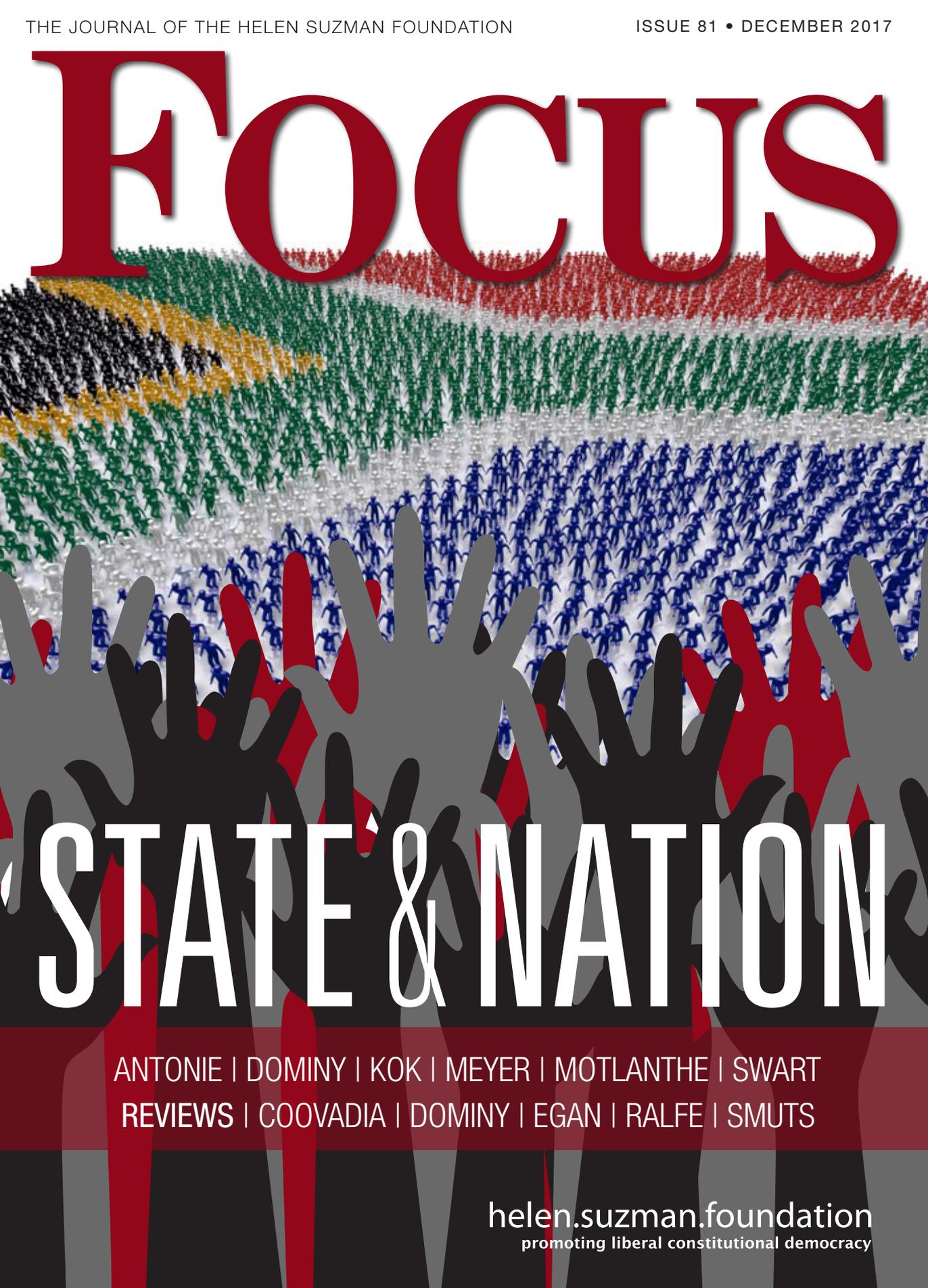


FOCUS

The background of the cover features a large, stylized graphic of a crowd of people with their hands raised. The hands are rendered in various colors, including red, grey, and black. The crowd is set against a background of horizontal bands of color, including green, yellow, and blue, which appear to be composed of many small, individual figures or elements, creating a sense of a large gathering or protest.

STATE & NATION

ANTONIE | DOMINY | KOK | MEYER | MOTLANTHE | SWART
REVIEWS | COOVADIA | DOMINY | EGAN | RALFE | SMUTS

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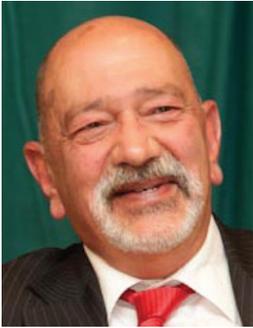
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State and Nation



Francis Antonie is the Director of the Helen Suzman Foundation. He is a graduate of Wits, Leicester and Exeter Universities. He was awarded the Helen Suzman Chevening Fellowship by the UK foreign Office in 1994. From 1996 to 2006 he was senior economist at Standard Bank; thereafter he was director of the Graduate School of Public and Development Management at Wits University. He is the founding managing director of Strauss & Co.

*This edition of Focus, in part, commemorates the centenary of Helen Suzman's birth. And we publish two tributes to her. The first is the Annual Helen Suzman Memorial Lecture, delivered this year by former **President Kgalema Motlanthe**. President Motlanthe's lecture, titled "Generosity of Spirit: Power and Privilege in Politically Uncertain Times" was a beautifully crafted tribute to Helen. What was especially impressive was the way in which he sought to place Helen's commitment to public service within the context of her liberalism. Motlanthe's lecture draws clear links between the values which drove Helen's work and what is required of us today, it was a fitting tribute and an important clarion call to contemporary South African society.*

The second tribute comes from a sermon I delivered as part of a joint commemoration between the Foundation, Holy Family College and Beit Emmanuel Synagogue, Helen's school and synagogue respectively. My address frames Helen's life in terms of the Prophet Micah's question. "What is it that the lord requires of you?". The inspiration for this address coming from Bishop Colenso's great sermon following the defeat of the British at Isandlwana. This pays tribute to Helen's lifelong quest for justice and mercy.

Cecelia Kok analyses South Africa's failure to execute the international arrest warrant against Sudanese President Omar Al Bashir. Kok attended the International Criminal Court's case against the South African government at the Hague and shares her disbelief at the legal arguments the South African Government offered. Placed in the context of the domestic legal battles around al Bashir's visit, this piece excoriates the lack of commitment to the rule of law and the pursuit of justice shown by a government which is, supposedly, committed to these principles.

Willem Meyer offers us a look at South African society through the analogy of an aircraft, whose success is based on the efficacy of number of, interconnected, systems. Revisiting Rostow's important observations about economic development in his account of the plurality of threats South Africa's future development prospects face. Additionally, South Africa's societal complexity is brought into focus with the foundations upon which it is built being questioned. Meyer places South Africa's current challenges in both an international and a historical context and offers suggestions for attaining a South African "aircraft" that is better coordinated.

With Parliament's Ad Hoc Committee on the Funding of Political Parties completing its work, **Mia Swart** looks at the history of the issue, the legal issues surrounding it and the effects that funding could have on enhancing political competition in South Africa. The issue of party funding has a history of legal battles in the years following South Africa's first democratic elections, but prior to this year there had been little progress on the issue. However the establishment of the Ad Hoc Committee and the High Court's recent

ruling in a case brought by My Vote Counts have fundamentally overturned the prior lack of regulation. Swart explores the implications of political party finance reform for South Africa. This is also a topic that the HSF has been engaged in, and has produced a substantial body of research on over the past few months, it has also made written and oral submissions to the Ad Hoc Committee.

Graham Dominy's Alan Paton Memorial Lecture takes us on a journey of Liberal thought in South Africa through the lense of three generations of an illustrious South African family. The Schreiner's substantial contribution to liberal thought in South Africa is evident throughout Dominy's lecture in a piece that interweaves the progression of the liberal tradition with crucial moments in South African history. In doing this Dominy analyses the impact of South Africa's liberal tradition on the formation of the Union of South Africa, the anti-Apartheid struggle and the beginnings of democratic rule.

Anthony Egan reviews Charles van Onselen's book *The Cowboy Capitalist*. Van Onselen's book completely alters perceptions about one of the historical hallmarks of early Johannesburg, the Jameson Raid. The raid forms part of the ingrained image of early Johannesburg as an homage to the American Wild West and conventional history has always placed Cecil John Rhodes as the driving force behind it. However, this groundbreaking piece of research shatters that idea and rather paints American engineer John Hays Hammond as the mastermind. This both alters traditional conceptions of the facts, but also imparts a new, global angle on the story that reshapes conceptions of how early global interdependence began to influence South African politics.

Gary Ralfe reviews Kalim Rajab's book *The Political Thought of Harry Oppenheimer* which explores the driving, liberal, political thought behind Oppenheimer's conception of business' role in society. Ralfe's review draws on his decades long experience in Anglo American and De Beers, offering a view of how business should contribute to society that was behind Oppenheimer's vision. This adds a rich background to Rajab's nuanced analysis of the contribution made by Oppenheimer and the criticisms that he faced.

Brian Huntley's memoir of his time in the wilderness of Angola is reviewed by **Rosemary Smuts**. While a personal memoir in some ways, Huntley's vast experience in Angola parallels a number of major political changes. This work exposes the devastating ramifications of Angola's tortured history on its natural environment. The book acts as a brilliant record, but also as a call to arms to protect Angola's wilderness and the creatures in it.

Previously an area of history presumed the preserve of British historians, John Laband's book *The Assassination of King Shaka*, reviewed in this edition by Graham Dominy, forms part of a fine development of local historians exploring the topic. Laband's book explores the life of King Shaka and the circumstances surrounding his death, while also exploring the hypothetical fate of the Zulu Kingdom had Shaka survived.

Swart explores the implications of political party finance reform for South Africa. This is a topic that the HSF has developed a substantial body of research on over the past few months, having produced nine policy briefs on the topic and made written and oral submissions to the Committee.

Another wonderfully descriptive review comes from Professor Imraan Coovadia, who looks at David Lurie's *Undercity - the Other Cape Town*, a visual look at the – often unseen – side of the Mother City. Lurie explores the nature of use and usefulness in the context of urban settings with photos that cut to the heart of the unseen areas that help drive the city. Coovadia's review brings Lurie's pictures to life and paints an emotive image in the reader's mind of the Cape Town the country forgot. This work offers a profound visual record which is essential viewing for all who are concerned about not only Cape Town, but all our cities.

The Spirit of Generosity: Power and Privilege in Politically Uncertain Times



Kgalema Motlanthe

is a former politician, anti-apartheid activist and trade union leader. He joined Umkhonto We Sizwe as a young man and spent 10 years on Robben Island for furthering the aims of the African National Congress. He became chairperson of the ANC in 1990, Secretary General of the National Union of Mineworkers in 1992 and Secretary General of the ANC in 1997. He served as President of the Republic between 2008 and 2009 and Deputy President between 2009 and 2014.

07 November 2017

Programme Director; Francis Antonie, Director of the Helen Suzman Foundation; Trustees of the Helen Suzman Foundation; Senior Managers of SAPO; The Suzman Family and Friends; Lady Frances and Sir Jeffrey Jowell; Dr Patricia Suzman; Mrs Irene Menell; Daniel Jowell, Queen's Council; Hubert Cooreman; Ambassador of Belgium; Jessye Lepenn, Acting Ambassador of the United States of America; Distinguished Guests; Ladies and Gentlemen;

Thank you for inviting me to deliver this year's annual lecture. I am deeply honoured to present this lecture on the event of the centenary of Helen Suzman's life.

Since 2008, this annualised lecture has provided an instructive space to interrogate the liberal democratic values that were so central to Helen Suzman's life and political contributions to South African democracy.

The intellectual tradition of such lectures hold at their core the complex matter of memory - owing their existence to the extraordinary lives of those whose names they bear.

Indeed, earlier this evening, we marked memory by honouring Helen Suzman with a postage stamp¹ that bears her image. It is a fitting tribute to a more deserving champion of basic human rights, whose contribution to freedom transcended South African and international borders.

When the name 'Helen Suzman' is invoked, a common image emerges: the silhouette of a woman, standing as a lone anti-apartheid voice in its parliament for 13 years - committed to intentionally and strategically campaigning against the dehumanising system of apartheid.

We think of the politician who audaciously declared: "I am provocative, and I admit this. It isn't as if I'm only on the receiving end, a poor, frail little creature. I can be thoroughly nasty when I get going, and I don't pull my punches".²

We remember the liberal who presented an alternate (if minority) image of white South African ideologies and ethical morality through her actions, statements and way of being.

With wit, relentlessness and an unflinching determination, Helen Suzman is canonised as an ardent critic of her South African context. The *Hansard*, a verbatim record of parliamentary proceedings, is filled with accounts of her meticulously researched, assertively delivered and detailed remarks.

Suzman dared to speak truth to power. Such tenacity, with the knowledge of potential consequence and privilege by way of position, is no small contribution to our democratic freedoms.

A caveat must be stated:

The interrogative opening provided by lectures such as these, asks for engagement with a few facets of a complex life. Keeping in mind their limitations, by way of time and narrowness of focus, we are still required to acknowledge the complicated multiplicity of being existent in every one of us – the ‘multitudes’ that poet Walt Whitman notes we contain.³ As such, our efforts at canonising figures such as Helen Suzman are required to avoid the pitfalls of sanitising memory.

In the effort to ensure their significant contributions to liberation, and aim for clarity, these notable individuals become martyrs, saints, villains – outlined as archetypes without the rich texture of human existence. As President Nelson Mandela, himself afflicted with this reality, noted:

‘In real life we deal, not with gods, but with ordinary humans like ourselves: men and women who are full of contradictions, who are stable and fickle, strong and weak, famous and infamous.’

In considering her legacy, I am struck by the inextricably linked relationship between power, privilege and politics. All three were pivotal features of Suzman’s life, and remain in an inescapable, yet complicated relationship in our present and past contexts.

It is critical, in service of their commemoration, to draw depictions that allow for the full breadth of who these public figures were to be kept in focus, as we wrestle with the political and personal tensions inherent in the scope of any human life. As such, the historical tensions of the South African liberal perspective within the struggle context are unavoidable in considering the life of Helen Suzman, just as we celebrate her remarkable existence.

In considering her legacy, I am struck by the inextricably linked relationship between power, privilege and politics. All three were pivotal features of Suzman’s life, and remain in an inescapable, yet complicated relationship in our present and past contexts.

Consequently, in identifying a site of focus in the life of Helen Suzman, I have entitled this evening’s lecture ‘*Generosity of Spirit: Power and Privilege in Politically Uncertain Times*’.

It unfolds through a consideration of five lessons that Suzman’s legacy provides, that intersect and inform each other. These are framed as:

- The value of critical consciousness;
- The central principles of liberal constitutional democracy;
- Consciousness of agency and collective action;
- The philosophy of humanism; and
- The importance and meaning of the self-determination of oppressed peoples.

How then, do we define the atmospherics of uncertainty within the present South African context – while always keeping in mind its global resonances?

The potential importance of this year in history must be briefly considered.

Variegated across history are instances that reveal themselves as defining moments.

It must be noted that a vast set of conditions and factors coalesce in the creation of the appearance of a watershed, or turning point. Given the present global realities, in once-considered stable and developing democracies, 2017 appears to be a historically significant year.

Perhaps in future, and with the nostalgic benefit of hindsight, we will look back at this year and see it as a time when the tide turned in favour of a return to the central tenets of democracy and ethical leadership. Or instead, it could constitute a moment in which we were collectively overcome by the waters of corruption, conceit, deceit and the most depraved of human attributes.

The hinge on which our interconnected local and global future rests, is the question of agency. This was a reality that Helen Suzman, and her contemporaries, never sought to shirk.

Through public dialogue and events, it has become clear that ours is not an unblemished society. Considering the local dimensions of this moment in political history, the South African reality is fraught with interwoven successes and failures.

The historical fault lines of South African life are still divided along race, class, creed, sexual orientation, gender and ability. These divisions are insistently and increasingly revealing themselves in countless discursive and material ways.

The meaning of such revelations requires understanding the local and global dimensions of the founding promise of our country's democracy.

As South Africa made its transition from an Apartheid state to one founded on lofty democratic principles enshrined in our Constitution, the nation and society was presented as a potential paragon of change.

The nation carried the hopes of the global community who anticipated that we would provide the world with the ultimate instructive example of good governance and progressive policies based on human rights, proving oppressive histories could be overcome by resolute commitment to unity. The combination of ethical leadership and democratic institutions, it was thought, would act as midwives to a new way of being. This did not come to pass.

In being fair, the burden on our collective shoulders was too heavy a weight to carry—the expectations too high to fulfil in absolute terms.

In being frank, those charged with power – in numerous sectors – have failed to live up to the oaths of office, terms of business and moral consciousness attached to their positions. Our present is not one unattended to by human hands; we are simultaneously charged with keeping those in power accountable. Responsibility is, therefore, at once individual, collective and multidirectional.

As such, the first aspect of Helen Suzman's legacy that I seek to draw attention to is *the value of critical consciousness*. A quintessential part of her legacy is the functional value of intentional, measured and actionable critique.

The Dominican American author Junot Diaz provides a useful way to frame the beneficial function of criticism. When asked whether his work – which reflects a 'grimmer' depiction of American history, has made him love the country any less, he answered:

Why should it? I've always thought that you don't love a country by turning a blind eye to its crimes and to a problem. The way that you love a country is by seeing everything that it's done wrong, all of its mistakes, and still thinking that it's beautiful and that it's worthy.'

Our present is not one unattended to by human hands; we are simultaneously charged with keeping those in power accountable. Responsibility is, therefore, at once individual, collective and multidirectional.

Diaz frames his fundamental responsibility as a citizen around the acknowledgement of both American shortcomings and his own privilege – purposed towards making the country ‘a better place’.⁴ Here, again, we see the intersection of privilege, position, politics and power.

Those who view critique this way seek to ban books; doggedly pursue dissenters within their ranks; and ultimately desire the silencing of critics. They manipulate the language of democracy and the power of their position, utilised as mandates to their stifling strategies.

Premised upon this mode of understanding the functional value of criticism – I wish to briefly consider two ways in which we frame critique on our shores. The first challenges any disagreement through the erroneous use of democratic rhetoric and institutional power; the second appeals to the idea of a more perfect past, pervaded by a determined pessimism.

Criticism is purposed towards reinforcing our ability to self-critique and therefore self-correct.

There is a certain attitude to critiques of the South African present that is fundamentally undemocratic in nature. Primarily located in corridors of power, across sectors, its ethos goes against the idea of informed discourse that is central to Suzman’s legacy.

Within this frame of thinking, challenges to the use and abuse of power are viewed as unpatriotic acts. Critiques are made malleable, reformulated as attacks and condemnation of person, party and state – separately or simultaneously. In such minds, love of country is demonstrated by the absence of critique and acceptance of the status quo.

