both locations are incorporated into a new municipal authority that is given a resplendent democratic-era title. Consider, for example, Pretoria, the name of the capital of Paul Kruger's Zuid Afrikaanse Republiek. Later it was the administrative capital of apartheid South Africa. Today, Pretoria has the same municipal status as the townships with which it has been incorporated. The whole goes under the name of the Tshwane Metropolitan Council.

What the TRC failed to do, some of South Africa's new name-constellations achieve, subtly and elegantly.

The name Pretoria survives to designate an area within the new metropolitan authority. Here the past is not erased or repressed. Rather it is invoked as an element, a part of a new, united whole, whose meaning and significance is transformed in a genuinely transcendental symbolism. This is an elegant restatement of the Freedom Charter's opening declaration: South Africa belongs to all who live in it,

black and white. In this constellation, equal citizenship is granted, not simply to the physical beings that inhabit the land of South Africa, but even to their pasts and their histories. The spatial juxtaposition of names recalling diverse (and usually violent and antagonistic) histories in a bounded whole (Tshwane) has another surprising effect. Pretoria alongside Soshanguve alongside Mabopane alongside Atteridgeville etc renders their histories simultaneous and equivalent. That is, they become elements of a common history. What the TRC failed to do, some of South Africa's new name-constellations achieve, subtly and elegantly.

This is why current (failed) efforts to erase the name Pretoria altogether are as much about historiography as they are about politics. They are claims on what should be remembered about the past and how. In this sense there has been a distinct shift in the tone and direction of the political discourse. Why would elements of the ANC government wish to forget "Pretoria"?

At least since the Presidency of Thabo Mbeki, there has been growing ambivalence about the character of 1994 and its relationship to the future.

We get a sense of this uneasiness when we re-read an important essay from 1997, asking precisely the question above. "How do we understand April 1994?" Pallo Jordan asked in a paper prepared for the 50th ANC National Conference. Jordan's chief concern was with the 'national question' by which he meant the degree to which "South Africans share a common patriotism and a common vision of the future of their society"². Of chief concern for Jordan was the "material basis of white racism"³. A cornerstone of the ANC's non-racialism, that which distinguished it from say the Africanism of the Pan Africanist Congress (PAC), was that racism was not explained in terms of the peculiar psychology or culture of whites as individuals. It reflected, rather, the way that capitalism had developed in a colonial setting and the institutions created to sustain those productive relations.⁴

What did 1994 represent on these terms? “The ANC,” Jordan writes, “had to make a number of distasteful concessions to the old order in order to secure the beach-head of majority rule in 1994. These were made with the implicit understanding that the main thrust of movement policy would be to consolidate that beach-head and employ it to lay the foundations of a truly democratic society”⁵.

In other words, on Jordan’s terms, national unity was delayed as long as racism continued to be institutionalised – in both apartheid institutions (that arose to support the productive forces) and in the structures of the economy (colonial capitalism). Therein lay both the disappointment of 1994 and also its promise. “Distasteful concessions” were made to the white minority regime, such that institutionalised racism survived. In 1997, however, Pallo Jordan was hopeful that the bridgehead that the democratic breakthrough represented, could be progressively advanced and expanded.

There is a genuine radicalisation happening in the African National Congress, as all sorts of repressed or forbidden thoughts increasingly find expression.

Thirteen years later there is an intemperate atmosphere in the ANC suggesting that such optimism is over. When Julius Malema and the ANC Youth League moot nationalising the mines, it reflects a more generalised frustration with the terms of 1994, even with the constitution and with democracy itself. This is not simply a clash between nationalists and ‘leftists’ in the ANC. There is a genuine radicalisation happening in the African National Congress, as all sorts of repressed or forbidden thoughts increasingly find expression.

I wonder if something of this mood is not at work in the public silence about 1910. When 1994 looks less and less like a bridgehead to the post colony, there is surely no desire to be reminded of the imperial birth of modern South Africa. It invites a cynical retort, *plus ça change plus ça reste la même chose*.⁶

NOTES

- 1 Press Release on the Renaming of Hendrik Verwoerd Drive and Hans Strijdom Drive, 14 July 2007.
- 2 Jordan, 1997
- 3 Jordan, Affirmative Action, Corrective Measures and the Freedom Charter
- 4 Jordan, Towards Solutions
- 5 Jordan, Affirmative Action, Corrective Measures and the Freedom Charter
- 6 The more things change, the more they stay the same.

Beyond patriarchy and militarisation



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"Never, never and never again shall it be that this beautiful land will again experience the oppression of one by another and suffer the indignity of being the skunk of the world. Let freedom reign. The sun shall never set on so glorious a human achievement!"

President Nelson Mandela, Inauguration May 8, 1994

2010 is a year of commemoration in South Africa. In February we celebrated twenty years since former President Nelson Mandela walked out of prison after an incarceration of 27 years. In March we remembered those who were mowed down in Sharpeville and Langa in 1969 by the apartheid police when they were protesting peacefully against the hated pass system. We then celebrated the rural women of Ixopo and elsewhere who resisted the land dispossession brought about by the 1913 Land Act. We also commemorated the struggles of women from the shantytowns of Umkhumbane (Cato Manor), who protested against municipality-owned beer halls. And, we remember that it was in May, 1910 that the South African state emerged.

As we mark South Africa's first centenary as a modern state, and as we contemplate the next hundred years, it is a good time to reflect on our achievements and the most pressing challenges of the next hundred years. With apartheid, colonialism and state-sponsored violence behind us, as well as fifteen years of relative peace in a constitutional democracy, we can truly celebrate.

Much has been achieved in the last twenty years to transform our society and state institutions, parliament and the judiciary, following the release of political prisoners, the unbanning of the ANC, SACP, PAC and other political organisations and the negotiations of a new constitutional order for South Africa.

South Africa is a different place from what it was in 1910 when the black majority was excluded in the Act of Union.

We have a new constitution that protects wide-ranging rights, extending to second-generation rights like health, shelter and security. The Constitution entrenches gender equality and a wide range of other rights including the right not to be discriminated against on the basis of sexual orientation. Democratic institutions have become more representative in their demographic make-up, and we have representation for women and people with disabilities. Our victory in defeating apartheid and agreeing to negotiate a peaceful transition was hailed as a miracle. The miracle however did not just happen, and was a result of struggle. And as we move more deeply into our democracy, the struggle to continue achieving what we want requires as great an effort and unity of purpose as the struggle to remove what we did not want. This new struggle is a struggle which all South Africans can engage in, whatever their political persuasion.

Leadership has become the most critical issue. People are calling for leaders with integrity. They want leaders who understand that they are elected to serve and not enrich themselves, their relatives or their friends. There are fears that we are running out of time, as people begin to lose patience with the slow pace of service delivery, and what they perceive as selfish leadership.

In an article on Leadership published in Agenda (2007), I wrote about the concept of servant leadership, a concept that is thousands of years old. Chanakya¹, the Indian strategic thinker writing in 4 BC said, “the king shall consider what is good, not what pleases him but what pleases his subjects...the king is a paid servant and enjoys resources of the state together with the people”².

After a hundred years of rule by men, I would argue that patriarchal South Africa needs feminist leadership to take the country into the future and out of the many crises we face. The call for feminist leadership is not about replacing bad male leadership with bad female leadership, however. This is not about *femocracy*, as defined to mean “an anti-democratic female power structure, which claims to exist for the advancement of ordinary women, but is unable to do so because it is dominated by a small clique of women whose authority derives from their being married to powerful men, rather than from any actions or ideas of their own”³.

This also relates to the tendency by some women leaders to defend male leaders at the expense of women’s rights and interests. It was Anne Marie Goetz⁴ who argued: “No government or bureaucracy feels it has anything to fear from women. In civil society they rarely represent a tightly mobilised constituency; at the domestic level their interests are often closely bound in with those of men in the family, and in politics and public administration they are under-represented and have rarely acted in distinctively feminist ways”⁵.

This situation is exacerbated by the absence of a strong women’s movement or national gender machinery. “Feminist politics” feminist scholar Chantal Mouffe says “should be understood not as a separate form of politics designed to pursue the interests of women as women, but rather the pursuit of feminist goals and aims within the context of a wider articulation of demands.”⁶

It is for all these reasons that we need to analyse whether or not the greater representation of women in Parliament and other state institutions is really helping to transform the outcomes of our policies. Are we succeeding in the reduction and elimination of violence against women and children? Are we taking women out of poverty or driving them into deeper poverty and deprivation? Do we evaluate the decisions we take from a gender perspective? What impact did women make on decisions such as the arms acquisition that saw billions being spent on submarines, corvettes, helicopters and fighter planes? What are women saying about the alleged corruption in the arms deal?

What are women saying about widespread corruption that has become endemic

Women in 2010

Women are dying prematurely, from pregnancy-related conditions, HIV/AIDS, heart disease, cancer and diabetes, domestic violence and from gender-based violence in their communities. HIV prevalence among pregnant 15-24 year old women is 21,7% and life expectancy for South African men had dropped to 53,5 years and for women it is 57,2 years in 2009¹. In 2008, South Africa’s GDP per capita was five times higher than that of India. However, the average life expectancy in India for the period was much higher (64 years), this despite South Africa’s massive health and social welfare expenditure (R100billion and R89billion respectively).

1 (StatsSA, 2009)

in government and business, and how extensive is women's complicity in the corruption? President Zuma has called for a debate on morality. What input will women make to this debate? The media regularly reports on corruption in government deals and tenders. This is very important and the media is playing a critical role in holding government and society accountable. What are we doing, as individuals and as organisations to root out this corruption? And, what are women doing and saying about the increase in the cost of electricity and other basic services such as transport and food? Where is the women's voice – a distinct woman's voice – in the political debates that are raging in the public sphere among men, such as the growing militarisation of our police services and in the conflicts in political parties?

- Do we really understand the covenant⁷ that President Mandela was urging us to build as a nation to be one, where women, children, the elderly, the poor, people with disabilities, refugees, and people of different sexual orientation, can “*walk tall and without fear in their hearts, assured of their inalienable right to human dignity?*”
- Do we understand that for as long as there are South Africans who go to bed without food and shelter, as long as people die of preventable diseases, as long as foreigners and refugees are hounded out of their homes, as long as lesbian women are killed or raped to “correct” their sexual preference, as long as women are prostituted to put food on the table and women and children fear for their lives in their own homes and communities, we have failed to honour Mandela's vision and that of our Constitution?
- Do we really understand this?

The burden that women bear

The Committee on Morbidity and Mortality of Children under 5 Years of age estimated that 60 000 children under five die every year in South Africa. This translates to 57,6 to 94,7 deaths per 1000 live births for children under five and 42,5 to 59,1 per 1000 live births for infants. According to the Confidential Report on Maternal Deaths in South Africa, “During 2002 – 2004, a total of 3 406 maternal deaths were reported to the National Committee on Confidential Enquiries into Maternal Deaths (NCCEMD) in South Africa. This was much higher than the 2 772 deaths reported in the previous triennium report”.

I would argue that the answer to these questions lies with women. There is a critical and urgent need for a vibrant and autonomous women's movement in South Africa to keep our leaders accountable. There was such an autonomous movement in the past, one that had developed alongside the national liberation movement and had articulated a separate agenda, based on women's specific needs and interests. However the decision to disband women's organisations, affiliated to the United Democratic Front, created a vacuum, and led to the demobilisation of the women's movement at a critical time of transition in the early 90's. In place of the broad-based women's movement, the Women's National Coalition (WNC) headed by the ANC Women's League emerged. In 1994 the WNC drew up the Women's Charter to ensure that the new Constitution secured and recognised women's rights. The Coalition realised that a Charter would not be effective without a network of structures to support its implementation and to hold leaders accountable. This gave rise to a collection of gender focused agencies – the ‘national gender machinery’ which today has been concentrated in the Ministry of Women, Children and Persons with Disabilities.

While it is debatable whether the creation of a Ministry of Women is the best

approach, it is critical that this newly established Ministry provides the kind of impetus and leadership needed if we are to achieve what the Women's Charter set out to do at the dawning of our democracy and that was so demonstrably carried forward by women during our fight for freedom. This is ever more critical as the Women's National Coalition that evolved into the Progressive Women's Movement of South Africa (PWMSA) has been in a state of collapse for many years and the national gender machinery has become ineffective. The decline began within the government itself when the gender focal points became marginalised and the Office on the Status of Women in the Presidency suffered under a male minister whose attention was on 'more important things'. The PWMSA was in its design, a politically non-aligned forum of women's organisations to champion the interests of women. Since its inception however, it has been virtually silent on most issues affecting women and the nation⁸.

The urgency (and the tragedy) is underlined by the fact that millions of South African women in rural and peri-urban areas find themselves without a voice. They are resorting to demeaning ways of putting bread on the table. Many are being prostituted or trafficked. This effectively means that many, many women are still not free in our country, but live in poverty, experience extreme levels of gender based violence and insecurity, and are unable to make their voices heard with respect to major public issues that are being discussed.

Author and gender studies scholar, Shireen Hassim would argue that the current approach is not effective. She cautions:

"A key weakness of the national gender machinery approach...is that such agencies have rarely brought about a reduction in gender inequalities.

"The usual cause is that donor countries have insisted that otherwise conservative and even undemocratic political elites establish these agencies; seldom do they come into being as a result to the efforts of national women's movements"⁹.

Hassim comments on the importance of autonomy and agency in the women's movement. She says, "the extent to which women's movement activists in South Africa were able to harness and develop feminist consciousness was determined by the extent to which nationalist movements and other social movements were willing to allow feminist approaches to thrive. This condition may be described as one of organisational and discursive autonomy"¹⁰. An autonomous women's agenda, for example, would have stood more firmly and effectively behind the Rural Women's Movement and other women's organisations in response to the Parliamentary debates on the Communal Land Rights Act 11 of 2004. The Act deals with the content and vesting of land rights as well as the powers and functions of the structures for the administration of 'communal land'. The Rural Women's Movement *et al* had made a strong appeal to Parliament on the basis that the Bill was not going to help address the unequal

Issues of nutrition

Commenting on the state of malnutrition in South Africa, Jay Naidoo as president of the Global Alliance to Improve Nutrition (GAIN) said that South Africa needed a campaign on the scale of the government's anti-smoking drive to create awareness of the effects of undernourishment on the long-term health of its citizens. He felt that it was critical that in the nine months from the conception to twenty months after birth, that mother and child be given fortified foods. Naidoo points out such work needs political will and government accountability to enforce its own laws. He said it was time government moved beyond expensive and wasteful "healthy lifestyle" campaigns and spend money on clearly definable, comprehensive and sustainable programmes.

power relations between men and women.

A strong women's movement would have held the government to account for the decision to accede to the demands by traditional leaders, to hang on to the patriarchal forms of land ownership in South Africa.

Women, FIFA and the World Cup

As South Africa prepares to host the biggest world sporting event, the FIFA World Cup there are fears of increased trafficking and sexual exploitation of women and children. What are South African women leaders and organisations doing to warn women and children about the danger this poses? Some argue that the figure of forty thousand women to be trafficked for the World Cup is exaggerated and say Germany did not experience an increase in trafficking during their games.

According to the Global Trafficking in People (GTIP) report, this is because Germany put in strong anti-trafficking measures. This cannot be said of South Africa, which does not as yet have the legislation or the resources to combat or prevent trafficking. Even if there was legislation, South Africa does not have the required capacity at this stage to fight trafficking. We do not have the statistics as to how many people are trafficked into South Africa. There is much we can do to raise awareness about the dangers of trafficking and we can insist that the existing laws be used effectively to deal with traffickers. To do this effectively we need a close partnership between state institutions and civil society.

But despite the strong plea by women to the government not to hand over the power over land to traditional leaders at the expense of women's right to land, patriarchal ownership won out in the overriding interest of appeasing the chiefs. A very good example of what Hassim describes as 'discursive autonomy'.¹¹

As our democracy grows, this entrenched system of patriarchy has become disturbingly intertwined with militarism, and the two institutions (patriarchy and militarism) have permeated the fabric of our society. A new language of institutionalised violence has begun to creep back into the psyche of those charged with protecting us. This language comes across in the 'shoot to kill' discourse of the leadership of the South African Police Services, for example.

It is this language that normalises the use of violence for solving conflicts. It reverberates in the use of corrective rape for lesbian women; in the objectification and commercialisation of women's bodies; widespread gender based violence and domestic abuse and the trafficking in women. It permeates our thinking about masculinity and femininity so that men who won't use violence are regarded as weak. Well known gender activist and scholar, Amina Mama, calls for a thorough understanding of the link between patriarchy and militarism. She says:

"Bringing a feminist lens to bear on the meaning of militarisation, conflict, peace and reconstruction, takes our analysis beyond the 'toys for the boys'

consideration of arms, arms expenditure, and the mobilisation and demobilisation of national armies. It enables us to tackle the broader historical socio-cultural conditions that underpin the normalisation of institutionalised violence in our lives.

"Feminist analyses define militarism in terms that include values, norms and ideas, institutional cultures, and values that emanate from the military and military institutions to permeate society and come into play in all aspects of culture and identity.¹²

Mama's assertion calls for a critical analysis of the tendencies that are creeping into our language and culture. It calls for a critical examination of the value system that underpins our democratic order.

As we look into the future, we need to consider what we are going to do to align our society and the state with our Constitution so that it is truly non-sexist. We must transform power and bring feminist leadership to the fore so that we can unleash the potential and the imagination of women – the other half of South Africa's population that has been suppressed for so long.

Transforming our society includes undertaking dialogue on the issue of race. South African President Jacob Zuma called for calm on Sunday, 4 April, 2010 after the murder of white far-right leader Eugene Terre'Blanche fanned fears of growing racial tension. Members of the AWB had threatened to avenge the killing of their leader by two accused black men who had confessed to the murder. It is still to be revealed what sort of relationship existed between the AWB leader and his black workers that murdered him. It is this behaviour, spawned by a deep seated anger and fueled by alcohol, that South African women deal with daily, in their homes.

We need an urgent and honest dialogue among South Africans on the issue of race. Similarly, we must face the issue of men's sexuality that is having a negative impact on our society. This would include the issue of increasing abuse of alcohol and consumption of pornography that fuels the demand for prostitution. Such a dialogue will help us understand what is going on in our country, why black men are angry and why they take out their anger on black women. The reality of South African society is that despite all the gains and achievements of the democratic order, we are still racially divided, and women are the poorer for it.

The truth is that the legacy of apartheid remains alive in the racial and class profile of the majority of South Africans. It is alive for those who live in deepest poverty, who have no house, who are unemployed or are unemployable, who are illiterate or unskilled, and who are forced into prostitution or are trafficked. It is alive for those who are made vulnerable to infectious and preventable diseases like HIV and Tuberculosis. Thus the dialogue we urgently need goes beyond the issue of race, beyond broad transformational issues to issues of human dignity and justice – still but a dream for millions of South Africans. This dialogue is non-negotiable as we approach the twentieth anniversary of our democracy and as we begin our next centenary of statehood.

It does not help to provide commentary at the dinner table and not do something about it.

In commemorating the one hundred years of statehood in South Africa, we need to remember that some paid dearly for the freedom that took 84 years to be realised. It has been a hard-won and precious freedom and it is our duty to defend it and to ensure that all reap its benefits. It does not help therefore to look from the sidelines and comment on how our country is going the same way as other African post-liberation democracies. It does not help to provide commentary at the dinner table and not do something about it. As we begin our next century, we have to understand that it is we – all of us who live in South Africa – who are going to make the difference.

NOTES

- 1 Chanakya 4 BC: The Servant as Leader, in Greenleaf (eds), *The Servant Leader Within – A Transformative Path*, eBook, available at <http://www.google.co.za>
- 2 Agenda, 2007.
- 3 Amina Mama 2006: In *Africa Insight*, Vol 36, Africa Institute of South Africa.
- 4 Author and gender activist.
- 5 Anne Marie Goetz: *The Politics of Integrating Gender to State Development Processes in Hassim 2006: Women's Organisations and Democracy in South Africa: Contesting Authority*. UKZN press.
- 6 Chantal Mouffe, 1992: *Feminism, Citizenship and Radical Democratic Politics*, in J Butler and J.W. Scott (eds), *Feminists Theorise the Political*, New York, Routledge.
- 7 *We enter into a covenant that we shall build a society in which all South Africans, both black and white, will be able to walk tall, without fear in their hearts, assured of their inalienable right to human dignity – a rainbow nation at peace with itself and the world*. Nelson Mandela, 1994.
- 8 In the aftermath of the drafting of the Constitution, instead of strengthening a broad-based women's movement, we allowed it to collapse. The subsequent decision to create the Progressive Women's Movement of South Africa (PWMSA) was made without much consultation so its agenda was therefore not widely canvassed. Its first call was for a female President for South Africa. Since then, the PWMSA seems to have abandoned this campaign and is virtually silent on many issues affecting women and the nation. The women's voice is silent in the public political debates, such as the call for nationalisation of mines by the ANC Youth League, the recent government loan from the World Bank for the construction of a power station by ESKOM or the expectedly huge numbers of women that will be trafficked during the 2010 FIFA World Cup.
- 9 Hassim 2006: p214.
- 10 Hassim 2006: p9.
- 11 At the time of going to print, the Communal Land Rights Act was declared invalid and unconstitutional in its entirety by the Constitutional Court. (Tongoane and Others v National Minister of Agriculture and Land Affairs and Others (CCT100/09 [2010] ZACC 10 (11 May 2010)). Ed
- 12 Mama 2008: p4.

Reflections on a 100 years of struggle between the polity and the market in South Africa¹



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At the inception of the Union in 1910, the South African economy, with a population of around 6 million, was based largely on agriculture and on its rapidly expanding and increasingly dominant gold-mining industry. By the standards of the time, it was hardly a modern economy. The building of railways from the Cape and Natal (and from Delagoa Bay in Mozambique) to the Witwatersrand in the 1890s had begun to open up the interior, but it was not until after the Anglo-Boer War of 1899-1902 – several decades after the initial mineral discoveries – that the lore, values and behaviours appropriate to a market-based exchange economy began to become commonplace.² Moreover, except at the most basic level, the manufacture of consumer goods was still almost non-existent – virtually all consumer requirements, along with machinery and equipment for the mines and the railways, had to be imported.³

By conventional standards, the Union's first 60 years were economically relatively prosperous. Despite the privations occasioned by two World Wars and by the Great Depression of the early 1930s, real GDP – the measure of the total value of all goods and services produced after allowing for inflation – grew at an annual average of around 5%. After allowing also for population growth, this represented a virtual doubling of real average ("per capita") income over the same period.

However, given the exceptional endowment of mineral wealth and the very low starting point, this was hardly a spectacular record.⁴ Moreover, the ensuing 30 years, up to the turn of the millennium, brought almost unremitting decline. While the population continued to expand – augmented, especially in the 1990s, by significant immigration from elsewhere in Africa – output stagnated. Real GDP per head fell 16.6% between 1981 and 1993;⁵ it did not really begin to recover until 2000, and it was not until 2006 that it regained its 1981 level. For the four years from 2004 to 2007, annual growth again averaged over 5%, but this rate of expansion has not proved sustainable, and official expectations that it should rise to 6% between now and 2014 have no prospect of realisation. Despite the recent acceleration in growth, South Africa's per capita national income is still below \$6,000, compared with \$40,000 – \$60,000 per head among most of the world's industrialised countries.⁶

If South Africa's 100-year growth performance has been poor, its 'development' record has been infinitely worse. Even during periods of growth, the benefits were highly unequally distributed. Indeed, in the fast-growing decade of the 1960s, when total output expanded by some 68%, a probable 40% of the African population – mostly trapped in the 'reserves' – derived virtually no material benefit from the growth surge.⁷ A combination of real growth with widening inequality was far from unique to South Africa, but with poverty and deprivation exacerbated by the institutions and policies of apartheid, the country was located around the extreme end of the spectrum.⁸ Nonetheless, South Africa's standing in terms of the UN's Human Development Index (HDI) actually improved considerably between 1975 and 1995, at which point it ranked 67th in the world.⁹ Regrettably, the 16 years of post-apartheid governance have seen significant retrogression, with South Africa's ranking plummeting to 129th in 2008.

South Africa's state of serious economic underdevelopment in 1994 was primarily the consequence of the system of apartheid, and the earlier self-serving policies of the white minority. In addition to the cruelties, inhumanities and indignities occasioned by institutional apartheid, the politically motivated distortions of, and limitations upon, the ownership and utilisation of productive resources, especially the country's human capital, were hugely wasteful of economic potential. However, this did not mean that the ending of apartheid would, or even could, be sufficient in itself to bring general prosperity. (The absence of apartheid in other structurally similar countries – for example, Argentina and Brazil – did not bring their populations widespread economic prosperity.)

For all the distortions of market forces during apartheid, South Africa remained a market-driven economy. The determinants of economic growth in market-based economies are always complex, and those of widely-shared growth ('development') even more so, especially in resource-rich economies. A low-income developing country, with a small domestic market (such as South Africa was a century ago and, in relative terms, still remains today) has no choice but to rely on exports for its path towards growth and development. It is not necessary to be rich in natural resources in order to be successful, as the so-called 'tiger' economies of South-East Asia (Taiwan, South Korea and, especially, the small island economies of Hong Kong and Singapore) have demonstrated so dramatically in the past half-century.¹⁰ Conversely, having a rich commodity-producing resource base is no guarantee of success, as is equally dramatically illustrated by the severe lack of development in numerous oil-rich economies of the Middle East and West Africa and, indeed, by South Africa itself. The path to growth and development through commodity exports is complicated because the domestic economy becomes hostage to external ('exogenous') conditions in global commodity markets, and the consequent 'commodity dependence' often seriously distorts domestic economic structures and policies. In this sense, a rich resource base can become a 'curse' rather than a 'blessing'.

It follows that, among the many dimensions to economic growth and development, the terms on which a resource-rich country, such as South Africa, engages with the global economy, are especially relevant to the outcome. Some well-endowed small countries – for example, Norway, Australia and Canada – have successfully built on their resource bases to achieve very high levels of development. Australia is a particularly interesting example, since its history, economic structures and circumstances are not wholly dissimilar to South Africa's, yet it has powered ahead

...having a rich commodity-producing resource base is no guarantee of success...a rich resource base can become a 'curse' rather than a 'blessing'.

over the past century to achieve a 2008 per capita income level in excess of \$40,000 and an HDI ranking of 2nd.

