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The Politics of Inequality: South Africa Then and Now

Guest Editor: R. Hunt Davis, Jr.

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Editorial Staff

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Table of Contents

Introduction

R. Hunt Davis, Jr. (1-5)

Invisible Resurrection: The Recreation of a Communist Party in South Africa in the 1950's
Sheridan Johns (7-24)

"Mannenberg": Notes on the Making of an Icon and Anthem

John Edwin Mason (25-46)

The Ash Heap of History: Reflections on Historical Research in Southern Africa

Robert Edgar (47-61)

South African Land Reform and the Global Development Industry

Thackwray Driver (63-79)

Patrolling the Resource Transfer Frontier: Economic Rights and the South African
Constitutional Court's Contributions to International Justice

Henry Richardson III (81-106)

Contesting Liberal Legality: Informal Legal Cultures in Post-Apartheid South Africa's
Privatizing Seafood Fishery

Ken Salo (107-125)

Media, Social Movements and the State: Competing Images of HIV/AIDS in South Africa

Sean Jacobs and Krista Johnson (127-152)

Book Reviews

Colonialism in Question: Theory, Knowledge, History. Frederick Cooper. Berkeley:
University of California Press, 2005. 327pp.

Charlotte Baker (153-154)

Reversing Sail: A History of the African Diaspora. Michael A. Gomez. Cambridge:
Cambridge University Press, 2005. 219 pp.

J. Omar McCalpin (154-155)

Popular Intellectuals and Social Movements: Framing Protest in Asia, Africa, and Latin
America. Michiel Baud and Rosanne Rutten, eds. Cambridge University Press, 2005. 222 pp.
Devashree Gupta (156-157)

Prisoners of Freedom: Human Rights and the African Poor. Harri Englund. Los Angeles:
University of California Press, 2006. 260 pp.

Emily Musil (157-159)

Women in African Parliaments. Gretchen Bauer and Hannah Evelyn Britton, eds. Boulder, Colorado: Lynne Rienner Publishers, 2006. 235pp.
Chineze J. Onyejekwe (159-161)

Fiscal Disobedience: An Anthropology of Economic Regulation in Central Africa. Janet Roitman. Princeton: Princeton University Press, 2005. 233 pp.
Jeremy Rich (161-162)

Developmental Local Government: A Case Study of South Africa. Jaap De Visser. Oxford: Hart Publishing, 2005. 313 pp.
Didibhuku Wellington Thwala (163-164)

Introduction

The Politics of Inequality: South Africa Then and Now*

R. HUNT DAVIS, JR.

Guest Editor

Each year for nearly a quarter century, the University of Florida Center for African studies has honored Gwendolen M. Carter's association with the Center in her latter years as a scholar through holding a conference or set of lectures named after her on a topic of critical importance to the study of Africa.¹ Gwen, as she was known to her friends and colleagues, delivered the first set of Carter Lectures on Africa in fall 1984.² It was a time of great turmoil and strife in South Africa, with then President Botha thereafter declaring a "state of emergency" on July 20, 1985. Given her broad and detailed knowledge of South Africa based on nearly four decades of research and writing about the country and broader region, Gwen chose to inaugurate the Carter Lectures with presentations on "United States Policies toward South Africa and Namibia" and "Can SADCC Succeed?"³

Although Gwen spent only a few years at the University of Florida, her interactions with both faculty and students left an indelible mark on its community of Africanist scholars.⁴ Since she was born in 1906 (July 17; she died on February 20, 1991), the faculty of the Center thought that in the centenary year of her birth the Carter Lectures on Africa for 2006 should return to her central scholarly and personal concern with South Africa. She had first become acquainted with South Africa when, during a thirteen-month trip around the British Commonwealth in 1948-1949, she spent three months in South Africa. Gwen wrote that she was "utterly fascinated by South Africa," and was "particularly fascinated by its contrast with what I had seen of emerging African nationalism" elsewhere on the continent.⁵ In 1952, she returned to South Africa for a year's research that led to the publication of what is arguably her most significant work: *The Politics of Inequality: South Africa Since 1948*, which appeared in 1958. As she noted in her introduction:

Few countries have been so subject to publicity and criticism since World War II as has South Africa. It is a rare year in which no writer uses that colorful country as a subject. And yet, for all this publicity, there is remarkably little understanding in other countries either of the complexity of the problems which South Africa confronts or of the character of the forces which are shaking it.⁶

She therefore set out to promote that understanding in a manner that "tried to separate facts and analysis from . . . judgments, and to let the former speak for themselves," deliberately

R. Hunt Davis, Jr. is Professor Emeritus of History and African Studies at the University of Florida and was formerly director of the UF Center for African Studies and editor of the *African studies Review*. He was a close colleague of Gwen Carter when she was at UF and co-authored a chapter with her for Peter J. Schraeder, ed., *Intervention in the 1980s: U.S. Foreign Policy in the Third World*. His area of specialization is the history of southern Africa since 1800.

<http://www.africa.ufl.edu/asq/v9/v9i4a1.pdf>

aiming "at a broad coverage in the hope of providing. . . the material necessary for understanding the political factors and forces operating" in the country.⁷

In contrast to much of the subsequent literature on South African politics, *The Politics of Inequality* had only a limited coverage of African politics.⁸ In the book's conclusion, Gwen acknowledged as much, stating that she had "virtually disregarded the non-Europeans . . . because, in practice, they have relatively little to say about the. . . policies which affect their lives. Yet in the end, they will be the most important factor of all in determining the future of South Africa."⁹ She also had had great difficulty in securing material for "non-European groups." Recognizing the long-run importance of African and other black political organizations, she joined with Tom Karis, Gail Gerhard, and Sheridan Johns in producing the four volume documentary history *From Protest to Challenge* that covered the period 1882-1964 and the huge collection of microfilmed South African political materials that make up the Carter-Karis Collection in the Northwestern University Library.¹⁰

Since Gwen's pioneering work appeared, there have been innumerable studies of South African politics and political history, many of which have drawn heavily on *From Protest to Challenge* and the Carter-Karis Collection. These studies have generally sought to illuminate "the complexity of problems" that have confronted South Africa and the forces shaking it. Yet, understanding has remained illusive. Perhaps nothing better illustrates this than the belief that most South African academic specialists held in the 1980s that the country was inevitably headed toward a bloody revolution. As it turned out, however, there was no violent revolution. Rather, apartheid ended as a result of a protracted and sometimes difficult and violent process of negotiation and compromise. Since the early 1990s, there has been a torrent of publications about the "new" South Africa, the "rainbow nation," the country's prominent leaders (most notably Nelson Mandela, the subject of several biographies), and similar "positive" themes. To be sure, as the immediate euphoria of the democratic election of 1994 has faded, more critical studies have emerged. Still, there is ample room for further scholarly analysis of contemporary South Africa and its recent past, "of the complexity of the problems" the country faces and "the character of the forces" shaping them.