Those who view critique this way seek to ban books; doggedly pursue dissenters within their ranks; and ultimately desire the silencing of critics. They manipulate the language of democracy and the power of their position, utilised as mandates to their stifling strategies.

Such formulations, fail to see the immense value of critical analysis. They neglect to account for the way it can assist in shaping our state, through hewing at every feature that does not align with our Constitutional vision when an assessment of our present is purposed towards a realisation of our founding ideals. They fail, if one could phrase it in this manner, the Diaz test in which functional critiques are born of a desire to improve present conditions, arrive at a better future and restore the vision we officially founded on the 27th of April 1994.

The second critical attitude I would like to draw attention to is one that frames every aspect of our present in solely negative terms. It too, pervades multiple sectors – but is located in more diffuse sites of power. Such perspectives conform more to criticism than analysis, failing at self-reflection and existing for their own sake.

These approaches seek refuge in the past, with a dogged refusal to recognise the successes made in our democratic era. They are curiously unaware of their repetition of colonialism and apartheid’s vocabulary and grammar of being – viewing the past as a greener pasture and even adopting its symbols. Their assessment of the present is one that still spins on the linguistics of ‘us’ and ‘them’. These attitudes are found wanting when searching for any measure of Suzman’s political objectives, to make South Africa ‘a better place’, for they reside not in the present, but in a romanticised past.

A critical consciousness must note, as Danish Philosopher and theologian Søren Kierkegaard, remarked that “Life can only be understood backwards; but it must be lived forwards.”⁵

Any apprehension of the contemporary South African reality, that seeks to understand the relationship between past and present, must resist any attempts at epochal neatness. The break between historical eras, between the ‘new’ South Africa and the old, will not be clean.

Just a week ago, the courts found that Ahmed Timol did not commit suicide, but was murdered.⁶ The past is still being resurrected, the future still being shaped.

To return to the promise of complete societal renovation that was hoped for the South African state, academic Peter Vale notes:

Instead of the country being held up to the world as an example of successful ‘transformation’, it might well be regarded as a microcosm of a world unable – perhaps unwilling – to deal with old social pathologies like race, class, and nationalism or even newer ones like the environment, or gender relations, or a post-capitalist world.⁷

How, then, do we meaningfully address these social pathologies, in service of the second aspect of Suzman’s legacy: **the central principles of liberal constitutional democracy** founded in the dream of an equal South African society?

The Constitution provides a vision of the South African dream, as imagined in the 1990s.

The American poet Langston Hughes oft-quoted poem, *Harlem*, asks:

‘What happens to a dream deferred?’

Does it dry up

Like a raisin in the sun?

Or fester like a sore—

And then run?

Does it stink like rotten meat?

Or crust and sugar over—

Like a syrupy sweet?

Maybe it just sags

Like a heavy load.

Or does it explode?’

We have now found that a disavowal of the past is not a construction of the future because ‘the past we inherit and the future we create’.

What, then, of the South African dream?

We have now found that a disavowal of the past is not a construction of the future because ‘the past we inherit and the future we create’.

Our Constitution founds the Republic of South Africa on the values of human dignity, the achievement of equality and the advancement of a wide definition of human rights and accompanying freedoms.

It is rooted in non-racialism and non-sexism.

It establishes a state based on the supremacy of the constitution and the rule of law. Universal adult suffrage, a national common voter’s roll, regular elections and a multi-party system of democratic government are institutional prerequisites.

By design it is meant to ensure accountability, responsiveness and openness underpinned by the principle of judicial review.

It demanded then, as it does now, a radical transformation of every aspect of South African life.

Yet given how apartheid sought legal dominion over families, intimate relationships, places of work and residence, friendships, ways of gathering, speech and art, it is in some ways understandable – yet still lamentable – that our society and state have not realised the conditions required to make the Constitution and its liberal ideals a living document.

Suzman's campaign against apartheid in parliament was inspired by liberal ideals in the universalist sense, against the power and privilege embedded in racial order.

Yet it bears stating that these ideals are not without their own tensions that played out in struggle history and remain with us.

Pallo Jordan makes the critical distinction between liberals and liberalism. He argues that while the former refers to 'an organised political current', the latter defines 'a modern political value system'.⁸

Jordan maintains:

"The victory of liberal democracy in South Africa is paradoxical because its midwife was an African nationalist movement with a history of a troubled relationship with liberals but which had nonetheless consistently defended basic liberal democratic principles. It was the parties associated with that movement that upheld the universalist vision at the core of the liberal democratic tradition during our constitutional talks."⁹

A broad cross-section of the South African citizenry has been jolted out of their complacency and apathy, and is presently taking up the mantle of 'visionary agency'. We are becoming alive to the all too real possibility of the failure of politics to singularly usher in a new era.

Dedicated to a counter-vision of South African society, the dream that Suzman and many other comrades pursued in the midst of internal differences was one rooted in basic liberal ideals: freedom, equality and universal human rights.

In the post-apartheid frame, however, the ways in which we have regressed from this promise, from the dream of a united, democratic, non-racial and non-sexist South Africa is regrettable.

Consequently, the question as to how we realise our strategic goal still finds itself without a clear-cut answer. This requires that instead of turning away from uncertainty, we embrace its lessons – viewing this as a moment to reframe our vision of society. Collective action and responsibility is required.

Here enters the third aspect of Suzman's legacy: **consciousness of agency**.

A broad cross-section of the South African citizenry has been jolted out of their complacency and apathy, and is presently taking up the mantle of 'visionary agency'.¹⁰ We are becoming alive to the all too real possibility of the failure of politics to singularly usher in a new era.

Given the historical exigencies of our state, inequality shapes power, privilege and agency.

Our world is organised by multiple forms of power which exist as architecture and influences agency. Power defines what it means to be human and informs every aspect of daily life. It is inescapable and political, and must be understood as such, if we are to address the uncertainty of our present through collective action.

Many commentators often present Helen Suzman as though she was fundamentally alone. While she was the only member of the Progressive Federal Party with political representation for over a decade, Suzman was joined by an extra-parliamentary mass movement of millions. Her significant contribution was like a rivulet that decanted into the mainstream movement of resistance. Thus, when conceiving of agency, we move from the individual to the collective level.

Helen Suzman used the privilege of a parliamentary seat afforded by power attached to identity – which then granted her a degree of agency, towards liberation.

In the post-apartheid climate, power and privilege are in complex formation.

While still generally conferred along historical clefs, the existence of growing public platforms and a more diffuse allocation of power among the burgeoning middle and upper social classes provides greater opportunities to speak out, effect change and address the failures of the democratic state. Simply put, we are called to use our privilege towards the upliftment of all.

It cannot be untangled from the final aspect of her life that I seek to draw attention to: the tensions between using privilege while acknowledging oppressed people's right to self-determination.

A question emerges: how do we rally and mobilise a unified South Africa to shift the present condition?

Disagreements by way of identity, ideology and experience have made the realisation of South African unity a difficult objective to achieve. As Fidel Castro writes in 'My Early Years' 'Like religious faith, political belief should be based on reasoning, on the development of thought and feelings'. The 'reasoned discourse' that underpinned Suzman's approach to discord, which allows space for disagreement, is only possible when we take as our starting point, the realisation of a common humanity.

A progressive humanism asks that we emphasise our universal rights to freedom, equality and justice, without dismissing the particularity of our experiences. It asks that we go beyond ourselves, and consider our destinies held in common, and our futures as fundamentally linked. A divided South Africa, therefore, is asked to see itself as connected. A seeming paradox emerges. While South Africans, of many kinds, know that the present is untenable, moving forward, through unity, is difficult to conceive of and realise precisely because difference is pervasive.

The central principles of our belief systems are called to stand for the values embraced by people like Helen Suzman. She identified these as 'simple justice, equal opportunity and human rights. The indispensable elements in a democratic society - and well worth fighting for.'¹¹

While Suzman was once condescendingly referred to as a "sickly humanist",¹² I can think of no greater compliment than to be found a fitting match for such an aspirational ideal.

Humanism provides the fourth instructive lesson from the life of Helen Suzman and her contemporaries. It cannot be untangled from the final aspect of her life that I seek to draw attention to: **the tensions between using privilege while acknowledging oppressed people's right to self-determination**. Consequently, I will not attempt a neat separation of these facets of her legacy.

Throughout the liberation struggle, activists from various backgrounds differed on numerous matters. In Suzman's case, this most distinctly included the issues of sanctions and the use of violence.¹³ We must be wary, however, of historical revision

that wishes to attach the present ‘way of seeing’ to the past’s set of circumstances.

As John Berger notes:

‘Our specific points of difference no longer exist because the choices to which they applied no longer exist. Nor will they ever exist again in quite the same way. Opportunities can be irretrievably lost and their loss is like death’.¹⁴

Still, there were ways in which the borders placed between South Africans – both physical and legal – were overcome by a shared opposition to injustice. This provides an instructive lesson to our present divisions: a way to work towards a common cause.

Quoted in Suzman’s autobiography ‘*In No Uncertain Terms*’, Nelson Mandela once remarked on these shared ideals:

‘A wide gap still exists between the mass democratic movement and your party with regard to the method of attaining those values. But your commitment to a nonracial democracy in a united South Africa has won you many friends in the extraparliamentary movement.’

Often, those in positions of leadership negate the possibilities for self-determination, becoming consumed by a project of self-preservation. They relate to those structurally prevented from positions of power and privilege as if they are minors.

In Suzman’s life we see the ability to transcend political difference. Remarking on this, Nadine Gordimer commented:

[But over the years I have observed – that when people are in trouble, she has been the one they have appealed to. She is the one everyone trusted]...Suzman never refused anyone her help, that I knew of. No matter how unpleasant or hostile the individual’s attitude to her and her political convictions had been.¹⁵

Considered in chorus, these quotes generate two aspects of agency and power that are related.

The litmus test of liberal principles is the question of self-determination, as opposed to the paternalism that is often present when thinking about the condition of oppressed peoples. This is not a gift that should be bestowed. It is a basic human right. Often, those in positions of leadership negate the possibilities for self-determination, becoming consumed by a project of self-preservation. They relate to those structurally prevented from positions of power and privilege as if they are minors.

The attitude of oppressed masses and mass democratic leaders of the struggle was born of a belief that liberation required taking full charge and responsibility for their own being. Part of realising this aim, involves strategic mobilisation of degrees of privilege.

To this point, I phrase one example.

The creation of the homeland system superimposed jurisdiction that saw people living in these areas excluded from the rest of the country. We cannot accuse those people, who in their day-to-day lives had to function and exist within the framework of the homelands, created in spite of themselves, with complicity in the oppressive system.

Realising the potential for subversion of the system, the African National Congress approached leaders of the homelands with a simple request. They were asked to use the limited political space created by their position within the homelands to

preach the message of unity of the African being. The purpose of the creation of the homelands, we must remember, served to deepen divisions along ethnicities – which we still contend with today. The responses from homeland leaders were varied.

The South African polity, within this era, was structured such that it excluded black people from power – except within the homeland system and urban councils. White South Africans, like Suzman, were privileged to have both the franchise and the ability to participate in official political structures. The purpose of framing this example speaks to one downside of boycott as a weapon of struggle – as in particular instances, we are called to use the limited space, and privilege, available to us.

“At least one Afrikaner should make this protest.”

Connected to this point, privilege can also be used to strengthen unity among like-minded people – who exist in different positions of power. Two leaders, Bram Fisher and Ahmed Kathrada, who held privileges attached to their racial classifications, exemplify this approach.

Born into a powerful Afrikaner family, Bram Fisher could have easily chosen a life of privilege and reached the apex of political power. Initially a nationalist, Fisher was later radicalised while at Oxford College, where he embraced a communist world outlook.¹⁶ This outlook would later see him immersed in the struggle against apartheid – arrested, convicted and sentenced to life imprisonment.

In a statement from the dock, he said: “At least one Afrikaner should make this protest.”¹⁷

Ahmed Kathrada embodied similar values. At the conclusion of the Rivonia Trial, Kathrada was only convicted on one count. Thus, many within the legal fraternity believed he could have appealed his life imprisonment. Kathrada chose not to, emboldened with the firm conviction that all should suffer the consequences of apartheid’s injustice – as privilege should not allow some to be exempt from the brutality meted out to the less privileged.

In closing, as human beings we must be defined by ethical morality – which would enable us to be opposed to injustice, wherever it might manifest. Like Suzman, we are called to play our part in the creation of a more humane world, where we can relate to each other as human beings and not categories of persons, arranged in hierarchies of being.

Emboldened by Suzman’s indomitable spirit, we are called to dare to reimagine a different South African future, in favour of an inclusive and universal dream for the future of humanity. From the 36 years she spent in parliament to her prison visits, Helen Suzman reminds us that visionary agency is possible, that we are able to envisage alternate prospects in the face of devastating realities.

As I noted in the State of the Nation address of 2009, Helen Suzman was ‘a truly distinguished South African, who represented the values of our new Parliament in the chambers of the old.’

In striving towards a realisation of a better future suffused with liberal values, it is evident that the intersection of power and privilege call for us to each mark where we stand, politically, morally and ethically.

Present times require that we use our positions of privilege to effect change, in the spaces where we hold influence – from classrooms to boardrooms, parliament

to political rallies, written texts to radio, sporting codes to performing arts and organised stakeholders of the nation at large.

In the words of Nobel prize-winning author, Toni Morrison, commenting on politically uncertain times: ‘There is no time for despair, no place for self-pity, no need for silence, no room for fear’.¹⁹

Whether by our hands or through our reticence, South Africa is being shaped and the future is at stake.

Thank you

NOTES

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Helen Suzman Sermon

Beit Emmanuel – 3 November



Francis Antonie is the Director of the Helen Suzman Foundation. He is a graduate of Wits, Leicester and Exeter Universities. He was awarded the Helen Suzman Chevening Fellowship by the UK foreign Office in 1994. From 1996 to 2006 he was senior economist at Standard Bank; thereafter he was director of the Graduate School of Public and Development Management at Wits University. He is the founding managing director of Strauss & Co.

*As many of you know, we are in the midst of celebrating the centenary of Helen Suzman's birth, and these celebrations culminate with the memorial lecture on Tuesday 7 November, when we launch the commemorative issue of the stamps in her honour, followed by former President Kgalema Motlanthe's lecture on *The Spirit of Generosity: Power and Privilege in politically uncertain times*.*

The celebrations began this morning with a joint initiative of the shul, the Holy Family Convent next door, and the Helen Suzman Foundation – three institutions connected to Helen at various stages of her life. And I want to pay special tribute to Rabbi Sa'ar and Dr Mark Potterton for initiating these celebrations. The Helen Suzman Foundation is proud to be part of this initiative.

We began this morning with a plenary session, where the principle guest speaker was Terror Lekota, one of the original four Delmas Treason Trialists.

Helen was a constant presence at the trial, and, I know, an important link between the accused and the outside world.

Terror's speech this morning is a remarkable testimony to her role as a witness to these events, and to the support, moral and otherwise, which she provided.

But this support was not an isolated moment in Helen's life as a public servant. It was the hallmark of a life dedicated to public service. I will return to this theme later in my address.

But I would like now to thank Rabbi Sa'ar for the opportunity to address the congregation this evening.

As the Director of the HSF, you do the HSF a great honour.

At the Personal level I am not only honoured, but moved, by the invitation to talk this evening. I thank you!

I am also mindful of the fact that this is the Sabbath, and it must be commemorated.

I do though admit that I come here this evening realising my deficiencies – the most glaring of which is that I have never before delivered a sermon anywhere or to anyone.

So the honour Rabbi you have so generously bestowed on me is also a burden, but – remembering the Prophet Isaiah – a little one.

Likewise, I am reasonably sure that no-one whose background is Lebanese Maronite, part of whose family are Sephardi Jews, has ever before, addressed this congregation.

And if that is not sufficient, this week marks the 500th anniversary of the beginning of the Protestant Reformation in 1517. So for completeness, I also recall that Lutheran branch of my Mother's family.

In thinking about this evening's sermon, I reflected on some of the great addresses and sermons which I have read or heard.

Without doubt, the most compelling lecture I think I have ever attended was delivered by Professor R.J Werblowsky on “Jerusalem”. He was the successor to Gerschwin Scholem at the Hebrew University and, as expected, that lecture shed light and clarity, not only on the place, but the idea behind the place.

The most compelling sermon I have ever come across, was that delivered by Bishop Colenso in March 1879, two months after the defeat of the British at Isandlwana.

And I would like to reflect on that sermon this evening and its relevance not only to Helen Suzman, but to our time.

“What doth the Lord require of thee. To seek justice, to act mercifully and to walk humbly with your God”

When I was appointed to the position of Director of the HSF. I had been clear that I didn’t see the HSF being turned into a shrine to Helen. Rather, we would use the values which informed Helen’s life and the example of her dedication to public service, as our guiding lights. In that way, we would both commemorate Helen, and be inspired by her. That I

believed, and still believe would, be paying appropriate tribute to Helen’s life and memory.

How, then, do we bring together a nineteenth century Bishop from Natal, whom some regarded as schismatic and Helen Suzman, who I think would have somewhat relished at the idea of being schismatic?

In this beautifully and forcefully constructed sermon the good Bishop used the test from the Prophet Mica VI, 8:

“What doth the Lord require of thee. To seek justice, to act mercifully and to walk humbly with your God”

The Sermon is actually an excoriating one, in which Colenso spares no one.

The Colonial authorities, the imperial and the colonists all come under his scrutiny. And on the occasion when the Governor had called “for a day of prayer and humiliation”, Colenso reviews the behaviour of all, and points out just how far from the Prophet’s injunction all had fallen.

John Clarke writes: “So ended that memorable address, long to be remembered by those fortunate enough to hear it. Many of his listeners were indignant, some were saddened, a number accepted the castigation, and a few were admiringly antagonistic, but whatever the reaction to his words, such was the overall effect exercised by Colenso’s strong and sincere personality that he was heard through to the end in silence.”

There are many points of contact or of intersection between what Colenso was trying to do and say, and Helen’s life.

Let me immediately say that the idea of Helen walking humbly, may strike many of us as somewhat incongruous, to say the least. I have no idea what she is saying or doing in the afterlife. It is not for one to speculate. But if there is an afterlife, I have no doubt that she will be asking all the difficult questions.

Helen’s life was a life dedicated to seeking justice.

She stood up in Parliament and opposed Apartheid unequivocally. For 13 years, she was the only MP to do so. She took on every Apartheid bill and subjected it to criticism of the most penetrating, detailed and coruscating kind. Utterly fearless and devastatingly articulate, she confronted the scores of Nationalist MPs and bullying

Ministers. She took them on, time after time, in speech after speech. Suzman was unwavering in her support for a Bill of Rights and the principle of the Rule of Law - defining features of our current liberal constitutional democracy.

It is a matter of public record that she not merely vociferously opposed the use of violence by the Apartheid regime, but repeatedly exposed in Parliament many of its worst instances.