However, South Africa's economic structures, including its terms of engagement with the rest of the world, have also been strongly shaped by internal factors, most particularly by the continuing processes of contestation between the evolving domestic economic and political imperatives – in short, between the demands of the market and the ideological and social-engineering objectives of the polity. For most of the past century, those structures were grotesquely bent and twisted by the irresistibility of the former, and the seeming immovability of the latter. Market forces are, of course, not perfect; at times, they can be seriously imperfect. But the large and growing number of prosperous market-driven economies all over the world is clear testament to the market's underlying strengths. With the ending of apartheid, the opportunity existed for those strengths – in particular, the ability to allocate resources in economically efficient ways – to come to the fore.

Arguably to South Africa's great cost, that opportunity was not fully grasped by the new polity. The rationale for passing it up was that the discrimination endured by the 'historically disadvantaged', especially in respect of their access to assets, justified positive discrimination ('affirmative action' or 'empowerment') in their favour as recompense. This new form of social engineering has been applied particularly to the allocation of human resources, defined in its broadest sense. In so doing, the new polity appears to have overlooked Michael O'Dowd's sage observation that

(t)he first thing necessary for any kind of successful future is...that we, all of us, have to accept reality...To accept reality does not mean to like it, or not to want to change it. On the contrary, it is the first prerequisite for any attempted change to have any hope of success...The idea that it is somehow natural to man to be rich, free and secure is completely without foundation. Wealth and freedom...have to be achieved. They do not come about automatically as a result of getting rid of some obstruction.¹¹

After 16 years, the evidence seems plain: only a small minority of the historically disadvantaged have benefited from the new ideology, and the extent to which the benefit can be attributed to intrinsic productivity, as opposed to political connection, is unclear.

After 16 years, the evidence seems plain: only a small minority of the historically disadvantaged have benefited from the new ideology, and the extent to which the benefit can be attributed to intrinsic productivity, as opposed to political connection, is unclear. As O'Dowd further observed, it is "old proverbial wisdom that those who try to go too fast arrive later than those who go at a slower pace"¹².

This essay therefore has two aims. The first is to reflect on both the structural and policy aspects of South Africa's relationship with the global economy over the past hundred years, and to explain how this relationship has affected, and will continue to affect, the country's prospects for growth and development. The second is to draw attention to the disturbing fact that, despite the terrible damage caused by the long-running battle of attrition between the former polity and the market, the new polity appears determined to carry that battle forward, particularly in areas that impinge directly on key elements of the global relationship. With these aims in mind, Distinguishing Characteristics (Part 2 of the essay) draws attention to two characteristics of this relationship that

have distinguished, and arguably continue to distinguish, South Africa from most other developing countries. Part 3, Constraints on Growth and Development, briefly surveys the constraints on growth and identifies those with particular relevance to the international dimensions of the problem. Parts 4, 5 and 6 (Balance of Payments Constraint; The Job-creation Challenge; The Competitiveness Challenge) examine the key constraints. A luta continua! (Part 7) offers a brief conclusion.

DISTINGUISHING CHARACTERISTICS

The determination and navigation of South Africa's growth and development paths over the past 100 years have been hugely complicated by two distinguishing characteristics. The first is the continuing struggle, already noted, between the polity and the market, particularly in the labour market, where it extended back into the late 19th century and is still evident today. It is the extreme degree, and the deeply ideological nature of this intervention by the polity that arguably sets South Africa apart from most other 'capitalist' societies.¹³

...on the few occasions when the international gold price was raised, South Africa experienced significant windfall gains, which substantially prolonged the life of the industry.

The second distinguishing feature is the high degree of external economic vulnerability, which derives from the highly 'open' character of the economy (in the sense that the ratio of foreign trade to domestic production is high).¹⁴ It manifests itself partly in the fact that the country has been subject to a more-than-fair share of externally induced 'windfall' gains and losses. The problem with windfalls, whether positive or negative, is that they are (generally) wholly unrelated to economic fundamentals; indeed, the effect of a windfall is often to obscure underlying realities, and this has certainly been true for South Africa.

South Africa's vulnerability to external shocks has also been heightened by two unique additional factors:

- For most of the 20th century, the main export was gold. Unlike any other commodity, the price of gold was fixed externally – by political fiat – for unpredictably long periods of time, and was not influenced by market conditions of supply and demand.¹⁵ Moreover, in contrast with most other gold-producing countries, gold mining in South Africa was predominantly deep-level and, hence, very expensive: the need to dig ever-deeper to extract the gold-bearing ores demanded highly capital-intensive techniques, the machinery for which mostly had to be imported. Deep-level mining also required very large numbers of unskilled labourers. Given that the exchange rate was also fixed for extended periods¹⁶, gold mining was exceptionally cost-sensitive, and any rise in production costs could render a significant number of mines dangerously marginal in commercial terms. Moreover, wages were the only significant input costs that could be controlled locally, inevitably making all issues relating to labour especially sensitive, politically as well as economically. At the same time, on the few occasions when the international gold price was raised, South Africa experienced significant windfall gains, which substantially prolonged the life of the industry. From 1976, when the gold price became market-determined, its fluctuations translated instead into volatility in the value of the rand, placing South Africa more on a par with other resource-rich countries, in particular opening the economy up to the potential ravages of 'Dutch disease'.¹⁷

- During the apartheid era, and especially during the 1980s, South Africa was subject to widening international trade and financial sanctions. Whatever the political imperatives behind the sanctions campaign, and whatever its perceived political consequences, it has not always been adequately recognised that sanctions engendered significant – and sometimes unexpected and unintended – economic consequences, both in the short and the longer term.¹⁸ For example:

- The trade embargoes distorted and curtailed exports, with sales to the rest of Africa – South Africa’s main market for manufactured goods – most strongly affected; and they raised the costs of imports, especially of ‘strategic’ commodities such as oil and armaments.
- The financial sanctions led to significant foreign disinvestments from the domestic capital markets and the disposal by many foreign corporations of their South African subsidiaries. These disposals gave a temporary boost

...sanctions engendered significant – and sometimes unexpected and unintended – economic consequences, both in the short and the longer term.

to many domestic corporations, who acquired productive assets at bargain-basement prices, but they increased the degree of concentration (and, hence, reduced the levels of competition and efficiency) in a number of sectors. They also enriched large numbers of lawyers, accountants, investment bankers and other deal-makers, the net social benefits of whose efforts were debatable.

- The defensive institution of a dual exchange rate, in an attempt to isolate the ‘political’ influences impinging on the rand, had the effect of artificially raising the external value of the currency at which normal trade took place, thereby again disadvantaging exports, including manufactured exports.¹⁹
- While the financial sanctions induced the monetary authorities into an increasingly vulnerable reliance on short-term international borrowings, the 1985 decision of global banks not to renew many of these loans was a major contributory factor in generating the subsequent long-running recession, which led in turn to large-scale job losses and a significant reduction in industrial capacity.
- More generally, the escalating sanctions reinforced the long-standing ‘fortress’ mentality towards the international economy just at the time that the necessity for and the benefits of a more outward-looking approach were beginning to percolate through to key policymakers. The adverse structural and policy consequences of several of these effects are still present today.

CONSTRAINTS ON GROWTH AND DEVELOPMENT

There are many different definitions, concepts and theories of economic growth and, even more so, of economic development. However, it would be common cause that both growth and development necessarily involve processes of structural transformation in which the constraints on, and obstacles to, the realisation of economic potential are progressively eroded.

The potential sources of constraint on growth in any economy are manifold. In a 2006 policy document, entitled 'Accelerated and Shared Growth Initiative for South Africa' (AsgiSA), the ANC-led government identified six 'binding constraints' which, in its view, are preventing South Africa from achieving a sustainably higher growth rate.²⁰ These are:

- The relative volatility of the currency
- The cost, efficiency and capacity of the national logistics system
- Shortages of suitably skilled labour, and the still-evident effects of apartheid-era spatial distortions on the costs of low-skilled labour
- Barriers to entry, limits to competition and limited new investment opportunities
- The regulatory environment and the burden on small and medium-sized enterprises (SMEs)
- Deficiencies in state organisation, capacity and leadership.

No dispassionate observer would contest the relevance and validity of these characteristics. Indeed, most of these constraints strikingly have been present in one form or another for much of the past century, and they therefore represent a telling reflection on the country's economic management and governance, whether pre, during, or post the apartheid era.

Where financing proves problematical and the deficit persists, the constraint ultimately becomes binding and the only viable alternative is to cut the deficit

However, the AsgiSA list arguably is at least as noteworthy for its omissions as for its inclusions. In particular, there is no direct reference to:

- the balance-of-payments constraint;
- the capital-intensity – and low labour-absorbing propensity – of fixed investment;
- or
- South Africa's low level of international competitiveness.

These omissions are significant, partly because they are all structural constraints, partly because they all also have long – and unresolved – histories, and partly because they are all closely interrelated. Moreover, they are all directly relevant to the key international dimensions of South Africa's economic development, and therefore warrant closer examination.

BALANCE OF PAYMENTS CONSTRAINT

In principle, every country faces a balance of payments constraint: imports and services of all kinds purchased from abroad have to be paid for in foreign currency and, if earnings from export activities of all kinds are insufficient for this purpose, the deficit has to be financed in some other way, either through borrowing, or through gifts (foreign aid) or through other forms of capital inflows (foreign investment).²¹ Where financing proves problematical and the deficit persists, the constraint ultimately becomes binding and the only viable alternative is to cut the deficit. In practice, reducing the deficit means reducing imports in the short term while hopefully increasing exports in the longer term.

The origins of South Africa's balance-of-payments constraint lie in the nature of the country's early economic development. As noted earlier, the mines and railways required vast investments in imported machinery and other capital equipment. When industrialisation and the modernisation of commercial agriculture got under way, they too relied on imported technologies, often together with other manufactured, semi-processed and raw-material inputs, local production of which was precluded by the small size of the domestic market. This import-dependence applied also to the production of goods for export. The degree of dependence can be measured by the 'import-penetration ratio', namely the ratio of the value of imports to total domestic expenditure; and the structural character of the dependence is reflected in the fact that South Africa's import-penetration ratio invariably rises with the rate of growth, partly because increased growth implies higher levels of capital investment, and partly because higher incomes lead consumers to purchase more imported consumer goods.²²

...since 1920, there have been only 5 years in which the value of goods exported has (marginally) exceeded the value of goods imported.

At the same time, sales of exports depended entirely on external economic conditions. Moreover, since exports were predominantly composed of minerals and commodities, their prices (with the exception of gold) were subject to wide fluctuations. Consequently, any acceleration of domestic investment or output growth was invariably accompanied by a surge in import costs, but without necessarily generating a compensating rise in export earnings.

The balance of payments constraint can be viewed from three different angles: the balance of merchandise trade; the balance of trade, including gold; and the current account. South Africa's underlying balance of trade (the difference between the values of merchandise exports and imports) has been in virtually perpetual deficit: since 1920, there have been only 5 years in which the value of goods exported has (marginally) exceeded the value of goods imported. In most years, exports have fallen far short of imports. Even when commodity prices (other than gold) have

boomed, the deficit has persisted.

When gold exports are included, the picture appears somewhat different – at least on the surface. Prior to World War II, this expanded balance was regularly in significant surplus, with gold more than compensating for the merchandise trade deficit. After the War, however, the manufacturing sector began to eclipse gold mining (and agriculture) as the driving force of South Africa's development, and the huge imbalance created by manufacturing's import needs began to manifest itself. Fortunately for South Africa, sterling was devalued by 30% (against the US dollar) in 1949²³; and in the 1970s, a competitive international gold market was created, leading the gold price to climb spectacularly from \$35 per fine ounce to a peak of over \$800 in 1981²⁴. Had it not been for these windfall gains, the expansion of industry would probably have been brought to a shuddering halt. However, even with continuing high gold prices, total revenues subsequently began to stagnate as the physical volume of gold production started to decline. Despite the record gold prices of the past few years, the underlying deficit re-asserted itself as economic growth accelerated in the mid-2000s.

The third perspective – the current account – incorporates not only the trade in goods and gold, but also the receipts and payments in respect of trade in 'invisibles' (transport, insurance, tourism and other services) and – most significantly for South Africa – the profits, dividends and interest accruing to foreign capital, and cross-border remittances paid to expatriate labour. In principle, with gold's historical and windfall-enabled 'rescue' role finally playing itself out, and manufacturing industry seemingly incapable of providing the ultimate escape route from the balance-of-payments constraint, these other activities could have constituted an alternative source of salvation. In practice, the default post-War position on the current account has remained one of deficit, except during periods of economic stagnation²⁵. And in the past decade, despite all the recent efforts at promoting tourism and other 'non-traditional' sources of foreign-exchange earnings, the deficit has soared to unprecedented levels. At the height of the recent China-driven commodities boom, South Africa's current-account deficit approached a staggering 8% of GDP.²⁶

For a developing country, a sustained deficit on the current account is not necessarily problematical.

Indeed, where domestic capital resources are insufficient to exploit the country's development potential, it is entirely rational to augment them by 'borrowing' capital from the rest of the world on a long-term basis. The flip side of this coin is that foreign capital has to be remunerated (via profit and interest payments) and, if required, eventually repatriated. If sufficient long-term foreign capital continues to be forthcoming, a current-account deficit can be sustained for an extended period. However, no country – least of all a small developing country – can be assured of a perpetual supply of foreign capital, whether long- or short-term, and a continuing large current account deficit must be regarded as ultimately unsustainable.

...there has been a substantial shift in the composition of capital inflows away from direct investment in new productive assets towards indirect ('portfolio') investment

South Africa's resources and development potential were sufficiently attractive to ensure a near-continuous inflow of long-term investment capital in its first half-century. Foreign capital helped to finance the development not only of the mines and the manufacturing base, but also of the financial sector. However, over the past 50 years, the supply of long-term foreign capital has been much less assured, indicating – at the minimum – a decline in the attractiveness of South Africa relative to other investment destinations. Moreover, there has been a substantial shift in the composition of capital inflows away from direct investment in new productive assets towards indirect ('portfolio') investment in the domestic financial markets. In sharp contrast with direct investments, portfolio capital flows are inherently unreliable and, as South Africa has discovered to its cost on several occasions, prone to near-instantaneous reversal in response to changing market sentiment, whether in South Africa or abroad.

Admittedly, in the past decade, South Africa (along with most other 'emerging-market' economies) has been a fortunate beneficiary of global financial conditions. In the aftermath of the September 11 terrorist attacks in the US in 2001, and again following the global financial upheavals induced by

the post-2007 sub-prime mortgage crisis, South Africa has benefited enormously from major inflows of portfolio capital. Indeed, without these inflows, the recent spectacular rise in the current-account deficit – primarily the result of the greatly expanded infrastructure development programme – would have required severe curtailment (or, alternatively, huge and expensive foreign borrowings). However, these portfolio inflows neither constitute investment capital directly related to South Africa's inherent economic potential, nor have they done anything to moderate the country's import dependence.²⁷ On the contrary, the real value of exports has shown only limited growth, while the import penetration ratio has almost doubled since 1994.²⁸

In short, after 100 years, the basic structural deficiency, in terms of which exports are fundamentally insufficient to fund South Africa's import requirements, is still very much in evidence. Although the country's export profile is now very diverse, its export performance contrasts poorly with those of so many other countries around the world. While global exports have grown by leaps and bounds, especially over the past two decades of increasing globalisation, South Africa's share of this trade has continually diminished. Indeed, in the past decade during which the developing world at large, including much of Africa, has benefited from China's seemingly limitless demand for commodities and raw materials, the real volume of South African exports has not only grown significantly more slowly than global trade, it has at times actually shrunk.²⁹

THE JOB-CREATION CHALLENGE

The paradox of highly capital-intensive investment – which typically creates relatively few jobs – in conjunction with seemingly abundant supplies of labour is by no means peculiar to South Africa. However, almost from the outset, South Africa's development path has embodied a particularly extreme form of this mix. In principle, this paradox could have been avoided, for – as Ralph Horwitz put it – "(t)he unique aspect of the gold-mining industry was that it was capital-intensive, labour-intensive and export-intensive".³⁰

On the labour front, the geological nature of the mines presented a requirement for significant numbers of skilled artisans, together with much larger numbers of unskilled workers. The former, of necessity, were

(whites) recruited from abroad; the latter were mainly southern African blacks, induced into a system of temporary migrant labour. While the wage rates, both absolute and relative, for both groups were initially determined entirely by market forces without conscious regard to race, racial politics quickly intervened to institutionalise discrimination in the form of a job colour-bar which, in turn, increased the wage-bargaining power of the white workers.

Although the mine-owners were not averse to coercive measures to encourage Africans to forsake their traditional societies for wage labour on the mines, the emerging colour bar was not in their economic interests.³¹ This was on account of the extreme sensitivity – in the face of the fixed gold price – of mining profits to wage costs. However, the mine-owners' repeated post-Union efforts to undermine the colour bar led ultimately to the Rand strike of 1922 and, subsequently, to the advent in 1924 of the Pact government – a coalition between the Afrikaner-dominated Nationalist Party and the white workers' Labour Party. From that point on, the battle between the (prejudices of the white) polity and market forces shifted decisively in favour of the former, not only on the mines but also throughout the economy and society. In particular, given the whole panoply of other controls, including the pass laws and land laws, market forces within the labour market were distorted by a wide range of constraints and controls, and the economic interests of blacks were increasingly subjugated to those of whites, especially Afrikaners.

Meanwhile, the realities presented by the existential challenge facing the mining industry remained inescapable. In this respect, there had already been considerable debate over the merits of promoting local industry through tariff protection – as

Although the primary focus – for the government – of industrialisation was relief of white unemployment, inevitably the new industries also generated many jobs for blacks, albeit largely only in menial and low-paid roles.

had been done elsewhere in the world – as a first step towards export diversification.³² Reservations about the idea were partly theoretical and partly practical: it offended against the prevailing free-trade orthodoxy; and there was the danger that the higher-priced outputs of protected local industries would severely damage the mining industry in the long-term by raising its costs. Both in academia and the public service, therefore, there was general recognition that, if implemented, the policy should be based on the application of commercial criteria wherever possible.

However, the Pact government's political preoccupation was not with issues of competitiveness. Rather, it was with the 'poor white' problem, and – as with the so-called 'civilised labour policy' on the railways, and the establishment of the state-owned Iron and Steel Corporation (ISCOR) in 1928 – protected industrialisation was seen primarily as a means of creating employment for whites.³³ As Charles Feinstein has observed, this policy of attempting to link import-substituting industrialisation to "policies designed to create employment specifically for one group in the labour force" was "unique" to South Africa.³⁴ In addition, commercial agriculture – almost exclusively white-owned – was offered considerable protection against imports in order to guarantee markets for its outputs, especially in the emerging food industry.

Although the primary focus – for the government – of industrialisation was relief of white unemployment, inevitably the new industries also generated many jobs for blacks, albeit largely only in menial and low-paid roles. With the advent

of the Second World War, industrial development accelerated dramatically, both on account of the war effort and the associated disruptions to international trade. Notwithstanding the colour bar, with many whites mobilised into the military, the consequent sharp rise in job vacancies led inexorably to the growing recruitment of black workers into increasingly skilled and responsible positions. However, with the election of the National Party government in 1948, the polity quickly sought to reassert its dominance over market forces and to reinforce discrimination against black workers.

From a purely economic perspective, as Feinstein notes, the “crucial” post-War question was whether the existing system – comprising the established but cost-constrained gold-mining industry, heavily subsidised commercial farming and protected industries – could “continue to promote the expansion of an economy in which the contribution of mining was expected to diminish, and growth would have to depend predominantly on the ability to generate further and more self-supporting advances in manufacturing?”³⁵. The policy dilemma was that South Africa was “in the deeply unsatisfactory position that (its) manufacturing industries could survive only as long as they were supported by the gold mines they were supposed eventually to replace”³⁶. The dilemma was reinforced by the fact that the new industries were directing themselves almost exclusively towards the domestic, rather than the export, market.

In the event, thanks to the 1949 devaluation windfall, the predictions that the mining industry would be undermined by the protection-induced increases in costs did not materialise. The enhanced gold revenues also gave manufacturing industry a new lease of life, and the long-term policy challenge was deferred. Over the next 25 years, industrialisation proceeded by leaps and bounds. Import substitution – behind protective barriers – progressed from local production of previously imported consumer goods to intermediate goods and to machinery, motor vehicles and other equipment. Real value added by private manufacturing grew at an average rate of over 7% per year between 1948 and 1974, and employment at 4.3%.³⁷ Nonetheless, impressive though this performance was, it was obscuring some fundamental problems: as already discussed, the adverse balance-of-trade problem was one; another was the failure to absorb the rapidly growing labour force.

Despite increasingly restrictive government policies, the flow of migrant workers attracted to the growing scale of economic opportunities in urban areas accelerated.

As was typical of import-substituting industrialisation programmes in other developing countries, investment in South Africa’s manufacturing sector was based largely on imported technologies, which were developed for labour-market conditions very different from those in South Africa. Indeed, much of the investment was carried out by the foreign suppliers themselves, substituting local manufacture for their own imports. In doing so, they brought with them their relatively sophisticated, capital-intensive and ‘labour-saving’ production techniques. Such technologies are generally more productive – they produce more output per unit of fixed capital invested – and, hence, also generally more profitable. Consequently, they helped create a bias against smaller, more labour-intensive firms. The real value of fixed capital investment in manufacturing increased sevenfold between 1948 and 1974, and output more than sixfold, but employment grew only threefold.³⁸

These trends were the outcome of rational responses by producers to the incentive and policy structures that they faced in the marketplace. Firms’ relative preference for machines over labour reflected the high cost of labour, both white and black. Skilled and even semi-skilled labour was perpetually in short supply – especially after immigration from Europe was restricted in the 1950s – and, hence, relatively expensive. Moreover, many white workers were unionised. By contrast, the supply of black labour was plentiful – at least potentially. Despite increasingly restrictive government policies, the flow of migrant workers attracted to the growing scale of economic opportunities in urban areas accelerated. In addition, migrants stayed much longer. As Jill Nattrass noted, “(t)he combined effect of these two influences was to increase the potential supply of man-years contributed by the migrant labour system from 6 million in 1936 to nearly 25 million in 1970”³⁹.

However, because of the demands of the (white) polity, the effective supply was far more limited, especially of much-needed semi-skilled workers. Black

workers were largely uneducated and unskilled; they lived in poor and insecure housing conditions and often had to commute long hours and distances to work; consequently, their productivity was generally very low. Moreover, employers (as well as workers) had to deal with the uncertainties and bureaucratic restrictions imposed by the pass laws and the system of 'influx control', exacerbated over time by increasingly direct restrictions on the employment of black labour in the main urban centres as the government sought to induce firms to relocate to the 'border industrial areas' of the Bantustans. From the perspective of many firms, therefore, black labour was not 'cheap', despite the often-abysmally low wages.⁴⁰

...when population growth exceeds the growth of job opportunities, the rate of capital accumulation for the purpose of job creation becomes the crucial determinant of the rate at which labour is absorbed.⁴¹

As Natrass observes, when population growth exceeds the growth of job opportunities, the rate of capital accumulation for the purpose of job creation becomes the crucial determinant of the rate at which labour is absorbed.⁴¹ Even when manufacturing was at the peak of its expansion, capital investment in the sector manifestly was far below that required to prevent the rise of mass unemployment. Equally clearly, firms' experiences of the operation of the labour market were a key factor in this equation.

From the mid-1970s onwards, most of the trends in manufacturing reversed. Following a brief gold-price-fuelled 'last gasp', and despite a more-than-doubling of the sector's fixed capital stock during 1974-94, manufacturing output growth slumped to an average 1.6% per year over the same period, and was effectively zero between 1981 and 1994. However, firms were clearly not investing for employment growth: total manufacturing employment was only 13% higher in 1994 than in 1974, and actually declined from 1981 onwards.⁴² In short, along with much of the rest of the private sector, including the mining sector, manufacturing was shedding – not creating – jobs.

Meanwhile, black workers were becoming increasingly unionised and, hence, able to bargain more effectively for better wages and working conditions. In principle, the ensuing negotiated settlements should also have delivered benefits to many firms, via improvements in productivity. In practice, however, for the sector as a whole, the growth of labour productivity (i.e. output per worker) slowed considerably in 1974-94 and was stagnant during the turbulent years between 1981 and 1987.⁴³ This outcome will have done little to counter employers' growing preference for capital over labour.⁴⁴

The period under review brought into sharp focus the nature of the unemployment problem in South Africa, in that the economy was no longer absorbing even a proportion of the new entrants coming into the labour market every year. Consequently, it was not only unemployment that was soaring, but also that section of the workforce variously described as being 'in disguised unemployment' or 'underemployed' or 'discouraged workers'. The disguised unemployed comprised those who were potentially economically active, but were not even bothering to look actively for work which they recognised they had no realistic prospect of obtaining, and who therefore had resigned themselves to eking out an existence through petty trading or service activities in the informal sector (or 'second economy'). The most visible signs of this phenomenon included the growing army of petty traders on the streets and at traffic lights, and the parking 'attendants' in almost every non-residential urban street.

Against much expectation, the period since 1994 has delivered little improvement on the employment front. Although economic growth did resume – on a modest scale – between 1994 and 2004, it was widely described as ‘jobless’ growth: Natrass’ fear that, as the economy grew, “the people who manage to secure jobs will “enjoy rising living standards... (while) an increasing number...will be excluded from an opportunity to share in the growing wealth of the country” has sadly been realised.⁴⁵ There was some growth in jobs in trade and in financial, business and personal services, but in the public sector, especially the state-owned enterprises, and in mining, the numbers of jobs contracted sharply. In private manufacturing, the putative driving force of the economy, employment fell by around 22% in the first post-apartheid decade, before stabilising in 2006.⁴⁶ Total private-sector employment did rise in the 2005-2008 mini-boom, but most of the gain was quickly reversed in the 2009 recession.

...market forces have continued to be shackled, no longer by the dictates of apartheid, but by the quotas, targets and entitlements of ‘transformation’...

The ending of apartheid could not reasonably have been expected to bring a quick recovery from the long-term damage done to labour productivity by its institutions and policies. That process could take several generations to complete. It was not unreasonable, however, to expect that the stifling and distorting hand of the polity, especially in respect of social-engineering objectives, would be withdrawn from the labour market. Instead, market forces have continued to be shackled, no longer by the dictates of apartheid, but by the quotas, targets and entitlements of ‘transformation’, through the agencies of affirmative action and black economic empowerment, and on the grounds of post-apartheid ‘political imperatives’.

That tackling the ‘poor white’ problem of the inter-War years constituted a political imperative for the Pact government cannot be gainsaid; but that it was fundamentally immoral to privilege one section of the population at the expense of others, purely on grounds of race, is equally true. The polity’s policies were ‘understandable’ from a narrow political perspective, but were hugely damaging to the general economic welfare of the wider population.