The conference organizers utilized the concept of "the politics of inequality" as the central organizing theme for the 2006 Carter Conference, for it provides a pertinent analytical approach for furthering understanding of present-day South Africa.¹¹ What has been the legacy of the original politics of inequality and the place of law in society under its sway for the years since 1994? How appropriate is it to continue to examine politics and society in South Africa through the lens of "inequality"? If so, to what degree is it a product of the politics that Gwen wrote about it, and to what degree is it the result of newer forces such as the wider process of globalization? Posing questions such as these led to the development of the conference theme with the title, "Law, Politics, Culture, and Society in South Africa: The Politics of Inequality Then and Now. A separate session of the conference, entitled "Law, Language and Politics in South Africa: The Impact of the Constitution," subsequently took place at the University of Cape Town.¹²

The seven papers presented in this special issue reflect the broad range of topics within the overall general theme of the conference and the diverse mix of scholars who participated in it. Two of the papers focus on the apartheid era. Sheridan Johns' analysis of South African

communism covers a crucial aspect of political history in the first decade and a half of the apartheid era. The Suppression of Communism Act (1950) forced the Communist Party of South Africa formally to dissolve itself. As Johns notes, however, its leadership went underground to resurrect the party as the South African Communist Party (SACP). The SACP was quite active until the arrest of its leadership at its Rivonia headquarters in 1963 led to its near collapse. John Mason's paper also centers on the apartheid era, but it takes a different tack to political history with its focus on Abdullah Ibrahim's jazz hit, "Mannenberg." This piece became an anthem of the anti-apartheid struggle in the 1980s. Mason devotes more of his paper, however, to its composer, Abdullah Ibrahim (aka Dollar Brand), how he came to write this song, and the meaning that it came to have for the South African coloured community. In the process he also examines African-American cultural and political influences on South Africa.

Bob Edgar's paper straddles the apartheid and democratic eras with its description of conducting research and collecting documents on political and religious movements over the course of three decades. Though the challenges and hurdles change between the two eras, but they do not disappear. His personal research agenda led him in unconventional directions, two of which he recounts in his paper. One was an involvement with the discovery in a Grahamstown museum of the long-lost Ark of the Covenant of an Israelite sect. The other consisted of the search for the burial site and the re-interment of the remains of a female prophet from the Eastern Cape in the 1920s named Nontetha. His ability to establish close and rewarding relationships with the communities involved in both instances serve to remind other researchers to be open to unanticipated opportunities that their research may offer them to move beyond the conventional.

The remaining papers all center on the post-apartheid democratic era, a period that many scholars consider as marking South Africa's true independence. Dax Driver deals with one of the most difficult legacies of the South Africa's long colonial history, that of massive land alienation. Though the large-scale loss of African lands preceded the apartheid era, it intensified during those years. Land issues have thus been at center stage since 1994, as, he notes, they have also been in international development debates. As a result, South African examples and policies have been influential internationally. South Africa's Constitutional Court has also had an international impact through its legal reasoning in several cases where it has used "reasonableness" as critical element in deciding the justiciability of cases arising from the high levels of economic inequality resulting from the apartheid and earlier colonial eras. Henry Richardson is concerned with how strongly the Court should push its judicial authority towards having actual decisional influence on national resource priorities and allocations, including where resources are scarce. It could therefore have a greater potential for meeting the needs of poor people, not least those of color, through offering judicially-enforced legal rights for access to resource transfers critical to their basic welfare.

In many ways, Ken Salo's discussion of the role of law, policy making, and court decisions related to South African fisheries serves as a case study of how in post-apartheid South Africa the economic and social inequalities of the apartheid era are transformed and perpetuated. He argues that the present rhetoric of liberal rights transforms but does not transcend prior cultures of fisheries regulation arising out of colonial violence and bureaucratic racism that heavily disadvantaged primarily Coloured subsistence fishers in favor of primarily white commercial

fishers. The subsistence or informal fishers, however, have their own legal claims to traditional forms of access and control over coastal fishing grounds, claims that are neither ahistorical nor abstract.

Economic and social inequalities are also transformed and perpetuated in the health arena. Nowhere is this more evident than with South Africa's raging HIV/AIDS crisis. Sean Jacobs and Krista Johnson examine the role of the country's mainstream media in shaping the discourse about HIV/AIDS. The media has for the most part failed to capture the urgency of the crisis and instead has taken an approach that focuses on its political dimensions in terms of conflict over policy. For the most part, this is due to the inherited structures of the media, structures that continue to reflect the social and economic legacies of the apartheid era. The authors utilize the concept of framing to explain why the media's coverage of HIV/AIDS has been primarily in terms of political battles and health issues rather than the more significant issue of the epidemic's devastating impact on the political economy.

In conclusion, it is clear that these and the other papers presented at the conference demonstrate the continued relevance in many different spheres of the concept of "the politics of inequality" for understanding the structures of contemporary South Africa. It remains an effective lens of analysis for examining "the complexity of the problems which South Africa confronts" and "the forces which are shaking it." The conference papers and discussion would have been of great interest to Gwen, for they contribute to her quest for an answer to the question that she repeatedly posed in her scholarly writing, beginning in 1958: "Where is South Africa going?"¹³

Notes:

* These papers and others were first presented at the The 2006 Gwendolen M. Carter Conference on African Studies held at the University of Florida from March 5-7. For the full conference program and abstracts of all papers presented see <http://web.africa.ufl.edu/Carter2006.html>

1. Carter came to UF on a part time appointment as professor after retiring from Indiana University, where she had taught 1974-1984. Prior to IU, she had taught at Smith College, 1947-1964, and Northwestern University, 1964-1974. She was on the UF faculty 1984-1987.
2. As her long-time colleague Tom Karis noted, "Everyone who knew Gwendolen Carter called her Gwen." Karis, 2006.
3. These two lectures along with some additional writings and lectures appeared in print as Carter, 1985.
4. A lasting physical reminder of her contribution is the Gwendolen Carter Collection at the University of Florida George A. Smathers Libraries. This collection houses a voluminous set of correspondence, bibliographic notes, interview transcripts and other assorted ephemera all collected from several decades of research conducted by Gwen Carter throughout Southern Africa.
5. Quoted in Karis.