Indeed, one of Helen Suzman's most important contributions was to use her Parliamentary position to highlight the injustices and violence of Apartheid and bringing to light facts that would otherwise have been covered up. She did this by posing question after question in the House, thereby evading the censorship that then existed and bringing numerous iniquities to light. When told by a Minister that her questions were an embarrassment to South Africa, she famously retorted that it was not her questions but his answers that were the cause of the embarrassment. She also famously and repeatedly called for Nelson Mandela's release – as for so many other political prisoners. This is all recorded in Hansard.

Mandela writes: 'It was an odd and wonderful sight' he wrote, 'to see this courageous woman peering into our cells and strolling around our courtyard'.

Finally, and perhaps most importantly, she used her Parliamentary position to assist the many victims of Apartheid. With her famous expression "go and see for yourself", she purposefully went to see what was happening, and she acted on what she saw - often with crucial implications for people's lives. In particular, she played an unparalleled role in visiting prisons and improving conditions for political prisoners.

It is this last point that I wish to reflect on.

The Prophet Micah urges us to act mercifully.

Inevitably, we think that this injunction applies to those who rule over us. This is no doubt correct.

But this is where Helen used her authority as an MP to act in such a way, that the lives, especially of those incarcerated, were in so many ways improved.

Mandela writes: 'It was an odd and wonderful sight' he wrote, 'to see this courageous woman peering into our cells and strolling around our courtyard'. Suzman reported back on the inhuman conditions... Soon afterwards... conditions began to improve. The prisoner's saw Suzman's visit as a turning point: had she not come, wrote Neville Alexander, 'there is no saying what might have happened'"

Her all-important visits to Robben Island, and the improvements in the prisoner's lives that derived from them, were just the tip of the iceberg. She visited the banned and the banished. She fought to obtain amnesties and passports and exit visas for countless political (and non political) prisoners. She pleaded for scores and scores of individuals who were victims of the pass laws and group areas and racial classification. She took up the causes of literally hundreds, if not thousands, of individuals. She used her powers of persuasion and threats of exposure with ministers and officials to obtain redress. Her desk was a veritable harvest of the seeds of Apartheid and she worked tirelessly to try to help every one of those that sought her assistance, black, white or coloured, rich or poor, famous or unknown.

These are, I believe, all acts of mercy, carried out by a woman who understood what needed to be done, and who used her authority wisely with great effect.

So I take leave of the Prophet Micah, but not of the matter of the Prophecy.

There really was something Prophetic about Helen.

Let me be clear, I am not suggesting that Helen was a Prophet. But that resolve to carry out her what she truly believed in, and what she believed would come about, goes beyond sheer determination and hard work and courage.

And I believe that no-one realised this more than Madiba.

On the day that he signed our Constitution into law, she accompanied him to Kliptown at his insistence, to witness that historic moment at his side.

If I can be so bold, I would say that that was their finest moment: the realization of their hopes and aspirations for our country.

It is our task to ensure that that moment is not lost or squandered.

That is our challenge. That is what the Prophet Micah enjoins us to do.

PULLING THE WOOL OVER EVERYONE'S EYES: Reflections on South Africa and the International Criminal Court (ICC)

My jaw dropped lower and lower as I witnessed each bizarre new argument unfold. The International Criminal Court (ICC) had convened a hearing on South Africa's failure to arrest Sudanese President Omar Al Bashir. In 2015, he had attended an African Union (AU) Summit in South Africa. Instead of complying with its obligation to arrest him, our government allowed him safe passage in and out of the country.

I was present throughout the court hearing in The Hague. The following is a reflection on South Africa's relationship with international justice and the ICC. In particular, I will discuss South Africa's submissions to the ICC, which are baffling in light of the Al Bashir cases that were heard in our domestic courts.

Unfortunately, legal matters can acquire a kind of clinical character due to their technical and occasionally abstract nature. In the matter of Al Bashir, the heinous nature of the crimes of which he is accused cannot be overstated. The ICC has issued two arrest warrants for him – one in 2009 and the other in 2010. He is charged with

five counts of crimes against humanity: murder, extermination, forcible transfer, torture, and rape; two counts of war crimes: intentionally directing attacks against a civilian population as such or against individual civilians not taking part in hostilities, and pillaging; three counts of genocide: by killing, by causing serious bodily or mental harm, and by deliberately inflicting on each target group conditions of life calculated to bring about the group's physical destruction.¹

Behind these horrific charges lie hundreds of thousands of stories of devastating human suffering.

The ICC is tasked with investigating and trying perpetrators with the gravest crimes known to humanity in order to bring about a more just and peaceful world. Of course, even if Al Bashir is tried, convicted and sentenced, this cannot undo the gruesome deaths suffered and atrocious harms caused to his victims. It would, however, go some way in combatting impunity and in this way instantiate an important aspect of justice. It would also prevent the man from carrying out such violence again and serve to hold him accountable for his gross human rights violations.

Many commentators quickly end up shifting focus to lofty discussions around alleged questions of principle such as 'How legitimate is the ICC?' or 'Is the ICC biased against Africa?' when discussing South Africa's position in respect of the ICC. These are questions that surely would perplex victims of the grave crimes with which the ICC deals. The hearing I attended in The Hague could not have made South Africa's unprincipled stance clearer. Indeed, the aspects I outline below point to a deeply disappointing picture of South Africa's commitment to international justice and to the rule of law. Whilst there are many strange features of South Africa's position as it was outlined at the ICC, I focus here only on a few.



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Upfront, it is important to note that South Africa is a State Party to the ICC, having ratified the Rome Statute (the treaty establishing and governing the ICC) and domesticated the latter through the Implementation of the Rome Statute of the International Criminal Court ('the Implementation Act') in 2002.

It is also useful to outline the domestic litigation that took place before I turn my attention to the ICC hearing:

Domestic litigation around Al Bashir

Sunday, 14 June 2015: Urgent Application brought by the Southern Africa Litigation Centre (SALC) at the North Gauteng High Court to arrest Al Bashir after it had become clear the latter was on South African territory:

In the morning, Advocate Ellis, appearing for the South African government, explains that the defence will be based on a Cabinet decision to grant Al Bashir immunity. Government alleges this immunity trumps South Africa's duty to arrest Al Bashir in light of the ICC warrants and South Africa's Implementation Act.

Advocate Ellis then requests a three hour adjournment to draft a complete argument on this basis.

However, at 15:00, Advocate Mokhari SC – joining Advocate Ellis – requests more time to draft an answering affidavit instead of arguing the case Advocate Ellis had outlined earlier.

Although Judge Fabricius grants an adjournment till 11:30 the following day, he finds it incumbent – given the seriousness of the crimes alleged – to grant an interim order directing government 'to take

all necessary steps' to prevent Al Bashir from exiting South Africa, pending the outcome of the court application the following day.

Monday, 15 June 2015: The North Gauteng High Court grants an order pending the final order for the arrest of Al Bashir and states that a failure to do so would be unconstitutional

The government's answering affidavit, meant to be filed at 09:00, is only filed at 11:25 with no explanation for the delay. This calls for a further adjournment for the applicant to peruse the papers and file a reply. Weary of media reports claiming Al Bashir had left or was in the process of leaving South Africa, the court requests Advocate Mokhari to confirm Al Bashir's whereabouts given how central this information is to the application. Advocate Mokhari repeatedly assures the court that Al Bashir is in South Africa, which subsequently, however, turned out to be untrue.

Relying primarily on the host agreement concluded between South Africa and the Commission of the AU, the South African government proceeds to argue that Al Bashir enjoyed immunity from arrest.

Only on concluding the proceedings at 15:00, immediately after issuing the order to arrest and detain Al Bashir, is the court informed by Advocate Mokhari that Al Bashir had left South Africa. This evidently constitutes a blatant violation on the part of government of the interim order made the previous day and the court thus finds it necessary to require the Minister in the Office of the Presidency and the Minister of State Security to file an affidavit within seven days explaining how Al Bashir managed to exit South Africa despite the court order handed down the previous day.²

Relying primarily on the host agreement concluded between South Africa and the Commission of the AU, the South African government proceeds to argue that Al Bashir enjoyed immunity from arrest.

Indeed, much suspicion is roused by the numerous litigation delays which seem to have had the effect of allowing Al Bashir to exit the country.

Possibly the most haunting part of the Court's judgement is the following extract:

- how was it possible that President Bashir would, with his whole entourage, travel from Sandton to Waterkloof Airbase, without any of the Respondents' knowledge?
- how was it possible that the Sudanese plane would take off from the airbase without the Respondents knowing whether the President was on board or not?
- how would that plane be able to land in Sudan by late afternoon if it had not departed at about noon that same day?

The answers suggest themselves.³

Palpably concerned about the gravity of the unlawful government action, the Court, in its order confirming the patent unconstitutionality of the government's actions, wrote that:

A democratic State based on the rule of law cannot exist or function, if the government ignores its constitutional obligations and fails to abide by Court orders. A Court is the guardian of justice, the corner-stone of a democratic system based on the rule of law. If the State, an organ of State or State official does not abide by Court orders, the democratic edifice will crumble stone-by-stone until it collapses and chaos ensues.⁴

In an affidavit filed by the government for these proceedings, it is noted that Al Bashir exited South Africa on a plane from Waterkloof Airbase at around 11.30 am on Monday the 15th of June 2015 without even an attempt to explain how a head of state, making use of a military air base for use of dignitaries, could have left the country without any government official being aware of this.

The Court went on to state:

Where the rule of law is undermined by Government it is often done gradually and surreptitiously. Where this occurs in Court proceedings, the Court must fearlessly address this through its judgments, and not hesitate to keep the executive within the law, failing which it would not have complied with its constitutional obligations to administer justice to all persons alike without fear, favour or prejudice.

We stated earlier that the departure of President Bashir from this country before the finalisation of this application and in the full awareness of the explicit order of Sunday 14 June 2015, objectively viewed, demonstrates non-compliance with that order. For this reason we also find it prudent to invite the NDPP to consider whether criminal proceedings are appropriate.⁵

The South African government subsequently decided to appeal the High Court's ruling.

Wednesday, 15 March 2016: Appeal brought by the South African government in the Supreme Court of Appeal (SCA) against the above High Court judgement with the Southern Africa Litigation Centre (SALC) as respondent and the Helen Suzman Foundation as *amicus curiae* (friend of the court)

In an affidavit filed by the government for these proceedings, it is noted that Al Bashir exited South Africa on a plane from Waterkloof Airbase at around 11.30 am on Monday the 15th of June 2015 without even an attempt to explain how a head of state, making use of a military air base for use of dignitaries, could have left the country without any government official being aware of this.

The SCA wrote scathingly that:

Senior officials representing Government must have been aware of President Al Bashir's movements and his departure, the possibility of which had been mooted in the press. In those circumstances the assurances that he was still in the country given to the Court at the commencement and during the course of argument were false. There seem to be only two possibilities. Either the representatives of Government set out to mislead the Court and misled counsel in giving instructions, or the representatives and counsel misled the Court. Whichever is the true explanation, a matter no doubt being investigated by the appropriate authorities, it was disgraceful conduct.⁶

The SCA also noted that in the High Court, the South African government did not challenge its obligations in terms of the Rome Statute and the Implementation Act but sought to rely on the host agreement concluded between South Africa and the Commission of the African Union.

This drastically different argument meant that now the government was denying that it ever had a duty to arrest Al Bashir to surrender him to the ICC although it previously acknowledged this obligation.

The SCA judgement made reference to Dr Lubisi, the Director-General of the Presidency and the Secretary of Cabinet, who testified that in a Cabinet meeting it was decided 'the South African government as the hosting country is first and foremost obliged to uphold and protect the inviolability of President Bashir in accordance with the AU terms and conditions' and that 'Cabinet collectively appreciated and acknowledged that the aforesaid decision can only apply for the duration of the AU Summit.'⁷

Thereafter, the SCA wrote that 'an entirely different argument emerged in the application for leave to appeal to this Court', namely one grounded in customary international law and the South African Diplomatic Immunities and Privileges Act of 2001.⁸ This drastically different argument meant that now the government was denying that it ever had a duty to arrest Al Bashir to surrender him to the ICC although it previously acknowledged this obligation. (At this point it is relevant to note that in 2009, Al Bashir declined to attend Jacob Zuma's inauguration in South Africa in light of the fact that South African officials would arrest him in given the ICC's arrest warrant issued that year.)

Ultimately, the SCA dismissed the South African government's appeal, reaffirming that the country's failure to arrest Al Bashir is unlawful.

2016: South Africa applies for leave to appeal the SCA judgement but then decides to withdraw this application.

South Africa and the ICC: a revealing timeline

While the above litigation was playing out of the local stage, the following engagements were taking place between South Africa and the International Criminal Court:

28 May 2015: The ICC refers to public information around Al Bashir's potential travel to South Africa to attend the African Union Summit (7-15 June, Johannesburg), reminding South Africa of its duty to cooperate in respect of arresting Al Bashir; The ICC also requests South Africa to consult with the ICC without delay should the country foresee any difficulties in fulfilling its obligations.



Thursday, 11 June 2015: The South African Embassy of the Netherlands requests an urgent meeting to pursue consultations as provided for in the Rome Statute.

Friday, 12 June 2015: The ICC obliges South Africa's bold request and consultations are held at 5pm at which South Africa's duty to arrest Al Bashir, should he set foot on South African territory, is reconfirmed.

Saturday, 13 June 2015: In spite of all the above, Al Bashir enters South Africa.

Sunday, 14 June 2015: The North Gauteng High Court grants an interim order for Al Bashir's arrest.

Monday, 15 June 2015: Al Bashir leaves South Africa, despite an interim court order for his arrest issued the previous day and legal proceedings before the court that same day which culminate in a final order for his arrest.

Professor Dire Tladi, Counsel representing South Africa in The Hague 7 April this year, was at great pains to state that 'we should not reduce the criminal justice project to a single individual', but the facts before us seem to indicate South Africa's rather blatant willingness to disregard the criminal justice project for a single individual, namely one Omar Hassan Ahmad Al Bashir.⁹

It ought to strike any reasonable person as strange that South Africa waited until the eleventh hour to approach the ICC even though official documents confirm South Africa's knowledge in early June of Al Bashir's confirmation to attend the AU Summit (accompanied by a request for immunity) from Sudan. To request a meeting for the eve of the arrival of Al Bashir in South Africa cannot but provoke serious misgivings and throw up a plethora of uncomfortable questions.

To make matters worse, South Africa, before Pre-Trial Chamber II, then proceeded to take issue with the way consultations were conducted, with no good argument to support this claim.¹⁰ Far from failing to hold appropriate negotiations, the ICC must be commended for reacting so quickly and appropriately to what it took to be a serious request in respect of one of the most serious criminal fugitives in the world.

A deliberate omission by South Africa at the ICC: domestic litigation around the arrest of Al Bashir

The most astounding feature of what transpired in The Hague was Professor Tladi's statement that the South African litigation which had taken place around Al Bashir was irrelevant.

In light of the domestic litigation which made world-wide headlines and which was patently relevant to the matter at hand as ought to be clear from my above outline thereof, Tladi's statements strike one not as a negligent or even grossly negligent but rather as a deliberate attempt to conceal material information from the ICC.

Tladi claimed that 'the issue before us today is not whether South Africa violated its legal obligations under South African domestic law. The question squarely before us is whether South Africa was in violation of its duties under the Rome Statute and international law in general' and that he would not 'today be addressing matters that we believe fall squarely within the jurisdiction of the South African courts.'¹¹

In light of the domestic litigation which made world-wide headlines and which was patently relevant to the matter at hand as ought to be clear from my above outline thereof, Tladi's statements strike one not as a negligent or even grossly negligent but rather as a *deliberate* attempt to conceal material information from the ICC.

It is a matter of course that the above cases dealt with South Africa's obligations in terms of international law and – given that the relevant international statute is domesticated – South African law.

South Africa is subject to the judgements of its courts. Of course, courts may err and an appeal system seeks to remedy any errors when they occur. Although the government pursued an appeal to the SCA, it withdrew its appeal application from the Constitutional Court, thus effectively accepting the SCA's ruling. And when an appeal court pronounces unequivocally that the country had a duty to arrest Al Bashir and its failure to do so was unlawful (and there is no appeal against this), how can it be South Africa has the audacity to argue before the International Criminal Court the very opposite?

It was left to Prosecutor Julian Nicholls to raise the issue of domestic litigation before the ICC. Nicholls summed up the situation by stating that South Africa had 'accepted that Supreme Court of Appeal's judgment, accepted the law, withdrawn its further appeals, although it now attempts to argue some of the same points before this Court.'¹²

It is beyond baffling that Professor Tladi could – without flinching – claim that 'we can't simply assume a legal duty to arrest exists'.¹³

This extraordinary behaviour speaks volumes about South Africa's lack of commitment to international justice and to the rule of law at a fundamental level.

The ‘but everyone is doing it’ argument

Another perplexing maneuver was Professor Tladi’s appeal to the ‘practice of State Parties’ suggesting that the Court erred in the way it understood the international law at hand, claiming that states such as Kenya, Chad, Malawi, Djibouti, the Democratic Republic of the Congo, Nigeria, Uganda, Jordan and South Africa all shared ‘the same interpretation’.¹⁴

In response, Mr Nicholls had the following to say:

My friend made reference to several State Parties that have failed to arrest and surrender Mr Al Bashir. That is not a reason to stop referring these cases to the only bodies that they can be referred to. And there is no reason therefore in this case why it should, South Africa should be treated differently than Djibouti, Uganda, DRC and the others which have been found similarly noncompliant.¹⁵

Peace versus justice – an obviously false dilemma

Astonishingly Professor Tladi uttered the following:

Our commitment to peacemaking, to peacekeeping, is tangible. It’s not academic. It’s not just about statements that we make at the African Union or the United Nations. More than 40 South Africans have in recent years lost their lives.¹⁶ As a leading player in peace efforts, we cannot disengage from the African Union or adopt a policy that would suggest we’re not going to host AU heads of state. It’s just not possible.¹⁷

One shudders to wonder what the victims of Al Bashir’s crimes might feel at such doublespeak.

I suggest that what that shows is that South Africa did not begin this process by identifying a legal impediment to an obligation and seek a way to resolve it. It was actually the reverse. South Africa identified a political and diplomatic problem in the obligation and since then has been searching for a legal impediment to rely on.

Changing legal arguments

The South African government changed tack, basing its justification for not arresting Al Bashir from one grounded in a host agreement (in the High Court) to one founded on customary international law and the South African Diplomatic Immunities and Privileges Act (in the Supreme Court of Appeal). In the ICC, the bulk of South Africa’s defence lay in critiquing the jurisprudence of that court, another curious move indeed.

Prosecutor Nicholls, in respect of the changing legal arguments proffered by South Africa, came to the following damning conclusion:

I suggest that what that shows is that South Africa did not begin this process by identifying a legal impediment to an obligation and seek a way to resolve it. It was actually the reverse. South Africa identified a political and diplomatic problem in the obligation and since then has been searching for a legal impediment to rely on.¹⁸

Conclusion

The way South Africa has conducted itself in relation to the matter of Al Bashir before its own courts and before the ICC is nothing short of appalling.