There can be no denying that the number of jobs that would have been created in the absence of the colour bar would have been vastly larger; and the associated structural economic flaws to which it gave rise would have been mitigated. The hideous degrees of economic inequality that it helped to generate, together with the associated narrowness of the domestic market and the abiding bias in favour of labour-saving technologies – so inappropriate in a labour-abundant economy – would, at the minimum, have been reduced.

The argument that the deprivations and depredations suffered by black South Africans under apartheid provide a political imperative for encumbering the labour market with institutionalised protections, is similarly flawed. It may be politically incorrect to say so, but it is counter-intuitive to assert that the demands of transformation in the labour market have not continued to inhibit employment creation, as was the case for many decades under the *ancien regime*. More fundamentally, in a context in which more than a third of the total labour force and more than half of those aged 18-35 have no gainful employment, the requirement that all jobs must be ‘decent jobs’ is continuing to create a class of privileged ‘insiders’ alongside a vast mass of disadvantaged ‘outsiders’.⁴⁷ Today’s minority is no longer racially exclusive, but it is no less exclusive for that fact. Far from ‘transforming’ South African society at large, these policies are perpetuating and entrenching some of the gross economic inequalities created by apartheid. Apartheid stifled the entrepreneurial talents inherent in the community at large, discouraged (real) wealth-creating enterprise, and allowed the welfare-enhancing forces of competition and merit to function freely only within a privileged minority. Instead of liberating the labour market from these inhibitions, post-apartheid South Africa is promoting a culture of entitlement and dependency.⁴⁸

THE COMPETITIVENESS CHALLENGE

South Africa’s distance from Europe and North America afforded its industries a degree of ‘natural’ protection, which was reinforced by the international economic consequences of World War II. From the outset, however, following Union, the naturally growing sense of economic nationalism translated into the desire to develop a local industrial base, for which the ‘infant industry’ argument provided a coherent

intellectual justification: a potentially competitive industry warrants protection in its infancy until it grows up and is able to stand on its own (unprotected) feet. In practice, the infant all-too-often fails ever to grow up and, as Feinstein remarks, the “recurrent theme” for economic policy becomes “the inescapable tension between providing protection and coddling inefficiency”.⁴⁹

South Africa’s economic nationalism reached its acme after the War and, courtesy of gold, the government felt able to defer tackling this tension. However, this could not indefinitely obscure the fact that, with a small domestic market and low productivity, “tariffs could offer only short-term gains for which they exacted a heavy long-term penalty”.⁵⁰ Moreover, as noted earlier, pending the inevitable decline of the gold industry, the fundamental challenge for South Africa was to develop a replacement export sector – a role for which manufacturing was the only viable contender. Instead, by virtue of its low international competitiveness, manufacturing significantly worsened the balance of trade. The primary causes of the lack of competitiveness were the endemic inefficiencies and high costs of the manufacturing sector.

Inefficiencies

The inefficiencies arose from two sources: the absence of competitive pressures to hold down costs of production; and the rise of state-directed industrialisation. The former reflected the levels of effective protection accorded to many firms; the latter, which reflected the government’s predilection for interfering with market forces, had two components: indirect control through a growing range of non-tariff protective measures, encompassing import controls and licences; and direct state investment in key industries. The system of non-tariff barriers was complex, opaque, cumbersome and costly, and depended on bureaucrats second-guessing the market in crucial resource-allocation decisions.⁵¹ Direct investment, much

of it mediated through the state-owned Industrial Development Corporation, was partly directed at subsidising ‘selected’ industries, and partly at creating a range of ‘strategically significant’ import-replacement enterprises, including in response to threats of economic sanctions. Again, however, the market has been subjugated to the judgements of the polity, often at significant cost.

...competitiveness would be improved if labour productivity were to rise significantly faster than average wages over an extended period.

At the heart of the high-cost problem lies the low productivity of labour. Here, the key variable is ‘unit labour cost’ (measured by the ratio of the average wage of each worker to the average output of each worker). South Africa was (and remains) uncompetitive because of its high unit labour costs relative to most of its competitors – some 60% higher on average in 1990-94 according to one study quoted by Feinstein. As Feinstein further observes, the low output per worker in South Africa would matter less – in economic terms – if the average wage per worker were lower than it is.⁵² Alternatively, looking ahead, competitiveness would be improved if labour productivity were to rise significantly faster than average wages over an extended period. However, there has been no sign of such a differentiated trend in the past 40 years.

The post-1971 era of flexible exchange rates has also played its part in undermining South Africa’s competitiveness. When the exchange rate appreciates, even efficient firms can become ‘uncompetitive’ – and, hence, fail – on account of squeezed

revenues and profits. The past 40 years have brought many ups and down in the value of the rand, with each episode of major currency appreciation inflicting serious damage on exporters. Consequently, greater stability of the exchange rate is an important policy objective.⁵³

By the 1970s, even the National Party government had begun to recognise the need for a restructuring of industry, and its reorientation from the domestic to the export market. Several commissions of enquiry, covering issues that included protection, the labour market and the foreign-exchange market, recommended varying degrees of liberalisation of the economy. The incipient policy shift was assisted by growing evidence from South-East Asia, where several countries had successfully transformed their initial import-substituting industrialisation programmes into export-promoting strategies. A number of liberalising moves took place in the late-1970s/early-1980s, but these were brought to an abrupt halt – in some cases even reversed – by the combination of growing external pressures for South Africa’s economic and political isolation and domestic political upheavals. How far the liberalisation thrust would have gone in more propitious circumstances is unclear, but the brief – and, in global terms, particularly timely – window of opportunity for South Africa to undertake some much-needed and fundamental structural reforms was again firmly shut. The lost opportunity was to cost South Africa, and especially its workforce, dearly over the ensuing 10-20 years.

A more substantial, and widely supported, attempt to dismantle the structures of protection was made during the mid-1990s political transition, and was followed in 1996 by the adoption of the controversial Growth, Employment and Redistribution (‘GEAR’) strategy. However, while these initiatives brought significant changes to the macro-framework for economic policy, there was no coherent or consistent follow-through on the promotion of exports or the improvement of competitiveness. More recently, the publication of a revised Industrial Policy Action Programme (IPAP2, Department of Trade and Industry) proposes a reversion to a more state-directed and interventionist industrialisation policy.

CONCLUSION: A LUTA CONTINUA!

A brief review of 100 years of economic growth and development in an economy as complex as that of South Africa, and in the context of such profoundly diverse social and political forces, cannot hope to touch on more than a small number of relevant factors. A primary purpose of this essay has been to illustrate the central – and continuing – role of the struggle between the broadly liberating thrust of market forces, and the broadly stifling hand of the polity in determining the nature of South Africa’s growth path, especially in respect of its engagement with the global economy. Even though South Africa has remained throughout a market-based (as opposed to a centrally-planned or socialist) society, many of its contemporary economic structures, and especially their flaws, were the sometimes witting, sometimes unwitting, creations of the polity. While so many other countries have experienced great prosperity, the two most fundamental challenges for South Africa – of generating self-sustaining growth, and creating employment for all citizens – are arguably not much closer to realisation today than they have been over the past 10 decades. Market forces are not a panacea for all economic ills, and they often require regulation or moderation. But the repeated determination of successive South African governments to override and distort

them for sectional and, especially, racial interests, has inflicted incalculable damage on the economy and the people. It must be a matter of grave concern that the

post-apartheid government appears intent on making the same mistake.

NOTES

- 1 I am grateful to Alan Doran for helpful suggestions, but he is not responsible for any of the views expressed in this essay.
- 2 Horwitz, chs 1,2.
- 3 Although both were already stimulating the growth of secondary industries, in the form of input supply, repair and other service activities.
- 4 See Lewis T2.2; Nattrass, T2.1; Hobart Houghton, p41 ff.
- 5 Calculated from SARB QB March 2010, Table S-149.
- 6 World Bank, World Development Indicators.
- 7 Houghton, p240.
- 8 Ibid; Nattrass, p xix.
- 9 Republic of South Africa, Department of Environmental Affairs and Tourism, <http://soer.deat.gov.za/themes.aspx?m=350>.
- 10 Israel offers a further example of a successful export-oriented economy with no natural resource base.
- 11 O'Dowd, p171-2.
- 12 O'Dowd, p180.
- 13 See Horwitz for a masterly and closely annotated analysis of the contending forces of market and polity up until the mid-1960s.
- 14 Typically, the combined ratio of merchandise imports and exports, including gold, to GDP has ranged between 50% and 65%. See Nattrass T10.13; Lewis T3.1; SARB QB, various issues.
- 15 For a summary of the determinants of the gold price and of the special role played by gold in the South African economy, see Feinstein, p93 ff.
- 16 Except for a brief period in the early 1920s, South Africa was part of the sterling area until the latter's collapse in the early 1970s. Following its introduction in 1961, the rand remained fixed at R2/£1. Sterling was devalued in 1933 and 1949. The rand was floated in the mid-1970s.
- 17 Between 1978 and 1983, for example, the real exchange rate appreciated by no less than 36%. See Feinstein, p216.
- 18 See, for example, Blumenfeld, Chs 1, 2.
- 19 The dual exchange rate comprised a 'commercial rand' (CR), which was used for current-account transactions, and a 'financial rand' (FR) for capital-account transactions. The discount at which the FR stood to the CR became a barometer for the degree of political confidence in the country. The mechanism was first introduced, in a more restricted form, in the aftermath of the Sharpeville shootings in 1960.
- 20 See <http://www.info.gov.za/asgisa/>
- 21 The accumulation of gold and foreign exchange reserves can provide a temporary buffer.
- 22 With the passage of time, the degree of direct import dependence in the mining sector declined significantly as a local capital-goods sector developed. However, import dependence in the manufacturing sector (including capital-goods producers) remained high, and the relative importance of manufacturing vis-à-vis mining increased, leaving the overall marginal propensity to import high. See Houghton, pp172 ff.
- 23 The effective increase in the gold price in 1949 not only significantly extended the life of the declining Witwatersrand mines, but also permitted the development of the new and richly endowed goldfields of the Orange Free State.
- 24 The price fell back sharply after 1981, but still maintained an average of around \$400 until the mid-1990s, before resuming an upward trend. At times when the higher dollar gold price was accompanied by an appreciation of the rand, gold revenues in rand terms were further adversely affected.
- 25 The exceptions were the two key periods of domestic political upheaval, around Sharpeville (1959-1963) and Soweto (1977-1980), and the 'debt-standstill' period from the mid-1980s to the mid-1990s. In each instance, there was a substantial exodus of foreign capital, necessitating a squeeze on domestic growth in order to bring the current account into surplus.
- 26 Typically, the post-War deficit has been well below 3% of GDP.
- 27 Even apart from the balance of payments, the sense in which speculative capital inflows are a 'benefit' needs to be qualified in the light of their impact on the value of the rand, the inflation rate and other inter-related aspects of economic policy.
- 28 SARB AR 2007/08, pp49, 50 (charts).
- 29 SARB AR 2008/09, p57 (chart).
- 30 Horwitz, p216.
- 31 Horwitz, Ch 11.

- 32 Including the US, Germany, Russia, Canada, Australia and Argentina. See Feinstein, p119.
- 33 "*In the early twentieth century SA's most pressing social problem was the growing numbers of almost destitute and largely uneducated Whites, who found it virtually impossible to obtain a job that would enable them to live amongst the rest of their fellow Whites*" (Nattrass, p 57).
- 34 Feinstein, p119.
- 35 Feinstein, p144, (italics in original).
- 36 Feinstein, p131.
- 37 Feinstein, p184 ff.
- 38 *ibid*, T8.5; Nattrass, Chs 5, 8.
- 39 Nattrass, p41.
- 40 In fact, from the early 1960s onwards, and on account of the effective shortage, the wages of black workers began to rise in real terms, but without any necessary compensating improvements in productivity, thereby reinforcing employers' preference for capital. See Feinstein, p222.
- 41 Nattrass, p34.
- 42 Feinstein, T9.4
- 43 *ibid*.
- 44 Labour productivity is, of course, a function not only of the 'quality' of the labour force, but also of the nature and scale of capital investment.
- 45 Nattrass, p57.
- 46 SARB QB, various issues.
- 47 The 'decent work' agenda, first proposed by the International Labour Organisation, calls for all workers to be able to work in conditions of freedom, security, dignity and equity. While these objectives are unexceptionable, their relevance in conditions where very large numbers of people have no work at all becomes questionable.
- 48 It is, of course, the duty of the state to set and monitor appropriate minimum standards for the workplace. However, the exercise of this power becomes morally dubious if the level at which the minima are set does not take cognisance of the availability of adequate social welfare support for those who may, in consequence, be unable to secure employment.
- 49 Feinstein, p117.
- 50 Feinstein, p130.
- 51 Ironically, it was South Africa's 1947 accession to the General Agreement on Tariffs and Trade (GATT) that resulted in the switch away from customs tariffs to the licensing system. See Feinstein, p180-1.
- 52 Feinstein, p245.
- 53 The fact that episodes of appreciation are interspersed with periodic depreciations is no compensation, since it is easier to put a firm out of business than to start one up. What is needed is a (relatively) stable exchange rate at an appropriate level.

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Reflections on a Century of the Press

As the two former Boer republics and two British colonies on the southern tip of Africa embarked on their new status as provinces of the Union of South Africa on 31 May 1910, most of the country's newspapers lauded the new state — though some had reservations on such issues as the extent of the voting franchise and language rights.

Those most apprehensive about union lived in the former British Colony of Natal which had established a life apart from the other three states under the protection of Britain but with a form of independent government. *The Natal Mercury* in Durban which, on the eve of Union, solemnly welcomed the new dispensation on a note of "trust in ourselves, fair mindedness towards our Union partners and a firm resolve to make the best of things", was set back on its heels on the very first day of Union. That was the day Prime Minister General Louis Botha announced his new cabinet comprising seven Afrikaners, including the South African Party leader General J B M Hertzog (who was strongly opposed in Natal because of his insistence on the status of Afrikaans and bilingualism) and only four English-speaking men. The paper reacted sharply in an argumentative, if not belligerent tone, that has been the hallmark of the press in South Africa in the following hundred years. It said, "A feeling of intense and profound disappointment will prevail throughout the British community in South Africa at General Botha's selection of ministers...General Botha has betrayed the trust we reposed in him."

From those small and, in many instances, uncertain beginnings — in 1912 the number of publications was stated to be 247 — the South African press has expanded enormously and today about 13 000 mainstream, provincial and community newspapers, magazines and other periodical publications are published.

The papers in the early years were started as independent enterprises but they eventually merged or amalgamated into ever-growing groups, eventually creating the few powerful expanding organisations of today. Now, the major daily and urban and provincial weeklies and many magazines are substantially owned by three companies: *Media 24* (formerly *Nasionale Pers*), *Independent Newspapers* (formerly *the Argus Company*) and *Avusa* (formerly *Times Media* and before that *SA Associated Newspapers*).

Caxtons, publisher of *The Citizen*, once the subject of a government scandal that led to the toppling of a president, has close links with Avusa. A number of the profitable community newspapers have also been swept up by these companies.

The big three have diversified beyond print media. Independent Newspapers, itself part of an international chain based in Ireland developed by Tony O'Reilly, for many years the chief executive officer of the vast H J Heinz food empire, owns 31% of the country's newspapers and has interests in book publishing and communications operations. For years the profits of its South African newspapers bolstered the



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failing fortunes of London's *The Independent* and *Sunday Independent* which were sold earlier this year to Russian entrepreneur, former KGB lieutenant-colonel Alexander Lebedev, for £1. Avusa has interests in books, entertainment, music and films, outdoor advertising and digital agencies. Some of its publishing interests are bound up with Pearson's, publishers of the London *Financial Times*. It has also engaged in enterprises in other African countries with mixed results. But the giant publishing house that has grown from the tiny *Die Burger* daily in Cape Town in 1915 is *Media24*, now the second largest publishing group in the southern Hemisphere which has shown great enterprise by adding to its several Afrikaans newspapers in South Africa, pay-TV, English papers, mobile phone technology, entertainment, books and foreign printing operations some as far afield as in China.

The Cape papers strongly supported the qualified voting franchise...The Transvaal and Orange Free State were implacably opposed to the qualified franchise.

The first big political controversy involving the media, when the Act of Union was being debated, was over the electoral franchises included in the entrenched clauses. The press was divided. The Cape papers strongly supported the qualified voting franchise for Africans and Coloureds in the Cape that enabled them to vote alongside white voters for white members of parliament and opposed the restriction on membership of parliament being confined to white males. The Transvaal and Orange Free State were implacably opposed to the qualified franchise. The Cape had misguidedly cherished the view from 1910 that the other provinces could be persuaded to accept its African and Coloured franchise, but that received a setback in 1936 when the fusion government of Generals Hertzog and Smuts removed the Africans from the common voters' roll in the Cape and placed them on a separate roll enabling them to elect three white representatives to Parliament. Separate voters' rolls were also set up in the four provinces enabling them to elect four white representatives to the Senate. Hope that the Coloureds would remain on the voters roll was finally dashed after 1948 when the Nationalist Party took power.

In the fifties the Nationalist Party introduced proposals to overcome the entrenched clause protecting those rights for Coloureds which could only be overturned by a two-thirds majority of both Houses of Parliament, launching the country into an intensely bitter and acrimonious six years of political strife. Opposition political parties and English-language newspapers castigated the various stratagems adopted by the Nationalists who finally achieved their two-thirds majority by enlarging the Senate by 41 seats to a total of 89. The Coloureds were removed from the common voters' roll in the Cape and placed on a separate roll to elect three white representatives to Parliament.

Two newspapers, *The Star* in Johannesburg and the *Natal Mercury* in Durban, incensed at the cynical tactics employed by the government – *The Star* was concerned about the danger posed to the other entrenched clause protecting the English language – that they launched highly intemperate attacks on Parliament and the new Senators who complained to the Speaker. The Speaker summarily ejected the *Natal Mercury's* political correspondent, Terry Wilks from Parliament and he was only allowed to return days later after his editor, Mervyn Ellis, had apologised. *The Star's* editor, Horace Flather, was sued for libel by two Senators. Though the court found against him, he was relieved that the damages awarded against the paper was £100, a paltry figure compared to the £10,000 each claimed. Flather

feared the 39 others would each claim £10,000, too, making a huge dent in the company's fortunes.

The remarkable aspect of this issue was the conduct of the *Rand Daily Mail*. It began its career in the bar of Heath's Hotel in Johannesburg in 1902 on a highly conservative white protectionist note, but made a full about turn 50 years later to fight the Nationalists. When the Act of Union was being debated, the *Mail's* editor Ralph Ward Jackson was strongly opposed to even those limited rights being granted to Coloureds and Africans, and campaigned vigorously against the retention of the clause in furtherance of the so-called "white labour policy". In 1956, however, then editor George Rayner Ellis took a diametrically opposite line strongly opposing the removal of those rights. Indeed, Rayner Ellis is regarded as the first liberal editor of the *Rand Daily Mail* after the long succession of conservatives. Former editor of the *Sunday Times*, Joel Mervis, credited him with changing the political direction of the *Mail*, and to some extent the *Sunday Times* when the Nationalists came to power in 1948. In October 1957 Laurence Owen Vine Gandar extended Rayner Ellis' liberal stance, becoming, as former *The Star* editor Richard Steyn describes him, 'the first editor to turn a major South African newspaper into a crusader for human rights'. He transformed the opposition press in South Africa not only into a campaigning force, but into a courageous and determined defender, supporter and promoter of press freedom, and earned a vicious backlash from the government with police raids, phone tapping and the arrest of staff.

After Union, a series of labour disputes and strikes which began in 1912 and continued for a decade, led to the Rand Revolt in March 1922. The papers called for negotiation and reconciliation but no one paid any attention. The mobs of white workers chanting "we fight and unite for a white South Africa", chased and attacked blacks in the streets. At *The Star*, the staff feared attack assuming the police were distracted by the strikers and thus unable to defend the paper. Reporters and other workers were armed with pistols and rifles to protect the building and the plant. The "revolt" ended soon afterwards with the bombing of the rebel positions and the deportation of the strike leaders.

The next controversy to engulf South Africa was over the national flag. Since Union, South Africa had flown Britain's Union Jack but the Nationalists detested it

and wanted a flag reflecting the colours of the former Boer republics. It was called the 'Battle of the Flag', launched with the introduction of the Flag Bill by Dr Daniel F Malan, the Minister of the Interior, in May 1926. The disputes raged over the inclusion of the Union Jack in a small cluster of the Transvaal Republic's Vierkleur and the Free State flag in the centre of the orange, white and blue flag. Lively arguments filled the newspapers, public meetings erupted in disorder, in particular one in Bloemhof, where the hall was wrecked and people were injured and General Jan Smuts was prevented from speaking. The "war" ended when the deputy prime minister Tielman Roos connived with the *Rand Daily Mail*, then seen as a "jingo" opposition paper, on a compromise solution which led to opposition collapsing and the Flag Bill being passed in October 1927. In an unprecedented move, Roos publicly trumpeted praise for the opposition *Rand Daily Mail*.

By then the Afrikaans press had started to grow vigorously with political party-aligned newspapers. The small newspapers in Pretoria (*De Volksstem*, the Boer republic's most influential newspaper) and Potchefstroom (*Staats Courant*) and other centres of Afrikaner dominance protected Afrikaner/Dutch language, cultural rights and their political trends. *Die Burger* was, from its inception, designed to be a mouthpiece for Hertzog's new National Party established a year earlier in 1914. It dutifully carried on that role, especially during the apartheid years in common with the other newspapers in the group that emerged, the Cape-based *Nasionale Pers* (now *Media 24*). In 1968, *Die Burger* received a plumb accolade from Professor John C Merrill at the University of Missouri's School of Journalism who in his book, *The Elite Press*, listed the paper among the 40 Great Newspapers of the World. He said it differed from other Afrikaans papers which followed the government party "rather slavishly".

Later, in 1980, Merrill chose the *Rand Daily Mail* as one of the "World's 50 Great Dailies", a choice repeated two years later by the London *Guardian's* foreign correspondent, Martin Walker, who placed the paper among Twelve of the World's Influential Newspapers in his 1982 book, *Powers of the Press*. *Media24's* Transvaal competitor, *Perskor*, closed its three dailies in the early 1990s and merged its Sunday paper, *Dagbreek*, with *Nasionale Pers's* Sunday paper, *Die Beeld*, to form *Rapport*. *The Citizen*, subject of the so-called "Information Scandal" had been sold by

the government to its printer *Perskor*, for R2.3million (a fraction compared to the R32million that the government had secretly sunk into it) and *Perskor* later sold it to Caxton in 1998. In 1974, *Nasionale Pers* launched the daily *Beeld* in Johannesburg, which caused the demise of *Perskor's Die Transvaler*. Both groups supported the National Party and, unlike the English newspapers, even had National Party leaders as editors – Dr Daniel F Malan and Dr Hendrix Frensch Verwoerd as editors of *Die Burger* and *Die Transvaler*, respectively, are examples – and on their boards of directors. But there was fierce competition between them. Today *Media24* has in its impressive collection of titles: the English language *Sunday City Press* which is directed to a black audience, and the *Natal Witness*, for more than 100 years the paper of the Pietermaritzburg establishment. *Die Burger* and *Beeld* serve each other with their important news stories and *Rapport* and *City Press* also exchange stories. During the apartheid era the viability of these two groups was considerably enhanced by their being awarded lucrative contracts by the government to print telephone directories.

Two years before World War II, Prime Minister Hertzog clashed with newspaper editors over criticism of Nazi Germany. Hertzog had received complaints from the German Reich's ambassador. Hertzog held a meeting with editors and told them that he was not "satisfied with the attitude of the press and that he intended to introduce a strong Bill providing for a certain measure of control if the situation did not improve". He said the papers' anti-Nazi tone was bad for trade. Cape Times editor George H Wilson pointed out to Hertzog that his draft Bill, which would have prohibited newspapers from reporting speeches criticising Hitler's Germany, would also have prevented South African papers reporting a speech by US President Franklin D Roosevelt when he denounced the dictators and in particular, Hitler and the Nazi regime. It would also have stopped the importation of foreign newspapers that contained the speech. Hertzog was startled at the implications of an importation ban, and said he would look into the point, "but generally maintained that it would make for the peace of the world and of South Africa if comments of such a kind were forbidden circulation", Wilson wrote. Hertzog was not impressed by an attempt by newspaper and periodical representatives in July 1939 to impose on themselves a questionable code to discourage practices considered to be "contrary to good morals or the public interest". Then war broke out and with the war vote going against Hertzog, he was out of office and his Bill died with him.

It was notable that among the Afrikaans papers that sided against Hertzog on this issue was *Die Burger*. Indeed, a feature of the Afrikaans press has been their support, though infrequent and not strenuous, for the English press viewpoint on certain media freedom issues when government tried to impose restrictions such as Hertzog did.

During the war, Prime Minister Jan Smuts refused to ban the Afrikaans press for their anti-war stance and support for Nazi Germany, a remarkable attitude to be adopted in a country at war with Germany, but understandable given the power and status of the Afrikaners. One paper in particular, *Die Transvaler*, when edited by Verwoerd, was told in 1941 by a judge that he had made his paper a tool of Nazism and that he knew he had done so.

In 1942 *Die Transvaler* published the National Party's draft republican constitution which contained the threat that the press and other institutions "shall not by their actions be allowed to undermine the public order or good morals of the republic,

internally or externally”, which journalists interpreted as signalling the Nationalists’ intentions to introduce press control should they come to power.

In 1950, following a tirade against the “yellow and liberal” press and certain journalists who “spread filthy venom overseas” and were responsible for “the foul contamination of the minds of people overseas”, the government appointed a Press Commission. It was to inquire into the control of the media and its effect on the editorial content and accuracy in news presentation. Further subjects for inquiry were: tendencies towards monopoly control of news and paper distribution, restraints on starting papers, the conduct of journalists (especially stringers and foreign correspondents), adequacy of discipline over journalists, sensationalism and the extent to which findings “militate for or against a free press in South Africa and the formation of an informed public opinion on political matters”. Thirteen years later in 1964 the Commission reported and called for the registration of journalists and a disciplinary Press Council with powers to fine journalists. The registration proposal was dropped but the disciplinary council had already been set up in 1962, without powers to impose fines, under the title of the Press Board of Reference. It was to adjudicate complaints by the public against the Press. This arrangement was accepted by the Government after negotiation. The Board had powers to demand correction and to impose censure, but had no other punitive powers. During the negotiations, the Afrikaans press supported their English colleagues in urging the government not to impose press control. By 1968 the Board had heard 16 complaints. Later, the government insisted on fines being imposed. One was found to have been wrongly imposed on the government-supporting *Rapport* because the State’s Secretary for Information, Dr Eschel Rhoodie had lied to the board. The money was distributed to charity.