6. Carter, 1958: 9.
7. Carter, 1958: 11.
8. The coverage was largely confined to the chapter, out of sixteen, on "Non-European Political Organizations" near the end of the book. This was despite the fact that during her period of study in south Africa during 1952-53, the passive resistance campaign was in full swing.
9. Carter, 1958: 417.
10. The four volumes appeared from Hoover Institution Press. Vol. 1, subtitled "Protest and Hope" covered the period 1882-1934; Volume 2, "Hope and Challenge," 1935-1952; Volume 3, "Challenge and Violence," 1953-1964; and Vol. 4, "Political Profiles," 1882-1964. For the catalogue, see Wynne.
11. The organizers were R. Hunt Davis, Jr., editor of this special number of the *African Studies Quarterly*, and Winston Nagan, Professor of Law and Samuel T. Dell Research Scholar, University of Florida. Nagan, a South African by birth, is founding director of the Institute for Human Rights and Peace Development at UF and has extensive experience in the field of human rights.
12. The second session of the conference took place June 29-July, 2006 and was organized by Professor Daniel Visser, Faculty of Law, University of Cape Town. The sessions covered papers by sitting justices of the Constitutional and Supreme Courts of the first ten years of the new constitutional era, democracy under the constitution, gender and the constitution, the constitution and memory, and the constitution and "traditional" law.
13. A variance of this question is the title of Carter, 1980.

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Invisible Resurrection: The Recreation of a Communist Party in South Africa in the 1950's

SHERIDAN JOHNS

Abstract: Gwendolen Carter frequently mentioned communism in her seminal 1958 book, *The Politics of Inequality: South Africa Since 1948*. This paper will analyze South African communism in the opening decade and a half of apartheid. It will consider the characterization of communism in opposition as presented in Carter's book, in light of recently published autobiographies and biographies of communists and African nationalists who were active in the 1940s and 1950s. The 1950 Suppression of Communism Act forced the formerly legal Communist Party of South Africa (CPSA) to transform itself into the underground South African Communist Party (SACP). The paper delineates the important features of organized communism underground up to its near collapse as a result of the arrests at its Rivonia headquarters in 1963. It then briefly examines its deepening collaboration with the African National Congress over the next 30 years and concludes with observations on the significance of this early apartheid era history for the SACP's position in post-apartheid South Africa.

*"The Government thus made it impossible for a Communist to be chosen a Native representative by the Cape Africans. It is less sure that its victory was more than a surface one."*¹

*"Detention without trial, isolation in police cells, physical and psychological torture - [were] practices which in my experience in the 50's and 40's were never engaged in by the security services."*²

Introduction

In her 1957 assessment of efforts by the National Party government to block white communists elected to represent Africans in the lower house of South Africa's parliament, Gwendolen Carter suggested that the government's 'success' was limited. Neither she, nor apparently anyone outside communist ranks, were then aware that South African communists in 1953 had founded the South African Communist Party (SACP), a successor to the Communist Party of South Africa (CPSA) that had been dissolved by its central committee in June, 1950.

Sheridan Johns is Professor of Political Science at Duke University. He began to study opposition socialist and African nationalist movements in South Africa in the early 1960s for his doctoral dissertation (Harvard, 1965). He is one of the editors of *From Protest to Challenge*, with responsibility for Vol. 1, and is co-editor with Hunt Davis of *Mandela, Tambo and the African National Congress: The Struggle Against Apartheid, 1948-1990* (1991). In 2003 he published *South Africa and the Communist International: A Documentary History*, a two-volume work, co-edited with three Russian historians.

<http://www.africa.ufl.edu/asq/v9/v9i4a2.pdf>

Only recently, following the publication of autobiographies and memoirs of longtime communists, in tandem with biographies of deceased communist leaders, has sufficient new information come to light that permits a more detailed examination of the fashion in which the SACP came into existence and the dynamics of its clandestine activities in the 1950s. Drawing from these sources, the analysis that follows delineates the important features of organized communism in South Africa during the first years of its underground existence.³ In a brief conclusion, observations are offered on the significance of this period for the SACP in the post-apartheid years since 1994.

In the decade that followed the dissolution of the CPSA, communists and other radical opponents of apartheid, most notably the African National Congress (ANC), were actively engaged in organizing challenges to the National Party government. They operated in a political environment in which the government both repressed and tolerated its radical opponents. Repression was intensified through the passage of new legislation and the utilization of existing police power and practices to control and harass its opponents. The Suppression of Communism Act of 1950 symbolized the primacy that the government gave to expanding its arsenal to counter the 'threat' of communism. The broad powers of this legislation empowered the government to prosecute and ban organizations and individuals deemed 'communist' under a loose and encompassing definition. These powers, combined with those already in the hands of the government under the Riotous Assemblies Act, and augmented by those of the Public Safety Act of 1953 and the Criminal Laws Amendment Act of 1953, allowed the government to regulate and ban organizations and individuals that acted to protest the deepening of segregation and discrimination that was apartheid. Toleration of anti-apartheid opposition by the government was unwilling and grudging, particularly as ANC-led opposition grew through the 1950's, but legal rights were generally respected and police practices continued largely as they had been in the pre-1948 period. Joe Slovo's 1985 observations about the non-brutal nature of state power in the 1950s highlight the semi-benign nature of the government's response to opposition in the years when the secret SACP was establishing itself.

'SUPPRESSION OF COMMUNISM'

The SACP's predecessor, the CPSA, was a prime target of the National Party as it assumed power in 1948. In the eyes of the National Party, the CPSA was a major source of 'unrest' among the African population. Although its membership numbered only several thousand, having peaked during World War II when Great Britain and the United States were allied with the Soviet Union against Nazi Germany, its membership was drawn from all racial groups and many were prominent activists in trade unions and nationalist bodies, notably the ANC and the South African Indian Congress (SAIC). The party operated openly, recruiting support through public meetings and publications. It engaged in electoral politics, both in 'white' elections at national, provincial, and local levels and in the limited segregated spaces where the few African voters were permitted to choose white candidates to represent them.

In the two years following its 1948 electoral victory the National Party's fears of the 'communist menace' were further confirmed when two white communists successively won elections as 'Native' representatives in the African voters-only constituency of the Western Cape

-- Sam Kahn in 1948 as MP in the House of Assembly (the lower house of the national parliament) and Fred Carneson in 1949 as Member of Legislative Council (MLC) in the Cape Provincial Council. In the first months of 1950, the National Party government moved to enact legislation to make communist organizations and activity illegal.