In its decision handed down on the 6 July 2017, the Chamber noted that ‘reliance by States Parties to the Rome Statute on immunities ... with the Court would create – at least as concerns requests for the arrest and surrender of individuals subject to a

warrant of arrest – an insurmountable obstacle to the Court’s ability to exercise its jurisdiction’.¹⁹ In essence, the position South Africa argued for would mean that the court would be emasculated to the extent that it would not be able to carry out one of its core functions in terms of the Rome Statute.

The Chamber confirmed unambiguously that

[t]he irrelevance of immunities based on official capacity with respect to proceedings before the Court is incorporated in the Statute as a basic principle to which States Parties subscribe by having voluntarily ratified the Statute.²⁰

It added that ‘South Africa was not entitled to rely on its own understanding [of the law]’.²¹

Indeed, the Chamber saw it necessary to emphasise this point by stating that the law concerned

does not provide that the requested State may refuse cooperation with the Court, or postpone execution of the request for arrest and surrender. Even less does this provision grant discretion to States Parties to choose whether to cooperate with the Court or refuse such cooperation on the ground of a disagreement with the Court’s interpretation and application of the Statute. While in particular circumstances certain procedural remedies (such as appeal) may be available, disregarding the determination of a court of law is, manifestly, not one of these legitimate remedies.

Given the gravity of its noncompliance in terms of its duty to arrest Al Bashir, the Chamber’s decision – simply restating this failure as unlawful – seems rather short of appropriate when it could have exercised its discretion to refer South Africa to the Assembly of State Parties to the Rome Statute and the Security Council of the United Nations. This was, in fact, what the prosecution advised. In my view, the Chamber was far too charitable toward South Africa on this occasion.

NOTES

- 1 <https://www.icc-cpi.int/darfur/albashir>
- 2 <https://constitutionallyspeaking.co.za/complete-high-court-al-bashir-judgment>
- 3 <https://constitutionallyspeaking.co.za/complete-high-court-al-bashir-judgment> I have removed paragraph numbering for ease of legibility.
- 4 <https://constitutionallyspeaking.co.za/complete-high-court-al-bashir-judgment>
- 5 <https://constitutionallyspeaking.co.za/complete-high-court-al-bashir-judgment>
- 6 The Minister of Justice and Constitutional Development v The Southern African Litigation Centre (867/15) [2016] ZASCA 17 (15 March 2016) – ‘SCA judgement’
- 7 SCA judgement
- 8 SCA judgement
- 9 ICC-02/05-01/09-T-2-ENG ET WT 07-04-2017 1/92 SZ PT, ‘Transcript’, p.31
- 10 On this note, in its decision delivered on the 6th of July 2017, the Chamber wrote that the availability of a channel for dialogue between the Court and a State Party – irrespective of the form that such dialogue may take – cannot be understood as resulting in a (unilateral) suspension of the execution of a request for cooperation. This is particularly important in cases such as the one at hand, where execution of the request for cooperation could succeed only in a narrow window of time.
- 11 Transcript, p.13
- 12 Transcript, p59
- 13 Transcript, p.16
- 14 Transcript, p.35-36
- 15 Transcript, p.45
- 16 Presumably Tladi is alluding to lives lost in military missions.
- 17 Transcript, p.40
- 18 Transcript, p.57
- 19 ICC-02/05-01/09-302 06-07-2017 1/53 RH PT, ‘ICC decision’
- 20 ICC decision
- 21 ICC decision

Man a Machine and Society



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Abstract

The idea of likening man to a machine is a picture of thought – une image imaginaire – or a make belief of how the author of L'homme Machine a imaginé de comparer l'homme à une machine, that is, how he came to compare man to a machine. The idea was expanded later by an economic historian who compared a country to a 'flying machine' by analysing what is needed to make it 'flight-worthy'. In the present article society – for example South African society – is likened to an aircraft too. Like a 'flying machine' there have to be a number of systems in place to make society 'life-worthy' or viable. If anyone of those systems should become dysfunctional society, like an aircraft, may disintegrate and eventually crash.

Man a machine?

The title is partly taken from the book *L'homme Machine*, by Offray de la Mettre (1774), translated to *Man a Machine* by G.C. Bussey (1912). At the time it was published the book caused quite a commotion, because it likened man to a machine, a mindless object without heart and soul.

Rather it is the other way round: A machine invented, engineered and constructed by man has something human about it, as an extension of man. Man prefers to be likened to God, and therefore to be almost godlike, adorned with powers to control heaven and earth (Matt. 28: 18). But then man is overestimating himself, for however hard he may try he will never attain that position despite all the (material; political) power he may seem to possess.

A country compared to a flying machine

It may not be surprising that it was Walt W. Rostow, an economic historian at the Massachusetts Institute of Technology (MIT), who made the same kind of comparison. In his book *The Stages of Economic Growth* (1962) he also likens man to a machine, with the only difference that he compares a developing country to a flying machine.

As is well-known an aircraft will first have to travel a certain distance on the runway before it can get airborne. Once airborne the aeroplane should be able to sustain its flight, because now it is entirely on its own. It will have to gather speed and change into a self-sustaining flight to reach an altitude where flying is safe and will experience the least air resistance.

For an aircraft to be flightworthy it will have to be solidly constructed by engineers and technicians to meet all the requirements set by engineering science and the laws of nature. This implies that a lot of study and research must have preceded the construction of a flightworthy aircraft. If construction is not sufficiently robust to withstand the vicissitudes of atmospheric conditions the aircraft could crash with all the terrible consequences for crew, passengers and relatives.

A flying machine - an aircraft - to be flightworthy, is supported by a number of essential systems, like a navigation and steering system (pilot) , a wing system (front and aft), a power system (engines and fuel), a landing and braking system, a carrying capacity for both passengers and luggage, and probably many more. All these systems together constitute an order, that is a framework or setting in which they co-operate to make the aircraft flightworthy.

The poor countries of 'yesteryear' managed to restructure the social, economic and technological relationships that were impeding their development.

Society and machine

In this section society (e.g. South African society) is likened to a flying machine.

First, it may be in order to enlarge a little on the concept society. Social welfare (or wellbeing) is something that resides in the human mind, and social welfare (which includes economic welfare) refers to the welfares of individuals who together constitute

a society. Thus, welfare or happiness does not refer to a society conceived as an organic whole and having its own mind, but welfare can be defined as the aggregate of all the utilities (or satisfactions) obtained by individuals constituting a society. For example, economic welfare is the ratio (or tension, i.e. the mental or emotional strain) between needs felt and the means required to satisfying them. In economics this is called relative scarcity (Meyer, 2007).

Each year the United Nations Organisation publishes a "happiness index" for each of its member-countries showing which countries, in descending order, have been able to attain a certain level of happiness. Highest on the list is Norway, Denmark 2, Ireland 3, Switzerland 4, Netherlands 6, Canada 7, Australia 9, USA 14, Germany 16, UK 19, Russia 49. The unhappiest countries are: Rwanda 151, Syria 152, Tanzania 153, and Burundi 154 (UN Happiness Report 2017, A Survey of 155 countries.)

In section 2 reference is made to Rostow (1962) who compares the historical stages in the development of countries to a flying machine. He also emphasises that the historical stages-of-growth are a limited way of looking at the sequence of modern history. The stages have been designed to dramatize not merely the uniformities in the sequence of modernisation, but also the uniqueness of each nation's experience.

Present-day developing countries are unique in that many of them are still looking for the right kind of structural changes to take place within their society. The poor countries of 'yesteryear' managed to restructure the social, economic and technological relationships that were impeding their development.

Present-age less developed countries (LDCs), however, find the introduction of this kind of change in their social and economic framework an extremely difficult task. It is this inability to accommodate the required structural change that is holding these countries back. To this day many LDCs cannot initiate and/or sustain high levels of rapid growth because they often don't have those institutions which can

create and foster a technology that is based on their own resource endowments and which can cope with their high rates of population increase (Singer & Ansari, 1977; Zimmerman, 1964).

Rostow distinguishes between five stages through which a country will have to proceed before it will finally achieve sustainable growth. In the latter phase it continues to develop on its own accord. These stages are: (1) the traditional society, (2) the preconditions for take-off, (3) the take-off, (4) the drive to maturity, and (5) the age of high mass-consumption.

Stage three, the take-off, is the great watershed in the life of a modern society. It is the interval when the old blocks and resistances to steady growth are finally overcome and the forces making for economic development and progress expand and begin to dominate society.

In the same way as an aeroplane needs to be 'flightworthy' to take off into a self-sustainable flight, a society also needs to be 'life worthy', or viable, i.e. capable of obtaining the desired level of prosperity and happiness for its inhabitants.

A society, like an aircraft, also needs to be supported by a number of systems which in combination should lead to a successful and self-sustainable order with the capacity to reach its destination and make a safe landing. The most important systems probably are:

- the political (the executive or government, parliament and law-making, government administration, etc.),
- the judiciary
- the maintenance of law and order (police, etc.)
- the social (family welfare, etc.)
- transport (roads, harbours, airports)
- the educational (schools, universities)
- the health care
- the economic
- the monetary
- the cultural (arts and sciences)
- communication (printed media, radio and TV, electronic media)
- recreation (sports, music, cinema)
- the military (land and sea)
- the religious (the Church in its various denominations)

And so forth

It appears that society is a very complex 'machine' requiring a great variety of systems to create order and make it viable. Any one of the above systems is crucial for the successful performance of society with regard to changing it into self-sustaining development.

Sustainable development

In 1988 the World Commission on Environment and Development chaired by Gro Harlem Brundtland published a report titled *Our Common Future* (Brundtland, 1988) in which it proposed the following concept of sustainable development:

In the same way as an aeroplane needs to be 'flightworthy' to take off into a self-sustainable flight, a society also needs to be 'life worthy', or viable, i.e. capable of obtaining the desired level of prosperity and happiness for its inhabitants.

Humanity has the ability to make development sustainable; to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs.

'Sustainable development' has been rather vaguely defined as a set of conditions based on the requirement that the natural stock of capital should not decrease over time. This definition is mainly applied to the problems of developing countries. Natural resource assets comprise *inter alia* soil, groundwater and various other natural conditions (Pearce, Barbier and Markandya (2010)). It is obvious that natural resource assets only do not suffice in the definition, but that 'societal' assets (the systems needed to create order in human society) are equally important conditions for sustainable development.

When several credit rating institutions like Moody's and Standard and Poor's recently downgraded South Africa to junk status they meant to issue the simple warning that it is living beyond its means; it spends more than it earns.

If only one of the above mentioned systems should be dysfunctional and not performing well it will lead to its disintegration and might cause it to 'crash' eventually.

Like an aircraft, society also has to pass through various stages of development before it can obtain sustainable growth in order to achieve progress and prosperity. The verb obtain (rather than attain) is used to refer to development in which change is not automatic, but that change is the result of sacrifice, which is the price to be paid to obtain it. In order for a society to advance, scarce resources have to be employed (and

sacrificed) in exchange for the production of a great variety of goods and services needed to satisfy all the wants and desires of consumers. However, if the price a society must pay to obtain them is higher than the cost needed to produce them it is an indication that scarce resources are being wasted. The price then is not 'right', it is not conveying the right message in relation to its scarcity.

In this context it is important to realise that prices result from exchange and this, in turn, leads to the emergence of a network of value relationships which has an independent existence. These value relationships find their expression in terms of money which is the price at which goods and services are exchanged. If prices do not reflect relative scarcities and are not 'right', the entire economy may become distorted, and this is not sustainable either. Very often prices are distorted due to monopoly power, government interference, misinformation through advertising, and, generally, 'strange' consumer behaviour and simply ignorance (Meyer, 1984, 1990).

Similar to the sturdy structure of an aircraft's ability to withstand the vicissitudes of atmospheric conditions, a society should also be robustly structured in order to withstand the regular occurrence of recessions and depressions of many kinds: natural, political, social, economic, religious, and international (Witteveen, 1956).

Junk status

Following Rostow (1962), to liken society to an aircraft may also be regarded as an attempt to *dramatize* and reveal the processes that lie at its foundation.

When several credit rating institutions like *Moody's* and *Standard and Poor's* recently downgraded South Africa to junk status they meant to issue the simple warning that it is living beyond its means; it spends more than it earns. Most of its material and immaterial means are not being productively employed or may even be wasted.

The country's resources are being squandered; not used well enough to create the wealth and progress needed to convince investors to have confidence in its future development.

In an article by Welsh (2000) titled *Why South Africa is different* (from Zimbabwe) he was still optimistic, likewise *The Economist* did not include South Africa among the hopeless. Could he still be optimistic today?

A 'solution of sorts' to this inability to draw local and foreign investment might be for the government to create ('print') the needed money itself through the banking system. This is what non-viable countries sometimes do thereby creating more problems than they already have. The consequences of that kind of policy are legion: increasing rates of inflation, taxation and unemployment.

If therefore South Africa is not sufficiently viable ('flightworthy') to grow, it will not be able to attract loans from and investments by people who can and do save and are also willing to invest in this country. These loans are needed to pay off the huge national debt plus interest as this has been accumulating over the years (Meyer, 2016). Foreign investment is needed when South Africa cannot generate the savings itself or when these savings are being taxed away.

Conclusion

Like an aircraft without enough fuel to reach its destination a country may also disintegrate and fail to make a success of its 'drive to maturity'.

At present the different groups of like-minded people, sections, movements, factions and parties in South African society, all with their own value systems, are pulling in different directions with no clear idea of where they are going. Some politicians say: If only society could be 'transformed' - changed - all will be well. "Changed" in what way? Do they mean in the way of structural change to make development sustainable? This is what is needed and is holding South Africa back like some other developing countries. Society will have to make the necessary adjustments with regard to finding a *modus vivendi* to make it viable and start the drive to maturity.

Knowledge might give insight which is not to be equated with wisdom. Wisdom knows how to do it in a different way. Perhaps this is the time when the religious system - the Churches - must set the route and show the way forward to a common destination, the land of hope and opportunities for all.

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Opening Pandora's Box? On Revealing the Private Funding of Political Parties

The legislative regulation of the private funding of political parties in South Africa is long overdue. It is a matter that has been discussed by Parliament since 1997 but on which, until very recently, there has been a perplexing lack of transparency. The recent High Court judgment in the My Vote Counts case has finally focused attention and called for action on amending the law and developing a clearer policy on the private funding of political parties. It is surprising that this topic has not been scrutinised more closely during the first two decades of democracy. In light of the importance of the question of funding, it is also surprising that there has not yet been greater public insistence that parties should reveal their funders especially since the media have been consistently critical of instances of corruption resulting from the lack of regulation of private funding.

The question of the lack of private funding regulation was initially raised in 2003 by the Institute for Democratic Alternatives in South Africa and, subsequently, by various non-governmental organisations and political parties.¹ The media has been consistently critical of instances of corruption resulting from the lack of regulation of private funding.² South Africa is one of very few democracies worldwide that does not regulate private funding of political parties.

Although legislation on public funding of political parties was enacted in 1997 in the form of the Public Funding of Represented Political Parties Act, there is still no regulation of private funding of political parties in South Africa. There is also no legislation or other forms of regulation for the public or private funding for the local sphere of government. But all this is set to change. This is however set to change. The Political Party Funding Bill was published in the Government Gazette in September 2017 and the public has been given an opportunity to make written submissions.

Intriguingly, it is not just the ruling party that has resisted such disclosure. Opposition parties such as the Democratic Alliance have been particularly unsupportive of such disclosure efforts. Reluctance to disclose naturally raises the question: What is the agenda here? It will be argued here that disclosure of donations is vital for the promotion of transparent government and multi-party democracy. Such disclosure is also of crucial importance in the fight against corruption.

The most important objective of legislation on private funding would be to combat corruption, particularly *quid pro quo corruption*.³ The direct exchange of an official act for money, described as *quid pro quo corruption*, should be clearly legislated against.

Political party funding pertains to the set of methods that a political party applies to raise money for campaigns and routine party activities. It is suggested that the matters of public funding and private funding should be combined in one Act. This is the position in Germany where the Political Parties Act of 2009⁴ regulates both public and private funding.

Although the public funding of political parties is equally of interest and will briefly be commented on, this piece will focus on the regulation of private funding.

The Constitution:

The starting point for devising a principled framework for the regulation of political party funding is the 1996 Constitution:⁵ Section 236 of the Constitution states:

Funding for Political Parties:

To enhance Multi-party democracy, national legislation must provide for the funding of political parties participating in national and provincial legislatures on an equitable and proportional basis.⁶

The regulation of political party funding impact on rights in the Bill of Rights, most significantly the right to freedom of expression, the right to political participation and the right to access to information.

Regarding the right to freedom of expression, the Constitutional Court has held that this right

is what “makes [the right to vote] meaningful.” This is only if information is freely imparted, and citizens are kept informed. As Mogoeng CJ has noted on behalf of the Court, “the public can only properly hold their elected representatives accountable if they are sufficiently informed of the relative merits of the issues at stake”. As the United States Supreme Court explained in *Buckley v Valeo*, disclosure of political funding “provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office. It allows the voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate’s financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office. Second, disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. This exposure may discourage those who would use money for improper purposes either before or after the election. A public armed with information about a candidate’s most generous supporters is better able to detect any post-election special favours that may be given in return.

This right to vote for a political party includes knowing the private sources of political parties’ funding. This is because private contributions to a political party are not made thoughtlessly or without motive. They are made in the anticipation that the party will advance a particular social interest, policy or viewpoint. Political parties, in turn, depend on contributors for the very resources that allow them to conduct their democratic activities. Those resources keep flowing to the extent that they

The sources of a candidate’s financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.

meet their contributors' and funders' expectations. There can be little doubt, then, that the identity of those contributors, and what they contribute, provides important information about the parties' likely behaviour. Judge Cameron powerfully captured the importance of informed decisionmaking in the initial *My Vote Counts* case:

So the right to vote does not exist in a vacuum. Nor does it consist merely of the entitlement to make a cross upon a ballot paper. It is neither meagre nor formalistic. It is a rich right – one to vote knowingly for a party and its principles and programmes. It is a right to vote for a political party, knowing how it will contribute to our constitutional democracy and the attainment of our constitutional goals.⁷

The principle of multi-party democracy is a foundational value of the 1996 Constitution.⁸ The principle therefore requires further elaboration.

The My Vote Counts Case

In 2015 the organisation My Vote Counts (MVC) approached the Constitutional Court to order Parliament to enact legislation obliging political parties to disclose their sources of private political funding.

On 27 September this year, Judge Yasmin Meer found that the right to vote includes the right to cast an informed vote, stating that the right to choose a political leader “is valuable only if one knows what one is choosing”.

The Court failed to deal with the substance of the issue and focused on the rather technical question of subsidiarity. The majority of the Constitutional Court held that MVC should have mounted a “frontal challenge” to the constitutionality of the Promotion of Access to Information Act (PAIA) for failing to allow access to information on the private funding of political parties, in a High Court.

MVC proceeded to bring the case to the Western Cape High Court this year.

Due to the importance of this information in the right to vote, MVC contended that the constitutional right of access to information required the systematic disclosure of private funding to parties. MVC further argued that information about political parties' private funding is essential for citizens to exercise their constitutional right to vote and is an essential to SA's multiparty democracy.