Today the press has its own voluntary self regulation mechanism to hear complaints in the form of the Press Council while broadcasters have a similar Complaints Commission.

All this was shortly after the start of the newly empowered Nationalist Party mounted its campaign against freedom of the press and freedom of expression in general and against the English press, in particular, which lasted for more than 40 years. Some of the laws that existed before 1948 were made more restrictive but what has been described as an

avalanche of repressive legislation was rolled out by the Nationalist law drafters from 1950 onwards, starting with the Suppression of Communism Act. More legislation followed, accompanied by the banning of newspapers. Indeed, the frightful chapter that the Nationalists had opened for South Africa merits a book on its own.

Journalists suffered to the extent of being imprisoned, assaulted, especially Africans, manhandled and their homes and offices raided by the police.

It led beyond the banning of newspapers and journalists to detention without trial (which in effect could become indefinite) arrest and imprisonment for a variety of crimes, house arrest, banishment, banning (which meant a person could not be quoted or attend meetings of more than one person), deportation of foreign journalists, refusals of entry to the country and so on. All of these measures were mainly designed to censor information, to prevent people from knowing what was going on and from being exposed to arguments opposing apartheid and about human rights and democracy.

South Africa was moulded into a police state but the English press and their staffs rose to the challenge and presented the news they were able to gather, despite the censorship, as best they could — a vigorous exposure of evil, malpractice and corruption that the Afrikaans press would dutifully deny.

The ugly side of the repression was the strong arm tactics by the authorities, and, as repression grew more intense, the killing of anti-apartheid activists. Journalists suffered to the extent of being imprisoned, assaulted, especially Africans, manhandled and their homes and offices raided by the police. They also had to contend with interrogation before magistrates of their news sources, the penalty for refusing the information being jail which some endured. In addition there was the knowledge that among their newsroom colleagues were police spies.

In 1965 the *Rand Daily Mail’s* Laurence Gandar and reporter Benjamin Pogrand published a major expose of the squalid conditions in the country’s prisons,

citing mainly ex-prisoners. The government reacted angrily and international organisations such as the International Red Cross raised their concerns which further infuriated the government. The law that was being challenged was the Prisons Act which declared the publication of “false information” about prisons or prisoners without taking reasonable steps to verify the information — the onus of proving such steps had been taken being placed on the accused — carried a penalty of a year in jail and/or a fine. *South African Associated Newspapers’ (SAAN)* lawyer said requiring its witnesses to swear to their testimony would meet the ‘reasonable steps’ provision. The state, however, summarily dismissed that claim and set about putting the informants on trial. It even rebuilt sections of the jails to disprove the *Mail’s* witnesses’ evidence about what they had observed. Finally, Gandar and Pogrund, their passports removed, were tried. The case dragged on for four years and ended with Gandar being fined R200 with the option of six months’ jail and Pogrund sentenced to six months’ imprisonment, suspended for three years. Supporters regarded the light sentences as a victory for the paper. A fascinating aspect was Gandar’s fine being paid anonymously as he was contemplating going to jail instead of paying it. The case had cost upwards of R350,000, when the paper’s profits were about R300,000 a year.

The Government tried to perpetuate the myth that SA had a free press and this endeavour no doubt helped to save the major opposition editors from being jailed or assaulted. Had any of their papers been banned or senior staff arrested, the Government’s claims to a free press would have been destroyed. (This may have been the reason for the *Rand Daily Mail’s* last editor Rex Gibson, and *Sunday Times* editor Tertius Myburgh escaping in 1983 with fines and suspended prison sentences for contravening the Official Secrets Act for publishing a story that had already been published in *Rapport*. Months later *Rapport* was fined.)

One editor of a major daily, Donald Woods of the *Daily Dispatch*, in East London, who wrote a very critical column for several newspapers and who had befriended the black consciousness leader, Steve Biko, was indeed banned after a dispute with Police Minister Jimmy Kruger. He later escaped dramatically to Lesotho and on to London from where he waged an effective anti-apartheid campaign. Another editor not only to be banned but imprisoned without trial

was Percy Qoboza, editor of *World*, the black-oriented daily. His paper and its weekend edition, *Weekend World*, was also banned. This occurred on “Black Wednesday”, October 19 1977, when other weekly papers were banned, together with 19 black organisations, and scores of people were detained. The day is commemorated every year as National Press Freedom Day.

Action against the media escalated in the 1980s to even more repressive levels as ever more restrictive states of emergency were declared. The restrictions were taken to absurd lengths where radio reporters were required to withdraw from areas when the sounds of protest and police counter-activity could be heard and recorded, while TV and other cameramen had to withdraw from areas where they could photograph and film such activity.

Against this hugely repressive background, Harvey Tyson, editor of *The Star*, chose in 1987 to hold a conference to mark the paper’s centenary under the title of Conflict and the Press. He invited a large range of media representatives from the “Free World” and some from Eastern Europe to participate, knowing that the Government had frequently barred foreigners it deemed hostile and that some of his guests were likely to be refused entry. So he requested the government to permit entry for all his visitors, pointing out that “barring just one delegate would prevent free debate and create instead a protest meeting elsewhere”. He said he planned, if the government refused just one visa to an invited participant, to move the conference holus bolus to the Okavango Delta at the juncture of Zambia, Zimbabwe and Botswana. Such was the fear of further international opprobrium – the country had already been labelled the “polecat of the world” – that the government not only allowed all the invited guests to come, but indeed sent its own representatives to defend its restrictive media policies.

In 1968, a drama over the ownership of SAAN which would have far reaching consequences for the independence of the print media began with the major shareholder in SAAN, the Bailey Trust, without consulting the SAAN chairman, Cecil Payne, or the Managing Director, Leycester Walton, secretly offering its shares to the *Argus Company* enabling *Argus* to control SAAN. When *Argus* announced two days later that it intended to exercise the option and take control of SAAN, it provoked a response from an unexpected

quarter. Prime Minister Balthazar John Vorster quickly stepped in. He threatened legislation to stop the deal, stating that “takeovers of this extent...which so obviously conflict with the public interest are not in the interest of the country”. That ended the *Argus* gaining a monopoly over the country’s English press.

Perhaps the highlight of journalistic excellence in the apartheid years was the manner in which the *Sunday Express* and the *Rand Daily Mail* broke the Infogate scandal that resulted in President Vorster being forced to retire in 1979. It started in 1975 with fertilizer magnate Louis Luyt, who professed to be an opposition United Party supporter, making a bid to buy SAAN, publishers of the *Rand Daily Mail* and *Sunday Times*, using secret government funds. The editorial staff were aghast, fearing he intended to turn the vigorous anti-apartheid *Rand Daily Mail* into a government mouthpiece.

Stockbroker Max Borkum was galvanised into action when he heard of Luyt’s move and within a few days had assembled the finance and backing in a group called the Advowson Trust and pre-empted Luyt. Then Luyt, with financial backing from the Secretary for Information, Dr Eschel Rhoodie, started a morning newspaper, *The Citizen*, with the aim of dislodging the *Rand Daily Mail*. Shortly after the government-supporting paper began publishing in September 1976 it was discovered that it was fraudulently boosting its circulation figures by transporting 30,000 copies a day to be destroyed at a pig farm near Potchefstroom and a waste paper depot in Johannesburg.

The Rand Daily Mail and *Sunday Express* had set up teams to investigate the Department of Information and their stories alleging misappropriation of taxpayers’ funds eventually resulted in the appointment of a Commission of Inquiry headed by Judge Anton Mostert who confirmed that a government slush

fund had been improperly used to fund *The Citizen* and other publications. *Sunday Express* reporter Kitt Katzin who spoke to Judge Mostert, said he asked, “what took you so long?”

As newspapers head into the second century since the formation of Union in 1910, the newspaper industry is grappling with viability problems which have resulted in retrenchments of staff and, in turn, reduced news coverage and a threat from the new media, the internet and bloggers, who have already made an impact in the United States and threaten similar inroads in South Africa. Also looming is restrictive legislation which threatens the media freedoms protected by the Constitution.

These new challenges are all part of a revolution in communications and communication platforms which has begun to overtake the industry on a global scale and which the industry is trying to come to grips with. Traditional print circulations are declining, indicating the inroads being made into that sphere by the internet with its new breed of observant “citizen journalist”, and by vibrant TV and radio broadcasters who have advanced in the dissemination of news and information by leaps and bounds for well over the last half century. In addition, the newest platform, the ubiquitous mobile or cell phone, has rapidly become an even more powerful competitor as a disseminator of news and information to, in many countries, a total national audience.

Journalism which continues to sweep away the concealing superstitions and dogmas, the secrecy and ignorance in which people were once ensnared – and remain so in many parts of the world – will continue to shine the torch of enlightenment; but it will take on new physical forms of expression and demand greater effort, ingenuity, imagination, courage and endurance.

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Fixing the Past – Constitutional Challenges¹

"The past is not dead. In fact, it's not even past."

William Faulkner²

Introduction

The one hundred years of South African legal history from 1910 to 2010 contain eighty-four years of profound injustice and sixteen years of attempted rehabilitation. The iniquities of the past can and do fill libraries; they have been scrutinised, analysed and deconstructed in such detail and abundance that it will suffice here to give these eighty-four years the briefest synopsis, looking in more detail at some of the ameliorative steps introduced in decisions of the Constitutional Court after the end of apartheid in 1994 and the introduction of the Constitution and its Bill of Rights.

The background

By the time of the creation of the Union in 1910, South Africa was well on the way to establishing the racially discriminatory and oppressive regime that was to persist until 1994. After the formation of the Union in 1910, measures designed to mould the black population into a migrant labour force, with no rights or freedoms in the most prosperous parts of their native land, were swiftly introduced so that by the time of the formal introduction of apartheid in 1948, racial discrimination was in full swing.

The initial measures, which set the ground for forced removals and the Bantustans, were epitomised by the infamous Natives Land Act of 1913, which deprived blacks of all but 7% of South African land for their own purposes. In 1923 the Native Urban Areas Act compelled all black men in an urban area to register their presence there and their employment details and to declare loss of employment, as a result of which they would have to leave the area; the only black women allowed in urban areas were domestic workers. The 1936 Native Trust and Land Act and the 1937 Native Laws Amendment Act respectively prevented blacks from living on land in white areas, unless they were registered squatters or labour tenants, and further restricted movement of black workers in urban areas.

The Nationalist party came into power in 1948 on a mounting white working-class fear of black working-class action and of increasing demands from the African National Congress and the Indian Congress for participation in a common legislature. So the new government was installed to suppress political opposition and to safeguard the jobs of white workers by ensuring that black workers were kept out of the urban areas.

Measures to achieve these aims and to ensure that the many could not rise to compete with the privileged few were developed to control every sphere of life,

public and private. The most notorious measures included: the Population Registration Act 1950 and the Separate Representation of Voters Act 1951, which determined that the majority were disenfranchised; the Prohibition of Mixed Marriages Act 1949 and Immorality Act 1950, which ensured that blacks were kept apart from whites; the Bantu Education Act 1953, Extension of the Universities Act 1959 and Reservation of Separate Amenities Act 1953, which deprived black people of basic amenities such as education and health care; the Group Areas Act 1950, the Abolition of Passes and Co-ordination of Documents Act 1952 (the Pass Laws) and Job Reservation Act 1954, which restricted movement, employment and earning capacity; and, the core measures, the Bantu Authorities Act 1951 and Bantu Homelands Citizens Act 1970, which authorised the brutal uprooting and removal of entire communities from established settlements to barren and isolated areas.

Ruthlessness incurs resistance and the state imposed a mesh of security laws, designed to crush any opposition.

Ruthlessness incurs resistance and the state imposed a mesh of security laws, designed to crush any opposition. These laws banned organisations, individuals and gatherings, permitted detention and interrogation without trial, restricted free speech and the press and allowed the introduction of states of emergency. The most repressive enactments included the Suppression of Communism Act 1950, the Unlawful Organisations Act 1960, the Public Safety Act 1953, the Terrorism Act 1967 and the Internal Security Act 1972.⁴ Under Section 29 of the Internal Security Act thousands of people were detained without trial and interrogated in solitary confinement, at the discretion of the Police Commissioner, without access to almost anyone, including lawyers.

Repression reached its peak from the mid to late 1980s when PW Botha's government established, by repeatedly renewed regulations, a perpetual national state of emergency which gave the police extensive powers of detention and interrogation. Altogether, by the late 1980s, 32 anti-apartheid organisations were banned under the regulations, including the Congress of South African Trade Unions (COSATU),

the Congress of South African Students (COSAS) and the United Democratic Front (UDF)⁵. Thousands were detained without trial and subjected in custody to commonly acknowledged police brutality, buildings housing anti-apartheid organisations were bombed and political activists were murdered by agents of the South African government.

Despite the harshest of measures, opposition continued. Outlawed political parties such as the South African Communist Party (SACP), the ANC and the PAC continued to operate and significantly, challenges to security matters were not entirely unsuccessful in the courts. During the height of the emergency years some of the most progressive judgments were handed down.

In cases such as *Minister of Law and Order v Hurley*⁶ principles of administrative justice were used to circumvent clauses ousting court jurisdiction by considering the legitimacy of the discretion exercised by administrative officers. Several cases had a crucial impact on legislative policy, famously *Komani NO v Bantu Affairs Administration Board, Peninsula Area*⁷ and *Rikhoto v East Rand Administration Board and Another*⁸ led to the abolition of the pass laws in 1986.

Ironically, it was during the emergency period that laws comprising what is called 'petty apartheid'⁹ were repealed. One explanation for this move was that while the harshest repression continued unabated, the state, with extraordinary tunnel vision, was attempting to 'whitewash' South Africa's international image. From 1989 however, with the inception of the de Klerk regime, grand apartheid began to disappear, as major acts were repealed, outlawed parties and organisations, including the ANC, PAC, SACP and the UDF, were unbanned, Mandela was released, constitutional negotiations were initiated and, in 1994, apartheid was formally ended with the first inclusive election.

The repeal of repressive laws and enfranchisement of a society cannot change it overnight. In many ways, sixteen years later, the effects of apartheid are still very much with us: most black people are still impoverished and living in substandard conditions without adequate housing, water, medical care, education and access to land, and unemployment is rife¹⁰. The focus of this paper will be on some of the attempts by the Constitutional Court to ameliorate the continuing effects of past injustices.¹¹

The Constitutional Court

For many, the most exciting aspect of the new legal order was the creation of the Constitutional Court and its adjudication of matters under the Bill of Rights. There is room in this paper for very few of the numerous decisions made by the Court. I have chosen the following: *S v Makwanyane and Mchunu*¹², which abolished the death penalty for murder through interpretation of the basic provisions of the Bill of Rights and which set out the basic principles for a post-apartheid legal system; *Alexkor Ltd And Another v Richtersveld Community and Others*¹³, which shows how far things have come from forced removals and discriminatory land dispossession; *The Government of the Republic of South Africa v Grootboom*¹⁴ and *The Minister of Health v Treatment Action Campaign*¹⁵, which demonstrate the extent of legal intervention in relation to the state's socio-economic obligations; and *Gumede v President of the Republic of South Africa*¹⁶, crucial against gender and racial discrimination in customary law.

The principles of post-apartheid South Africa

S v MAKWANYANE AND MCHUNU

It is useful to begin by looking at *Makwanyane* not only because it abolishes, for murder, South Africa's much-overused death penalty, but also because it represents a break with the past and the beginning of a "rights culture". The implementation of capital punishment in South Africa was a symptom of the pervasive effect of a racially discriminatory system. A study done in 1989 shows that out of the 283 prisoners held on death row at the time, 272 were black, eleven were white.¹⁷ In deciding whether capital punishment for murder is consistent with the rights to dignity, life, equality, and the right to be free of cruel, inhumane or degrading punishment, *Makwanyane* sets the broad parameters, the function and scope, of the new Bill of Rights putting South African law, at least notionally, firmly beyond its oppressive and discriminatory past.

Indeed the principles that arise in *Makwanyane* were considered so important in establishing a new order that all eleven judges gave separate opinions stating, with differing emphases, how the death penalty violates crucial rights protected in the Bill of Rights¹⁸, and is not rescued by the terms of the limitation clause¹⁹ which permits an encroachment on a right if it is found to be reasonable, justifiable and necessary. There is no space here to examine all the intricacies contained in the judgments, so what follows is a

discussion of the most evocative aspects: the overall effect of capital punishment on society, the fact that the penalty is innately cruel, inhuman and degrading and the significance of popular opinion.

Institutional killing by the state – the effect on society

In expressing the effect that the penalty has on a society, the abhorrence of the members of the Constitutional Court towards capital punishment is apparent in their use of strongly emotive language, both in their own words and in frequent quotations from judgments in other jurisdictions. What follows is the gist of the statements expressing the unacceptability of the penalty.

Capital punishment is clinical, predetermined, institutional killing; it is done in cold blood. It is performed on someone who has been kept in a cell, isolated from all, save those like him, waiting, for months on end, to be killed. One does not abolish the death penalty out of sympathy for those who commit crimes of violence, but in concern for the society that diminishes itself whenever it takes the life of one of its members.

However cruel the acts of a murderer may be, the state should not respond with deliberate and matching acts of cruelty of its own²⁰. If the state, which serves as a role model for individuals, is allowed to kill institutionally, this will cheapen the value of human life.²¹ Everyone in society is compromised by capital punishment since it is an act that repeats, systematically and deliberately, although for a different purpose, what has been found repugnant in the offender.²²

The Constitution constrains society to express its condemnation and its justifiable anger in a manner which preserves society's own morality. The State should not make itself guilty of conduct which violates that which it is in the community's interests to nurture. The Constitution, in deference to our humanity and sense of dignity, does not allow us to kill in cold blood in order to deter others from killing. Nor does it allow us to kill criminals simply to get even with them. We are not to stoop to the level of the criminal.²³

Didcott J sums it up:

South Africa has experienced too much savagery. The wanton killing must stop before it makes a mockery of the civilised, humane and compassionate society to which the nation aspires and has constitutionally pledged itself. And the state must set the example by demonstrating the priceless value it places on the lives of all its

*subjects, even the worst.*²⁴

The nature of capital punishment – cruel, inhuman and degrading

Similarly, emotive language is used to show the nature of the death penalty. Makwanyane says that it is the ‘absolute renunciation of all that is embodied in our concept of humanity.’²⁵ Not only does the death penalty invade all the basic human rights, it annihilates them. It destroys life²⁶ and dignity and inevitably it is imposed unequally from case to case.

A disquieting aspect of the death sentence is its inherently arbitrary nature. ‘At every stage of the process there is the element of chance.’ The factors that would affect the verdict are always variable: the way the case is prosecuted, the effectiveness of the defence, the personality and attitudes towards the death penalty of judicial officers, the negative effect of both race and poverty.²⁷ And although arbitrariness cannot be avoided in the imposition of any punishment, the consequences of the death sentence differ in degree and substance from any other form of punishment.

Where the arbitrary and unequal infliction of punishment occurs at the level of a punishment so unique as the death penalty, it strikes me as being cruel and inhuman. For one person to receive the death sentence, where a similarly placed person does not, is, in my assessment of values, cruel to the person receiving it. To allow chance, in this way, to determine the life or death of a person, is to reduce the person to a cypher in a sophisticated judicial lottery. This is to treat the sentenced person as inhuman.²⁸

The death sentence is a statement that society deems the prisoner a nullity, less than human and unworthy to live and this is something that he must live with for the entire period between sentence and execution. Not only is the act of execution cruel and dehumanising but waiting on death row is described by penologists and medical experts as ‘so degrading and brutalising to the human spirit as to constitute psychological torture’.²⁹

Public opinion

In support of retaining the death penalty, the Attorney General said that since public opinion was predominantly in its favour it could not be sufficiently cruel, inhuman or degrading so as to render it unconstitutional. The Court said that even though this was probably a true reflection of public opinion, at

best public opinion is a factor that must remain at the periphery of constitutional decisions; assessment of public opinion is essentially a task for the legislature not the judiciary.³⁰ The very basis for a new Constitution, a new legal order which gives the Constitutional Court the power of judicial review over all legislation, is to protect the rights of those who are not protected by the democratic process, the minority, the marginalised and the social outcasts, ‘the worst and weakest amongst us’.³¹ The court has to make this decision, as any other, independently, ‘without fear or favour’, a phrase which clearly denotes dissociation from the influence of public opinion. This reasoning has become especially significant over recent years when, due to the continuation of persistent violent crime, a public clamour for the return of the death penalty has been reinvigorated.

Deterrence and retribution

Public support for capital punishment stems from a belief in deterrence and retribution. The reasoning for the former is that the risk of the extreme penalty would put off putative perpetrators from committing murder; for the latter that the perpetration of murder should be vindicated by death, so giving satisfaction to the victims and society as a whole.

The members of the Court dismissed deterrence on the basis that it was most likely highly speculative, at best inconclusive, and so, unconvincing: there is no proof that the threat of the death sentence stops people committing murder. In any event there are those whom it could not possibly deter: ‘There will always be unstable, desperate, and pathological people for whom the risk of arrest and imprisonment provides no deterrent, but there is nothing to show that a decision to carry out the death sentence would have any impact on the behaviour of such people, or that there will be more of them if imprisonment is the only sanction.’³² Retribution, founded on vengeance, ‘an eye for an eye’, is an aim inconsistent with a new legal order that incorporates the concept of ubuntu, the value of humanity and of all human lives.

Necessity and justification

Those advocating retention of the death penalty would have to show that it is reasonable, justifiable and necessary. Arguments based on notions of deterrence and retribution do not take into account a valid alternative to the death sentence, a lengthy period of imprisonment. ‘It is difficult to appreciate why a sentence which compels the offender to spend years and years in prison, away from his family, in

conditions of deliberate austerity and rigid discipline, substantially and continuously impeding his enjoyment of the elementary riches and gifts of civilized living, is not an effective and adequate expression of moral outrage.³³

ALEXKOR LTD V RICHTERSVELD COMMUNITY

This case brought under the Restitution of Land Rights Act 22 of 1994 (the Land Restitution Act), allowed the Constitutional Court to undo some of the deleterious effects of enactments that deprived people of land on racially discriminatory grounds (unexpectedly, since it is not one of the core enactments that extinguished the land rights of the black population, the Precious Stones Act 44 of 1927).

A group of people, the Richtersveld Community, claimed restitution of a portion of land in the Richtersveld, the subject land, then registered in the name of Alexkor Ltd, a public company wholly owned by the second appellant, the Government of the Republic of South Africa, conducting business in the diamond mining sector. In terms of Section 2(1) of the Land Restitution Act, if the Richtersveld Community were to be successful in its claim for restitution they would have to show that they were 'a community or part of a community' that was dispossessed of its rights in the subject land after 19 June 1913 'as a result of past racially discriminatory laws or practices'. Key points in the history of this case are that the subject land was annexed by the British Crown in 1847 and diamonds were discovered on it in 1926.

The Richtersveld Community claim, successful in the Supreme Court of Appeal (SCA), was contested by Alexkor and the South African Government in the Constitutional Court on the basis that the 1847 annexation had terminated the Community's rights in the land and that they had not been dispossessed after 1913 on racially discriminatory grounds.

Retroactivity

A general legal principle is that the Constitution does not operate retroactively, invalidating what was previously valid, or vice versa, or turning conduct previously unlawful into lawful conduct. But where the enforcement of previously acquired rights would 'in the light of present constitutional values be so grossly unjust and abhorrent that they could not be countenanced' they would be reconsidered.³⁴ In any event, Section 25(7) of the Constitution expressly allows restitution if land was dispossessed on racially discriminatory grounds after the 1913 Act, but, significantly for this case, not before that.

The nature of the Richtersveld Community's rights in the subject land

The first point in deciding if the Richtersveld Community was dispossessed of its land rights after 1913 as a result of discriminatory laws or practices, was the nature of its rights in the land prior to, and after annexation. The Court decided that the Community held the subject land under customary, ie indigenous, law,³⁵ and under Nama law a community as a whole could hold land for their exclusive reasonable occupation and use, including of its resources, for all its people.³⁶ The Court found that, at the time of annexation, the Richtersveld Community were communal owners of the subject land and entitled exclusively to all its resources, including its minerals and precious stones.³⁷

Following the approach of the Privy Council, which assumed that the Crown respects and protects existing property rights when annexing land,³⁸ and since there were no indications to the contrary, the Constitutional Court endorsed the

SCA's finding that annexation did not extinguish the rights of the Richtersveld Community to the subject land. Similarly, the Court found that there were no indications that the Crown had expressly or indirectly denied the Richtersveld Community their rights after annexation, so that they existed at the time the 1913 Act was passed.

Diamond discovery on the subject land

After the discovery of diamonds on the subject land in the mid 1920s, a Parliamentary resolution established a piece of land, not including the subject land, the Richtersveld Reserve, 'for the use of the Hottentots and Bastards who are residing therein and of such other coloured people as the Government may decide'³⁹, and the Precious Stones Act was passed. Because the Richtersveld Community's rights to the subject land were unregistered, not only did the Precious Stones Act treat the rights as non-existent, but the Community's occupation and use of the land were regarded as unlawful. The state treated the land as its own, eventually transferring it to Alexkor; the Richtersveld Community were restricted to the Richtersveld Reservation.

Was the dispossession the result of racial discrimination?

The Court reasoned that indigenous law was the way black people held land and that the action taken under the Precious Stones Act, which disregarded the Richtersveld Community's rights to the subject land under indigenous law, was racially discriminatory compared to the recognition of registered land rights mainly held by whites. The beneficial ownership of the subject land and the right to use its resources were restored to the Community.

Socio-economic rights, the Constitution and the role of the judiciary

Those who do not have basic amenities such as food, housing, health care and other socio-economic rights are denied the core rights of dignity, equality and freedom.⁴⁰ Under the United Nations Covenant on Economic, Social and Cultural Rights, every state has what is called a 'minimum core' obligation to provide basic food, essential primary health care, shelter, housing and basic education. The role of the judiciary in making decisions on questions of socio-economic rights has been contested because, so the argument goes, the judiciary would be encroaching on the roles of the legislature and the executive. The substance of this argument is that it is the legislature and the executive who make policy and budgetary decisions;

that such decisions breach the separation of powers, and so are outside the capacity and expertise of a court of law. Socio-economic rights, however, are specifically covered in the South African Constitution in Sections 25, 26 and 27 and are thus justiciable by the Constitutional Court.