The impending passage of the Suppression of Communism Bill in June, 1950, posed an immediate threat to the CPSA. Not only did the proposed law provide mechanisms for the ouster of the recently elected communist legislators and for the outlawing of the CPSA upon coming into force on June 26, it also empowered the government to 'name' and to ban its members from political activity and to subject them to prosecution and prison for up to ten years for membership or support of the goals of communism as defined in the statute.

HURRIED DISSOLUTION OF THE CPSA

Faced with the threat to its existence and to the ability of its members to engage in political and trade union activity, seventeen members of the central committee of the CPSA, including representatives from Cape Town, Johannesburg, and Durban, met on short notice in Cape Town in June as parliament was debating the bill. Legal opinion had been sought and was presented to the central committee members, outlining the implications of provisions of the bill. The lawyers believed that if the party would be in existence at the time when the legislation came into force all members who had not resigned would be liable to criminal prosecution for being a member. The implication of the legal advice was that the party should go out of existence.

Michael Harmel, known within the party for his critical theoretical writings, proposed that the party remain in existence and that new underground structures be created for it.⁴ The central committee members were mindful that the government had lists of party membership seized in raids in 1946 in the wake of the African miners' strike. They were also aware that the party had been unsuccessful in setting up back-up 'underground' party structures in the wake of the 1946 African miners' strike. According to Brian Bunting (who was also present at the meeting), "the Central Committee felt that it could not go underground with the sort of membership it had, many of whom were totally unequipped both ideologically and practically for illegal struggle and all of whom were known to the police."⁵ Reference was apparently also made to the experience of the German Communist Party under Nazi rule that "highlighted the difficulties involved in passing from legal to illegal work without pause."⁶ Harmel's proposal for the immediate creation of underground party structures was rejected.

The majority of the central committee accepted the legal advice that the CPSA should dissolve itself. With only two members in opposition, the central committee voted that the CPSA would dissolve itself on the last day of parliamentary debate on the Suppression of Communism Bill.⁷ In the interim, party assets were to be disposed of in all district offices, but the party rank and file were not immediately informed of the decision of the central committee to dissolve the CPSA.

On June 20, the last day of debate in parliament on the Suppression of Communism Bill, Sam Kahn publicly read a statement announcing the decision of the central committee to dissolve the CPSA. Party members were informed at district meetings addressed by party leaders. Three to four hundred party members from the Johannesburg district assembled to

hear Moses Kotane, general secretary of the party. His brief remarks, explaining why the central committee had decided to dissolve the CPSA, were met with stunned silence. There were no questions and no discussion. In the words of Rusty Bernstein:

Was Kotane not covering the existence of an illegal successor to the party which was already being developed? We all had questions, but not ones that could be answered in public. What we wanted to hear, what we hoped to hear could not be spoken. We knew that. There was nothing to say. Finis. We sang the Internationale without enthusiasm for the last time, and went out into the night as though from a funeral. All our years of work and dedication had disappeared in dust - without warning. Only uncertainty and doubt about the future remained.⁸

There are no accounts of district party meetings held in other cities, but most likely many of the rank and file members elsewhere shared the same uneasiness of Bernstein and his Johannesburg cohort.

FROM DISSOLUTION TO RECONSTITUTION

Many party members believed that the decision of the central committee to dissolve the CPSA was part of a broader ploy to establish new underground party structures that would operate illegally. Two small groups took initiatives to form new underground communist parties, one of which was composed of Witwatersrand University students Joe Slovo, Ruth First, and Howard Wolpe. When the government 'liquidator', appointed under the Suppression of Communism Act, requested more than fifty former CPSA members in the Johannesburg area to show reason why they should not be 'named', many who had been contacted by the 'liquidator' came together in the Johannesburg barristers' chambers to discuss a common response. A committee, comprised of Moses Kotane, Yusef Dadoo, Bram Fischer, Michael Harmel, Rusty Bernstein, and Vernon Berrange, was elected to draft a reply to the 'liquidator'. Except for Berrange, all of the committee had been members of former CPSA central or district committees. Once the reply to the 'liquidator' was drafted and sent, the committee members, viewing themselves as "an elected body with some sort of a mandate from a substantial number of former Party members, who could give substance to a claim to be legatees of [the] Party's past traditions and prestige," undertook to create a new communist party.⁹

Four members of the *ad hoc* committee had participated in the central committee meeting that had decided to dissolve the CPSA. Kotane, Dadoo, and Fischer had supported the decision to dissolve the CPSA, while Harmel had opposed it. Neither Bernstein nor Berrange had been members of the central committee and thus had not been directly involved in the decision to dissolve. Joe Slovo, who had also not been on the central committee, but who had been a leader of the student group at Witwatersrand University that had established a new underground communist organization, was co-opted to the *ad hoc* committee.¹⁰

In a lengthy process of secret consultations, the *ad hoc* committee contacted all members of leading CPSA committees, regardless of their position on the question of dissolution, inviting them to consider joining a new underground party organization. How Moses Kotane, the secretary general of the dissolved CPSA and one of the members of the committee, carried out the task of the committee in the Johannesburg area was characterized by his biographer as follows:

Under surveillance all the time, Kotane had to act with extreme care, but step by step, he was able to establish contact with like-minded individuals and groups in Johannesburg and discuss plans for the launching of the new Communist Party. At the beginning, having no headquarters to operate from, he and his initial contacts used to meet at dawn, in the open veld, away from the urban centres, so that, hidden in the bushes, they would themselves be screened from observation while at the same time able instantly to detect the presence of any unwanted stranger. At each meeting they would make detailed arrangements for the next meeting, fixing the exact time and spot at which each comrade was to be picked up, and the time and spot at which he or she was to be set down. If cars were used for transport, they had to be changed from time to time. It was important that no regular pattern should be established; times, places and personnel were constantly varied. All written and telephone communication was banned.¹¹

Kotane and his group took the initiative in establishing contact with groups in Cape Town, Durban, Port Elizabeth, and elsewhere that were conducting similar consultations with former officeholders of the CPSA.¹² Although some prominent CPSA members declined to participate, a majority agreed to participate.¹³ The committee decided to undertake the building of a new, secret and illegal party.