On 27 September this year, Judge Yasmin Meer found that the right to vote includes the right to cast an informed vote, stating that the right to choose a political leader “is valuable only if one knows what one is choosing”. Meer found that the Promotion of Access to Information Act did not adequately provide for disclosure of private funding for political parties and that the mechanisms to access information through PAIA were limited. She therefore held that the act limited the right to information and the right to vote. In her view, PAIA did not allow for the ‘continuous and systematic’ recording and disclosure of private funding.

If a member of the public currently wants to obtain information on party funding, he or she has to apply through the rather arduous procedure provided for in PAIA. This should not have to be the case. The information should be much more readily available.

The High Court found in favour of the MVC constitutional challenge to PAIA. In essence the court held:

That information about the private funding of political parties is reasonably required for the effective exercise of the right to vote and to make political

choices and that PAIA is unconstitutional and invalid to the extent that the Act does not allow for disclosure of private political funding information. And finally that Parliament has 18 months to fix PAIA and to allow for disclosure of private political funding info

MVA and the court focused on PAIA as the route to greater transparency. There is however a case to be made for the enactment of specific legislation on party funding. This is the route that has been elected by various modern democracies.

Multi-Party Democracy

It is often stated that political parties are vital public institutions to enhance citizens' participation in their own governance and in democracy as well as civic education. Multi-party democracy necessitates the development of the political will of the people, shaping public opinion, political education, promoting active participation of citizens in political life and establishing links between the people and the organs of state and the Legislature.

In the South African context the value of this statement needs to be tested against the reality to ensure that reference to purposes such as the 'development of the political will of the people' does not remain merely rhetorical. It is proposed that measures be taken to strongly encourage parties to invest in the political education of the citizenry.

The ultimate aim of the new legislation on political party funding should be to help improve the capacity and financial sustainability of political parties in the legislature, both big and small.

It can be argued that the current South African system of public and private funding of parties is not sufficiently conducive to strengthening multi-party democracy. In some instances political funding is distorting the principle of multi-party democracy. An unregulated or under-regulated system of funding does not contribute to achieving a level playing field for all parties. There should be greater sensitivity to the fact that the larger political parties almost always have an undue funding advantage over smaller parties. It should further not be unduly onerous for new political parties to enter the political arena and contest elections.

The ultimate aim of the new legislation on political party funding should be to help improve the capacity and financial sustainability of political parties in the legislature, both big and small. It is suggested that a mandatory rule should be introduced that would oblige political parties to spend a percentage of their funding on civic education.

Public Funding

Public funding sustains the institutionalisation of political parties in democracies since such funding provides the necessary financial support for political parties to conduct their daily activities. It also reduces their dependence on private funding. Such support strengthens the capacity of political parties and can help to level the electoral playing field.⁹

National Legislation provides for funding of political parties in the Public Funding of Represented Political Parties Act;¹⁰ which is the enabling legislation that is administered by the Independent Electoral Commission. The Act created the Represented Political Parties Fund which is administered by the Independent

Electoral Commission. 90% of this fund gets allocated to parties in accordance with their representation in the National Assembly; 10% of the fund gets distributed between the provinces proportionally.

The Act provides for the performing of audits on political parties. Ninety percent of the funds are allocated to parties in terms of their representation in the National Assembly and Provincial Legislature; and the remaining ten percent is divided proportionally amongst provinces, and equally amongst the parties represented in each provincial legislature. The amount allocated to parties has barely kept pace with inflation.¹¹ No funding is currently made available at local government level.

It is for example possible to devise a model whereby a certain percentage of public funding gets distributed proportionally and a certain percentage gets distributed equally among all political parties.

Other sources of public funding include: MPs funded through their party caucuses by national and provincial legislature; funds transferred directly from Provincial Legislatures; and currently funding from any other private source is allowed which can include its members, businesses (local and foreign) and civil society groupings.¹²

Section 5(1)(b) of the Act¹³ says that the allocation may be used “for any purposes compatible with [the party’s] functioning as a political party in the modern

democracy,” the scope of ‘functioning is not defined in the Act nor is a political party defined in any legislation. However section 5(3) sets out specific prohibitions on the uses of public funds. These funds constitute a small portion of the financing of political party activity, and the majority of the funding is not accounted for and reliable figures are not available.

Concerns have been expressed that the amount that gets distributed from the Public Funding is inadequate to meet the purposes the Fund was designed to meet. It is suggested that the fund be enlarged. The extent to which it should be enlarged should, however, be carefully considered. It is especially important to consider whether enlarging the fund will mean that money will be diverted from other priorities.

The question of the proportionality of the allocation and distribution of moneys from the fund is fairly controversial. The term ‘proportionality’ is interpreted as meaning that each party should receive funding according to its performance in the last election. For this reason, the ANC received close to R60 million and the DA R16 million in 2015. One significant problem attached to this method of distribution is that it can perpetuate the dominance of the ruling party and does not sufficiently support multi-party democracy. It might be prudent to conceive of other methods of distribution that will meet the fairly vague ‘proportionality’ requirement. It is for example possible to devise a model whereby a certain percentage of public funding gets distributed proportionally and a certain percentage gets distributed equally among all political parties.

Finally...

An unregulated or underregulated system of funding does not result in a level playing field for all parties. There should be greater sensitivity to the fact that bigger political parties almost always have an undue funding advantage over smaller parties. It should further not be unduly onerous for new parties to enter the political arena.

One of the trickiest questions involves the extent of disclosure that should be expected from donors. Political parties have access to indirect funding, which takes a number of forms including tax exemptions and subsidised access to media. Whereas it can be argued that enjoying these benefits is just part of the political game, any material benefits enjoyed by parties should pass constitutional muster. Improper influence can be traded in many currencies. Proper scrutiny would include access to information on indirect as well as direct funding.

In light of the scourge of corruption and state capture that is corroding our public life, revealing the identity of private funders should become an urgent priority. The foundational values of accountability and transparency mean that for parties to reveal their sources of funding follows irresistibly from the spirit and text of the Constitution. At the very least, a decision that parties and funders should have the privilege of protection and discretion should be justified in an open and transparent manner.

NOTES

- 1 The ANC pledged to develop legislation following the dismissal in April 2005 of a high court application brought by civil society group Idasa aimed at forcing the DA, the ANC, the IFP and the former New National Party to reveal major private financial donors. According to Judith February of IDASA, one of the reasons IDASA decided not to appeal the judgment was that it took the ANC's pledge in good faith. See Vicki Robinson 'ANC reluctant to legislate on political party funding' *Mail & Guardian* 2 March 2007.
- 2 Tabela Timse '1 Billion in Illegal Party Payouts' *Mail & Guardian* 8 March 2013.
- 3 Justice Roberts referred to quid pro quo corruption in *McCutcheon v. Federal Election Commission*. He cited *McCormick v. United States*, 500 U.S. 257, 266 (1991): 'The hallmark of corruption is the financial quid pro quo: dollars for political favors.'
- 4 *Parteiengesetz* 2009
- 5 Constitution of the Republic of South Africa, Act 108 of 1996.
- 6 Constitution of the Republic of South Africa Act 108 of 1996 section 236.
- 7 *My Vote Counts* para 41
- 8 Section 1 (d) of the Constitution refers to: Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.
- 9 <http://www.oecd.org/gov/ethics/financing-democracy-framework-document.pdf> p 9
- 10 Public funding of Represented Political Parties Act 103 of 1997
- 11 Brief document: Public Funding and Regulation of Political Party Finances to enhance and deepen democracy- Draft discussion document- May 2013
- 12 Electoral Commission: Party Funding <http://www.elections.org.za/content/parties/Party-Funding/>
- 13 *Supra* 2

THE 2017 ALAN PATON MEMORIAL LECTURE

Limitations On Liberalism: A Tale Of Three Schreiners



Graham Dominy is a former Archivist of South Africa who retired in March 2014 after winning a protracted labour dispute with Minister and Department of Arts and Culture. He has worked in and managed a variety of, archival, cultural and heritage institutions since the 1970s. He has studied extensively in South Africa and internationally: obtaining his graduate and professional qualifications in South Africa (University of Natal and Pretoria), his MA in Ireland (University College Cork) and his PhD in the United Kingdom (at the Institute of Commonwealth Studies, University of London).

*I am greatly honoured to have been invited to present the 2017 Alan Paton Memorial Lecture at my Alma Mater and in a venue that brings back so many memories of my student days. The newly published Volume 2 of Bill Guest's history of the University of Natal contains two episodes from the early 1970s which occurred in this hall. They both have a slight bearing on the topic of this lecture. There was a Rag Variety concert held on this stage where Michael Lambert composed the lyrics parodying Gilbert and Sullivan's operettas, particularly *The Mikado*. He lampooned three major campus personalities of the day: Professors Colin Webb, Colin Gardner and Deneys Schreiner: 'a giggling tall historian, an English Pwof who lisps and a bearded scientist'; an indication that there was a liberal tolerance of criticism of the university by students.*

The second was a University Dramatic Society (DRAMSOC) production of Shakespeare's *Anthony and Cleopatra* that was so bad that Professor Francis Stock, the University Principal, walked out during the performance and terminated the funding for DRAMSOC, an act which clearly demonstrated the limitations to the liberalism of Francis "The Laughing" Stock as he was known to students.

Alan Paton was a presence at the University of Natal during those years in the 1970s. He was an honoured guest at anti-apartheid meetings and marches, a speaker at public lectures and rallies and he was looked up to as a political and cultural icon. His step-daughter, Athene Hopkins, was also a student so he appeared on campus every now and then in a parental capacity as well. He was a local boy whose whose novel *Cry the Beloved Country* had gained fame across the world. He is linked in my memory with another great South African liberal icon, Edgar Brookes.

The Hon Senator Prof Dr Revd Mr EH Brookes was entitled to every honorific in South African state documentation, except Mrs and Miss (Ms was not officially used then). Paton and Brookes were close friends and veterans of many political struggles. They shared many platforms together and often joked at each others expense. There is a story, told by the late Tim Dunne, a former SRC President, that at some meeting in the early 1970s, Edgar Brookes (born in 1897), referred to Alan Paton as a dinosaur and Paton (born in 1903), retorted that he may be a dinosaur, but at least he was born in the 20th Century.

Paton and Brookes were both leaders of the Liberal Party and, the more research one does, the more one realises that Pietermaritzburg was a major centre of South African political liberalism in White (but almost entirely English-speaking), Indian and African communities. In addition to Brookes and Paton, there was Peter Brown, who led the Liberal Party and who was banned for many years by

the Nationalist government. There were several members of the Indian community (such as Pat Poovalingam), who were active liberals and, in Edendale, H. Selby Msimang, was a leading figure. Uncle Selby had been both a founding member of the South African Native Congress (the predecessor of the ANC) and the Liberal Party and he saw no contradiction between the two.

In this lecture I will briefly describe liberalism in South Africa, its strengths, its weaknesses and, of course, its limitations. I will do this by examining specific aspects of the careers of three members of the Schreiner family who played significant roles in the evolution of South African liberalism, its defence against apartheid assaults, and eventually its role in setting foundations for its resurrection in the new South Africa.

They are – WP Schreiner, OD Schreiner and GDL Schreiner, (grandfather, father and son). This will take us chronologically from the 1890s to the 1980s through a judicial pit-stop in the 1950s. We will then take a final peak at the 1990s and the then “New” South Africa.

The meaning of liberalism need not detain us very long. The origins of the concept can be traced back to the 17th Century philosopher John Locke who articulated the notion that government requires the consent of the governed. While the 17th Century poet John Milton argued for the importance of free speech and prized, ‘...the liberty to know, to utter and to argue freely according to conscience above all liberties’.

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In South Africa the African concept of “*ubuntu*” (A person is a person through people), has similar connotations of community, mutual tolerance and support. However, governmental structures in a colonised state were inevitably authoritarian and illiberal. So much so that historians have characterised late 19th and early 20th century South Africa as a ‘conquest state’.

Liberalism has a bad name these days in South Africa. It is equated with neo-liberalism, which is not quite the same thing, being an economic theory advocating privatisation and the free market and the free market can be very illiberal in its treatment and exploitation of workers and the poor. Some local demagogues have even equated liberalism with racism, which is a complete contradiction; and with colonialism, with which liberalism has had a complicated relationship.

In South African history, liberalism is linked to the Cape Liberal tradition. This evolved from British liberalism, the Enlightenment and the ideals of the French Revolution. The one important aspect for us to note about British Liberalism is that there was a top-down approach. Whig aristocrats conceded rights to the wealthy middle classes; middle classes conceded rights to established working classes and eventually the franchise became universal, including women and the young, above the age of eighteen.

This process moved into South Africa via the Cape Colony. Two strands of liberalism were imported. The first was the structural component, namely an elected legislature, independent courts and the rule of law. The second was the humane, the ideological, or theological strand, as it was propagated by missionaries, one of whom was WP Schreiner’s father, Gottlob. This focused on freedom of speech and human dignity.

When self-government arrived at the Cape, there was a colour-blind, qualified, male-only franchise. This was, more or less, in line with international norms. In Britain, at the same time, there was a qualified franchise and women were not to get the vote until after the First World War. In the other local British colony, Natal, the franchise may have been nominally colour-blind, but it was deliberately devised to maintain the control of white colonists who were in an extreme minority of the population. Derisory numbers of Africans and Indians qualified for the votes.

For over three generations, the Schreiner family fought for both strands of liberalism: structural and humane.

WP Schreiner (1857 – 1919):

William Philip Schreiner was the son of a German missionary, Gottlob Schreiner and his English wife Rebecca Lyndall. There were many siblings, but the most prominent of whom was his sister, novelist Olive Schreiner, who wrote *The Story of An African Farm*. This book became the Victorian equivalent of a best seller and made Olive's name and placed South Africa on the English-speaking world's literary agenda. Olive lived an independent life and espoused views on social conventions, marriage, race relations and sexuality that were far in advance of her times.

WP later attributed his 'Damascene Moment' to a visit to the Transkei and a meeting with John Tengo Jabavu, a pioneering early African journalist, intellectual and philosopher.

Despite his parents' financial difficulties in the Eastern Cape, WP Schreiner acquired a good education in Cape Town and went on to Downing College, Cambridge, to read law. His academic results in Cambridge were brilliant and he loved the university, for him it was ever a place apart: 'Jerusalem and Athens in one', as he described it.

After admission as a barrister to the English Bar, he returned to the Cape to establish a practice and soon became close to the Governor and the leading politicians of the day. From there it was a quick jump into the political area and in 1893, he became Attorney General and in 1898, he became Premier of the Cape Colony and fought hard to prevent the outbreak of the Anglo-Boer War.

WP Schreiner was married to Frances Hester Reitz, a sister of Orange Free State President F.W. Reitz. He was therefore opposed, emotionally and in principle, to the war-mongering policies of Sir Alfred Milner (Governor and High Commissioner), and Joseph Chamberlain (the Secretary of State for the Colonies). Milner manoeuvred and eventually managed to undermine Schreiner and his ministry and forced them out of office in June 1900.

WP was not a liberal when he became Prime Minister: in fact, he echoed the casual paternalistic and disparaging remarks of colonists about Africans, to the annoyance of his sister, Olive. His first election manifesto in 1893 had contained 'a robust keep-the-native-in-his-place; effusion'. WP later attributed his 'Damascene Moment' to a visit to the Transkei and a meeting with John Tengo Jabavu, a pioneering early African journalist, intellectual and philosopher.

It was this meeting that began the process of turning WP Schreiner into a liberal. He was talking to an educated, intelligent man who was being discriminated against. WP's period in the political wilderness, from late 1900 until 1908 also gave him time to reflect and rethink his casual and ignorant bigotry. The war being fought so

savagely between the two so-called ‘civilised’ white groups in South Africa, while the black communities by and large conducted themselves in a more civilised manner, also had a profound impact on him. Then, as he began to look to fight for a seat in parliament again, he realised that Jabavu could mobilise those black voters on the roll in support of him; after all, he was a politician.

By the time he was re-elected to Parliament in 1908, Schreiner was already an elder statesman, South Africa was moving swiftly towards Union and a National Convention was planned to be held in 1909 in Durban and Schreiner was nominated as a member of the Cape Delegation. However, he was also approached by Sir Matthew Nathan, Governor of Natal, at the behest of Winston Churchill, to undertake the defence of Prince Dinuzulu ka Cetshwayo, son of the last independent Zulu King Cetshwayo, against the rather spurious charges of treason that had been levelled against him in the aftermath of the Bambatha Rebellion.

Here was the liberal dilemma: structural liberalism versus the humane impulse. Schreiner desperately tried to do both and the Natal Government desperately tried to outwit him as schedules changed and court dates were postponed.

WP Schreiner took the humane course and defended Dinuzulu to the best of his not inconsiderable ability at the special trial in the Greytown Town Hall, while the National Convention deliberated on the future of South Africa in the Durban City Hall. Dinuzulu was acquitted on most charges, but it really was an “Alice in Wonderland” case of “Sentence first and verdict afterwards”. Dinuzulu was jailed against protests from the imperial government in London and from Louis Botha in Pretoria, as well as from the usual liberal suspects, such as Harriette Colenso. Reporting the conclusion of the trial, the London *Spectator* (6 March 1909), described WP Schreiner as, ‘The ablest counsel in South Africa’.

The driving forces of the National Convention were Generals Louis Botha and Jan Smuts, who favoured a close union of the two former Boer republics and the two British colonies. The Natal Government, basically led by political nonentities, favoured federation and the least possible rights for Africans and Indians. The leaders of the Transvaal and the Orange Free State favoured Union and the least possible rights for Africans and Indians. Most of the Cape delegation wanted to retain its own franchise arrangements.

WP Schreiner was one of very few politicians of stature who favoured both federation and political rights for all ‘civilised’ men, regardless of race. The manipulation of court and convention dates meant that Schreiner was unable to argue for the causes he believed in, and for their inclusion in the South Africa Bill, which became the constitution of the Union of South Africa, after it had been passed by the Imperial Parliament in Westminster. Those Cape liberals present at the National Convention managed to preserve the colour-blind voting and civil rights within what was to become the Cape Province, but these could be removed by a two-thirds majority vote in the Union Parliament. Schreiner fired off a telegram from Greytown describing the South Africa Act as:

Narrow, illiberal and short sighted in conception of the people of South Africa. The great majority are not of European race or descent and their rights and future are not adequately safeguarded or provided for by maintaining temporary privileges of Cape natives or coloured electors.

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He went to Britain with the blessings of Cape liberals, coloureds and Africans to try to persuade the Imperial Parliament not to pass the South Africa Bill. It was a forlorn hope.

When the Union Parliament was formed, Schreiner was nominated as a Senator with the responsibility of representing the views of the 'Non-Europeans', or Africans, which he was proud to do. His alarm over the direction of the incoming Union Government was alleviated by his contacts with Louis Botha who he admired and respected and who promised to release Dinuzulu. A promise which Botha kept, releasing the prince on 31 May 1910, the very day the Union was formed and Botha's first day in office.