The kind of orders that can be made

The Constitutional Court has stated on a number of occasions that it is not limited to the least onerous, declaratory orders, but can issue a *mandamus* against an organ of the state, an order that would offer effective relief and, if necessary, follow this by a subsequent order for monitoring compliance with the *mandamus*.⁴¹ Where state policy is challenged and found lacking under Sections 25, 26 and 27 of the Constitution, courts *must* intervene and make orders to remedy this, even creating new policies if appropriate. This kind of intervention has become a common practice of the Court, for instance, ordering the Electoral Commission to allow prisoners to vote, in a provision that would necessitate changes in policy as well as incurring further costs;⁴² and, on one occasion inserting words into a statutory provision so as to add to the definition of spouse, 'or partner, in a permanent same-sex life partnership',⁴³ where this had previously been omitted, discriminating unfairly against lesbians and gays, and so seriously limiting their rights to equality and dignity.

The substance of socio-economic decisions

The Constitutional Court has decided that the state cannot merely pass appropriate legislation, but must support it with reasonable schemes for progressive implementation. Reasonableness is gauged by considering each problem in its particular context. The schemes must be balanced and flexible, must take into account long, medium and short term needs and must not exclude a significant segment of the population.

The two cases that follow, *The Government of the Republic of South Africa v Grootboom* and *Minister of Health v Treatment Action Campaign* show how the state's failure to adopt measures to reduce severe deprivation and suffering, which are demonstrably reasonable and flexible, was adjudicated in the Constitutional Court.

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA V GROOTBOOM

This decision opens with a clear statement that the housing shortage and the intolerable living conditions

for hundreds of thousands of people in the Western Cape are a direct consequence of apartheid and influx control.⁴⁴ The claimants in this case, Mrs Grootboom and hundreds of others living in such conditions,⁴⁵ moved in desperation from their damp overcrowded settlement to a site where their presence was illegal since it had been set aside for the development of low-cost housing. At the start of the cold, windy and rainy winter the claimants were forcibly evicted by the municipality under a court order, in a style said by the Constitutional Court to be reminiscent of apartheid forced removals, their homes bulldozed and burnt, their possessions destroyed.⁴⁶

The High Court decision

The Bill of Rights explicitly makes socio-economic rights justiciable and Mrs Grootboom and the others, homeless after their eviction, applied to the High Court for adequate housing⁴⁷ and shelter under two separate provisions of the Constitution.⁴⁸

The High Court concluded that Mrs Grootboom and the others had two separate rights – a right to adequate housing (including minimally land, services and a dwelling)⁴⁹ under Section 26, as part of a long-term nationwide housing scheme, and on account of their desperate circumstances and a right under Section 28, to shelter on demand, irrespective of available resources. This ruling was challenged by the government in the Constitutional Court.

In examining the decision of the High Court, the Constitutional Court said that although at first glance it would appear that the right under Section 28 of parents and their children to shelter is independent of the right to housing under Section 26 the High Court's conclusion was erroneous. First, it would imply, anomalously, that only children or those with children are eligible for shelter 'while others who have none or whose children are adult are not entitled to housing under that section, no matter how old, disabled or otherwise deserving they may be'⁵⁰; secondly this conclusion does not show a proper understanding of Section 28.

Section 28 is the children's clause in the Constitution. It is lengthy and comprehensively covers all the rights and protections of the child, its main aim being to oblige parents to care for their children, to protect them and give them the basic necessities of life, failing which the obligation falls on the state. The right to shelter is grouped in Subsection 28(1)(c) with children's rights to nutrition, health care and social services. It follows that the rights listed under Section 28 would of necessity overlap with specific rights

covered in the other socio-economic Sections. So the right to shelter under Section 28 is subsumed by the right to housing under Section 26. For this reason the Constitutional Court found that the High Court was mistaken in finding a right to shelter 'on demand' for those in crisis.

Housing schemes

On examining the legislation that existed for the nationwide development of housing, the court found that despite an extensive policy that included structures for implementation, everything was geared towards the provision of permanent housing. There were no measures that provide temporary housing for those in desperate circumstances.

The Bill of Rights is designed to look after the poorest and weakest in society. As stated earlier, the core human rights, dignity, equality and freedom cannot exist if one is deprived of basic amenities such as housing. This is the substance of the Constitutional Court's decision in *Grootboom*. It found that the state's omission was a breach of its constitutional obligations and ordered it to take positive steps to improve the conditions of the claimants under the Accelerated Managed Land Settlement Programme.⁵¹

MINISTER OF HEALTH V TREATMENT ACTION CAMPAIGN

This is a case about HIV/AIDS. The starting point, as for housing, is that the state is overstretched in the provision of adequate public health, another legacy of apartheid. HIV/AIDS has reached epidemic proportions; it is acknowledged as the biggest threat to public health. The drug Nevirapine was found to be effective, if administered at birth, in preventing the transmission of mother-to-child HIV. In 2000 the drug manufacturers made Nevirapine available to the government free of charge for five years.

The main issues before the Constitutional Court were the right of everyone to have access to public health, especially the right of children to be given special protection, and the government's obligation to make and implement plans for a comprehensive and progressive programme to supply Nevirapine.

The High Court had ruled that the government should supply the drug within the public sector, but the government had done this in a limited and restricted manner only, reaching 10% of the population,⁵² saying that they had yet to test the drug's safety and efficacy, despite a 2001 World Health Organisation

recommendation that it should be administered at birth to combat HIV in newborn infants.

Although by the time of judgment there had been an extension of the programme in three of the nine provinces, the other six had not disclosed any plans or details of implementation which showed a lack of transparency and openness:

The magnitude of the HIV/AIDS challenge facing the country calls for a concerted, co-ordinated and co-operative national effort in which government in each of its three spheres, and the panoply of resources and skills of civil society are marshalled, inspired and led. This can be achieved only if there is proper communication, especially by government. In order for it to be implemented optimally, a public health programme must be made known effectively to all concerned, down to the district nurse and patients.⁵³

The Constitutional Court noted that the government was committed to fighting HIV/AIDS⁵⁴ – a surprising view of the Mbeki regime and one that not many people would have shared⁵⁵ – but found that its policy had not met the requisite constitutional standards of flexibility, reasonableness and openness; that it was excluding from a potentially life-saving programme, a large majority of the population. It made an order recognising that the safety and efficacy of Nevirapine had been established, and that, as a potentially lifesaving drug its distribution, as well as facilities for testing and counselling, should be extended on as comprehensive a scale as was reasonably possible throughout the public health sector.

There had been argument to the effect that after the provision of a single dose of Nevirapine, bottle or formula-feeding instead of breastfeeding is necessary to prevent persistence of resistant strains of HIV. But the order did not go so far. The Court said that the chance of persistence was not high and, most significantly, formula-feeding would be almost impossible for women in rural areas without access to clean water.

GUMEDE V PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

Mrs Gumede's case is important because it shows how far the Constitutional Court is prepared to go in righting the inequalities faced by black women involved in customary law marriages. Mrs Gumede was an old-age pensioner in a marriage entered into in 1968. Her marriage was governed by the following provisions, Section 7(1) of the Recognition of Customary Marriages Act (the Recognition Act)⁵⁶, Section 20 of the KwaZulu Act on the Code of Zulu Law (the KwaZulu Act)⁵⁷ and Sections 20 and 22 of the Natal Code of Zulu Law (the Natal Code)⁵⁸. Under Section 7(1) all marriages entered into before the commencement of the Recognition Act were customary law marriages and under Section 7(2) all marriages entered into after the inception of the Act, 15 November 2000, were in community of property. The sections of the KwaZulu Act and the Natal Code that codified customary law in KwaZulu-Natal made Mr Gumede exclusive owner of the family property, both during and after marriage. He was head of the family and had 'control' over all its 'inmates' who owed him 'obedience'.

He was head of the family and had 'control' over all its 'inmates' who owed him 'obedience'.

About to be divorced, Mrs Gumede had challenged the provisions that regulated the proprietary consequences of her marriage in the High Court, saying that they were unfairly discriminatory on the basis of race and gender. The High Court had

declared the offending provisions invalid and Mrs Gumede sought confirmation of this order in the Constitutional Court. Mr Gumede was not a party to the matter. The provisions were defended in the Constitutional Court by the government.

The implications of Mrs Gumede's situation and hundreds of thousands of others like her, are that women are unfit or incapable of owning or administering property – a violation also of their rights to equality and dignity that would render them dependent and poor. Mrs Gumede's action for confirmation of unconstitutionality was supported by the Women's Legal Centre Trust as *amicus curiae*, urging an extension of the finding to polygamous marriages under customary law.⁵⁹

According to the Court,

...a prominent feature of the law of customary marriage, as *codified*, is male domination of the family household and its property arrangements. Whilst patriarchy has always been a feature of indigenous society, the written or codified rules of customary unions fostered a particularly crude and gendered form of inequality, which left women and children singularly marginalised and vulnerable.⁶⁰ [emphasis added]

So it found the provisions constitutionally discriminatory both on the count of gender, as between husband and wife and between those women married after the enactment (in community of property) and those married prior to it under the codified customary law.⁶¹

Two orders were possible: either to develop customary law, making it compliant with the Constitution, or to declare the offending provisions unconstitutional. The former was deemed unnecessary since the parameters of customary law in this case pertain only to codification in KwaZulu-Natal.⁶² The Recognition Act was intended to reform customary marriages by giving spouses equal status and capacity, and regulating the marriage's proprietary consequences. Its unconstitutional results were defended by the government on the basis that women in such customary marriages could seek to have property transferred to them under provisions of the Divorce Act.⁶³ But the Court decided that even if this were successful it would not change the situation during the marriage. In any event it is unlikely that a woman in a customary marriage is in a position to bring such an action, and even if she did, it would be unfair for her to bear the cumbersome onus of proving that she

is entitled to the marital property.⁶⁴

Retroactivity again

The point about Section 7 of the Recognition Act is that it brings equality between the spouses from the Act's inception only (15 November 2000). The sole way to remedy the effect of this section would be to make parts of it invalid retroactively so that marriages concluded earlier than 15 November 2000 would also be in community of property. All customary marriages would from now on be in community of property. 'The recognition of the equal worth and capacity of all partners in customary marriages is well overdue, and no case has been made out as to why it should be delayed any further.'⁶⁵

An order was made invalidating section 7(1) of the Recognition Act, the segment of Section 7(2) saying 'entered into after the commencement of this Act', Section 20 of the KwaZulu-Natal Act and Sections 20 and 22 of the Natal Code. The Court emphasised that the retroactivity would not affect the legal consequences of the exercise of marital power, or of customary marriages that ended with death or divorce before the order was made

Polygamous marriages

The Court noted the concern of the *amicus curiae*, the Women's Legal Centre Trust, that if Section 7(1) of the Recognition Act were abolished there would be no statutory provision regulating polygamous marriages entered into prior to the act. They asked the Court to safeguard such polygamous marriages by making an order which would direct how the marriage property should devolve on dissolution of the marriage. The Court refused, saying that it was unlikely that there would be a lacuna and that pre-recognition polygamous marriages would most likely continue to be regulated under customary law. If there was a lacuna it could be addressed in future legislation. But the order included the words, 'invalid to the extent that its provisions relate to monogamous customary marriages'.⁶⁶

How much has the past been fixed?

Each of the five decisions discussed are a consequence of the iniquity, deprivation and oppression inherent in pre 1994 South Africa. In each case the Constitutional Court took steps to redress the injustice. The remaining question is to what extent the Court was successful. *Richtersveld* returned full rights and beneficial use of the subject land to the Richtersveld Community, and after *Makwanyane* there would be no more institutional

killing for murder; death row ceased to exist.

But the socio-economic rights cases do not provide easy answers. The less than perfect results show the profundity of past deprivations. The judgement in TAC could never have been effective enough. The Mbeki government's recalcitrance and denial of the HIV/AIDS epidemic in the wake of pre 1994 deprivation of adequate health care had already caused an irremediable amount of damage; and the lack of clean water for so many people did not allow the Court to extend the order to make provision for formula or bottle-feeding instead of breastfeeding,

and thereby to prevent the persistence of resistant strains of HIV. The fact that people in the position of Mrs Grootboom and her co-litigants were numbered in their thousands meant that immediate relief was not practicably possible.

The proprietary status of Mrs Gumede and women like her was remedied by the Court's order. However, women in polygamous customary marriages not only remain insecure and unprotected, but the continued acceptance of such marriages under a new legal regime, which is intended to secure dignity and equality is, to say the least, anomalous.

NOTES

- 1 I want to thank Aninka Claassens and Jacqui Lurie for helpful advice in writing this paper.
- 2 Requiem for a Nun (1951).
- 3 M Chanock: *The Making of South African Legal Culture 1902-1936: Fear, Favour and Prejudice*, Cambridge University Press 2001, gives an excellent account of how the events prior to and after Union set the ground for what was to follow.
- 4 For full discussion of these laws see, for instance, J Dugard: *Human Rights and the South African Legal Order*, Princeton University Press 1978, pp107 to 202; A Mathews, *Freedom, State Security and the Rule of Law: Dilemmas of the Apartheid Society*, Juta 1986.
- 5 S Ellmann: *In a Time of Trouble, Law and Liberty in South Africa's State of Emergency*, Clarendon Press Oxford, 1992, p22.
- 6 1986(3) SA 549 (A).
- 7 1980 (4) SA 448 (A).
- 8 1983 (4) SA 278 (W). Appeal by the State dismissed in *Oose-Randse Administrasieraad en 'n Ander v Rikhoto* 1983 (4) SA 595 (A).
- 9 These included the Prohibition of Mixed Marriages Act, the Immorality Act and the Reservation of Separate Amenities Act.
- 10 See *Soobramoney v Minister of Health, KwaZulu-Natal* 1998 (1) SA 765 (CC); 1997 (12) BCLR 1696 (CC) at para 8.
- 11 Prior to the Constitutional Court the only occasion on which the highest court at the time, the Appellate Division, had overturned parliamentary action was in *Harris and Others v Minister of the Interior and Another* 1952 (2) SA 428 (A) and *Minister of the Interior and Another v Harris and Others* 1952 (4) SA 769 (A), the first two of the three 'constitutional crisis' cases. Here the Nationalist government's attempts to remove coloured from the voters' roll in the Cape, using a Senate vote that did not fulfil entrenched provisions under the Union Constitution, were twice rebuked by the AD. The government was successful in the third case after a packed Senate had rendered the move notionally legitimate. In the final case, *Collins v Minister of the Interior and Another* 1957(1) SA 552 (A), the sole dissenter was Schreiner JA.
- 12 *Makwanyane*, (CCT/3/94) [1995] ZACC 3; 1995 (6) BCLR 665; 1995 (3) SA 391; [1996] 2 CHRLD 164; 1995 (2) SACR 1 (6 June 1995).
- 13 *Richtersveld*, (CCT 19/03) [2003] ZACC 18; 2004 (5) SA 460 (CC); 2003 (12) BCLR 1301 (CC) (14 October 2003).
- 14 *Grootboom*, (CCT38/00) [2000] ZACC 14 (21 September 2000).
- 15 TAC, (CCT 8/02) [2002] ZACC 16; 2002 (5) SA 703; 2002 (10) BCLR 1075 (5 July 2002).
- 16 Gumede, (CCT 50/08) [2008] ZACC 23; 2009 (3) BCLR 243 (CC); 2009 (3) SA 152 (CC) (8 December 2008).
- 17 G Simpson, and L Vogelmann. 'The Death Penalty in South Africa', Centre for the Study of Violence and Reconciliation. [need date]
- 18 Chapter 3 of the Constitution at the time of *Makwanyane*, now Chapter 2.
- 19 Section 33 at time of *Makwanyane*, now Section 36 (the limitation clause).
- 20 *Makwanyane*, para 197, Kentridge J.
- 21 *Ibid* para 124, Chaskalson CJ.
- 22 *Ibid* para 272, Mahomed J.
- 23 *Ibid* para 233, Langa J, quoting, in part, Brennan J in *Furman v State of Georgia* (1972) 408 US at 305.
- 24 *Ibid* para 190.
- 25 *Ibid* para 178, Didcott J, quoting the judgment of Stewart J in *Furman* op. cit. at 306.
- 26 On this point most of the judges say that to assume that a death sentence is per se a violation of the right to life is simplistic since there could be occasions such as war where State approved killing would not be unconstitutional.
- 27 See *Ibid* paras 48 to 56, Chaskalson CJ. See, too, the reference to the racially unfair imposition of the death penalty, n.11 above.
- 28 *Ibid* para 166, Ackermann J.
- 29 *Ibid* para 177, Didcott J, quoting Wright CJ in *The People v Anderson* (1972) 493 P 2d 880, para 894.
- 30 *Ibid*, Didcott J, para 188.
- 31 *Ibid* para 88, Chaskalson CJ.
- 32 *Ibid* para 121.
- 33 *Ibid* para 296, Mahomed J.
- 34 Richtersveld, para 35.
- 35 *Ibid*, paras 50 to 57.
- 36 *Ibid*, paras 50 and 59.
- 37 *Ibid*, paras 64.
- 38 *Oyekan and Others v Adele* [1957] 2 All ER 785 at 788E-I, quoted *Ibid*, at para 69.
- 39 Richtersveld, para 84.
- 40 Grootboom, para 23.
- 41 See, generally, TAC paras 100 to 114.
- 42 *August v Electoral Commission* 1999 (3) SA 1 (CC); 1999 (4) BCLR 363 (CC). In this case the order was accompanied by an injunction to submit a detailed plan for public scrutiny.
- 43 *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* 2000 (2) SA 1 (CC); 2000 (1) BCLR 39 (CC) para 86. See too, paras 66 and 82 ff.
- 44 See Grootboom, para 6.
- 45 'About half the population were children; all lived in shacks. They had no water, sewage or refuse removal services and only 5% of the shacks had electricity. The area is partly waterlogged and lies dangerously close to a main thoroughfare.' Grootboom, para 7.
- 46 *Ibid*, para 10.
- 47 An important paper on this case and its surrounding circumstances is 'The Grootboom case and women's housing rights', Budget Brief No. 111, IDASA October 2002.
- 48 Respectively, Sections 26 and 28 of the Constitution.
- 49 *Ibid*, para 35.
- 50 *Ibid*, para 23.
- 51 *Ibid*, para 99. The Accelerated Managed Land Settlement Programme was initiated to facilitate the provision of land and progressive access to basic services for people in crisis situations.
- 52 TAC, para 119.
- 53 *Ibid*, para 123.
- 54 *Ibid*, para 124.
- 55 A background to the South African AIDS epidemic, the tragic consequences of the government's failure to provide nevirapine more comprehensively and pertinent comments on the attitudes of the Mbeki regime are found in A Belani: *The South African Constitutional Court's Decision in TAC: A "Reasonable" Choice?* Center for Human Rights and Global Justice Working Paper No. 7 (New York, NYU School of Law 2004).
- 56 120 of 1998.
- 57 16 of 1985.
- 58 Proclamation R151 of 1987 GG No. 10966.
- 59 Note that Section 7(2) of the Recognition Act makes any marriage that occurred after the Act came into force a marriage in community of property only 'if a spouse is not a partner in any other existing customary marriage' (my emphasis).
- 60 Gumede, para 17.
- 61 *Ibid*, para 34.
- 62 *Ibid*, paras 28 and 29.
- 63 70 of 1979.
- 64 Gumede, para 48.
- 65 *Ibid*, para 51.
- 66 *Ibid*, para 59.



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On South African Identity¹

*When old age shall this generation waste,
Thou shalt remain, in midst of other woe
Than ours, a friend to man...*

Keats

Patina, as any antiques dealer will tell you, is all the things that have happened to an object since it was made. It individuates, since each object has its own history, and it embodies the conditions of survival. The object itself connects us to an earlier age, different social conditions, a different aesthetic, and it steadies us, as 'now' becomes a moment in a great unfolding history.

Certainly, a steady, historically informed and largely descriptive perspective needs to be added to the often frantic and highly normative debates of the moment about Identity. What drives these debates? Disappointment and anxiety.

One immediate cause of disappointment is not hard to find – it is close to being global. The Great Recession struck our labour market in early 2009, with aggregate employment dropping from 13.8 million in the last quarter of 2008 to 12.9 million in the third quarter of 2009. Here is the cause of restlessness from below, manifesting itself in strikes and increased demands, backed by revolt, on the often low limits of capacity of local government to deliver.

There is a corresponding fiscal source of disappointment. The dominant sentiment at the Polokwane conference of the ANC was that monetary and fiscal policy had been too tight. More money for the new administration was expected. But it never arrived. The Great Recession drastically cut tax revenues, so that without any adjustments on the revenue side, the budget deficit soared to levels above anything discussed at Polokwane. And the medium run expectation is that there will be fiscal tightening to prevent the national debt to GDP ratio rising above 50%, the level thought prudent as an upper limit in developing countries.

Deeper and more serious than these conjunctural reasons for disappointment is a longer term failure. Economic historians speak of the 'great modernising work of the Meiji oligarchs'. They were powerful people who saw, in the late nineteenth century, what was needed to make Japan a modern nation. And they did it. Power and wealth were harnessed to a higher objective. South Africa has had its modernising oligarchs. It has a few still, but old wealth has its work cut out to survive and new is heavily focused on augmentation. And political power seems increasingly to be conceptualised as a means to the accumulation of wealth. The wilder side of Wall Street finds its counterpart here.

Hence the anxiety. It has three sources. The first starts from above. One has only to look to the immediate north to see what no holds barred accumulation by a few can do to a whole society: stolen elections, infringements of human and property rights, hyperinflation, beatings and murder of political opponents². And at home – if

I mistake not – behind the flamboyant activities of the ANC youth league on land reform lie the desires of older counterparts to acquire choice farms not necessarily at market prices. Just what is it that keeps us from the slippery slope?

The second source of anxiety starts from below. A democratic society is built from a set of institutions. The minimal set guarantees openness, competition and regular testing of opinion through elections. The minimal set underpins the dominant conception of democracy in the United States. Europeans characteristically add the institutions of social citizenship to the minimal set as essential to democracy. It is not surprising that we went the European route in the 1996 Constitution. What is surprising is that the implications have been so poorly understood. For what is required, above all, is the careful creation of institutions on which ordinary citizens can rely. They must be fit for purpose and incorrupt. They must develop rather than decay.

So one reads with some dismay the report of the ministerial committee on the National Student Financial Aid Scheme (NSFAS)³, whose origins lie in a fund established by the Independent Development Trust in 1991. The aim of the fund was to establish a loan fund for poor students arriving in increasing numbers in institutions of higher education. Where are we twenty years later? Let the report tell us:

State led development is essential, it is promised, but it is not delivered to the required standard.

- The Committee could not find any [NSFAS] board policies other than a 2007 investment policy...Among the immediate consequences of the absence of a comprehensive policy regime is that NSFAS operates with inadequate organisational and systemic checks and balances.⁴
- The lack of continuity in the office of the CEO has limited the organisation in its ability to respond strategically to the challenges facing NSFAS. The organisation has had three CEOs and two acting CEOs during its ten year existence [i.e since the IDT scheme became NSFAS].⁵
- The processing of NSFAS loan agreements does not meet good governance or audit requirements.⁶
- The present NSFAS premises are inadequate for the administrative, safety, security, office accommodation and other needs of NSFAS.⁷
- The Committee found that NSFAS has no information technology governance structures.⁸
- During the Committee's visit to NSFAS, it was evident that it has no safe document storage system, with loan agreements and other documents stored in cardboard boxes stacked in offices and passages, vulnerable to fraud, fire and theft.⁹

And there is more. It is a paradigm case. Here is an institution whose job it is to disburse billions of rand per year in support of human capital formation among students from poor families and what do we find? — A lack of commitment at the top, no development of policy in response to circumstances and management which appears little short of chaotic. State led development is essential, it is promised, but it is not delivered to the required standard. It can't be if the top positions are filled by people ever eager to move on to something better.

The third cause for anxiety is the increasing preoccupation with identity in recent

decades, a trend pushed along by the collapse of communism in its heartlands. A marker was Huntington’s *Clash of Civilizations*, but more radical has been the construction of accounts of social circumstances connected to particular identities¹⁰. These accounts are usually constructed against the ‘other’ — patriarchy, heterosexual, white America, the globalised economy. The struggle between identities clogs the universities, leading to seriously incomplete education and can, at their worst, make certain things unsayable. It was the rough treatment that she received on a factual point she made at a seminar on the ‘Black Athena’ thesis¹¹ that led Mary Lefkowitz to write her *Not out of Africa: How Afro centrism became an excuse to teach myth as history*. South African scholars will find the terrain familiar. The worst is when whole societies are caught up in myth which, because it is a myth, becomes murderous.

So what does the experience of the last hundred years have to offer at this new time of peril?

It takes some stretch of the imagination to realise how raw and incoherent the South African project was at the time of its inception in 1910. The territory was defined by conquest and settler expansion with some frontiers closed less than twenty years ago. While migrant labour was already an institution, most people lived from agriculture and travelled small distances from where they were born. Neither of the nationalisms — which were to play an increasing role in defining political identity as the century wore on — had yet been organised at the national level.

And while the new government was swift to move on the land tenure question, it was slower to understand the sociology in the territory it ruled. Some unnecessary blood was spilled, until a local tradition in social anthropology was developed which, by the 1940s, had produced world leaders in the field. Van Warmelo’s massive annotated bibliography, *Anthropology in Southern Africa in periodicals to 1950*,¹² shows that the achievements of the Hunters, Schaperas, Hoernles and the like in the 1920s to 1940s were grounded in extensive 19th century studies. You can deconstruct the colonial gaze as much as you like, but its results between Union and 1948 were largely benign, reducing costly confrontation.

The anthropologists saw clearly that what they were describing was changing under the impact of

Christian mission, education and above all economic development. It was apartheid that wanted to freeze the frame as a justification for racial separation and territorial division. Ideological misuse and loss of practical function vitiated social anthropology, which in any case was due for a merger with sociology. While there has been innovative work on a limited range of themes over the years, South African society remains markedly under-described. What are the main features of contemporary rural sociology? What is ‘youth culture’ like among young people who have lived most of their lives in post-apartheid South Africa? What unites and what divides the middle class? We don’t really know.

Things are not helped by a preference for theory, not to mention normative ‘correctness, over solid empirical work in the social scientific disciplines in South Africa. In an earlier period people got into their Model T Fords and went to have a look; now we mostly theorise. The current unwillingness results in a deficit in our knowledge and understanding of how identities are formed; indeed it fails to provide a map against which identities can be defined or chosen.