According to Rusty Bernstein the *ad hoc* committee operated under two rigid rules: to keep totally silent about the existence of the Party; and to require a unanimous committee vote before anyone was approached to join. We developed new ways of meeting surreptitiously in unlikely places such as borrowed homes and offices, moving cars, country picnic sites and even night clubs by day. We persuaded the two embryo Party groups to integrate their unattached members into the more representative body we were forming, and started systematic recruiting of activists in all provinces from those known to us from their political past. Before long, there was a thin network across the country of groups with not more than four members each, unknown to each other without any contact between them.¹⁴

In 1952 the committee decided that a formal founding conference should be held with delegates from throughout the country. A complicated procedure was devised to select delegates.¹⁵

Early in 1953 - no source gives a precise date - some twenty five delegates met in the house at the rear of the shop of an Indian merchant in a rural area of the eastern Transvaal. Rules of organization, membership, and secrecy were adopted and a short statement of aims was agreed as an interim program. The new organization was formally named the South African Communist Party, distinguishing it from its dissolved predecessor, the Communist Party of South Africa. The delegates unanimously selected Yusef Dadoo as chairman and Moses Kotane as secretary. They were authorized to select a central committee on the basis of nominations of known or 'presumed' members made by the delegates. The two delegates who received the most votes (whose names were announced) joined the chairman and the secretary in designating the remainder of the central committee (whose names were not announced), keeping in mind demands of security and adequate regional representation. It was decided that party headquarters were to be in Johannesburg.¹⁶

FROM RECONSTITUTION TO UNDERGROUND 'SUCCESS'

In this fashion the reconstituted communist party, the SACP, commenced operations. From 1953 onward the SACP successfully operated as a clandestine party in accord with the guidelines laid down at its inaugural meeting. Apparently no one who was a member of the SACP revealed its existence and no one was prosecuted for membership in the SACP.

The SACP secretariat in Johannesburg, headed by Kotane, met frequently.¹⁷ Small party groups of four or five members, unaware of other similar groups in their district (or elsewhere in the country) met regularly to discuss the current political situation, the work of their group's members in trade unions and national organizations, and party matters. Party members were obligated to advance the theoretical knowledge of Marxism within the party itself and outside it. The latter activity was carried out in small groups, consisting of one or more party members and non-party members of nationalist organizations and trade unions, or in similar study classes designed to identify recruits for the party.¹⁸ District party meetings were held and, after 1953, five additional underground national conferences were held either in Johannesburg or vicinity through 1962.¹⁹ Party members at all levels participated in the deliberations of policy. In the words of Slovo:

Despite the post-1953 underground conditions, we continued to practise a good measure of internal Party democracy. The rank and file had the opportunity of debating major policy statements before they were finally adopted by the Central Committee. The leadership was re-elected at least once every two years at conferences attended by delegates from every district and who outnumbered members of the Central Committee.²⁰

Elections continued to take place under the formula agreed at the inaugural conference. Results were respected by the party leadership; only rarely was a candidate excluded who had won the necessary number of votes - and then on the grounds of security or the need to maintain adequate representation of all regions.²¹ The membership of the SACP apparently numbered no more than several hundred, but it was still asserted, particularly by the government, that 'communists' controlled the anti-apartheid opposition.²²

Accusations that communists controlled the ANC (and other organizations linked in the Congress Alliance) were a testimony both to the prominent positions that many former CPSA members held in these organizations and increasingly pro-Soviet pronouncements made by the ANC and its allies in the 1950s. Kotane and Dadoo, the top office holders in the SACP, had both been highly visible members of the CPSA. Both continued to be active in the leadership of the ANC and the SAIC, their respective national organizations. Other prominent African and Indian communists, including Marks and Bopape in the ANC and Kathrada in the SAIC, also continued in leadership positions. Many white CPSA members, after the formation of the white Congress of Democrats (COD) in 1953, took prominent positions in the COD nationally and locally. Rusty Bernstein found himself the COD representative on a national working committee to prepare for the Congress of the People. "As the only regular writer on the Committee" he was drafted to write the national call for the Congress.²³ He then subsequently drafted the Freedom Charter that was adopted with few changes by the Congress of the People at Kliptown in June, 1955.

Communists who had been active in trade unions of Africans, Indians, and Coloureds, including such stalwarts as Ray Simons and Raymond Mhlaba, also continued to work within the labor movement. Other communists (Ruth First, Brian Bunting, and Rusty Bernstein)

focused on journalism and became the mainstays of radical newspapers and journals such as *The Guardian* and *Fighting Talk*.²⁴ Communist lawyers, such as Bram Fischer, Joe Slovo and Vernon Berrange, maintained active practices beyond their participation in 'political' cases, while simultaneously participating in bodies such as COD. Because of their past membership in the CPSA as well as their continuing activism many communists were banned periodically, often for years, from participation in both political organizations and trade unions. Nevertheless, despite government restrictions upon their political activity, all found ways to maintain their involvement clandestinely throughout the 1950s, including the post-December, 1956 period when many party activists were among the 156 arrested and charged in the Treason Trial that dragged on in Johannesburg and Pretoria until 1961.

Although the tedium and inconvenience of the Treason Trial were heavy burdens for the communists and their allies, there is broad agreement that the consequences were highly beneficial. Those charged with treason were segregated in 'white' and 'black' prisons and in men's and women's sections of the prisons, but they came together each day in 1956 and 1957 in the common dock in the Drill Hall, a facility of the military reserve organization that had been converted into an oversized courtroom. In the unique hothouse of daily enforced proximity those charged with treason, communist and non-communist, from all population groups and from all parts of the country, found a new sense of solidarity and common purpose. In the assessment of Bernstein the government's aim of breaking the Congress Alliance was turned on its head by the process of the Treason Trial:

The leaders it was intended to cripple are more united and effective. The activists it was intended to demoralize and disperse have found new strength in unity. The inter-racial Congress front which it was intended to shatter has emerged stronger and closer. And frictions between communists and the rest which it was intended to enlarge have been resolved and laid to rest.²⁵

The Drill Hall had given rise to an extraordinary fraternity which became the bedrock from which the modern Congress was sprung. That close fraternal spirit was the core which held together the enduring unity of the liberation movement for the next forty years, and kept it free of the factionalism and strife which destroyed so many movements in so many other countries. It was the matrix of the singleness of purpose which distinguished Congress, inside and outside the country, in prison and in exile, until the end of the apartheid era.²⁶

Despite tensions on specific issues and campaigns within the Congress Alliance and the continuous pressure from the government, communists considered that the clandestine party was making great strides in advancing its goals.