Dinuzulu was delighted by Schreiner's new role:

Friends I might have, but there is no man like you since Mr Colenso is dead. All my trust is in you... May the Lord keep you and give you power to fearlessly advocate for the just and equitable treatment of the Natives of South Africa.

However, the political tide was flowing swiftly in an illiberal direction. All the old battles fought out in the Cape had to be re-fought in the Union Parliament, and with less prospect of success. Olive Schreiner described the sad process best:

The waggon (sic) of South Africa is beginning to make a long slide backward on the muddy road of time.

In 1914, at the outbreak of the first World War, WP Schreiner was in London and was asked by Louis Botha to take over as South Africa's High Commissioner and he remained in this post until his death in harness in 1919. Olive died a few weeks later.

Schreiner vigorously, but unsuccessfully, opposed the 1913 Native Land Act and continued to advocate liberal causes, including votes for women, a popular cause in the Schreiner family. In 1913, he submitted a petition from the African women of the Free State against the imposition of the pass laws on them. The petition was received in the Prime Minister's Office and instantly consigned to the files.

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WP Schreiner did not begin his political career as a liberal, but his liberalism developed out of the contacts he had with African men of western education and his realisation that a political system which gave a vote to an ignorant white wagon driver or a back farm bywoner, but not to a black graduate, was seriously flawed. He was also stimulated and sometimes inspired by other family members, particularly his sister Olive. In addition to the stimulation, he was driven by a sense of duty, a sense of service and a sense of purpose.

Whether WP Schreiner's presence at the National Convention would have made much difference to the constitution of the Union is debatable. There were powerful forces aligned against him: not only Smuts and Botha, but the economic interests of the all powerful mining industry. These were indeed dominating limitations on any liberal expectations in 1909 and 1910.

WP Schreiner felt that he had ultimately taken the right decision in defending

Dinuzulu. He had taken on Dinuzulu as a client before the date of the convention had been set and he felt that white-black relations were so fraught that it was better for a white man of standing to make an unmistakable gesture of principle and goodwill at a time when civil rights were being generally curtailed. Perhaps the only thing his presence at the convention would have ensured was that a more powerful minority dissenting report would have gone to Westminster with the draft South Africa Bill.

The limited voting rights for coloured people that were part of the South Africa Act came to haunt the next generation of Schreiners.

OD Schreiner (1890 - 1980):

WP was survived by his wife, two daughters and two sons. One of whom was Oliver Deneys Schreiner who has been described by Ellison Kahn as 'the greatest Chief Justice that South Africa never had'.

Oliver Deneys [OD] had been born in 1890 and witnessed his father's political progress to liberalism. OD's growing understanding of these events influenced throughout his life and informed the philosophical influences he was subjected to in England where he went to complete his education, at Cambridge. According to Alan Paton, OD could have had the Rhodes Scholarship to Oxford, but given his father's feud with Rhodes, this would never happen as, 'no Schreiner took such a gift from such a man'.

Whilst still at Cambridge and close to the conclusion of his studies, World War I broke out. OD trained as an officer and saw active service in France, during which he was both wounded and awarded the Military Cross. After the war, he qualified for the bar in both England and in South Africa and practised in Johannesburg. In 1923 he was part of a small group of advocates fighting to open membership of the bar to all races. On 12 December 1923, while OD was a busy young advocate, his youngest son, George Deneys Lyndall, the third Schreiner of this narrative, was born.

I have the clear impression that he would have been appointed had he not been a Jew. If this is so it would be extremely distasteful to me to commence my work as a dispenser of justice by being, in effect, a party to an injustice' (Schreiner Letters: 10 February 1937)

In 1937 OD was appointed to the Transvaal Supreme Court bench. However, he hesitated before accepting the appointment, writing to General Jan Smuts, then Deputy Prime Minister, to protest that the position should have gone to Advocate Philip Millin, the husband of writer Sarah Gertrude Millin, biographer of both Rhodes and Smuts:

I have the clear impression that he would have been appointed had he not been a Jew. If this is so it would be extremely distasteful to me to commence my work as a dispenser of justice by being, in effect, a party to an injustice' (Schreiner Letters: 10 February 1937)

On receiving the requisite assurances from Smuts, OD took the post and Millin became a judge a few months later. Eight years later, in 1945, OD was elevated to the Appellate Division in Bloemfontein (now the Supreme Court of Appeal), where he spent the rest of his judicial career and faced the greatest judicial challenge of his life, requiring as much courage as he had shown under fire during the First World War.

Prime Minister DF Malan set about entrenching racial segregation, which became known as the policy of apartheid, and entrenching the Nationalists in power. One way of doing both, was by effecting the removal of coloured voters from the common voters roll in the Cape Province.

What is often overlooked in narratives of his career, is the fact that he presided over one of the major political trials of the Second World War, the trial of South African Olympic boxer, Afrikaner Nationalist and German spy, Robey Leibbrandt, for treason. Leibbrandt was pardoned and freed by the incoming National Party government in 1948. Perhaps this incident prompted Nationalist hostility towards OD long before his rulings on the issue of the coloureds and the common voters roll.

In 1948, the National Party became the government of the Union of South Africa, having been elected with a small majority, although it received fewer votes overall than the United Party (shades of Trump and Clinton). Prime Minister DF Malan set about entrenching racial segregation, which became known as the policy of apartheid, and entrenching the Nationalists in power. One way of doing both, was by effecting the removal of coloured voters from the common voters roll in the Cape Province. However, this was one of the entrenched clauses in the South Africa Act of 1909 that had established the Union of South Africa and the Nationalists did not have the required two-thirds majority to amend this clause.

Nevertheless, Malan's government rammed a law through parliament, the Separate Representation of Voters Bill, which passed with a simple majority. The matter was quickly referred to the courts and ended up before the Appellate Division where OD Schreiner and his colleagues struck down the act in April 1952 (just as white South Africa celebrated the three hundredth anniversary of Jan Van Riebeeck's arrival at the Cape).

In retaliation, the government passed a new law through parliament, the High Court of Parliament Act, which made parliament itself the highest judicial authority in the country. This new high court then overruled the previous judgement of the Appeal Court. The Appellate Division responded by ruling that this High Court of Parliament Act was as unconstitutional as the Separate Representation of Voters Act had been. But the Malan government was not to be beaten; it resorted to packing the Senate with extra nominated members so that it could secure a two-thirds majority in Parliament. Also, as additional insurance, it increased the number of judges on the bench of the Appellate Division from five to ten, thus enabling it to pack the court with its own supporters.

OD's reaction was resigned. He told his wife, Edna, that the appellate judges first heard about the appointment of the five new colleagues from the court registrar who heard it announced over the radio:

There it is – and the only course is to take things philosophically, reminding oneself of the relative unimportantness of the affair in the general scheme of things. (Schreiner Letters: 26 March 1955)

With the playing field thus tilted, the battle was finally over. In 1956, the bill became law, with the acquiescence of the Appellate Division, and from then until 1994, the coloured people could only vote on a separate voters roll for a handful of white MPs to represent them and later (from 1984), for their own toothless House of Representatives under the Tricameral system.

The last challenges to the legislation failed in the enlarged Appellate Division by nine votes to one. Justice Oliver Deneys Schreiner was the only dissenter. This gallant stand has led to the Law School at the University of the Witwatersrand bearing his name and to a bust of him being unveiled in the Supreme Court of Appeal building in Bloemfontein. It is also why Justice Schreiner never became Chief Justice of the Union of South Africa.

Delivering the annual Oliver Schreiner Memorial Lecture in 2008, Deputy Chief Justice Dikgang Moseneke said he was fascinated by ‘the steadfast stance Oliver Schreiner took in the Trilogy Cases that gave rise to the constitutional crisis of the mid-1950s’. Moseneke emphasized OD’s illustrious family background, his place in ruling white elite and his privileged education:

He did not need a social conscience or public spiritedness. He could have lived his life without the political fallout that led to the stunting of his bright judicial career by political executive disapproval. If he had stayed within his elitist confines he would have risen to become the Chief Justice, which he never was.

G.D.L. (Deneys) Schreiner (1923 - 2008):

George Deneys Lyndall Schreiner was the second son and youngest child of OD and Edna Schreiner. Born in Johannesburg in 1923, he was schooled at St John’s and matriculated at the age of 15 in 1939 as World War II broke out. Too young to join the army, he went first to Wits University where he completed his BSc degree at the end of 1942. He joined up immediately, but as an ordinary soldier, not as an officer, to the annoyance of the army.

While he was serving in North Africa and Italy, Deneys joined the Springbok Legion, a fairly left-wing organisation of South African soldiers dedicated to looking after the rights of soldiers of all colours back home in South Africa, but he was a little cautious about its overall orientation. However, he did not return home immediately after the war, but went straight from Italy to Cambridge, where his father and grandfather had studied before him. Post-war Cambridge was austere and Deneys complained about the rationing. His answer to austerity was to marry Else Kops in 1948 after he had completed the Natural Science tripos. He then completed a PhD in Inorganic Chemistry in 1952 a process during which Else produced their first child of two sons and two daughters.

In 1952 the Schreiner family headed for the United States and Deneys took up a visiting professorship at Pennsylvania State College. This was the period of the Cold War and of McCarthyism, and Deneys was required to take an oath of loyalty to the United States. His solution to the problem was elegant: He signed the required document, but appended a letter stating that he would remain loyal to the United States, unless it was at war with the Union of South Africa.

The Schreiners returned to the Union in 1953, as the crisis over the coloured voters roll was building up. It was also the year that the Liberal Party was established and Deneys was one of its founder members. The public faces of the Liberal Party were parliamentarians such as Margaret Ballinger and Edgar Brookes and, of course, Alan Paton himself. The party was resolutely opposed to apartheid, but faced the same dilemma that the Progressive Party was to face a little later: to

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stand completely on principle for what was still called one-man-one-vote and risk irrelevance; or to compromise in the hope of attracting over-wavering white voters.

Many Liberals were also fiercely anti-communist and it was this type of “built-in dither” factor which led to the Liberal Party not attending the Kliptown meeting of the Congress of the People in 1955 where the Freedom Charter was adopted. It resulted in the Liberal Party sitting at one remove from the Congress of Democrats movement despite individual Liberals. Later establishing the Armed Resistance Movement and undertaking anti-apartheid sabotage missions.

However, liberal efforts did not go entirely unnoticed on the other side of the colour bar. As Chief Justice Pius Langa said in delivering the 1999 Alan Paton Lecture:

We did listen intently to what was being said about us in Parliament and elsewhere, the Margaret Ballingers, Edgar Brookes, Helen Suzman and others. I think these, Helen Suzman in particular, were classified as good guys.

But no move was made to adapt the fundamentals of apartheid, or address the absurdity that black African South Africans would only have political rights in their independent Bantustans.

Deneys took up a post as professor of Inorganic Chemistry at the University of Natal in Pietermaritzburg (UNP), in 1959 and almost immediately began his involvement with local liberal politics and the seeking of alternatives to apartheid and the racially exclusive republic being foisted upon the country by the nationalists. He was actively involved in the arrangements for the 1960 Natal Convention, but at a rather junior level. Given that

he was a heavy smoker, the minutes of the organising committee in the Alan Paton Centre refer to the fact that Professor Schreiner was responsible for arranging the ashtrays!

When he became Vice Principal of UNP in 1976, he began organising an academic conference on ‘Constitutional Models and Constitutional Change in South Africa’. Many of the leading academic thinkers and political scientists, from so-called verligte Nationalists to what would now be called the ‘soft left’ (including a few blacks), attended, and an influential set of conference papers was published in 1978. The Soweto Uprising had occurred in 1976 and it was becoming increasingly clear that South Africa was facing a growing crisis and that the policy of apartheid was part of the problem and not part of the solution. PW Botha, the newly elected Nationalist Prime Minister, who had taken over in the wake of the Information Scandal, set about modifying and streamlining apartheid.

The rather strange quasi-legislative, quasi-advisory, President’s Council fleshed out the Tri-cameral Constitution which created talk-shops for Indian and Coloured politicians in an enlarged national parliament. The Tri-cameral Parliament and the unwieldy 1984 Constitution were the result of these endeavours. But no move was made to adapt the fundamentals of apartheid, or address the absurdity that black African South Africans would only have political rights in their independent Bantustans.

Botha would not permit the position of the African majority to be discussed. He regarded the Bantustan policy as settled. In KwaZulu, Prince Mangosuthu Gatsha Buthelezi had refused to move towards independence and claimed that his Inkatha Cultural Movement was supported by the exiled ANC. Buthelezi was incensed that he was excluded from the broader constitutional discussions and

that these discussions were about Africans and not with Africans. He decided to establish his own constitutional commission in opposition to the President's Council proposals.

To lead the Commission, Buthelezi turned to Deneys Schreiner. I have tried to contact Chief Buthelezi and ask him why he selected Schreiner, but without success. It is, however, obvious that the constitutional conference at the university a year or two earlier played its part, but there is another issue: Mangosuthu Buthelezi is the maternal grandson of Prince Dinuzulu and he turned to the grandson of the man who had defended his grandfather from bogus treason charges, to lead his signature commission to transform the country.

Buthelezi came to Pietermaritzburg and visited Schreiner in his office on this campus to ask him if he would chair a larger commission into constitutional options for KwaZulu and the Province of Natal. One of Schreiner's conditions for agreeing to take the position was that the commission should be called "The Buthelezi Commission". Many think that this labelling was a sign of Buthelezi's ego, but apparently, this is not so, Schreiner insisted on it.

Schreiner tried to include as broad a representation of races and parties as possible under the circumstances. This quickly proved to be a bridge too far. The Nationalists refused point blank to participate as they were anxious to paint the commission as purely an internal homeland affair. The left was banned, or in exile, so there was no ANC voice.

The white opposition party then running the Natal Provincial Council, the New Republic Party (the rump of Smuts' once mighty United Party), participated but refused to offer any positive, or even many meaningful, contributions to debates on political issues, such as the franchise, or how to structure representative institutions. However, there was a reasonably wide range of civil society voices from all races and a strong academic contingent.

The Buthelezi Commission report came out at approximately the same time as the President's Council report. Professor Lawrence Boule has compared the quality of the President's Council report unfavourably with the quality of the Buthelezi Commission report. PW Botha also waded in, Trump-like, undercutting the credibility of the President's Council before its report could be properly considered. The Buthelezi Commission report was completely ignored.

Boule made the important point that each report, '...is the issue of a different lineage in South Africa's constitutional history', and yet they both identified common areas of concern and similar 'consociational' forms of government. The Buthelezi report was based on far deeper and wider socio-economic and political analysis and suggested a workable, but complex, power-sharing provincial government for KwaZulu-Natal, based on clearly discernible liberal principles.

The Botha government rejected the Buthelezi report out of hand, but a bowdlerised version of the President's Council report appeared in the ramshackle Tricameral constitution.

Nevertheless, the Buthelezi Commission report did have an influence on constitutional and administrative developments in the province and the country.

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Using the report, Buthelezi pressed for the establishment of a joint authority in KZN. Eventually PW Botha reluctantly conceded that a measure of shared power could be exercised by the KwaZulu-Natal Joint Executive Authority (JEA) recommended by the commission. It was to be jointly headed by the Administrator of Natal, Radcliffe Cadman, and by Buthelezi himself. There was a cascading arrangement of joint liaison committees and shared meetings that went some way to reducing the absurdity of divided administrative control in KZN. In the interests of full disclosure, I participated in the heritage sub-structure in the late 1980s.

The liberal hopes that inspired Schreiner's work on the Buthelezi Commission were dashed by the structures of the JEA, a bastard child of the commission. Yet, out of the darkness came the new South Africa and the Buthelezi Commission report served as a crucial source document for the constitutional planning at the CODESA talks in the 1990s.

However, what was definitely an unintended consequence for Deneys Schreiner, was that the JEA provided the framework for the exercise of brutal politico-military repression in the province during the last days of apartheid. The shadowy third force hid behind the JEA's veil of secrecy, local authorities could send security personnel into peri-urban and peri-rural areas with impunity. If this puzzles you, think of the Transkei, where Bantu Holomisa overthrew the Matanzimas and was able to use the nominal independence of the bantustan and its fairly logical borders to offer a haven to refugees sought by apartheid security forces and provide an area from within which the ANC and MK could operate. The opposite happened in KwaZulu-Natal: Buthelezi and Inkatha were at loggerheads with the ANC and

the unions, and violence spread throughout the province.

The liberal hopes that inspired Schreiner's work on the Buthelezi Commission were dashed by the structures of the JEA, a bastard child of the commission. Yet, out of the darkness came the new South Africa and the Buthelezi Commission report served as a crucial source document for the constitutional planning at the CODESA talks in the 1990s.

Conclusion

From the 1890s to the 1990s, the Schreiners exercised a liberal influence on South Africa. In our conclusion we do need to look at the fact that one of the limitations on their liberalism was the elitism inherent in the philosophy.

WP Schreiner grew into liberalism thanks to the influence of John Tengo Jabavu. In the 1900s he faced the dilemma of acting on humane liberal impulses or structural imperatives. He chose the former, which may have been the better moral decision, but it was an exercise in gesture politics.

OD Schreiner fought for black rights from the post-World War I period onwards. His battlefield was legal, his weapons juridical. His aim was to defend the residual elements of structural liberalism in the Union of South Africa constitution. Ultimately he failed, because of the constitutional weaknesses in the law that allowed the protections to be circumvented.

His son GDL (Deneys) Schreiner, had the opportunity to move from reaction to action. Even here the limitations were set by the farcical circumstances of the apartheid system. KwaZulu could not legislate for Natal and the report of his commission recommended a rapidly empowered joint governmental system that let slip the dogs of war in KZN in the late 1980s and early 1990s.

In this case, liberalism was totally limited by the law of unintended consequences.

However, the work of the Buthelezi Commission endured a crucial few years until it was used to underpin a national constitutional settlement that was inspired by liberalism. Wonderful and liberal though the South African constitution may be, its limits are currently challenged by defiant and corrupt top officials. The saying, 'A fish rots from the head' is never so true as it is in South Africa today.

The liberal values in our constitution need to be defended. The limitation of the constitution is that it does not live on paper, it needs active citizen engagement to make it a living document. We have the example of three generations of Schreiners and, indeed, the current generation to inspire us.

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BOOK REVIEW

Anthony Egan is a member of the Society of Jesus. He has an MA in History (UCT) and 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 Vianny Seminary, Pretoria (Moral Theology). His current interests include: political leadership, South African politics, moral theology and bioethics.

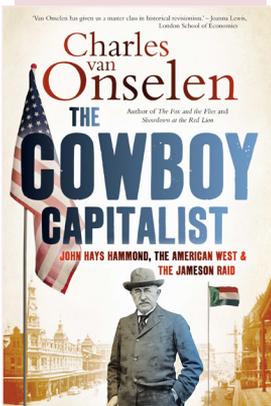
Charles van Onselen *The Cowboy Capitalist: John Hays Hammond, The American West & The Jameson Raid*

Picture an agrarian, rural country that is struggling to become a modern mining-industrial state. It has a shaky government that many of its citizens see as corrupt. It is experiencing rapid urbanisation, high levels of crime, incompetent policing and phases of labour militancy. Add into this an increasingly disaffected professional class and a capitalist elite, including foreign business interests, intent – through one means or other – on what we might call ‘state capture’. In other words, a country ripe for revolution or a coup.