It should also be remembered how precarious the South African economy was in the early years. In 1910, public debt was 90% of GDP, mainly because of the war a decade earlier. And the economy immediately ran into one head wind after another: the First World War and high inflation, the post war recession, the gold price crisis, the 1922 strike and the Great Depression. The best period for growth was between 1924 and 1928. Real income per head was probably no higher in 1932 than it had been in 1910. The great expansion of the economy took place between 1933 and 1975. In the 1960s, growth in real per capita income exceeded 3% in some years. Then things took another dip as the table shows:

Period	Average annual growth rate In real income per capita
1975-80	0.7
1980-85	-0.9
1985-90	-0.5
1990-95	-1.2
1995-2000	0.7
2000-05	2.2
2005-09	2.0

Source: South African Reserve Bank

Three five year periods of negative growth in income per capita meant that South Africa did not get back to

its 1980 real income per capita level until 2004. So, taking the century as a whole, for only just over half of it did we see an advance in living standards. Our march towards modernisation never goes fast for long and there are long falters. We are decades away from mopping up our labour surplus. At our median growth rate over the period 1950-2005, it will take us 70 years to reach where Portugal, the poorest west European country, is now.

And yet, useful things have been done in economically difficult periods. The foundations of South African manufacturing were laid in the period between 1918 and 1932. Business was able to make a number of useful contributions in the late apartheid period, laying some of the foundations of the immediate post-apartheid settlement, for instance in housing policy. The question is now: from where, and from whom, will the next round of innovative thinking – the next layer of economic identity – come? Perhaps the National Planning Commission will inform us in due course.

A remarkable feature of South African life has been cultural production by initially very poor urban communities. A distinctively African urban musical tradition was visible by the 1940s, with performance sites spilling out from the townships. It has been growing ever since, with dance and theatrical traditions growing alongside. Eclectic in its inspiration by sources as diverse as African-American music, traditional rural music, western popular music and the church music, this tradition is capable of high voltage, mellow and mobilising music by turns. Its energy derives from the energy that most South Africans devote to their leisure – we are, in economic parlance, a high leisure preference society. There is nothing wrong in that, of course; the economic engine can work just as well with these preferences as with more austere preferences. But this does mean that our gross national product under-measures our welfare, since it does not count in leisure, except to the extent that it is provided by marketed services. In other words, we should be happier than our GDP per capita indicates.

A remarkable feature of South African life has been cultural production...we are, in economic parlance, a high leisure preference society.

In fact, a study by Richard Layard¹³, put the happiness index (the average of the per cent of people who say they are happy and the per cent of people who say they are satisfied with their lives) at 68 for South Africa, a bit below the trend line of happiness plotted against GDP¹⁴. This can be explained by the very high level of inequality in South Africa, which characteristically reduces happiness a lot. Were inequality lower, South African happiness would lie well above the trend line.

Equally remarkable is the capacity of poor communities to organise themselves. This capacity can be found right across sub-Saharan Africa. It must be there since many countries descend from time to time to abysmal levels of governance, yet the population continues to grow. It can be the key to survival in very harsh circumstances. Right now I have a doctoral student analysing the results of a survey in an area of Zimbabwe consisting of old commercial farms surrounded by villages on land in communal tenure. The owners of the commercial farms saw the land reform coming and split them up into 25 acre lots for sale at modest prices and people in formal employment and with a bit of spare cash bought them. Initially the motive was often to have a 'place in the country', with a bit of cultivation if part of the extended family wanted to live there and do that. However, hyperinflation and unemployment meant that the lots became the main source of livelihood and as it did, farmer specialisation

and local trade sprang into existence. As shelves emptied and stocks of essentials disappeared, co-operatives to obtain these from neighbouring countries (Botswana and South Africa) emerged, along with the utilisation of links to these countries to supply migrant labour to pay for these imports. And along with the flows of migrant labour and goods, currency transactions had to be organised, presaging the multiple currency arrangements in Zimbabwe at this very moment. Currencies move around southern Africa in ways not predicted by the relevant central banks.

It is clear that there is an astonishing story here of how a community moved to avert disaster, both responding to market signals and overcoming collective action problems – state failure countered by community organisation. Of course, not all communities were able to adjust in this way: full urban communities and (particularly) informal settlements have been harder hit. ZANU-PF has found the rural areas easier to control politically, partly through an adapted version of the Shona *pungwe*¹⁵, which has in recent years taken the form of compulsory and lengthy community chanting of ZANU-PF slogans, followed by beatings of identified members of the opposition.

How do all these layers play out in our political system? Our closed party list system was the concession to consociationalism; minority groups would have less parliamentary representation in a first past the post single member constituency system. But the cost of that system is deficiency in representation; no area has an MP whose political fortunes depend on constituency approval. The artificial creation of constituencies has done little to change the position and can do little, in the absence of personal accountability. Representation at local government level is more direct. Half the elected representatives are ward councillors. But the link between people and representatives is vitiated by lack of capacity in many local authorities.

Moreover, the political system has become more opaque. The Mbeki administration placed priority on government coherence and communication of ‘message’. Following the Polokwane revolt, the Zuma administration has found it expedient to have a larger galaxy of ministers and deputy ministers, with much less effort devoted to coherent communication. Indeed, on any issue, one can expect two or three or four ministerial heads to pop up and say different things. To what extent does the Reserve Bank

now take considerations other than inflation into determining monetary policy? What is the next move to be in health policy? Can the leader of any of the ANC’s organisations do what she or he likes? It is anybody’s guess. And just who in national and provincial government is allying themselves with whom, and to what end?

Under these circumstances, which policies are available to the government?

Affirmative action type policies have the counterfactual outcome of weakening ‘identification with the nation’ (crucial to nation-state based identity) among the non-preferred groups(s).

The first is continued reliance on nationalist sentiment. This will become a declining asset if people are unable to link it to real improvements in their lives. Quiet disaffiliation and active resistance will follow. The most likely response will be to try and bind the constituency back in by upping the stakes, a trend we have seen from parts of the ANC recently. But upping the stakes will have an impact on the economy, not all of it positive. Trotsky once observed that what is politically rational is not necessarily economically rational. We may be in for a period which once more establishes the truth of that dictum. Anything (and particularly exclusivist nationalism) that undermines civic belonging with its correlative duties and obligations, will undermine the well-being of the political order. Even bellicose speech can have a negative effect. Affirmative action type policies have the counterfactual outcome of weakening ‘identification with the nation’ (crucial to nation-state based identity) among the non-preferred groups(s). As Thomas Sowell¹⁶ has pointed out, the effect of such policies is to produce a ‘double disincentive’. The ‘preferred group’ doesn’t need to work hard and to reap rewards commensurate with its efforts; the ‘non-preferred group(s)’ are not rewarded, however much they try. Such policies (and even presaging rhetoric) render feelings of belonging among non-preferred groups very fragile.

The second is bread and circus politics, of which the World Cup is the most prominent current example. This will be helped by South Africans’ leisure preference, which implies a taste for circuses. Bread

and circuses were originally the policy of the Caesars: they did not betoken democratic consent, but an attempt to legitimise authoritarianism.

The third is faction management. This is the predominant activity of the Zuma administration. The main aims of faction management are (a) to prevent the factions from tearing the organisation apart (b) to prevent the factions from tearing you apart and (c) to play the factions off against each other so as to prevent any from becoming too powerful. Output to the electorate is secondary in the mode. Pervasive uncertainty is what it produces.

...if contacts, if luck are more important than anything you can know in determining the outcome of your life, then the labour of learning anything will seem like a pointless exaction.

The fourth, and least likely on current form, is evidence-based policy development to improve the economy and living standards. There certainly have been achievements on this front in the last fifteen years, but the political system is now battling to assemble the necessary will and concentration. And the administrative apparatus on which policy implementation must rely, is often very weak. Cadre deployment means that political faction may go all the way down in implementing agencies. And administrative weakness is widespread.

The consequences can be felt in the peculiar problems of educating the young at the moment. One of the incentives to learn is an imagined place in the labour market where the learning will be applied. High youth unemployment, however, renders more tenuous and delayed in time the relationship between effort and reward. If the motive for investment is weakened,

the desire for consumption rises. And the only form of available consumption is leisure, leading to lower application. Uncertainty makes things worse and leads to a 'lucky breaks' mentality¹⁷; if contacts, if luck are more important than anything you can know in determining the outcome of your life, then the labour of learning anything will seem like a pointless exaction. Certification is desired, fetishised even, for the system requires it, but knowledge and the development of a plan of life to use and extend knowledge are in the background. It leads to an unsustainable situation because certifications are valued in the market place by the skills that they embody and by the anticipated steadiness of their application, while the motivation to acquire these skills is weakened.

The perspective here has been one of high modernism. Is that the problem? Does postmodernism offer more? Consider the following passage:

[Postmodernism] posits an end to history, an end to art and an end to 'the subject', whose individual and collective action makes meaningful change possible. Even the postmodern utopia is one which cancels movement by emphatically privileging space over time. Utopian postmodernism is thus a vision of a neo-tribal paradise in which spatially set forms of life carry on experiments, each in their own culture. In this vision, however, communication is impossible between tribes.¹⁸

Leave aside the uncanny parallel with the theory of apartheid. The real problem is that this vision of pleasurable play fails to focus on the pattern of global accumulation which shapes and re-shapes forms of life and identities. Making out economically has, in fact, become increasingly important in South Africa as expectations of comfortable or better life styles have become widespread. But tribal introversion is all but universal. And yet, resource strategies in East Asia may deposit the next layer in our complex identity.

NOTES

- 1 I am indebted to Professor Raphael de Kadt for very helpful comments on a first draft.
- 2 The last, of course, not unknown in South African political history.
- 3 Published on the Department of Education's website.
- 4 (p xvi)
- 5 (p xvii)
- 6 (p xvii)
- 7 (p xx)
- 8 (pp. xx-xxi)
- 9 (p xxi)
- 10 An assortment of feminist, queer, and ethnic minority identities come most readily to mind.
- 11 i.e. the idea that Greek thought was essentially unoriginal, relying on older Egyptian, and hence African, sources.

12 Published by the University of Witwatersrand Press in 1977.

13 Richard Layard, *Happiness: Has a social science a clue?*, Lionel Robbins Memorial Lectures 2002/03, Lecture 1:19.

14 Happiness rises with income per capita until a level of \$15 000 is reached. Thereafter there is no correlation.

15 See Joshua Hammer, *The reign of thuggery*, *New York Review of Books*, 26 June 2008.

16 Thomas Sowell is an American economist, philosopher, political commentator, social critic and author. The author is referring to his book: *Affirmative action around the world: An empirical study* (2004).

17 'Greatest thing since Noah/only does to show-a/anyone from anywhere can make it if they get the lucky breaks' – Joseph and his amazing technicolour dream coat.

18 (eds) Scott Lash and Jonathan Friedman, *Modernity and Identity*, Blackwell, 1992: 1-2.

Chris Alden & Ward Anseeuw, Palgrave MacMillan, 2009.

Land, Liberation and Compromise in southern Africa



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President Mugabe's opportunistic use of the land issue to shore up his failing government does not mean that land reform is unimportant in Zimbabwe – or other former white-ruled countries in southern Africa. In all of these, there was a pattern of land alienation, evident in the fact that, in 1970, in Zimbabwe, 6,400 white farmers owned almost half the land, while millions of blacks were confined by law to the rest. In Namibia, 4,200 white farmers owned 43% of the land and, in South Africa, 86% was reserved for whites who, in 1970, comprised 18% of the population (now down to 11%).

This disproportionate land allocation was accompanied by generous state supports and infrastructure for white farmers, alongside severe discrimination against black farmers, who were excluded from these supports and subject to constraints on their mobility, and to taxes, to force them to work for whites.

Following the establishment of majority rule within a framework of constitutional democracies – in Zimbabwe in 1980, Namibia in 1990, South Africa in 1994 – the white minorities lost political power. But they remained dominant economically, including in agriculture, where there was little change in 'colonial' patterns of land ownership. Moreover, farm workers remained among the lowest paid, least protected workers. In all these countries, black agriculture was still largely confined to the 'communal' areas (or 'homelands'), where there was little development, with the notable exception of an initial spurt of production in Zimbabwe (the success of which has received surprisingly little recognition).¹

Why was there so little land reform by 2000? Why were radical changes then suddenly and violently introduced in Zimbabwe? And are these changes a portent of what might happen in Namibia & South Africa? (In other southern African states with white minorities, colonial rule ended in revolutionary upheavals involving the flight of those smaller minorities, the expropriation of their property, and a very different situation in relation to land ownership).

The authors of this timely, challenging but uneven book argue that: (i) the co-existence – in Zimbabwe, Namibia, South Africa – of liberal constitutional democracies alongside the lack of economic transformation created an inherently unstable situation; (ii) this was a, if not *the*, underlying cause of the upheavals in Zimbabwe; (iii) these, in turn, have had a major impact throughout the region, pushing to the

fore the issue of ownership of land (and, one might add, other 'indigenous' assets). Alden and Anseeuw pursue this analysis through an examination of what they term the conflicting "national liberation", "settler colonialism" and "neoliberal" narratives, each constructed upon its own version of the history, values, identity, feelings and policy options.

Zimbabwe

Zimbabwe's lurch from relatively stable, functioning state, able to feed and educate its people, to a 'failed' state, was unexpected. In explaining this, Alden and Anseeuw avoid the standard oversimplifications of Mugabe as victim of neo-colonialism or malicious demon. While recognising Mugabe's opportunistic use of the land issue, and anti-imperialist sentiments, to shore up the power and privileges of the Zanu-PF elite, and justify his brutal treatment of the non-violent, popular (and overwhelmingly black) opposition, Alden and Anseeuw recognise the salience of the clash between black political rule and continued economic inequality, most glaringly of land.

Alden and Anseeuw relate how this unstable situation was brought to crisis point by the economic mismanagement of an increasingly autocratic and corrupt Zanu-PF, then exacerbated by the structural adjustment programme imposed on Zimbabwe by the International Monetary Fund's attempt to get the economic problems under control. Mugabe's relations with international donors was further strained by his 1998 intervention in the Democratic Republic of Congo (DRC), in support of embattled Laurent Kabila, which proved costly to the overstrained fiscus (though lucrative for Zanu politicians and generals).

Mugabe reacted to the political discontent generated by these economic problems by focusing on the unfinished business of land redistribution. This had started off well in 1980, but lost impetus and direction amid scandals over land grabs by the Zanu elite, and the subsequent withdrawal of financial support by the United Kingdom and other donors. In 2000, violent land invasions began, sanctioned by Mugabe and supported by his security forces. Mugabe reacted to ensuing court challenges by unconstitutional counter-measures against the judiciary, independent media and the opposition Movement for Democratic Change (MDC). The ensuing instability and violence led to a flood of refugees to neighbouring countries, and the West, where they campaigned for international support.

In this complex, emotionally charged situation, Mugabe's "national liberation narrative" won support from most African (and other Third World) leaders in two key respects. First, they endorsed his claim that Zimbabwe's domestic problems were rooted in the inadequacies of the 1979 Lancaster House settlement that ended white rule – a settlement to which Mugabe agreed only reluctantly, under pressure from both the West and neighbouring African states. Mugabe maintained that the land invasions were due to the failure of the West, particularly the UK, to live up to its promises of financial support for land reform. Second, there was support for Mugabe's contention that western "preoccupation" with Zimbabwe's crisis was due to racist concerns about their 'kith & kin', whose farms were seized. This charge gained credibility from the initial media focus on the few dispossessed white farmers, alongside neglect of the plight of many displaced black farm workers and persecution of the MDC.

Alden and Anseeuw relate how African leaders hailed Mugabe's actions as "a

Mugabe maintained that the land invasions were due to the failure of the West, particularly the UK, to live up to its promises of financial support for land reform.

forthright stance against vestiges of colonialism and the new imperialism”², and how the African National Congress (ANC), despite its claim of pursuing an even-handed, mediating role in this crisis, endorsed the essentials of Mugabe’s narrative (though not necessarily his manner of achieving his aims). This is evident in President Mbeki’s statement that Mugabe’s land seizures were a necessary form of redistribution due to “a problem caused by colonialism”, and the statement by Foreign Minister, Dlamini-Zuma that African states were aware of the West’s “hidden agenda to topple the Zimbabwean government... [and] re-colonise Zimbabwe”³.

Mugabe thus succeeded in presenting Zimbabwe’s crisis in racial terms, brushing aside not only intra-black class, ethnic and ideological divisions, but the growing domestic support for the MDC, which he depicted as a tool of local whites and the ‘new’ assertive imperialism of Bush and Blair. It was only following economic collapse, growing support for the MDC, intensification of the refugee flood (an estimated quarter of the population departed), and damaging effects on investment in the whole region, that the African Union/Southern African Development Community reluctantly applied sufficient pressure to force Mugabe to stage (violent, heavily rigged) elections and, eventually, in 2008, accept the power-sharing Global Political Agreement, which SADC arm twisted the MDC (which won the election) into joining, in a junior role.

Alden and Anseeuw argue that the land issue thus had profound effects not only for Zimbabwe’s economy, but also for the legitimacy of its constitutional democracy. Land became “the metaphor for the failure of post-colonial regimes to fully address the aspirations of liberation...the white farmer became a living representation of the brutal expropriation of land”, and Mugabe “dumped the constitutional state to retain political power”⁴. The failure to match political with economic reform damaged the long term prospects for democracy and led to a narrow definition of citizenship, i.e. who qualified as an African.

Regional effects of the Zimbabwe crisis

The authors argue that the Zimbabwe crisis had major effects elsewhere in the region, particularly on Namibia and South Africa, whose governments were “jolted” into addressing the land issue, on which, by 2000, they had done even less than Zimbabwe. But

Alden and Anseeuw believe the response of South West African People’s Organisation (Swapo) and the ANC is largely rhetorical and that they are unlikely to address this issue seriously (though some of their own data casts doubt on this conclusion).

The clear, informative chapter on Namibia documents the lack of progress in redistributing land, despite growing dissatisfaction with high unemployment alongside rapid gains for the urbanising Swapo elite, and anger at farm worker dismissals (prompted by the attempt of farmers to head off land claims by workers and tenants). They note the lack of effective pressure on Swapo, which has co-opted the leaders of emerging popular movements and appeased the poor with state grants and pensions.

“we are realists...[and] will not interfere with land ownership...as set out at present”⁵.

Alden and Anseeuw maintain it was only after the Zimbabwe upheavals that Swapo began to address the land question. However, as they also note, Swapo had signalled in 1989 that land reform was unfinished business, stating that: “we are realists...[and] will not interfere with land ownership...as set out at present”⁵. An affirmative action loan scheme for black farmers was set up in 1992; the budget for land purchases expanded, and the 1995 Agricultural (Commercial) Land Reform Act provided for expropriation with compensation.

President Nujoma strongly supported Mugabe’s “fast track” land reform (and his intervention in DRC) and strengthened the legislative framework for redistribution, introducing a land tax to raise the costs of ownership, especially of underutilised land.⁶ In 2003, an audit of agrarian reform was conducted, although the government declined to publish the ensuing report entitled, “One day we will all be equal”. There was, however, increasing official criticism of the “intransigence” of white farmers. In 2004, Prime Minister Gurirab warned that, unless they became more cooperative, “orderly fast track expropriation”, within the law, would be pursued. The budget was increased, and some farms listed, for this purpose.⁷

Thereafter, the (white) National Agricultural Union

became more cooperative (despite opposition from a hard line “rejectionist splinter group”), and began to work with the black farmers union on the provision of technical aid and mentoring, with donor funding (particularly from Germany). This gradual adaptation by white farmers presumably contributed to the fact that Swapo did not perceive the Constitution as an obstacle to economic reform.

“the land issue is not a top priority because every Minister has already got his farm”⁸.

But the pace remained slow. Among the reasons were weak state capacity and, probably, the fear of precipitating unrest among competing land claimants. There was also unrest in the ‘communal’ areas, sparked by land grabs by some chiefs. Swapo relied on the chiefs to deliver the vote, particularly in the Ovambo areas, which are the most fertile and heavily populated in Namibia (much of which is semi-arid). Alden and Anseeuw also refer to an issue usually avoided in the literature: fear of reviving pre-colonial conflicts over land among the indigenous ethnic groups. All this presumably contributed to Swapo’s wariness about tackling land reform, especially when, as trade union leader, Anfred Angula dryly commented: “the land issue is not a top priority because every Minister has already got his farm”⁸.

Alden and Anseeuw conclude that the symbolic importance of land might yet lead to the emergence of a new generation of activists who, “driven by political opportunism and idealism” might use land claims to invigorate their electoral prospects. But they think this unlikely and believe Swapo will remain cautious, engaging in “ritualised public condemnation” confined to cheering, but not emulating Mugabe.⁹

The long chapter on South Africa contains much useful information, but is uneven and dominated by an over detailed, confusing account of infighting among government departments and rural NGOs, whose view of their influence, and role as spokespersons of the rural poor, Alden and Anseeuw accept rather uncritically.

There has been little progress on land reform in SA: by 2008, only about 6% of white land had been redistributed by state action. Alden and Anseeuw do not refer to the amount of land transferred by

the market, estimated to be half as much again. If these (contested) estimates are correct, this would reduce the white-owned share to about 78% (from the original 86%).¹⁰

When ANC took office in 1994, the subsidies for white farmers had already been largely removed. Initially, the ANC did little; but after the Zimbabwe upheavals, began to strengthen the legislative framework for reform. In 2005, the government sponsored a National Land Summit at which there were calls for rejection of the ‘willing seller’ principle, and Deputy President Mlambo-Ngcuka stated that: “land reform had been too slow...we may need the skills of Zimbabwe to help us...South Africa should learn some lessons from Zimbabwe – how to do it fast”.¹¹

In 2007, cabinet approved a Proactive Land Acquisition Strategy and an Expropriation Bill allowing for the acquisition of land with compensation. Some farms were listed for expropriation and numerous claims lodged under the (separate) Land Restitution process. But little has happened. The ANC stresses the need for an orderly process that respects the constitution and upholds the rule of law. Alden and Anseeuw believe that South Africa (like Swapo) will do little beyond (mainly pre-electoral) rhetoric.

Obstacles to land reform

Why were South Africa (and Namibia and pre-2000 Zimbabwe) so slow to tackle land reform? The authors attribute this, in all cases, mainly to the “neoliberal international order”, particularly the ANC’s “wholesale acceptance of neo-liberalism¹² and their reluctance to breach the “willing seller” principle for fear of scaring off foreign investment. This is puzzling because, while South Africa (and the others) were undoubtedly concerned to attract foreign investment, they have failed to go as far as they can within the constitutional constraints, which allow both for expropriation of land with compensation and for affirmative action loans – the budget for which South Africa has never fully spent. This compares with South Africa’s more assertive affirmative action (BEE) policies in other economic sectors.

Alden and Anseeuw also attach importance to the resistance by white farmers and/or their attempts to jack up land prices. But these reactions can be at least partly countered by measures such as progressive land taxes and ceilings on land ownership. These have been widely adopted elsewhere, e.g. in post-

war Japan, Taiwan and South Korea and, recently, Namibia.¹³ These measures were among those recommended by the World Bank's 1993 report on reforming South African agriculture, which also urged South Africa to redistribute 30% of white-owned land to blacks within 15 years.¹⁴ The ANC has not used these mechanisms, nor acted on these recommendations. Yet there are other (less justifiable?) respects in which the ANC has imposed its will on white farmers, such as insisting on the disbandment of local commandos that provided policing in rural areas, where the murder rate is four times the (already high) urban rate. All this suggests a lack of priority for land reform, or at least for the reform to which the government pays lip service, namely, to the rural poor (i.e. small-medium) farmers, rather than to 'fat cat' (large-scale) farmers.

Land reform is always a difficult and potentially destabilising process and the ANC might be fearful of unleashing political unrest among rural blacks, who comprise their largest electoral base (as they do for Swapo and Zanu-PF). The "national liberation" parties in all three countries have attempted to get the rural chiefs and other traditional authorities onside. The ANC skilfully countered the challenge posed by Buthelezi's Inkatha Freedom Party by establishing its own chiefs' organisation, Contralesa, and by tailoring the 2004 Communal Land Rights Act to favour the chiefs – to the dismay of rural NGOs, and at the cost of small farmers, especially the many who are women. This measure also undermines the prospects for more accountable rural local government.

These 'conservative' pressures – black as well as white, domestic as well as foreign – have not been offset by effective counterpressures from the supposed beneficiaries of land reform, namely the unemployed and rural poor. Alden and Anseeuw recognise that the NGOs (to whom they allot so much attention) have little support from the rural poor, who seem wary of radical movements, such as the Landless Peoples' Movement, and show extraordinary "patience" (or acquiescence born of exhaustion & hopelessness?), reflected in the statement by an interviewee who said: "The government will deliver. They know we are waiting"¹⁵. This 'waiting' is eased by state grants and pensions, now received by a quarter of the population. These reduce poverty but in an unproductive way that imposes a heavy burden on the fiscus.

Another obstacle to reform has been poor management of resettlement programmes and

inadequate support for new farmers. These capacity problems were exacerbated by infighting over resettlement models and by the failure of the 'collectivist' models imposed on most resettlement schemes. Their failure discredited the programme and confirmed the widespread belief that "Africans can't farm".

Major criticisms

I have two major criticisms of this (often useful and, in its regional approach, pioneering) book. First, it says practically nothing about the economics of agrarian reform, in particular, the central issues of maintaining food production and of the potential of labour-intensive, smallholder farming to generate (full and part-time) employment. Alden and Anseeuw simply ignore the debate on these issues.¹⁶ But they seem to share the belief of most NGOs (and of the 'White Right') that black agriculture is primarily a matter of "subsistence farming & social security"¹⁷, and the underlying assumption that Africans are incapable of following the path of Asian (and many Latin American) smallholders who, in similar situations of labour surplus and capital shortage, showed they could farm productively, feeding themselves and, often, providing surpluses for the market – provided they receive the infrastructure and other supports that are invariably provided for large-scale farmers and for urban industry.

Rural NGOs have played a sterling role in highlighting the problems of the rural poor, and the deflection of the programmes intended to benefit them, to 'fat cat' big farmers. But their essentially welfarist approach fails to address the strategic issues of increasing food production and generating livelihoods. Responsible governments are obviously concerned about these "economistic" issues, and their neglect by activists, preoccupied with symbolic politics and welfare issues, weakens the case for land reform. Models which offer the prospect of reducing poverty and promoting, and certainly not harming, economic growth offer the best prospect of persuading nervous, sceptical governments, and selfish (black and white) elites, of the potential economic and political gains for the whole society from labour-intensive, smallholder farming, alongside the maintenance of the productive sectors of 'white' agriculture (not all of which is productive: there are many marginal white farmers).