FROM INVISIBILITY TO VISIBILITY

The 'success' of the CPSA helped to kindle an inner-party debate whether the party should abandon its invisibility and publicly declare its existence. The debate came to a head at the

national conference of the SACP in 1959 when a resolution was proposed that the SACP make an immediate announcement of its existence and 'emerge' to campaign openly. Frequently citing Lenin, those advocating a public declaration argued that secrecy "was spreading the illusion that socialism could be achieved without an independent party of the working class".²⁷ Their opponents "were less concerned with ideology than with the practical consequences of 'emergence'." They argued that invisibility "dispelled our allies' fear of a separate, and perhaps rival, communist agenda. 'Emergence' would be, at best, a gesture; but it could disrupt the established relations of trust between communists and the rest of the mass movement, and might well induce the legal organisations to repudiate co-operation with us in order to protect themselves."²⁸ According to Bernstein, the divisions over the proposed resolution were largely along racial lines. Those in opposition were mainly blacks associated with trade unions and the national movements of the Congress Alliance. Those supporting the motion for 'emergence' were mainly whites, who were not eligible for membership in the black components of the Congress Alliance and who were concentrated in the COD. The resolution failed by a slender majority.²⁹

Bernstein's compromise to 'defuse' the tension was a proposal that he had been considering prior to the conference - the circulation of communist educational and theoretical literature without party imprint. He suggested that the party publish a "regular journal of Marxist views on African and international affairs, without any identifying Party label." Both sides agreed, "perhaps as much as a gesture of peace as for its intrinsic merit. 'Emergence' was deferred *sine die* and the go-ahead was given for what was to become *The African Communist*."³⁰

SHARPEVILLE AND ITS CONSEQUENCES

The events of 1960 gave the SACP new opportunities to test its mettle. The anti-pass campaigns of early 1960, highlighted by the Sharpeville massacre on March 21 and the subsequent march of thousands of Africans into the center of Cape Town on March 30, culminated with a declaration by the government of a state of emergency. The speedily enacted Unlawful Organizations Act was used to ban the ANC (as well as the Pan Africanist Congress). Along with thousands of ANC members and other anti-apartheid activists, including members of the Liberal Party, leading communists were detained under the state of emergency. Among those detained were most of the members of the central committee. Only a few members of the SACP leadership escaped and went underground in Johannesburg. They included Yusef Dadoo, (chairman of the SACP), Moses Kotane, (secretary of the SACP), Michael Harmel, (a member of the central committee), as well as Ben Turok, (not a member of the central committee). Turok was representative of a new party generation who had been recruited directly into the SACP; he had not been a member of the CPSA.

Against the odds and to the fury of the government security forces, the small core of party members who had escaped reestablished a functioning center of party operations in Johannesburg. Dadoo went into exile after a few weeks.³¹ Kotane, Harmel, and Turok, supported by a few trusted party couriers and sympathizers, moved through ten different 'safe' houses for the next five months. They met daily or every other day to coordinate and direct activities. A few other senior party members who had escaped the government dragnet met

with the three at irregular intervals in one of the 'safe' houses, on the street or in automobiles, but it was Kotane, Harmel, and Turok who comprised the new *ad hoc* troika directing SACP. Often donning disguises when they ventured outside of the 'safe' houses, they successfully contacted party members who had also escaped imprisonment in the Johannesburg area, but also in Cape Town, Durban, Port Elizabeth, and elsewhere. Printing depots were established in Johannesburg and in major townships around the country from where leaflets were printed and distributed.³²

Midway during the state of emergency the issue of 'emergence' dramatically surfaced in a specially called meeting of the leaders not in prison. Three or four other leaders of the party had joined Kotane, Harmel, and Turok in a 'safe' house. One of the party leaders was Joe Matthews who had come from Lesotho disguised as an Indian merchant; the names of the other two or three participants are not mentioned by Turok.³³ Turok's account of the discussion about 'emergence', written some 42 years after the event, catches the high tension surrounding the issue:

In the midst of the discussion about the current situation, Michael Harmel raised the question of the party announcing its existence. He argued that with the banning of the ANC and the proscription of legal work, a new situation had arisen in which both the party and the ANC were in the same situation. There was therefore no formal reason for the party to maintain its former secrecy. Michael's statement was totally unexpected and a hush fell over the meeting as each of us digested it.

I saw Moses blanch and sit tight-lipped during Michael's presentation. Others shuffled their feet. After a lengthy pause, comments came and were generally cautious. People were feeling their way around the issue. Someone raised the question of the strength of the government and our own weakness, the danger of a backlash and the harm it might cause to unity within the Congress Alliance. Then Moses launched a strong attack, arguing that this was premature and unnecessary and that it would cause an enormous rift within the ANC. He thought it was wrong to make such a move while leaders were in prison and could not be consulted. Those who were not communists would feel that they had been stabbed in the back. Here were the two giants with whom I was in constant contact and whose unity was essential to survival during the emergency and they were clashing over this most fundamental of issues. I wish I could now recall the details of the debate more clearly, but I was too stunned.³⁴

After further discussion each person in the room was asked for his view. All the others supported Harmel, "leaving Moses isolated and looking very miserable. He shuffled his feet, clasped and unclasped his hands nervously, and seemed to be pressed to the limit of his endurance. But he remained in control, accepted the decision, and we moved on to discuss implementation."³⁵

The rump central committee, seemingly acting on Harmel's impulse, had overruled the majority of the elected central committee that had previously blocked 'emergence'. Harmel and Turok then drafted a leaflet. Kotane approved the text. It was printed using the depots that had been established by the party during the state of emergency. On July 14 the leaflets were distributed in the Johannesburg area and then elsewhere in South Africa. The party members who had been opposed to 'emergence' were surprised by the decision but accepted it as

appropriate.³⁶ The previously invisible SACP had become a visible 'illegal' body seven years after its creation.

OPTIMISM DESPITE INTENSIFIED REPRESSION

The state of emergency was lifted on August 31, 1960. Party members and allies in the Congress Alliance were released from detention. As Bernstein remembered it, the mood among them was "difficult to assess." Although the ANC had vanished, its activists were reconstituting their political activities in new modes. "Security, secrecy and caution had become the watchwords of survival."³⁷ The 'emergence' of the SACP was a "damp squib" according to Bernstein; it "made relations between Party and ANC simpler and less hedged about with concealments. And it dispersed some of the mutual suspicions about hidden agendas and motives which had tended to come between Party 'insiders' and non-communist ANC 'outsiders'."³⁸

Those who had led the underground troika were under great strain. At a meeting of the troika and central committee members resident in Johannesburg it was decided to return leadership of the SACP to the central committee and not to continue with the fully underground troika leadership that had stewarded the party through the state of emergency.³⁹ In the estimation of Bunting's biographer the SACP emerged strengthened from the state of emergency - relations between communists and its non-communist allies were further cemented and party organization had been "raised to new heights."⁴⁰

In the immediate post-emergency situation the situation seemed much the same as it had been prior to the emergency. South African communists now had a decade of illegality behind them. The secrecy of the SACP in its seven years of existence as an invisible clandestine body had never been breached. Its work within the Congress Alliance had borne rich fruit. While the government, after a few days of uncertainty immediately after the Sharpeville massacre, had shown its determination to use its powers of emergency to suppress its opponents, it had not apparently departed radically from the security and policy practices that had characterized it through the 1950's.