No, I am not speaking of South Africa in 2017. I am referring to the Zuid Afrikaansche Republiek (ZAR), (often called in those days the Transvaal), in the 1890s. And the attempted ‘state capture’ did occur around the turning of the New Year in 1895-1896. The Jameson Raid, the attempted overthrow of Paul Kruger’s Transvaal Republic, is named after its ‘leader’ Dr Leander Starr Jameson – medical practitioner, politician and dreamer of Empire, but conventional wisdom holds that the brains behind the operation was politician-imperialist, the mining magnate and sometime Prime Minister of the Cape Colony, Cecil John Rhodes. With a wink and little nod from higher-ups in Britain, who shared Rhodes’ vision of a British southern African federation – and control over the then richest gold mines in the world.

Not so, says Professor Charles van Onselen, possibly South Africa’s most distinguished historian. Amassing a wealth of information that has hitherto hardly been examined, he suggests that the Raid was in fact an attempted coup masterminded by an American mining engineer and businessman, John Hays Hammond. Aimed less at adding a golden jewel to the Crown Imperial than at creating a modern republic in the Transvaal modelled on his native United States that would include Johannesburg as a kind of semi-autonomous ‘District of Columbia’.

The plan, van Onselen argues, was hatched by Hammond on a trip he took with Rhodes and Jameson to Matabeleland in 1894 (It entailed drawing on internal discontent within the Transvaal’s president, Paul Kruger – from disenfranchised uitlander miners, mining capital that felt Kruger’s politics undermined growth, as well as Boers who also saw the need for a more modern state.) Building on public unease about crime in Johannesburg, the first stage was the creation of Vigilance Committees. The second step was creating a Reform Committee, comprising mainly mining magnates and professionals to demand political change. Arming



CHARLES VAN ONSELEN
THE COWBOY CAPITALIST:
JOHN HAYS HAMMOND,
THE AMERICAN WEST &
THE JAMESON RAID
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and organising loyal miners was part of the process. Finally, there would be a group of Raiders, led by Jameson, who would invade the Transvaal. In Johannesburg there would be a simultaneous uprising. Sections of the rebels would capture the Boer arsenal in Pretoria. Kruger would be kidnapped and the government of the Transvaal would be ultimately replaced by one sympathetic to the dream of Rhodes, but ultimately based on Hammond's vision.

Drawing on both South African and United States sources, van Onselen presents a powerful case for his thesis that it was Hammond ultimately, not Rhodes, who was the real brains behind the Jameson Raid. He suggests, in fact, that Rhodes was uneasy with the plan – though ultimately he went along with it. As history recounts the Raid was a fiasco – the internal insurrection fell apart as the Raid started, and the invasion force was captured with ease by Boer forces. If Rhodes had had misgivings, he was indeed prescient. Ironically it shattered his political ambitions nonetheless.

To defend his argument further, van Onselen delves extensively into the life and context of John Hays Hammond. Born in 1855 to a Southern family living in California, his worldview was shaped by an environment that extolled the values of the 'cowboy' and the filibusterer, the latter the aggressive adventurer who – like William Walker in Central America – organised insurrections and led invasions of territories and countries for profit and personal glory, sometimes in the name of the United States.

As a child in California, Hammond lived through a moment in 1861 when Southern 'gentlemen' plotted a coup in San Francisco, with the view to creating a Pacific Republic sympathetic to the Confederacy. The means they used, one might say 'Surprise! Surprise!' was a 'vigilance committee'. Though his family were not involved in the plot, he could not have been unaware of it through conversations in later life.

Later, before studying engineering at Yale University and in Prussia, part of his informal education was in the rough and ready life of the cowboy. As an engineer and mining magnate in the Wild West, Hammond had his fair share of battles with bandits and, later, trade unionists. A diehard capitalist and radical conservative (he was a stereotypical Southern racist and eugenicist), Hammond's determination to stop unionised labour generated a low intensity war in the early 1890s Idaho mines he owned.

In the wake of the Idaho debacle, he moved to Johannesburg and rose into the mining aristocracy there. This was not difficult, since there were hundreds of American mining experts on the Witwatersrand and trade with the United States was extensive. Many observers felt that Johannesburg was in fact becoming 'Americanised', something Hammond – who'd clearly imbibed the 19th Century vision of American 'Manifest Destiny' and anticipated the United States' imperial expansion at the turn of the 20th Century – clearly wanted extended.

Hammond failed in his South African filibustering: he and three other key figures in the Reform Committee (Frank Rhodes, Lionel Philips and George Farrar) were sentenced to death for treason. This was commuted to 15 years imprisonment, later reduced to a heavy fine. Yet, van Onselen recounts, this did not stop Hammond on his return to the United States from getting heavily involved in economic and

A diehard capitalist and radical conservative (he was a stereotypical Southern racist and eugenicist), Hammond's determination to stop unionised labour generated a low intensity war in the early 1890s Idaho mines he owned.

political wrangles in the Mexican Revolution, becoming an advisor and confidante to a number of U.S. Presidents, and almost William Howard Taft's Vice President.

It would be wrong, I think, to see this book as simply a biography of Hammond. Van Onselen rather uses him as a hinge on which to hang a much broader picture of, firstly, the Jameson Raid. By giving a detailed accounts of other conspirators – and significantly Boer 'collaborators' or sympathisers with the plan, including the great South African writer Eugene Marais – he shows how we cannot simply reduce the Raid to an Imperial and/or capitalist conspiracy, least of all the ambitions of Cecil Rhodes. Or even Hammond for that matter.

Secondly, this book strongly defends – and echoes – one of van Onselen's major themes in recent years: that globalization was as much a part of the 19th Century as it is of the 20th and 21st centuries. Colonial southern Africa was already becoming part of the 'American sphere of influence' through the movement of people (especially mining professionals), products, popular culture and ideas.

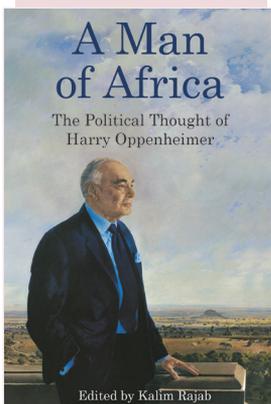
I have personally long held the idea that beyond such views in comparative history of opening and closing frontiers, the (somewhat) parallels between the civil rights and anti-apartheid movements, that South Africa and the United States mirror each other – even if like a mirror the image is inverted: majorities become minorities, but much is similar. (Even more so now, with populist demagoguery passing for politics in both countries!). I suspect van Onselen might hold a similar view.

Beyond the academic value of this book – taking an all too familiar event, almost done to death (or so it feels) by historians, and blasting open (if I may use a mining metaphor) a whole new understanding of it – one cannot but also enthuse at the quality of van Onselen's writing. As with his other books, he has an uncanny, an almost Sherlockian knack at following up clues scattered in sources on two continents that brought together reveal in Conan Doyle style the 'villain of the piece'.

While it is a dense and long book, it is never dull. Van Onselen weaves together his narrative and analysis in sharp, engaging prose, often heavily ironic in tone and with more than a little insight into the political cost of the Jameson Raid to modern South Africa. Once again, at the risk of repeating what I've said before, *The Cowboy Capitalist* is book prize material.

BOOK REVIEW

Gary Ralfe retired from active business life in 2006 after forty years of service firstly with Anglo American Corporation, and then with De Beers where he was Managing Director for eight years. In addition to the HSF he chairs the Board of Governors of Michaelhouse, the fund-raising arm of the Alexandra Education Committee, the fund-raising arm of Business Against Crime and the Beyond Foundation which does community work in rural areas.



A MAN OF AFRICA: THE POLITICAL THOUGHT OF HARRY OPPENHEIMER
 Edited By Kalim Rajab
 Publisher: Penguin
 Random House
 ISBN: 9781776092116

A Man Of Africa : The Political Thought of Harry Oppenheimer Edited by Kalim Rajab

My forty-year career with Anglo American and De Beers developed under the benign shadow of Harry Oppenheimer (HFO). To generations of managers and staff in what used to be called the greater group HFO was more than a chairman and leader. He was a living icon. I was not the first or the last young man or woman to join Anglo American because it was a force for good in Southern Africa, the most important engine of economic growth, industrialisation, urbanization and a better life for all. I associated with the credo attributed to HFO's father Sir Ernest Oppenheimer that "the purpose of large corporations such as Anglo American is to make profits for its shareholders, but to do so in such a way as to make a real and lasting contribution to the welfare of the communities where it operates".

It is surprising that seventeen years after HFO's death there is still no biography. I know that the family wisely wanted time to elapse before commissioning one. We now wait for Michael Cardo to produce that biography. In the meanwhile we have *A Man of Africa*, subtitled the Political thought of Harry Oppenheimer, under the editorship of Kalim Rajab. Kalim himself is close to the Oppenheimer family having been assistant to Nicky Oppenheimer in De Beers. But this is no hagiography. Kalim has produced a deft book, of which Part 1 is an "historical assessment" of Harry Oppenheimer. This is an original essay by Kalim. Part 2 is entitled "The Speeches" and consists of speeches by HFO, interviews, and excerpts from his Anglo American chairman's statements, in their day considered an alternative commentary on the state of the nation. These are arranged under various subjects and followed by commentaries by notable South Africans in the public domain – not all of whose political values coincided with HFO's. People like Heribert Adam, Ann Bernstein, Clem Sunter, Albie Sachs, President Kgalema Motlanthe, Jonathan Jansen, Xolela Mangcu. There is also a beautifully tailored piece by Tony Bloom.

Kalim's essay starts off with a sentence: "What role can moderates play in a society calling out for revolution?" He finds an apt metaphor for HFO in the so-called Rashomon effect. This is taken from the Japanese film *Rashomon*; what appears to be a straight-forward murder of a Samurai is witnessed by four people each of whom describes the event in equally plausible but mutually contradictory ways. Thus one's views of HFO depends on one's stance.

I fitted easily into Anglo American as an English-speaking privileged white male believing in liberalism, capitalism and the free market. Following the *Rashomon* line, Kalim contrasts the admiration of this group with the invective against

Juxtapose that with the closing sentence of Kalim's essay: "Assessing Harry Oppenheimer requires nuance, appreciation and generosity. Let us hope future generations possess it."

HFO by Afrikaner nationalism and the accusation of African nationalists that HFO was a hypocrite in the fight against racial oppression. The charge of black trade unions (which ironically HFO had helped to recognise) was that he and Anglo American had created their wealth through the exploitation of black workers. For me as an admirer of HFO and the old Anglo American, the most challenging part of Kalim's essay is the section headed "Original Sin". It is a stinging criticism of Anglo American's treatment of

hundreds of thousands of black workers particularly in its underground gold mines. The mines were run on migrant labour. The men were crammed into single-sex compounds and subjected underground to dangerous and insanitary conditions, resulting in deaths from rock-bursts and, in frequent cases, of silicosis. Kalim concludes that "the greatest threat to Oppenheimer's legacy will be ... in future assessment of his willingness to reform conditions underground".

Juxtapose that with the closing sentence of Kalim's essay: "Assessing Harry Oppenheimer requires nuance, appreciation and generosity. Let us hope future generations possess it."

Helen Suzman acknowledged that her parliamentary career and the Progressive Party would have been stillborn had it not been for the financial and moral support of HFO. About twenty years ago there was an appalling accident at Anglo American's Vaal Reefs gold mine when a locomotive jumped its rails and plunged down the men and materials shaft. It hit an upcoming lift and a hundred men were killed. Helen Suzman was invited to join the group which set out to commiserate with the families of these men. The most common response from the bereaved families was to ask if another member of the family could take up the job of the man who had died in the accident. This illustrates that what Kalim calls the "original sin" is also complex and Rashomon-like.

My review concludes with the following words from Nelson Mandela's tribute to Harry Oppenheimer on his death, appropriately reproduced at the beginning of the book:

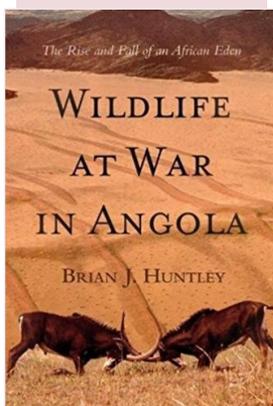
"The preamble to our founding constitution speaks of honouring those who suffered for justice and freedom in our country, and respecting those who have worked to build and develop our country. Chief amongst the latter must stand Harry Oppenheimer and his family; that they also fought in a particular manner for the former sets them apart in the gallery of South African patriots."

BOOK REVIEW

Rosemary Smuts

worked in education and community development in Mpumalanga in the 1970's-80's, extending these activities to the health sector in the Western Cape from 2000, after almost a decade with the British Embassy.

The Rise And Fall Of An African Eden Wildlife At War In Angola Brian J. Huntley



THE RISE AND FALL OF
AN AFRICAN EDEN
WILDLIFE AT WAR IN
ANGOLA BRIAN J.
HUNTLEY

Publisher: Protea Book
House, Pretoria 2017
ISBN: 9781485306115

'To understand Angola one must understand its history'

This reiterated comment underlies the new work that looks at a country and its politics through the lens of a scientist focussing on wildlife and the wilderness. Brian Huntley has an intimate knowledge of much of Africa, its landscapes and people. He has worked in all of sub-Saharan Africa as an ecologist, and his last position was head of the South African National Biodiversity Institute encompassing all nine botanical gardens. He has since his retirement written an illustrated history of Kirstenbosch Garden, as well as publishing his memoir of life on Marion Island as a newly graduated scientist in the 1960s.

In this, his latest work, he sets out to provide a record of his attempts to survey and consolidate land and conserve the wildlife of large areas of Angola from 1971 to 1975. As a young ecologist influenced by renowned conservationists Ian Player and Ken Tinley, he traversed the many fascinating biomes of this large and biodiverse country, which he calls 'an African Eden'.

Huntley is clearly enchanted with Angola's beauty and cares fiercely about the land and all its inhabitants. In the Preface he states: 'This book attempts to describe the Angola of the belle époque, its wildlife, its wilderness and its personalities.' He succeeds in doing so in a most readable manner, holding our attention as he juxtaposes the many varied elements of the tale. His sense of disillusion and frustration with what has failed to be achieved is strong. And dispiriting for the reader. In the final two chapters he details all that is wrong with Angola and proposes certain radical solutions, including the very urgent need to try to wrest back the wilderness and wildlife, from the ravages of colonial and civil war, followed by a kleptocratic, corrupt political order.

The 396-page book is made easy to navigate by its division into four distinct chronological sections, beginning with 'The Halcyon Years'. This is a nostalgic memoir of the four years he and his wife lived there, in remote areas of this huge country. In the course of working with various young Angolans, he forged enduring professional relations with a number of significant players. Huntley has successfully maintained contact – if erratic – over forty years of turmoil and war. Once South Africa was no longer persona non grata, he was able to pick up with old colleagues – a remarkable feat in itself given the very limited communications and opportunities for keeping such relationships alive. His exploration of this pristine wilderness

describes then existing – if unformalised – conservancies of the early seventies. The account moves easily between different topics, beginning with the Quiçama National Park, and the historical record of the Cuanza River running through it. This is followed by a full account of the magnificent giant sable antelope, with 60 inch horns, the icon of Angola much pursued by trophy hunters. There

‘Our first meeting on 24 June 1972 proved to be something of a pissing contest between veterinarians claiming to be born-again conservationists. But the façade soon dropped’ and he goes on to say that a certain individual ‘...was a goat specialist and behaved like one’.

is a rollicking narrative of the people linked to the exploration of the habitat and exploitation of this rare and elusive animal over the past hundred years. An interlude chapter deals with ‘The Enigmatic Living Fossil of the Namib’, an extraordinary desert plant aptly named *Welwitschia mirabilis*. The Iona National Park in the dry deep south is next, and is clearly his favourite locale. He lays claim to it being ‘Africa’s Last Wilderness’. Then comes a necessary digression to ‘The Cattle Wars – Politics and Personalities’ in Chapter 6, that excoriates supposed conservationists under colonial rule: ‘Our first meeting on 24 June 1972 proved to be something of a pissing contest between veterinarians claiming to be born-again

conservationists. But the façade soon dropped’ and he goes on to say that a certain individual ‘...was a goat specialist and behaved like one’ (P93). Huntley is not afraid of pulling his punches; his inside track knowledge, historical and current observations and residents’ information all render his tough talk credible. This part ends with pragmatic conservation proposals, ‘The Art of the Possible’, made to a receptive administration at the end of the colonial era in 1974.

‘...sorrow was the overwhelming passenger on the backs of most Angolans’...

Part 2: ‘A Short History of a Very Long War’ is an eminently readable account of the 500 years of disastrous history that has brought Angola, its wildlife and people to its present untenable situation. It runs from the period of intensive slavery – ‘a Recipe for Disaster’ – through the rebellion and retribution of the colonial era, followed by the Carnation Revolution of 1974 and, worse, the proxy wars fought in southern Africa during the Cold War. This fraught narrative is leavened by a chapter: ‘Interlude: The 100-year Odyssey of the Thirstland Trekkers’, a particular interest that he has pursued over the past forty years. It leads naturally onto a description of ‘An Angolan Exodus – August 1975’ wherein he provides a first-person account of the last refugee column of 10 000 people travelling south, reversing the previous trek, as they abandoned a country about to plunge into chaos.

Huntley writes in a clear, readable prose style. Given his first-hand experience, bolstered by extensive personal records, his Angolan political and conservation contacts, coupled with his wide reading of the available literature, he presents a credible case- for concern and dismay. (There is a fairly extensive bibliography on the various topics, both English and Portuguese, as well as a map – which could have been reproduced in more detail to cover unmarked locations in specific chapters.) While the book is a personal memoir, the writing is unemotional, setting out the facts rather than providing analysis or commentary- as one would expect from a natural scientist. That it is a comprehensive survey of wildlife management is without question. But it is also a comprehensive political history, this despite the many competing versions of events dealing with the liberation struggle (1961–1974), the proxy war (1975–1991), and

the two civil wars (1992–1994; 1998–2002). This book provides an informed and balanced insight into what will remain for most readers an unknown country.

The third section deals with wildlife conservation in a time of war. Unlike Garth Owen Smith, who successfully pioneered community conservation in neighbouring Namibia despite many travails and setbacks, Huntley and Angolan wildlife were not as fortunate. Much of this section makes for an engrossing but despairing read. Namibia was spared forty years of the time of great confusion or ‘*confusão*’ in Angola. It is a stable country today, with a thriving and lucrative conservation sector, unlike neighbouring Angola, naturally endowed with a far greater wealth of biodiversity, landscape and wildlife. Instead, Angola has emerged from the ‘*confusão*’ as a rentier kleptocracy, bedevilled by the ‘Resource Curse’ – in this instance oil and diamonds – and the ‘Culture of Greed’.