My second general criticism is of Alden and Anseeuw's 'narrative framework'. The complexities

of southern (especially South) Africa cannot be adequately encompassed within their narrow framework of “national liberation”, “settler colonialism” and “neo-liberal” narratives. In South Africa (real rather than ‘neo’) liberal and progressive reformers played a significant role in shaping events. This role is obscured by dealing with them under the rubric of “neo-liberalism”. In Rhodesia/Zimbabwe and Namibia, reformers were too few and weak to counter the increasingly racist course on which Rhodesia embarked, particularly from 1965: independence was indeed wrested by the combination of armed struggle and international pressure. But in South Africa, from around 1970, there were increasingly effective pressures for reform from within the white elite, including from progressive capital and, later, Afrikaner verligtes. These pressures precipitated the initial steps away from apartheid and made space for growing civil society movements, such as the United Democratic Front.¹⁸

“Neoliberal” is...misleading when applied to the post-1994 ANC...

This is not to dismiss the role of the armed struggle (as many now do), nor the domestic and international anti-apartheid campaigns, but to draw attention to the significant role played by powerful forces within the ruling oligarchy in ending apartheid. To subsume and dismiss all this under the label of “neo-liberalism” (which, often, surely means neoconservative?) is misleading; it is also anachronistic when applied to SA liberals/progressives, whose views ranged from classical liberals, mainly anti-racist and anti-authoritarian, to social democrats, who broadened their concerns to class and poverty issues.

“Neoliberal” is also misleading when applied to the post-1994 ANC, whose flagship BEE policy, and rapid expansion of social grants, hardly fits Alden and Anseeuw’s description¹⁹ of its “wholesale embrace of neo-liberalism” (not to mention ANC’s maintenance of exchange controls & banking regulations, which were opposed by true ‘neoliberals/neocons’, but are now recognised as having shielded South Africa from the full blast of the banking crisis).

Whatever relative weight is given to the various pressures which ended apartheid and led to South Africa’s negotiated settlement, the non-racial liberal/progressive forces comprise an important element, which cannot be accommodated within Alden and Anseeuw’s ‘narratives’. And this is significant not just analytically but also politically, because the missing post-nationalist, non-racial²⁰ narrative has implications for claims to citizenship. It is, moreover, a narrative or category that is also appropriate for the increasingly important group of black liberals/progressives, such as the MDC, who do not subscribe to race-driven politics. Hence, it is unsurprising that admirers of Mugabe, such as Julius Malema, reject the MDC and its “post-nationalist” narrative, which is not only historically well-documented, but offers the basis for a more inclusive, non-racial society, while not ruling out class-based economic redistribution.

The challenge for SA – and for the region it dominates – is whether it follows the example of the bungled Zimbabwean “fast track” land seizures, or grasps the nettle of more egalitarian economic reform. This would include the redistribution of land and agricultural opportunities in those sectors and products where it is appropriate, thus strengthening both more broadly based economic growth and democratic constitutionalism.

NOTES

- 1 William Kinsey, *Zimbabwe’s Land Reform Programme: Under-investment in post-conflict transformation* in *World Development*, 2004, vol 32.
- 2 p163.
- 3 pp 110, 174.
- 4 Alden & Anseeuw, 159ff.
- 5 p131.
- 6 p138.
- 7 p144ff.
- 8 p152.
- 9 p155.
- 10 Information kindly supplied by Nick Vink, Professor of Agricultural Economics at Stellenbosch University.
- 11 p115.
- 12 p75.
- 13 For examples of successful smallholder reforms see Michael Lipton, *Land reform in developing countries: Property rights & property wrongs*. Routledge.

- 2009.
- 14 World Bank. *South African agriculture: Structure, performance & options*. Washington, DC. 1994.
- 15 (p108).
- 16 This debate is discussed in Lipton, Ellis & de Klerk (eds), *Land, Labour & Livelihoods in Rural South Africa*. Indicator Press. 1996, especially the Introduction.
- 17 (p102).
- 18 This argument is documented in Merle Lipton, *Capitalism & Apartheid: South Africa 1910-86*, Wildwood, 1986 and *Liberals, Marxists & Nationalists: Competing interpretations of South African History*. Palgrave MacMillan. 2008.
- 19 p75.
- 20 On this ‘narrative’ see Knox Chiteyo, *The Struggles for Zimbabwe, South Africa and SADC: The clash between liberation war theology and post-nationalism* in *Journal of the Royal United Services Institution*. August 2008, and William Gumede, *Thabo Mbeki and the battle for the soul of the ANC*. Zebra. 2005, chs 11-13.

REVIEW

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The Real Agenda

Ominous, wealthy and powerful anti-business fundamentalism attributes unconscionable greed, exploitation, neo-colonialism, resource-depletion, climate change, toxic waste, and the financial meltdown to sinister machinations of big business and mythical 'market failure'.

It is hard to think of any companies that have done more for humanity than pharmaceutical, energy and financial multi-nationals. They have provided cures for diseases and pain; energy for cooking, sterilising, warmth, refrigeration, transportation, productive employment, and basic needs; essential finance and financial services, and much more. Yet they are vilified by critics unashamed by the fact that they are themselves net consumers of wealth.

Ann Bernstein's *tour de force* is a splendid vindication of business and 'the market', especially their decisive contribution to development. It is a critique of the inclination of business to let anti-business mythology inform public opinion and policy, to 'appease' and fund detractors, and to be complacent about the erosion of liberty.

She has produced a rare example of truly 'essential reading', not just for business leaders, but anyone interested in replacing ideological disinformation with documented facts. Notwithstanding its considerable virtues, *The Case for Business* will, like the businesses it vindicates, be pilloried by the villains it exposes. They will, as always, do so with emotive slogans, non-sequiturs and shibboleths.

Conversely, business leaders and their supporters will sing its praises. But will they convert praise into action? The book has endorsements from a dazzling array of luminaries, and rightly so, for it is an accessible and compelling combination of analysis and information. It has, as all serious books should, an index and sources. For time-strapped readers, chapters have introductory comments and concluding remarks.

After showing how dangerous anti-business sentiment is, and why business should proudly and pro-actively occupy the moral high ground, she suggests new marching orders in *The Real Business Agenda*. Above all, Bernstein shows as conclusively as social science allows, that terms like 'corporate social investment' are misnomers coined by anti-business activists in support of the premise that running businesses successfully is socially irresponsible and that businesses, if allowed to exist at all, can redeem themselves only by funding dubious NGOs.

But she does not do so with the conviction she demands of business. Her timely and trenchant contribution is compromised by her failure to discard all anti-business mythology. Having presented what Martin Wolf justifiably calls 'the definitive answer to Naomi Klein' and a 'call to arms', she confuses and conflates 'business' and 'the market'; speaks of 'business' as if it's a single entity with uniform interests; regards businesses as separate entities rather than individuals acting collectively; and resorts to the kind of politically correct appeasement she urges business to jettison. Should companies worry about people and poverty? Yes. Are conditions in sweatshops a problem? Of course. Are all NGOs bad? Absolutely not. Does

ANN BERNSTEIN

THE CASE FOR BUSINESS IN DEVELOPING ECONOMIES

This book and also others in the series for the state of business in developing countries are available in paperback. Business leaders should know that if they are interested in the world to which the international world of business, not money, makes way, they should read the international world of business, not money, makes way. (Small text in the original image)

The Case for Business in
Developing Economies –
Ann Bernstein

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Africa: Penguin Books,
2010

business care about democracy? Yes. Did SA companies do enough against apartheid? No. And so on.

She adds the customary denunciation of 'market fundamentalism' and studiously avoids saying she's for a 'free' market, yet, with few exceptions, her pro-business and pro-market eulogy is as pure as that of demonised 'fundamentalists'. Not even her putative critique of Milton Friedman's 'seminal' opposition to corporate philanthropy will rescue her from the wrath of anti-market fundamentalists.

Trying to dismiss the considered views of one of the world's most profound and influential intellectuals as 'simplistic' and 'naïve' is, well, simplistic and naïve. That she feels the need to do so to establish her credentials shows, of course, how urgently the world needs her book. The irony is compounded by the fact that she advances essentially Friedman's views in her answer to the question of whether business should be free to do as it pleases.

I am no Friedmanite or monetarist, and also disagree with his critique of philanthropy...and I disagree with her. Both forget that businesses are just people acting collectively, which means they should be as free socially and legally as any individual to indulge or eschew benevolence. Both assume or imply that businesses are alike and should have one-size-fits-all corporate social investment policies.

Maybe she's a business fundamentalist rather than a market fundamentalist, whatever difference there might be and to whatever extent such derogatory terms are no more than pseudo-intellectual babble without substance. Her book is as uncritical of business as anything I've read, including Friedman. Bertrand Russell observed that people frequently stumble upon the truth, but pick themselves up and press on. This is what Bernstein could be accused of when she touches on business support for interventionism and anti-business causes then picks herself up and presses on as if it's rare and inconsequential. Is it merely that they lacked her 'Real Agenda', or is it that business leaders, like everyone else, promote self-serving interests rationally and resolutely? Is it because of positive trade-offs between their diluted interest in generally freer markets, on one hand, and concentrated interest in specific interventions, on the other? Do they lobby for anti-market and ultimately anti-

Bernstein provides all the intellectual ammunition that good faith business leaders need to appreciate and espouse their cosmic virtues and liberate their markets.

business government favours, contracts, subsidies, protection, franchises, restrictive licensing, minimum standards et al because they want to get into the castle and pull up the draw bridge behind them?

Bernstein provides all the intellectual ammunition that good faith business leaders need to appreciate and espouse their cosmic virtues and liberate their markets.

This short review does not do justice to the impressive breadth of issues she addresses: why 'fair trade' is really an excuse for protecting uncompetitive first world elites against competition from poor countries; how much more businesses do by being more profitable than philanthropic; that business is 'defensive' despite the triumph of capitalism; how globalisation benefits its supposed victims; the centrality of ideas; the 'faulty assumptions' behind Millennium Development Goals.

In conclusion, this is an excellent book. If it has a significant flaw it is that Ann Bernstein trivialises the issues she addresses as if they are essentially an empirical 'conversation' (about the role of business in development). Given her lucid logic and conclusive evidence, one wonders why there's a 'conversation' at all, why it's not regarded as a settled matter with business as vindicated as capitalism is triumphant. She should have devoted more attention to the conversation beneath the veneer, for which "conversation" is scarcely the right word. Anti-business and anti-market sentiment is histrionic, devastatingly effective, sometimes violent. What this reveals is a deeper contest, ultimately between liberty and dirigisme. In response to the relentless assault on business, markets and liberty, to which business leaders owe their existence, they should read and heed this book, and disseminate it widely.

REVIEW**Na-iem Dollie**

is a former columnist and a subeditor for Business Report, and worked for the Mail & Guardian's news desk. His most recent job was as a senior editor for economics and training at The Namibian newspaper. Currently, he is a research associate for the Chair of Development Education at Unisa.

In the Service of Capital and Ayn Rand

Ann Bernstein is controversial and confrontational. She writes with the self-assurance inseparable from the stations that political aristocracies and well-heeled individuals occupy.

Her book, *The Case for Business in Developing Economies*, is one of the few works of non-fiction I have read to date that is both unapologetic and erudite about the pursuit of profit and self-interest. By design or by accident, the book provides some philosophical meat to American novelist Ayn Rand's fascination with individual success in a society where greed is said to dominate. It glorifies the virtues thought to be embedded in self-inspired indulgence. In the orbit around her galaxy, Bernstein's "enlightened self-interest" is both the moral compass and the engine driving the satellite of capital and its captains. Her "call to arms" is an appeal to business people to stop being contrite about what they do. Business people need to engage the world as victors. After all, capitalism "has won", and yet, business remains on the defensive.

But praise has been heaped on Bernstein by those who agree with her. The accolades by 12 inspired missionaries and apostles of free enterprise say it all: Business Leadership South Africa chairman Bobby Godsell, former US ambassador to South Africa Princeton Lyman, SABMiller chief executive Graham MacKay, De Beers chairman Nicky Oppenheimer, *Financial Times* chief economics commentator Martin Wolf, *The Economist* columnist Adrian Wooldridge, Boston University professor of sociology and theology Peter L Berger, Harvard business school professor Herman Leonard, former UK ambassador to South Africa Lord Renwick of Clifton, Columbia University professor of economics and law Jagdish Bhagwati, professor of Asian studies Gordon Redding, and Henry Kissinger senior fellow in foreign policy in New York Walter Russell Mead. They offer the lead-in praise songs to her 397-page book. While this indulgence intrigues me, Bernstein may well have thought that these people and what they represent are the stuff of the future. They are the human capital needed to justify her "rhetorical flourishes" against the "subjectivity" of Naomi Klein's *No Logo*.

Unlike Bernstein, there is not anything I write that can even approximate an item in the hallowed portals of philosophical objectivity. While natural scientists pride themselves on notions of "objectivity", the ruse for political economists to substantively refute others in their field is to invoke the myth of objectivity. Bernstein invokes this authority. I am not a member of this parlour of objectivity, so my essay on Bernstein's work is biased.

The book provides an impressive list of lengthy definitions and a useful set of references for policy gurus. Bernstein's interpretation of corporate social responsibility provides the skeleton of her political and economic framework. Between the grey hard covers and the sleeves, the three-part, 11-chapter oeuvre has the feel of something academic. The reader is taken through a historical description of corporate responsibility politics and programmes, the dilemma posed by self-interest in the service of the public good, assertions about why business is good for society and "essential for sustained development", and a

sketch of why the search for profits contributes to social and economic development. This “battle of ideas” ends with a list of instructions to business and how it should position itself in society.

Bernstein delivers on her promise to draw on “facts” from the “developing world”. She takes the reader through a summary of the findings about Coca-Cola in China. Researchers from Peking University, Tsinghua University and the University of Carolina, found that the Coca-Cola “system” directly employed over 14 000 people, and about 414 000 direct and indirect jobs were “sustained” by Coke’s production and distribution.

Unilever in Indonesia, according to an Oxfam study, she says, indirectly employed about 300 000 people. SABMiller in South Africa created 362 000 full-time jobs. As for De Beers in Botswana, while no mention is made of the jobs created, diamonds accounted for 76 percent of the country’s export revenue.

So, not only as creators of jobs but as wealth creators, these multinationals have played pivotal roles in “developing” people and states by focusing on making and maximising their profit margins, she says.

The author then does the expected. In China, she declares, Coke and other companies have become a “transmission belt of modernity”. Their indirect impact, quoting from Robyn Meredith’s 2007 study of China’s and India’s rise in the world of economics, was to modernise the country. “It wasn’t just the jobs the Chinese were after, it was modernisation itself.”

Presumably, these examples are intended to show, once and for all, the explicit and inherent value of having multinational corporations investing in developing states. What is not questioned is what standards are used to define what “developing” is, and according to whose norms. As important is the unanswered question: what have been and are the long-term consequences of these modernising activities on family and social cohesion? But then it might be asking too much of an advocacy specialist to question her own assumptions. Her theoretical matrix is self-defined and acquired from the pantheon of her icons.

Bernstein’s ode to capital and Ayn Rand carries the following lyrical assertion in her final chapter: “I will

allow myself a bit of hyperbole here: We must find a poetic (mytho-poetic, if you will) language to talk about capitalism and about business. Capitalism has produced an ongoing revolution that has transformed the human condition, overwhelmingly for the better.”

If what I read is what she actually means, and I do not know what she means by “mytho-poetic”, then the description of my reading of her book has changed from dismay to despair. Her “symptomatic reading” of Naomi Klein’s *No Logo*, evolves into a tautological merry-go-round of proving assumptions with authoritative quotations. Instead of setting out to rebut “every one of Klein’s emotional assertions about companies with facts, analysis, and experience, mainly drawn from developing country settings”, Bernstein approaches her selected library of references and the persistence of left-wing critiques with a beach bucket to collect grains that would fill her quota of assumptions about the superiority of capitalism against the fallacies of socialist analysis.

It is a book in praise of “enterprise and corporation”. It does not have a “tenuous link with reality”, a phrase she glibly uses to describe *No Logo*. Indeed, Bernstein’s book is a bold statement of her reality. After all, the ideology that she embraces is a tailored refraction of the values that inspire her icons. The notion of competition is an indication that Bernstein acknowledges the different fractions of capital and the varied interests driving these sections of that amorphous complex called “business”. But the overarching imperative – the need to make profits – remains the glue binding her business. An ideology must be housed in the world of Mammon if it is to be embraced by this local and contemporary warrior of free enterprise.

Great business people, for her, are those “characterised” by “vision, hard work, stubbornness, perseverance, discipline, healthy egos, and a sense of personal satisfaction”. This insight and generalisation must count as some sort of delayed “fountainhead”, but my political “atlas shrugs” and suggests that these words could equally describe Cuba’s Fidel Castro, former Chilean president Salvador Allende, or our very own Chris Hani. I suspect that Ayn Rand would turn in her grave at my liberty of changing the titles of her signature novels into something cynical.

Bernstein accuses people on the Left of not having met the captains of industry they criticise. She, of course,

This belief is based on my understanding of ideology, the creation of surplus value and how profits are to be distributed, the production of knowledge and my view of the dead end of nationalism and nation states.

has been privileged to meet them. In my life, I have met some of these captains of industry, and my opinions have changed, but not in the ways I think Bernstein would like. I remain firmly committed to the socialist project. This belief is based on my understanding of ideology, the creation of surplus value and how profits are to be distributed, the production of knowledge and my view of the dead end of nationalism and nation states. The vacuous polemic of profit-making is not new, just as the understanding of state capitalism, which was regarded as communism in the former Soviet Union, is not new. I would assume that Bernstein knows this.

Bernstein is an advocate for individuals and companies driven by self-interest. "The kind of self-interest that advances the public good is rational," she says. Her understanding of rationalism is different to mine. Things are rational to me if they have contextual and cogent reasoning. There is too much of a leap from reasoning to "public good". The economics of capitalism has little cogent reasoning, and this is what separates the Left from directors and managers of the unplanned chaos of markets. Bernstein relies on the chaos of the market to give meaning to competition, and life itself.

Her assertion that capitalism has "won" is like worshipping an accomplished fact. It is not an analytical statement. She does not analyse the industrial complex that underpins its "victory", and the military shield about which it is hedged.

Bernstein's book is a "must read" for people keen on pursuing an economics of profit-making. Its usefulness lies very much in what it says, but also in what it does not say. What jumps out are crescendos of silence on class and class interests driving people, an uncritical embrace of a contested ideology, and a

cursory treatment of institutions of state power that govern our societies. While mention is made of the "triple bottom line", the interconnectedness between financial accountability, social responsibility and environmental impact is given scant attention.

For critics of benign and malignant capitalism, and I am one of these critics, Bernstein does no more than reiterate the case for a benevolent capitalism. This is not to say that the book is past its sell-by date. If nothing else, there is an honesty to her assertions and a brazenness to her delivery that are both refreshing and pedantic in their insistence on the superiority of the capitalist worldview. As a grid through which to view the new legions of free enterprise ideologues, the radical statement the book makes about the pyrrhic victory of capitalism over its socialist counterpart adds to the debates around South Africa's dilemma in acquiescing to the dominant global ideology. Her bourgeois radicalism also adds as a counterweight to the ongoing contest among the governing political principals about socialist alternatives, nationalisation and what to do about the forgotten legacies of socialist revolutionaries such as Amilcar Cabral, Samora Machel and Che Guavara whose opposition to the tried and tested world of free enterprise is a well-recorded fact, and not a "factoid".

Like Martin Luther, I believe that faith is an idea firmly located under the left nipple. Bernstein may not agree, but the battle of ideas and for ideological supremacy is far from over. For the moment, capital dominates. But the industrial revolution in "developing countries" still has to settle with the communications revolution and the changing forces of production. And, who knows, the spectre that has haunted Europe since 1848 may well settle in the South over the right nipple, under which lies an appendix, a useless human organ.

In my opinion, this is a key problem in the book: it lacks ambiguity. Marx's and Engels's Communist Manifesto lacked the same, but that was in the context of Europe in the 19th century. It is now the 21st and the age of reason is well established.

The book is written as a textbook and a bird's eye view for self-interested entrepreneurs, and for political captains of industry, but it lacks the worm's eye of political authority and philosophical grounding. The latter is expected, but disappointing.

REVIEW


Antoinette Handley is

currently Associate Professor in the Department of Political Science at the University of Toronto. South African born, her research interests take her back regularly to the sub-continent for her research on state-business relations in Africa. Her book on this subject was published by Cambridge University Press in mid 2008. Prof Handley's new project considers the political and moral economies of the HIV/AIDS epidemic.

Elusive Truths

Ann Bernstein's new book *The Case for Business in Developing Economies* feels more like two quite different books jostling uncomfortably within a single cover. The first comprises a pugilistic, all-guns-blazing defence of international business. The second is a more nuanced and subtle set of arguments about the important role that business – especially domestic and local business – can play in negotiating sustainable, long-term growth in the developing world. I suspect that many readers will not look past the first to find the second. Let me begin therefore with what I consider to be most important and helpful in this book.

Bernstein opens her book with a combative critique of a series of international campaigns directed against the labour practices of selected multinationals – such as the campaigns against sweatshops in developing countries. In her counterattack, Bernstein poses a series of important questions about whose interests these international NGOs actually represent. She rightly points out that these often conflict with those of developing country trade unions and /or governments, actors who oftentimes can (more) legitimately claim to articulate the interests of much larger numbers of people. As Bernstein asks, “[w]hy should the tastes and preferences of first-world consumers be considered morally superior to the life-determining choices facing poor people in developing countries?”¹. It is not an original point she is making here, but it is one worth noting.

More central to her argument is Bernstein's assertion of the importance of business – especially local or national business – as a crucial development partner for developing country governments. Her discussion of how business can create and occupy an independent political space from the state – and hence generate an alternative power centre in society² – stresses how important an interlocutor business can be in debates with government and other forces in the society (such as local trade unions) about how best development ought to be pursued. Despite the dominance of neo-liberal outlooks in development debates over the last thirty years, this potentially vital role for business is one that has curiously been given little attention. Yet it is often during these debates that policy negotiations that can and should take place within developing countries (between the government and other economic actors) that the prospects for development are either laid or derailed. This argument is made most cogently in Chapter Eight where she argues the need for business to organise collectively in order to participate effectively in broad policy discussions. “[D]evelopment,” she argues, “has to be rooted in national governments working with their own citizens, rich and poor, and their own businesses...”³. This is an important argument and it is correct that she lists government as the lead partner in this process. It is a shame that she does not maintain this tone in the rest of the book.

On then to my quibbles. The first is that for key elements of her argument, Bernstein sometimes provides unconvincing or insufficient evidence. Granted, the book is written for a popular audience but this should not necessitate the abandonment of rigour or a critical review of the evidence. On page 121 for example she asserts that “[w]e know that the add-on social and environmental practices of the vast majority of companies have not had any positive effect on their bottom line” – but

this statement is completely unreferenced and subsequent paragraphs provide no further evidence for this assertion. Elsewhere she makes an extended argument about the good that multinational companies (MNC) can do in the developing world but, in key instances, she relies on the judgment of the MNC in question to make her case (for example on page 185, she cites Motorola's assertion that its operations in China are guided by "respect for individuals and an uncompromising integrity in everything they do." We really wouldn't expect them to claim any differently. Or, on page 199, Unilever's recruitment of Indian women as direct sales operators is described as "according to Unilever, having had a significant impact on women's lives"⁴. Finally, in her critique of the Equator Principles (a set of environmental principles to guide international lenders), Bernstein tries to argue that the international NGO movement successfully scuppered Exxon's investment in Chad, but the strongest evidence she can muster is a secondary source which argues that "Shell and Elf pulled out 'possibly because of NGO pressure...'"⁵.

Many of the claims that she makes for what business can achieve are only likely...in societies with a certain minimal level of state capacity and competence.

Bernstein's writing style is brisk and authoritative – which can make it hard to realise in places that she is merely asserting something, rather than actually proving it. This tendency is evident again where she makes her argument about the benign impact of MNCs on developing country political economies. She proposes that these corporations will teach their workers and managers positive, modernising values. Western firms in China, she argues, are offering their workers access to mobile phones and e-mail. They are thereby "encouraging a more open Chinese society"⁶ and "helping the spread of new and radical ideas in a closed society"⁷. These rather grand outcomes are asserted – without any real evidence – despite the fact that, by her own admission, "less than 1% of China's labour force is employed by foreign companies"⁸. Elsewhere however, Bernstein is more exacting in terms of what she requires of her statistics. In Chapter Eight for example, she points out that only 2000 of the world's 60,000 MNC's have corporate social responsibility (CSR) programmes⁹ and therefore doubts that they could have a meaningful impact on the broader society (she asks: "How could they conceivably affect large international markets in the manner suggested [by CSR supporters]?"). However the figures that she herself provides us with indicate that companies with CSR programmes comprise 3% of all MNCs. If 1% of firms operating in China can achieve a dramatic political and cultural shift, why are the 3% of CSR firms not able to have a similar or greater impact?

My chief quibble with Bernstein, however, lies elsewhere namely, the extent to which she underplays the role of the state. Many of the claims that she makes for what business can achieve are only likely, or even possible, in societies with a certain minimal level of state capacity and competence. On page 241 she asks: "Why are those at the leading edge of the CSR movement directing so much pressure at corporations when they are aware that it is the quality of national governments that really make the difference?" I would be tempted to ask her a version of the same question. Like those she criticises, Bernstein's book consistently understates the importance of government and overargues what business – operating in the absence of a strong, effective and accountable government – can do or is likely to do.

Bernstein deploys a somewhat disingenuous rhetorical device here: While it is true that on a number of occasions she selectively acknowledges the importance of government in producing the outcomes she lauds (thus covering herself), overwhelmingly the content and substance of her argument stress only or mostly

the role of business. In particular, she says little about how to proceed in the absence of a competent, effective and representative state – a situation which pertains in far too many developing countries.

For example on page 182 in her discussion of foreign direct investment (FDI), she argues that if this issue is handled well by government, FDI can transform the future of an entire country. She may well be correct about this – but what are we to do when the government in question is too self-interested or lacks the technical capacity to act so as to secure the national interest? For business' cheerleaders, this is a weakness or failing of the state that therefore lets business off the hook – but for those genuinely interested in development it does not really solve the broader problem: how are we to “regulate” the operations of business in the absence of a competent or accountable state?