Building upon its established tactics of clandestine activity the party embarked upon an ambitious forward-looking program to escalate its challenge to apartheid. It continued to work with members of the ANC and other like-minded allies within the Congress Alliance to utilize the greatly constricted 'twilight zone' of semi-legal political space. It undertook initiatives to establish its presence outside the country in tandem with similar initiatives taken by the banned ANC. It supported the efforts of the ANC to establish an underground presence, symbolized by Nelson Mandela's travels overseas and his 'black pimpernel' existence in South Africa before his capture in August 1962. In mid-1960 it accepted that there must be a turn to organized violence against the state. With carefully chosen allies in the ANC who had also accepted that violence must be utilized, the SACP created Umkhonto we Sizwe to undertake a campaign of sabotage and then move beyond to organize for guerrilla activity. The purchase of Rivonia in a northern suburb of Johannesburg as a 'safe house' for the leadership of Umkhonto testified to the confidence of the SACP leadership that its hitherto successful modes of seemingly secure

underground operation could be extended to the direction of a sabotage campaign and planning for a more expansive armed struggle.

THE SHOCK OF RIVONIA AND ITS AFTERMATH

In light of its previous successes in concealing so many of its activities from the security services, the SACP leadership had grounds to hope that it could continue to do so with its daring new enterprise. But it had neither fully appreciated the potential of the government's new security legislation nor the nature of the transformation of the security services. When the government responded to the December 1961 start of Umkhonto's sabotage campaign with the enactment of new 'legal' measures, including 'house arrest' and detention for lengthy periods - eventually indefinitely - party members were immediately vulnerable. Although none were acknowledged members of the public, but still clandestine, SACP, most were highly visible activists known to the security services. The security services of the 1960's, in contrast to those of the 1950's, were shown to be a technologically sophisticated force willing to utilize psychological and physical torture upon detainees held under the newly enacted statutes. The crowning blow to the edifice built so painstakingly by the SACP was the Rivonia raid of July 11, 1963, in which the security forces captured key SACP and ANC leaders of Umkhonto we Sizwe along with a treasure trove of incriminating documents.

Uncompromisingly employing its new 'legal' powers, the enhanced capabilities of the security services, intimidation of activists, and torture of detainees, the government brutally destroyed the internal organization of the SACP in the three years following the Rivonia raid. Its leaders were arrested, tried, and imprisoned or went into exile. The middle and lower levels of the party within the country were also destroyed.

Writing in exile in 1976 Slovo soberly analyzed the main weaknesses of the party and its allies that led to the debacle:

First, the movement's own security screen which had seemed adequate in the previous period, proved inadequate after the regime had refashioned its own instruments to meet the new challenge. The immunity of the earlier period had bred a mood of carelessness and bravado which was, in the end, to prove costly. The majority of leaders and rank-and-filers taking part in illegal activity were well known to the authorities from the period of public campaigning, and very few of them 'went underground' in the sense of changing their identities and operating under a protective security screen.⁴¹

Slovo pinpointed the Rivonia underground headquarters as a point of vulnerability. The "organizational nerve centre of the struggle had come to be centred around this one headquarters; and there the lines of demarcation between the political and military organizations became impermissibly blurred."⁴² In the wake of the raid upon Rivonia the full weight of the new practices of the security services fell upon the detained members of the movement. "Many resisted bravely but the majority who were subjected to standing torture, sleep deprivation and similar methods proved unable to resist." In Slovo's view the "basic rule of conspiratorial work that the destructive effect be contained within the smallest possible limits" was broken with the consequence that "successful interrogation under torture of many of

those detained set up a chain reaction which made it easier for the security forces to immobilize almost every level of the movement's apparatus."⁴³

RESURRECTION AND POST-1990 LEGALITY

The mid-1960's decimation of the SACP was not followed by another relatively quick resurrection like the one that followed the dissolution of the CPSA in 1950. In contrast the second resurrection was a decades long process, initially spurred and coordinated by the exile apparatus of the SACP. Although the party's existence was not hidden as it was throughout the 1950's, most of its activities were clandestine, by necessity underground in South Africa and for political and security reasons only selectively visible in the locations where it operated in exile in Europe and Africa. The details of the fashion in which the SACP regrouped, both in exile and within South Africa, still are to be fully explicated, but the overarching features of its second resurrection are well known.

A major feature of the thirty years from 1960 to 1990 was a deepening collaboration with the ANC, the full nature of which will continue to be a subject for further research, discussion and reassessment. Building upon links forged in the 1950s (and even prior to 1950), the SACP as an organization worked closely with the similarly banned ANC - underground (including prisons) in South Africa and outside the country in the organization of armed struggle (centered in Umkhonto we Sizwe), and in anti-apartheid activities throughout the world. In keeping with party policies, SACP members joined the ANC (whose membership after 1969 was opened to non-Africans) and ANC members were selectively recruited to the SACP. The close ties between the two political organizations were symbolized by appearances of ANC leaders at reported SACP gatherings and by SACP spokesmen in ANC meetings and publications. Following the organization of the Congress of South African Trade Unions (COSATU) in 1985, representing tens of thousands of workers within the country, the ANC, COSATU, and the SACP came together in 1988 in Harare in a formal tripartite alliance, dedicated to the destruction of the apartheid state. Only when the party was unbanned in South Africa in 1990 did the SACP emerge for the first time as a 'legal' party, following the precedent of its predecessor, the CPSA.

In the transition period from 1990 to 1994, while the National Party still remained in formal control of government, the SACP suffered residual suspicion and hostility from the government as it sought to establish itself as an independent and 'legal' political party, allied with the ANC and COSATU. With the advent of full democracy in 1994 the situation of the SACP was irrevocably altered.

In the first democratic election under the 1994 constitution, the SACP chose not to run as a separate party, but to give full support to the ANC. Many party members were nominated as ANC parliamentary candidates and as such were elected to parliament. Prominent communists subsequently became ministers in the ANC-led government, subject to the leadership and directives of the ANC, the senior partner in the Tripartite Alliance with COSATU and the SACP. Within the Tripartite Alliance the SACP has periodically criticized ANC policies and the failure of ANC leadership to accept its views, but it has continued to reaffirm its adherence to membership in the Alliance.