The city-state of Luanda now has as many inhabitants as the entire country had when Huntley lived there – over 6 million. This chapter dealing with the superficial glitz of the capital and the impoverishment and neglect of the vast rural areas, makes for sobering reading. The war drove the citizens to the city, which itself ‘has no connection with the country’s abundant wealth. For a full generation and more, the urban populations of Angola had been isolated from the country’s wilderness by bullets and bombs, landmines, sieges and starvation. The war has left the urban Angolan with a deep fear and loathing of the bush – the *mato*. Nature is not in the frame of reference of the urban youth. It explains an almost total absence of environmental sensitivity and responsibility across all sectors of Angolan society.’ (P243)

The war has left the urban Angolan with a deep fear and loathing of the bush – the mato. Nature is not in the frame of reference of the urban youth. It explains an almost total absence of environmental sensitivity and responsibility across all sectors of Angolan society.’

A final chapter in this Part 3 entitled ‘Friends Lost and Found’ exposes more of his deep-felt sympathy and identification with the country and colleagues of yore, but does not fit easily – at least to this reviewer.

Part 4, the final section, deals with ‘Wildlife Conservation in the Twenty-First Century’. Chapter 19 is headed ‘Triage Conservation – Option of Last Resort’ and makes for depressing reading. He tells of a 4 000km circuit in 2014, ‘from the desert of Namibe to the rainforest of Uige, and back across the panalto of Huambo and Huila...[where] bushmeat traders had a wide range of forest animals hanging from their makeshift stalls – bushbuck, blue duiker, monkeys and pangolin. All staked out – fresh, wet and bloody – to be sold to passing Chinese truckers. The miombo woodlands of the 1970s had been converted into charcoal, the rainforests stripped of their rare timber trees. Is this the end game for Angola’s wildlife?’ (P274) In the same vein, quoting a fellow distinguished ecologist, he shares his pessimism... ‘What I see are inadequate parks, unstable societies, and faltering institutions. Nature cannot long survive any of these debilities: all three in combination add up to a recipe for extinction’. (P 275) (John Terborough, 2004: Requiem for Nature, Island Press, Washington DC).

Confronted with this critical state of biodiversity in Angola, he proposes a number of practical suggestions, some of which he initiated in the 1970s, for example, strengthening the management effectiveness of the existing network of protected areas. He then digresses into a comparative overview of fauna and flora narratives for South Africa and Angola – of which the latter is ‘critically bereft’. He asserts:

‘The country is breathtakingly beautiful and extraordinarily diverse. Each corner has its own charm and drama.’ (P282) And accordingly proposes a principle of ‘strategic opportunism’ whereby biodiversity ‘hotspots’ most worthy of conserving are identified. He lists six main categories. He has himself led a number of scientific expeditions into Angola in the past 10 years, as well as facilitating biodiversity

Huntley asserts ‘The thesis of this chapter is that it is the failure of governance – the complete and deliberate abdication of personal responsibility, the lack of accountability and transparency, and the pervasive culture of denial and of obfuscation – that have been the principle barriers to the recovery of the nation’s protected areas and its biodiversity. The truth is clear: the wilderness of Angola is dying a slow death, a death by a thousand cuts.’

training of young Angolans in 2009. International funding is readily available. But conflicting agendas abound. Misguided efforts have resulted in the relocation and introduction of animals that never occurred there! There is negligible on-going appropriate training and support for scanty personnel on the ground. Boundaries are ill defined. Special political and financial interests override conservation priorities. Indigenous game stock has been decimated by bush meat hunting during the long years of the UNITA/ Jonas Savimbi (SA-supported) civil war with MPLA. The large sums of available donor money attract interest from government departments that fail, at best, to utilise them effectively.

In the penultimate chapter, entitled ‘The State of the Game – the Era of “Paper Parks”’ he asks a number of questions that interrogate why, since the peace of 2002,

the protected areas have shown so few signs of recovery and effective management. Instead, Luandan bureaucrats have frustrated initiatives, abused the legislative status of national parks and the regulations governing their protection with impunity, and the visible active illegal trade in wildlife and hardwoods continues unabated. Parks exist on paper – no more than that. Huntley asserts ‘The thesis of this chapter is that it is the failure of governance – the complete and deliberate abdication of personal responsibility, the lack of accountability and transparency, and the pervasive culture of denial and of obfuscation – that have been the principle barriers to the recovery of the nation’s protected areas and its biodiversity. The truth is clear: the wilderness of Angola is dying a slow death, a death by a thousand cuts.’ (P364)

In Chapter 24, ‘Angola Adieu? Will Hope be the Last Thing to Die?’ he quotes from a 40-page report compiled in 2015 by the UNDP international advisor to the Global Environmental Fund project, which demonstrates how little contact was made on the ground with actual national parks. He goes further to say that the national parks are in a chaotic and critical state, and then proposes a number of recommendations to consolidate existing conservation areas and target key biodiversity hotspots, naming effective projects and people. Into this gloomy picture the writer introduces a final, radical option of last resort asserting ‘the government entity that has shown the greatest interest in and offered the most effective support to conservation action in Angola during the past two decades has been the most improbable: the military...has the best-financed, best-equipped and best-trained corps of professionals of any sector of government.’ (P392) An astonishing claim!

Huntley has successfully realised his first aim, to record the past. One hopes that his second aim, to inspire a new generation of custodians of the natural environment, is realised and that this book receives the readership it warrants.

BOOK REVIEW

Graham Dominy is a former Archivist of South Africa who retired in March 2014 after winning a protracted labour dispute with Minister and Department of Arts and Culture. He has worked in and managed a variety of, archival, cultural and heritage institutions since the 1970s. He has studied extensively in South Africa and internationally: obtaining his graduate and professional qualifications in South Africa (University of Natal and Pretoria), his MA in Ireland (University College Cork) and his PhD in the United Kingdom (at the Institute of Commonwealth Studies, University of London).

The Assassination Of King Shaka by John Laband

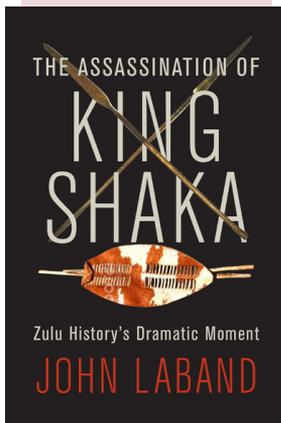
In February, 1979, an academic conference commemorating the centenary of the Anglo-Zulu War was held at the then University of Natal in Durban. Voices were heard before the conference wondering if it was superfluous as, surely, there was nothing left to say about the Anglo-Zulu War? The Chairperson of the Natal Provincial Museums Advisory Board (an old New Republic Party – ex United Party – political veteran with little apparent historical expertise), wrote,

‘There is little likelihood of an organisation based in South Africa adding anything really new to the material which has been published on military operations undertaken during the war.’

However, events in both South Africa and abroad had been developing an avid audience, both academic and popular. In 1964 the blockbuster movie *Zulu*, that launched Michael Caine on his career, came out and the following year, Donald Morris (an American ex-CIA agent based in Berlin), published a popular history, *The Washing of the Spears*, that became an enormous best seller. So, what was left to say? One new approach was suggested during the opening address at the conference: Chief Mangosuthu G. Buthelezi, then Chief Minister of KwaZulu, called for a Zulu approach to Zulu history.

The naysayers were proved wrong, the centenary and the conference launched one of the biggest historical growth industries in South Africa. For example, far more has been written about the Anglo-Zulu War than the Anglo-Boer War. The conference papers were edited by Andrew Duminy and Charles Ballard and published as *The Anglo-Zulu War: New Perspectives* (Pietermaritzburg, University of Natal Press, 1981), and works on the Anglo-Zulu War kept rolling off the presses and selling.

One of the leading academic figures in this industry is Professor John Laband. In 1979, he was a young history lecturer at the University of Natal in Pietermaritzburg and I recall him declaring at the conference that his doctoral thesis would tackle the Anglo-Zulu War from the Zulu perspective. In the introduction to *Kingdom in Crisis: The Zulu response to the British invasion of 1879*, the published version of his PhD dissertation, Laband credits his colleague, the late Paul Thompson (rather than the words of Buthelezi), with ‘inspanning’ him into Anglo-Zulu War research. Their partnership began with the appearance of the first edition of *A Field Guide to the War in Zululand 1879*, a publication that went through several editions and expansions. They also produced several area-specific monographs together. Laband has had an illustrious academic career, in both South Africa and Canada, that broadened from the narrow battleground of the Anglo-Zulu War, to war studies in southern Africa



THE ASSASSINATION
OF KING SHAKA
BY JOHN LABAND
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and across the continent more broadly. With *The Assassination of King Shaka* he returns to South Africa and to what the publisher's blurb on the front cover calls, 'Zulu History's Dramatic Moment'.

The assassination of King Shaka kaSenzangakhona, the founder of the powerful Zulu kingdom, was a key moment in South African history and is worthy of focused historical treatment, despite the difficulties with the source material. Written material on Shaka is limited and much of what there is comes from the British hunter-traders at Port Natal, who wrote up their reminiscences many years later and who had their own individual axes to grind. While Zulu accounts have been

published in the magisterial multi-volume, *James Stuart Archive of recorded oral evidence relating to the Zulu and neighbouring peoples* (edited by Colin Webb and John Wright), even these are second hand and were recorded many decades later.

Laband acknowledges the problems, but points out that classical historians write about the Ancient World with 'unabated enthusiasm', despite even greater difficulties. Given the paucity of reliable contemporary sources, scholars such as Carolyn Hamilton, author of *Terrific*

The Assassination of King Shaka is a gripping read as well as a professional history of the highest quality. However, it poses some of the challenges that reviewing a novel poses: how much to tell without giving too much away to a reader?

Majesty: The Powers of Shaka Zulu and the Limits of Historical Invention (Cambridge, Mass., Harvard University Press, 1998), have focused on the representations of Shaka Zulu in history, rather than on the development of a narrative history of Shaka himself. Is it, therefore, brave, or foolhardy, for John Laband to attempt such a history?

The Assassination of King Shaka is a gripping read as well as a professional history of the highest quality. However, it poses some of the challenges that reviewing a novel poses: how much to tell without giving too much away to a reader? The story opens with an incident at the court of King Mpande kaSenzangakhona, many years after the deaths of both Shaka and Dingane, when two large snakes were seen battling in a life and death struggle in the fencing around the buildings at KwaNodwengu, the king's principal military homestead. In terms of the traditional Zulu belief system, these snakes represented the spirits of Shaka and Dingane continuing their earthly battles in the spirit world. Mpande consulted the *izangoma* (the diviners with powers to communicate with the shades), who advised the king to propitiate the larger snake, the spirit of Shaka, the founder of the nation, rather than the Dingane snake, as Dingane had killed Shaka and divided the nation.

Laband initially focuses on an unsuccessful attempt on Shaka's life in 1824 and questions who the would-be assassins were: Members of the royal family? Ndwandwe loyalist supporters of Shaka's old rival Zwide? Or resentful men of the defeated Qwabe chiefdom? Laband explores each of the possible avenues and, through the explorations, tells the history of the Zulu people and the rise of the kingdom. The chapters are short, their titles are pithy and Laband quotes Zulu sources evocatively and effectively. The text is supported by a timeline, a list of characters, a glossary of Zulu words, maps, well selected illustrations and a list of kingdoms, chiefdoms and paramountcies, all very useful to the general reader.

The main focus is on King Shaka, on the man, his appearance, his background and his personality. What is refreshing is that this account sheds light rather than heat. Laband discusses Shaka's relationship with women and dismisses the suggestions that he was sexually inadequate or impotent. The death of his mother, Queen Nandi,

is discussed at length and the suggestion that Shaka himself killed her is debated. Laband identifies this event and the extravagant and gory mourning that followed, as a moment when Shaka's grip on his kingdom began to weaken.

Shaka built up and ruled one of the most powerful and well known African kingdoms in the first half of the 19th Century and his fame became legend with much being made of his tyranny and ferocity. Many of the early stories that reached white ears were spread by the small group of British traders, hunters and adventurers at Port Natal. They intrigued the king and he learned from them and exploited them astutely. Part of the reason that Shaka moved his capital south of the Thukela to KwaDukuza (a centre that became the colonial town of Stanger), was to be nearer to the opportunities offered by this strange group and to be able to counter any possible threats from them more quickly. The traders became Shaka's conduit to the wider world and he insisted that they accompany his emissaries to the Cape. The first mission was a failure and Shaka was killed before the second set of emissaries returned.

Laband does not believe that Shaka would have withstood the arrival of the Voortrekkers any more effectively than Dingane did, given the fact that the socio-economic, military and technical structures of the Zulu kingdom were almost identical during the reigns of both kings. However, there is an intriguing "what if" that Laband fails to explore. Had Shaka lived on, with his formidable reputation as a warrior-king intact, and cemented an alliance with the British, what would the Trekkers have done? Would they have thought it worthwhile to try and settle on the margins of his powerful kingdom when it was allied with the detested British authorities at the Cape from whom they were trying to escape? It would have been an act of double jeopardy for them.

This scenario would have changed the political geography of 19th Century South Africa dramatically and the Trekker states would have been pushed further west and perhaps further north. It is unlikely that they would have been able to develop as much as the Orange Free State and the Transvaal actually did. Instead of the "Great Trek" being seen as a watershed in South African history it may have turned out to be a relatively minor migration and the history of South Africa would have been very different – had Shaka continued to reign until the 1840s.

At the end of the 19th Century, Major Matthew Nathan, a British War Office official, who later became Governor of Natal, wrote in a Whitehall memorandum: 'The Zulus from Natal and Zululand form perhaps the finest material in the Empire for military service, but it has recently been decided that political considerations do not permit of a force for Imperial service being raised from them.'

It is fanciful to imagine the Zulu kings as playing the same role in the British empire in Africa as Indian maharajahs played in the imperial Great Game in central Asia. But it is a history that never happened because of the assassination of Shaka. John Laband's account of this critical and contested event is a fresh and worthy contribution to our understanding of an over-mythologised part of our common history. It is a real page turner from a brave rather than a foolhardy author.

BOOK REVIEW

Imraan Coovadia is a South African novelist, essayist, and academic. He is the director of the creative writing programme at the University of Cape Town.[1] He has taught 19th-Century Studies and Creative Writing at a number of US universities. His debut novel, *The Wedding*, published simultaneously in the US and SA in 2001, has been translated into Hebrew and Italian.

David Lurie *Undercity – The Other Cape Town*

Undercity – The Other Cape Town is David Lurie's fourth book on issues and crises around contemporary urbanisation. Moving away from pure documentary, he sees this work as "a visual essay and meditation on time, place, memory and personal history; a melding of journey and dream, bringing together...the political, the philosophical and poetic. Cape Town, for all its beauty and energy, is a city in crisis—a failed city that somehow works". It is reviewed by Professor Imraan Coovadia.

Barbed wire, power stations, railway yards, bicycle paths, building shells, housing estates, a car on blocks, six rusted-out hulks, a pile of unneeded tyres: David Lurie's camera in *Undercity* registers the presence of industrial and workaday infrastructure in scenes of Cape Town that have been for the most part cleared of human agitation and portioned in classical thirds. Panoramas are set in place from motorways and small hills, construing the city with a tough-minded but not merciless intelligence.

In the new volume's first plate, "Joe Slovo Park," a young man with bowed legs stands on a half-flooded path behind a barbed wire fence. An electricity tower looms over him, a bare-boned arrangement of triangles and rhombuses running

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CAPE TOWN
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www.davidlurie.co.uk



into power lines on the horizon. The young man could be a representative of the country's predicament, and its uncertain path through a litter box civilization, but the scene has the impartiality of a certain kind of painting rather than any tendency to symbolisation. It is neither an allegory nor a study in incongruity, not quite a piece of existentialism and not exactly an experiment in mood. It might be best described as a tidy consideration of South Africa's untidiness, and is therefore dominated by the green undergrowth which is neither wild nor natural, and not cultivated either.

Perhaps the most impressive of the photographs in the volume, "Phillipi, 2013," pursues this strategy. The perspective on a section of half-claimed ground reveals itself as a spiral or an S-shape: the pond in the distance is joined to an intermediate space of mud and tin shacks which turns into a great heap of apparently abandoned tyres. The fence in the foreground, along with a sky bellying into cloud, suggests the classical and pastoral source of the photograph's inspiration.

David Lurie will talk reluctantly of his training in economics (or what used to be called political economy to indicate a broader scope) but there is an abiding interest in the useful and in the nature of use in this volume—a tripartite scheme of the useless, the useful, and the things which stand outside the domain of use. A boy makes use of a concrete wall to build a shelter in the centre of the city, in sight of a Samsung sign. Cranes and cement mixers bask on the whitened floor of a building site between office buildings and parkades. A woman with a red and white scarf, her feet turned in, has converted an embankment into a bench. A line of tan boulders stretch to her left while carpets of green vegetation creep towards one another in the parched inner-city scene. The caption identifies her as a Congolese refugee. It is not an accident that Lurie includes in one photograph the cement curve of Cape Town's notorious useless fragment of highway which connects to nothing and forms part of no thoroughfare; nor that his photographs register the presence of signs ("Cash Loans," "\$tay True," "Own Business Efficiency," "The People Shall Share in the Country's Wealth") which place us inside the intertwined oppositions of wealth and poverty, usefulness and uselessness, industrial development and waste production.

The unworldly and unearthly also make a significant inroad into this collection. Two boats lie in a derelict building in Woodstock, waiting for an ocean that once flowed through this part of the city. They are no more useless than ghosts or memories. Over the trashland of Imizamo Yethu, reduced to rubble by a fire in 2017, hang black trees and sacrificial smoke. At Hout Bay the old municipal buildings are almost entirely buried in grey sand. In a remarkable photograph of a broken tree trunk on Tafelberg Road the scale has been adjusted to create a miniature forest in what might be smoke but is likely morning mist. Far away are the ghosts of several trees, nothing green in their branches.

The most fully realised spirituality in the collection comes in the double portrait of two worshippers of the Zion Church taken outside in Hout Bay. Suddenly, from a city of waste and industrial utilitarianism, David Lurie has coaxed an unashamed cosmic consciousness. If the mountains in the background are too low to propose an image of the sublime, if the cloud cover is too shallow and too

The most fully realised spirituality in the collection comes in the double portrait of two worshippers of the Zion Church taken outside in Hout Bay. Suddenly, from a city of waste and industrial utilitarianism, David Lurie has coaxed an unashamed cosmic consciousness.

light in places to indicate an oncoming storm, there is nevertheless something thrilling and unnerving in a foreshortened apocalypse. In the background, as anyone familiar with the city would know, are fish factories preparing the catch for overseas markets. It is no coincidence: on the previous page, in one of the many sequences which structure this volume, Lurie has placed two views of the fishing boats and factories in Hout Bay. To the categories of useful, useless, and transcendent, we may add a fourth category of the uses which the photographer makes of his views of the world, thoughtful and revelatory uses which turn up on almost every page of *Undercity*.



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