As argued above, while Bernstein acknowledges the importance of the state, very little of her book is ever devoted to elaborating this point. Consequently the overall impression that one is left with is that the positive outcomes she points to are exclusively attributable to business. An example of this is again to be found in her argument about how big corporations have positively contributed to national development. On pages 170-1, Bernstein discusses the role of the Debswana, the largest mining company in Botswana – and it is in some senses a great example for her argument (amongst other things, Debswana was one of the first corporations anywhere to offer free antiretroviral therapy to its HIV-positive workers). However what she does not mention is that many of the benefits accruing to the people of Botswana from Debswana's activities depended on the agreement that the government of Botswana negotiated with that corporation, an agreement widely regarded as one of the world's most favorable contracts between a developing country government and a large MNC. In fact the government of Botswana now owns 50% of Debswana and a large share of the company's profits are directly remitted to the government. And because the government of Botswana works as it ought to and is both accountable to its population and efficient in its operations, those benefits are ploughed right back into the broader society in the form of public goods such as roads, clean drinking water, schools, and health care. It is a great story – but Bernstein tells only half of it. And the problem of course is that very few of the world's small, poor developing countries have a state which is quite as impressive and capable as Botswana's.

NOTES

- 1 p107
- 2 p201
- 3 p264
- 4 italics mine
- 5 p231 italics mine
- 6 p187
- 7 p188
- 8 p187
- 9 p239

RIGHT OF REPLY



Ann Bernstein

is the Executive
Director of
the Centre for
Development and
Enterprise.

We take the benefits of market economies, indeed of capitalism so much for granted that we don't understand or appreciate it most of the time. Of course this is not a perfect system, but then which human institution is? The ongoing battle of ideas about business and the good society, business and development, is of great importance in South Africa and across the globe. One of my purposes in writing this book was to provoke a debate about many of the 'taken for granted' issues about business and society.

The conversation about business and society is fundamentally flawed. The debate about 'responsible' corporations takes for granted the everyday activities of companies and their contribution to society. This makes it possible to focus so much attention on what else a company must do to contribute to the social good. This book argues that any conversation about business and what it does, or should do, needs to start from a comprehensive understanding of what just doing business actually contributes. By any standard the positive impact of business is far-reaching and overwhelmingly positive.

The global conversation about business and society is dominated by the perspectives and interests of activists who live in rich countries. Most of these protagonists do not grasp the realities of poverty and the hard choices of development outside the rich industrialised world. As a result the debate about business 'responsibility' and corporate involvement in development is distorted, with few voices from developing countries being heard. A new approach and new discourse is required to cut through an increasingly unrealistic dialogue with potentially dangerous consequences for the poor and for developing countries in particular.

The three reviews all raise important issues.

Leon Louw makes a number of excellent points. There are two on which we disagree. He confuses corporate social investment with corporate social responsibility. I am absolutely in favour of CSI, devoting an entire chapter to how we might start thinking strategically about this very precious resource. Companies don't owe society this money and effort but they do have an interest in contributing to more effective social policies, education strategies and community development. Companies have a vital interest in helping to improve – through public policy advocacy and demonstration initiatives – the environment in which they operate within countries and regions.

The term 'business' describes a sector of activity. It should not be understood as an equivalent to the public sector. In every society it is important to identify and think about the entire business sector and not equate business with only one part of what is usually a multifaceted set of interests, organisations and individuals. There are different interests between large and small companies or exporters and importers and very often companies, in trying to get special concessions for their activities from the state, will distort markets – an argument for transparency and general rules. Business generally has a common interest in a stable environment and an enabling framework of governance. I am strongly in favour of competitive capitalism and dynamic markets and would support a strong role for an effective state in ensuring competition and rule by law amongst other things.

I have space to deal with only two quibbles raised by Antoinette Handley's thoughtful response. The field of business and society has been one characterised more by emotion than evidence. The CSR 'literature' is a body of information whose size far outweighs its analytical precision. It consists overwhelmingly of corporate PR, NGO advocacy material with few objective academic studies. One is dealing with thousands of companies across diverse countries all over the world. I think she takes some of my empirical comments and assertions out of context (for example where she claims I give no evidence for a statement, I have often dealt with it in a previous chapter; or she overstates my claim for a particular piece of evidence, where I am often using it to suggest a new line of thought rather than an unquestioning belief in everything a company says about itself). Nonetheless I would support her concern for greater empirical rigour in the field as a whole. Companies have an interest in more reliable, generalisable evidence.

I too would like to read a book about the state and business but that is not the book I set out to write. The quality of governance is the vital issue for most countries. I state this emphatically and repeatedly argue that smart states can use the power of companies and markets to change the future of nations. Who is the 'we' she would like to regulate the operations of business in the absence of competent or accountable states? Certainly not small unrepresentative self appointed NGOs based in very rich countries. I try and engage with the complexity of operating in countries with undemocratic, venal, brutal or weak states. There is no easy solution or simple generalisations. The situation needs to be assessed on a state-by-state basis. I set out some guidelines for this.

Na-iem Dollie and I see the world and how to improve it, very differently. To my mind, modern business is the most powerful engine ever invented, of innovation, openness to new ideas, empowerment, opportunity, large scale organisation and transmission of know-how across frontiers. Capitalism has produced an ongoing revolution that has transformed the human condition, overwhelmingly for the better. Millions of people have been lifted from dehumanising poverty to a decent life, and this process is continuing today in one country after another.

The past 50 years have seen smart states opening up their societies to more enterprise and competition from local and foreign firms. The result has been a phenomenal dynamic that no one predicted. More people have moved out of poverty than ever before; and they have done this more quickly than ever seen in human history. This revolution, while it does not automatically lead to democracy, creates strong democratising pressures. Simply put, the freedom of the marketplace is strongly related to 'voice' and the freedom of the ballot box – and thus to the expansion of human liberties and human rights.

I am not arguing that the business of business is **only** business. I am not a business apologist – there are companies that do bad things and business leadership should speak out differentiating themselves from, for example, companies that fix the bread price which then has harmful effects on the poor. I am in favour of business leaders playing a much more strategic, leadership role in the societies in which they operate as it is in their interests to do so.

Na-iem Dollie and I see the world and how to improve it, very differently... modern business is the most powerful engine ever invented...

REVIEW**Anthony Egan**

is a member of the Society of Jesus. He has an MA in History (UCT) and a PhD in Political Studies (Wits). He has pursued studies in Philosophy and Theology at the University of London and Weston Jesuit School of Theology. He has lectured at Wits (Political Studies), St Augustine College of South Africa (Applied Ethics), and St John Vianney Seminary, Pretoria (Moral Theology). His current interests include: political leadership, South African politics, moral theology and bioethics.

Beyond a Manichean View of South Africa's Struggle

Histories of Apartheid and 'The Struggle' in the past often read like a mythology of cosmic war that reached its apex (or nadir) in the teachings of a prophet named Mani, who envisioned history as an ongoing war between a good god and an evil god. Interwoven into these fantasies is a myth of redemptive violence, a belief that the all-pure forces of good will annihilate the forces of evil. In the heat of battle, such an approach to history is understandable, perhaps even justified. When the fight is over it is just intellectually dishonest – and sometimes may represent a less than noble agenda.

It is a delight, then, to read David Welsh's comprehensive and thoroughly non-Manichean analysis of the rise and fall of Apartheid in South Africa. While never justifying Apartheid, Welsh seeks to understand how the system evolved, the complex shifts and changes in opposition politics, and the slow, painful process that brought the ruling National Party to accept the inevitable, and negotiate the transition to democracy in 1994. Welsh writes a sober, empirical political analysis, never starting from a political ideology and fitting the evidence to suit the theory, apart from that of the quintessential liberal – the belief in the moral rightness of equality, fairness and the rule of just law.

His central thesis is that one cannot pin down Apartheid or its demise to a single, overarching cause. Nor can one claim uniformity in theory or behaviour of either 'side' – or indeed that the history he examines is reducible to a crude 'Nat versus ANC' or 'capital versus labour' battle. White supremacism, rooted in 19th century pseudo-theories of 'scientific racism' that were common currency worldwide, well into the 20th century, were as much a cause of the extension of segregation into post-1948 Apartheid as the demand for cheap labour. And, in a brilliant empirical defence of Merle Lipton's controversial thesis, the growth of capitalism in South Africa (to the horror of the residual Marxist in me!) seems to have actually contributed to making the system unviable economically. What was more difficult, if I read Welsh correctly, was forcing whites, rooted in racist values, to see that Apartheid was both immoral and unworkable.

Welsh structures his book as a struggle between the two sides: those forces maintaining and defending an increasingly redundant system by the growing use of a mixture of 'divide and rule' tactics, piecemeal concessions and the threat or use of violence, and a broad, sometimes disorganised coalition of resistance movements, led by, but by no means exclusively, the African National Congress. All of this is set against a shifting backdrop of global politics – from a world sympathetic to white supremacy and colonial rule through decolonisation and the thorough discrediting of racism, from a powerful Communist world through crisis and collapse. All of these forces – as well as the force of powerful personalities (anathema to many an old-fashioned Marxist) – contributed to the demise of Apartheid.

While some may view Welsh's alternating chapters as stylistically repetitive, covering

the 'same' ground, his approach has the advantage of telling the story from two sides and highlighting the inner contradictions of both. In this he manages to bring out new insights into modern South African history – to show how things could have been different. This is particularly clear in many of the chapters that examine the increasingly desperate attempts by the National Party to hold on to power. In the light of the carnage that happened in subsequent decades it is supremely ironic, and outright infuriating, to read how John Vorster and Hendrik Verwoerd seem to have acknowledged that the system they so ruthlessly implemented and maintained by force, was unworkable.

Welsh pays fairly limited attention to the important contribution of the 'English-speaking Churches' to anti-apartheid activism: as voices of protest, and as social networks that promoted and supported activists.

to his subjects highlights the ambivalence of many players and avoids the rhetorical excesses of earlier works on the subject. This is particularly the case in his handling of persons and groups outside the ANC alliance who have been hitherto, perhaps over-hastily, lumped together with the 'forces of evil': homeland leaders and movements, Coloured and Indian MPs in the Tricameral Parliament (which Welsh admits even many Nats acknowledged was doomed from the start). Some (like Enos Mabuza and Bantu Holomisa) were acknowledged even by the ANC as operating in the spaces they had for liberation. Others drifted more towards the State after clashing with the ANC or pro-ANC forces like the United Democratic Front. Still others, like some MPs, were pragmatists who, however imperfectly, used their positions to challenge the system.

Rhetorical excess is also challenged by Welsh. He shows how figures previously deemed monsters had softer sides and even political saints, notably Nelson Mandela, could be harsh in their judgments of opponents. Most of all, Welsh dispels crude rhetoric that equates Apartheid with Nazism: monstrous as the system was, it cannot compare with a system that sent millions to death camps and caused a World War.

If there is a major gap in Welsh's analysis, I think it is in his fairly peripheral treatment of the religious sector and the quite often ambivalent, role of the Christian churches in Apartheid's rise and fall. Mission churches in the 19th century helped create, through education, a black middle class and – through the protest generated by the 'glass ceiling' they imposed on ministerial advancement – the African Initiated Churches (AICs) that were the midwives of African nationalism. While astute in his analysis of Dutch Reformed Church documents like *Kerk en Samelewing* and the impact of shifts in Reformed theology on Afrikaner consciousness, Welsh pays fairly limited attention to the important contribution of the 'English-speaking Churches' to anti-Apartheid activism: as voices of protest, and as social networks that promoted and supported activists. From the 1970s onward, religious-

It may seem a shallow complement in the light of the history Welsh recounts to call his work balanced. Some readers may misunderstand this – that he is trying to say that 'things weren't as bad as they seemed'. Welsh is not balanced in this sense, but in the sense that his approach

REVIEW

THE RISE AND FALL OF APARTHEID



DAVID WELSH
'Informative, succinct and stimulating.' F van Zyl Stabbert

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based groups (like the Young Christian Workers, Young Christian Students and denominational youth and student organisations) provided the training ground for future activists within movements like the UDF, the labour movement – and human rights NGOs. In a book that otherwise acknowledges the inadequacy of a “Nats versus ANC” dualism of struggle, all too common in more partisan and ‘ideological’ accounts, this is unfortunate.

David Welsh has written an account of the rise and demise of apartheid that is likely to become a classic.

Welsh also demonstrates a fairly thin understanding of anti-Apartheid theology, evidenced in his comments on liberation theology and violence¹. Firstly, apart from a few articles published in ANC and SACP in-house journals like *Sechaba* and *African Communist*, South African liberation theologians – like their colleagues in Latin America – did not wholeheartedly endorse violence². The famous 1985

Kairos Document, not mentioned by Welsh, did not even raise the point. Even a publication of theologians that did,³ juxtaposed it with strong arguments for tactical, if not principled, nonviolent direct action. Secondly, the case could be made that ‘religious dogmatism’ for the most part, informed even the ANC’s decision for armed struggle: the decision to opt initially for non-lethal sabotage, and later for lethal combat within the constraints of (Christian-based) just war theory rules of war, can arguably be traced back to the values that informed the president of the ANC, Oliver Tambo – who was a candidate for Anglican ordination at the time he was arrested in the 1956 swoop that initiated the Treason Trial. The fact that the ANC was not omnipotent in its control over its own cadres and its grassroots supporters, and were often less than perfect in their practice, Welsh adequately demonstrates throughout his book.

In fairness to Welsh, I should add, thirdly, that by the mid-1980s the theological categories of just war and nonviolent protest had blurred from principles into tactics and that this problem has yet to be thoroughly examined. But it is a little ungenerous, uncharacteristic of this book, that he suggests that religious leaders implicitly endorsed mob violence and atrocity.

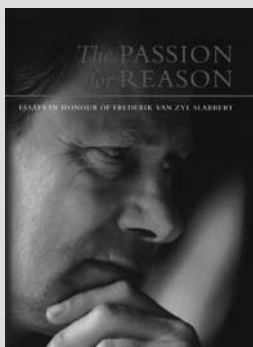
David Welsh has written an account of the rise and demise of Apartheid that is likely to become a classic. It is, overall, a brilliant historical narrative that, in highlighting the complexity of the subject while never seeking to justify it, forces us – wherever we stand on the political spectrum – to move beyond simplistic reasoning rooted in our ideologies. It is a major work of scholarship, tough-minded reasoning and a willingness to face often politically inconvenient complexity. In short, it is liberal in the best sense of the word.

NOTES

1 p297

2 Liberation theology, in line with mainstream Christian orthodoxy, accepts war as a last resort, but by no means encourages violence. Indeed theologians like the Uruguayan Juan Luis Segundo explicitly warns against an overhasty turn to guerrilla warfare.

3 *Theology and Violence*, 1988



The Passion for Reason
– Essays in honour
of Frederick Van Zyl
Slabbert. (Editors) Alfred
LeMaitre & Michael
Savage

ISBN: 9781868423774
(Editors), Jonathan Ball,
Cape Town, 2010.

In Praise of Van

For reasons of ill health over the past year Van Zyl Slabbert resigned all his public positions and offices. His declining health and recent death removed from our stage one of South Africa's great sons; one of the kinds of people who intervene to rescue us from the consequences of our base behaviour and who we are fortunate to continually produce. In January 2010 *"The Passion for Reason – Essays in honour of Frederick Van Zyl Slabbert"* was published, with essays and memories from his children and sixteen other contributors. This Festschrift far more adequately than any single obituary describes his life and times, illustrating the widely diverse areas in which he functioned and excelled.

Helen Suzman's public anger at Van Zyl for resigning as leader of the Progressive Federal Party in 1986 is mentioned, and it may seem incongruous to find a review of a volume honouring him in this particular Journal. It shouldn't be. Van Zyl's despondency about his role in Parliament was matched by Helen's despair at what he had done, but cordial, friendly, relations were resumed.

In the Festschrift supporters and admirers from many sectors and fields have, quite correctly, been generous with their praise. Beginning with statements of esteem, essentially highly personal recollections by his children and close personal friends, it goes on, roughly chronologically, with accounts, interpretations and elucidations of the times, from those whose lives were affected and influenced by Van Zyl in his multiple roles. Sponsored by devotees, the book seems a little hurriedly assembled, with the editing suffering. For example Jeremy Cronin, although a political prisoner, never was incarcerated on Robben Island [p 126] – that was a privilege reserved for the political opponents of colour of the Nationalist party government. Ken Owen got that one wrong!

But none of the bits and pieces that may have evaded the editors can detract from the massive influence Van Zyl had on the recent political landscape of this country. One of the stated aims of his entering formal politics was to crack the united front of Afrikaanerdom – not all Afrikaners need be Nationalists – and his assertion that the flaking away of support from the core of the Nats needn't inevitably be toward the right, as it had been with Hertzog's Herstigte Nasionale Party in 1969/70, and previous fractures in the Afrikaner polity. Prior to the 1974 elections, Van Zyl was courted by both the United Party and the Progressive Party, and from that time on, his political presence increasingly legitimised Afrikaners' opposition to the Nats, on their left. His charisma, the quality of his analysis and the focused criticism he brought to Parliament, greatly discomfited the government and broadened the appeal of the Progs, while his rugby playing prowess didn't hurt either. When he left Parliament his critics on the Parliamentary left flayed him for his lack of commitment and the abandonment of their joint cause. From the side of the Nationalists, they crowed, thinking their task would become easier without his presence, even as they began to grasp that the locus of power in the country was beginning to ooze from the institution.

Outside Parliament, Van Zyl and others pulled together a farsighted NGO, which made contact with the ANC in exile and in so doing contributed to our (relatively) bloodless transition from a racially based state to a fully democratic one. IDASA was an echo of an early 1970's initiative, Synthesis, in which Van Zyl was involved and whose influence in our history has been largely neglected. This gap should be filled while there are still those who can recall it.

Essays in the publication record the events, and Van Zyl's role in them, from the perspectives of the writers, while only slightly blowing the trumpets of the writers themselves. A number of the contributions are more theoretical and philosophical, and they ask some intriguing questions. Theo Hanf observes that, in a country where Liberalism has had only a slight influence in the political history, and has been completely excluded from institutions of power, the Constitution reflects significant liberal influences. To paraphrase him "... how come we're governed by Liberalism?"

Some of the essays ask what Van Zyl's role might have been had he remained in Parliament or been involved in the negotiations leading to the 1994 elections. We'll never know, but the speculation doesn't detract from the fact that his later career, after he exited formal Parliamentary politics, contributed to our transition in a very major way. From influencing the Nats while formally engaged, to early contact with the ANC, it all added to the successful transition. It was characteristic of Van Zyl to integrate the seemingly discrete stages of his life, as well as personally living out his world view and beliefs. There is reference in the publication to the deterioration and breakdown of his relationship with Thabo Mbeki whom he, possibly naively, enthusiastically embraced in the groundbreaking Dakar meeting in 1987. His last clearly political role was as Chair of a Commission which investigated alternative methods for electing Parliamentary representation. It was entirely ignored by the Mbeki administration and to this day remains shelved.

All in all, *The Passion for Reason* is a very satisfying quick read. The essays highlight the role of the convivial intellectual who, while politician and visionary, never thought he was anything more than an ordinary South African with a job to do under particular circumstances, and which he did with wit, grace and style. If it wouldn't be irritating to Van, one could with truth say *Hamba Kahle Mkhonto!* or, more simply, *Mooi loop!*

This article began as a review of the book *The Passion for Reason – Essays in honour of Frederick Van Zyl Slabbert*. Alfred LeMaitre & Michael Savage (Editors), Jonathan Ball, Cape Town, 2010.

Frederick Van Zyl Slabbert born 2 March 1940, died 14 May 2010.

Stan Khan

Stan Kahn is a sociologist who studied and taught at UCT, the University of Natal, and Wits. Between 1984 and 1991 he was the director of the Funda Centre in Soweto. Subsequently he worked on projects and organisation management with a variety of NGOs and has an extensive consultancy background in the health sector.
Van Zyl Slabbert was best man at his wedding in 1974.

Sheena Duncan: Defender of Peace and Justice

Sheena Duncan was born into a family in which the values of justice, integrity and public service were taken very seriously.

Sheena joined the Black Sash in 1963 and started to work as one of the volunteers in the Johannesburg Advice Office which had opened early in that year. Her warm humanity and her abilities to comprehend the suffering of others and to help them to understand possible options open to them, made her an excellent counsellor. It was characteristic that she would not sit across a table from the person she was interviewing, but invite them to sit beside her, to address the problem together.

Deepening her understanding of the pass laws, she developed a notable ability to clearly distil the essentials which impacted most unjustly on those affected by them, and to devise ways to oppose them. Her political activism was always based on first-hand knowledge acquired from her encounters with the people who suffered under discrimination and oppression.

Sheena became editor of the Black Sash magazine and in 1966 was elected Chair of the Transvaal Region, dual roles which she filled, in addition to her Advice Office work, until 1969, when she handed over her chairing responsibility. Thereafter she edited the magazine on and off until 1975.

In 1975 Sheena became the National President of the Black Sash.

By this time she was attracting international attention. She spent six weeks in the United States; regularly briefed foreign visitors, journalists and diplomats on the work of the advice offices; she addressed public meetings, including that of the International Convention of Women held in Grahamstown in December 1975. In her first presidential address in March 1976 she described the growing repression of dissent and the “rapidly developing alienation of the black community...and a serious and growing hatred of whites by blacks” and asserted “justice, the rule of law, liberty, freedom. These are our ideals and must be spoken to keep the ideas they enshrine alive. They are the goals towards which we strive and the ideas we hope our children will also understand and value.”

Sheena was absolutely committed to non-violence. For her this meant that she was bound to search for every possible other means of exerting pressures for change. She gave thoughtful, principled attention to debates about sanctions, about civil disobedience, about conscientious objection to military service, and about conscription. Her views influenced not only the Black Sash, but the many other organisations with which she was involved.

A deeply committed Anglican, Sheena played a leading role in the South African Council of Churches and built strong links with churches in areas outside the white urban areas, helping to establish training programmes for advice office and other work.

In 1982 she attended a conference of the Young Women's Christian Association in England, and then spent three weeks in the Netherlands on a lecture tour. She described it as comprising 29 public meetings, group meetings and lectures, 10 interviews, 11 media briefings, 4 radio and 2 TV broadcasts, and said it was “good to feel part of the world-wide struggle for the security and survival of ordinary people against the dark powers of states”.

Throughout the 1980s and into the years of negotiations and the transition to the new government in 1994, she remained an important public figure. Her analyses of legislation such as the Aliens Act (which she described as “the big cheat”) and the so-called Koornhof Bills were valued contributions to public understanding and opposition.

Sheena was a true liberal in the essential meaning of the word: generous, free of prejudice, opposed to any abuse of power, and committed to justice for all. In 2006 she was awarded The Order of the Baobab in Silver for her excellent contribution to the struggle for a non-sexist, just and democratic South Africa.

Sheena Duncan born 7 December 1932, died 4 May, 2010

Mary Burton

Count Otto Lambsdorff

Count Otto Lambsdorff's instructions for his funeral in the 800 year old Brandenburg Cathedral in former East Germany, were as concise and unsentimental as the man: No state funeral, a memorial service during which 'the vicar should thank God for my life – no further speeches'.

The Friedrich Naumann Foundation's chief executive officer, who worked with Count Lambsdorff in various capacities for over thirty years and knew him for close on forty, described him as someone who drew his strength from his religious beliefs, Protestant ethics and the Prussian virtues of decency, honesty, open-mindedness and self-discipline. The lessons he drew from the Nazi-period and World War II – at the very end of which he lost his leg to American dive bombers – made him a pugnacious democrat who at all times stood for liberty, the rule of law, the tenets of a market economy, human rights and the re-unification of Germany.

I first met Count Otto Lambsdorff shortly after joining the Friedrich Naumann Foundation in the mid-nineties in South Africa, when I went to a Foundation conference in Germany. Of course I had heard of him – former Minister of Economics, party leader of my party, the liberal Free Democrats, part of the second generation of West German politicians after Adenauer and Erhardt that made the country such a roaring economic and democratic success. He very much shaped the Germany that I grew up in. Now he was the chairman of the Friedrich Naumann Foundation.

What made that first encounter with him so memorable was his utter clarity not in matters economic, but in human rights! Some delegates at the conference mealy-mouthed about being 'realistic' and 'culturally sensitive' when it came to authoritarian regimes in Asia and to women. He would have none of it, and said so in his inimitably clear and precise way.

Over the next dozen years I had the privilege and joy of seeing him every single year in January on his and his wife Alexandra's annual visit to Cape Town. These visits were billed as holidays – up to a point. They usually arrived on a Sunday morning and I would be invited for Monday lunch. By that time Count Lambsdorff – who spoke truly excellent English –

had read the South African Sunday papers, and on Monday morning the business daily and the local rag. In rapid-fire German he would then proceed to ask me the most insightful questions, draw analogies, and analyse events and developments in a way that made my poor head spin. The next two to three weeks would be taken up, in part, with meeting South African politicians and intellectuals, giving talks, meeting the many South African friends. We arranged an annual dinner with a hand-picked group that became an absolute highlight in the FNF and our guests' calendar. These were evenings of rigorous, cutting-edge debate and intellectual sparkle.

His association with South Africa and with Helen Suzman and her party, of course, went back many, many years. Neither Helen Suzman nor Count Lambsdorff could exactly remember when they had first met, but both thought it must have been the late 1960s or early 1970s. They kept in touch until her death, a little less than a year before his own. They got on well. As an economic historian (Suzman) and ex-Minister of Economics (Lambsdorff) – and as life-long liberals – they often found that they analysed and saw the world quite similarly. And then there was their common and unwavering commitment to human rights.

Count Lambsdorff consistently, and often to the irritation of German Foreign Ministers (including those of his own party) spoke up for Mikhail Khodorkovsky in Russia, for Aung San Suu Kyi in Burma, for the Tibetans and for others. He did not believe that tyrannical and undemocratic regimes should be toadied to. He was convinced that appeasement was not a language such regimes understood, be they European, Asian or African.

As a rule, Africa is not even a blip on German politicians' radars. Not so Count Lambsdorff. He followed events on the continent, never falling into the trap of treating the whole of sub-Saharan Africa as if it were a single country. He was acutely observant of people's lives and saw things that many outsiders overlooked.

The liberal family has lost a great mind and mentor, Africa a great and outspoken friend.

Count Otto Friedrich Wilhelm Freiherr von der Wenge Graf Lambsdorff (20 Dec 1926 – 5 Dec 2009), former Chairman of the Friedrich Naumann Foundation and Patron of the Helen Suzman Foundation

Barbara Groeblinghoff

helen.suzman.foundation

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