Simultaneously, the SACP maintains its existence as a separate political party that "strives to be the leading political force of the South African working class whose interests it promotes in the struggle to advance, deepen and defend the national democratic revolution and to achieve socialism." Its constitution proclaims that it is "guided by those principles of Marxism-Leninism whose universal validity has been proven by historical experience." The document also states that "the ultimate aim of the SACP is the building of a communist society in which all forms of exploitation of person by person will have ended and in which all the products of human endeavour will be distributed according to need. The attainment of such a society will require an interim socialist formation in which reward will be measured by contribution." Membership in the SACP is open to "all South Africans over the age of 16 who accept the programme and policies of the SACP, undertake to carry out its decisions and to be active in a SACP structure and pay whatever dues are decided on".⁴⁴

'LEGAL' COMMUNISM: FROM 1921 TO 2007

The 'legal' SACP of 2007 is the direct lineal descendent of the also 'legal' CPSA of 1921-1950, but its status, particularly since 1994, bears only limited resemblance that of its predecessor. In 1950, on the eve of its dissolution, the CPSA was a small party, unallied with any other political organization, persecuted by the National Party government, and under attack by prominent members of the ANC, the leading political body of the African majority. In the first decade after its dissolution, operating in the face of sustained government persecution, the party not only resurrected itself organizationally, but more importantly its members became leading and accepted activists within the ANC and its allied anti-apartheid organizations. By 1960, when the SACP revealed its existence, it seemed to believe that it had found the means to operate successfully in clandestine fashion under the nose of the National Party government. Rivonia and its aftermath revealed that the SACP had profoundly misestimated both its own powers and the determination of the government.

When the ANC also was driven underground in 1960 and persecuted as ruthlessly as were the communists, both organizations as they had existed in the 1950s were destroyed and many of their leaders were imprisoned or escaped into exile. Building upon the network of personal and organization links developed in the years of 'hidden communism', the SACP over more than four decades has not only resurrected itself again, but also consolidated its complex intertwined relationship with the ANC in which the SACP (with its membership of tens of thousands) remains the 'junior' partner to the governing ANC (with its membership of hundreds of thousands). The persistence to date of the alliance of the two organizations into the 21st century testifies both to the strength of the bonds formed in adversity during the decades of the common struggle against apartheid and to the differing, yet convergent, interests of both parties in maintaining historically rooted connections.

Notes:

1. Carter, 70.
2. Joe Slovo, "Apartheid", (Part II), *Frontline*, PBS Television, 1985. Ten years later, in his autobiography, Slovo wrote: "In my experience of numerous political trials I rarely

cross-examined a Special Branch man who lied on fundamental matters. Assaults on political prisoners were extremely rare. The right of access to lawyers immediately on arrest was still in existence and, in any case, the law obliged the police to produce a prisoner and formally charge him in a court of law within 48 hours of his detention. The right to home privacy was still entrenched and no search could take place without a magisterial warrant. I recall an occasion when Head Constable Dirker, who had come to search Michael Harmel's house, was asked whether he had a warrant. He sheepishly replied that, being in a hurry, he had taken the wrong file and Michael's warrant was still in his office..This kind of bumbling ineptitude was soon to end. Already by the middle and late 1950s the new crop of security officials had been sent to foreign institutions which specialized in teaching techniques of mental and physical torture and the most scientific way to break the human spirit. They went to the United States, which had begun to accumulate field experience in Vietnam, to fascist Portugal and to Algeria, where the French were still trying to resist the popular onslaught." Slovo, 1995: 86.

3. The following autobiographies, memoirs, or biographies have been consulted: Rusty Bernstein, *Memory Against Forgetting* (London, Viking, 1999); Brian Bunting, *Moses Kotane: South African Revolutionary* (Cape Town, Mayibuye Books-UWC, 1998); Stephen Clingman, *Bram Fischer: Afrikaner Revolutionary* (Cape Town/Bellville/Amherst, David Philip/Mayibuye Books/University of Massachusetts Press, 1998); Ahmed Kathrada, *Ahmed Kathrada: Memoirs* (Cape Town, Zebra Press, 2004); Ismail Meer, *A Fortunate Man* (Cape Town, Zebra Press, 2002); Martin Meredith, *Fischer's Choice: A Life of Bram Fischer* (Johannesburg and Cape Town, Jonathan Ball Publishers, 2002); Thembeke Mufamadi, *Raymond Mhlaba's Personal Memoirs: Reminiscing from Rwanda and Uganda* (Pretoria and Robben Island, Human Sciences Research Council and Robben Island Museum, 2001); Ray Alexander Simons, *All My Life and All My Strength* (Johannesburg,: STE Publishers 2004); Joe Slovo, *Slovo: The Unfinished Autobiography* (Randburg, Ravan Press, 1995); Ben Turok, *Nothing But the Truth: Behind the ANC's Struggle Politics*, (Johannesburg and Cape Town, Jonathan Ball Publishers, 2003). With the exception of the biography of Moses Kotane by Brian Bunting all books were first published in 1995 or afterward. The Bunting book cited here was published in South Africa for the first time in 1998 with a brief introduction by Brian Bunting; it appeared earlier in two editions published by Inkululeko Publications in London, the publishing arm of the SACP.
4. Bernstein, 124.
5. Bunting, 178.
6. Simons, 196.
7. W.H. Andrews and Michael Harmel voted against the motion to dissolve.
8. Bernstein, 122.
9. Bernstein, 127.
10. Slovo, 1995: 84.
11. Bunting, 197.
12. According to Bunting, 197-98, "In Cape Town they met sometimes in houses, sometimes on the slopes of Table Mountain or in the thickets of the Cape Flats." Raymond Mhlaba, district secretary of the CPSA in Port Elizabeth at the time of

- the party's dissolution, has recalled his participation in the reconstitution of the party in his memoirs. Mufamadi, 93.
13. Bernstein, 127-128, notes that Harry Snitcher, Jack Simons, and Ike Horvitch in Cape Town and Issy Wolfson, Danie Du Plessis, and Edwin Mofutsanyana from the Johannesburg district declined to join a new underground party. At the request of Kotane, Brian Bunting met with Jack and Ray Simons. Ray Simons, 276, described the meeting as follows: "Brian Bunting came to ask Jack and I whether we would rejoin the Party. Jack walked out of the meeting, but Brian persisted: 'What about you?', he asked, and I answered, 'I have always been a Communist and I'll always remain a Communist'." According to Bernstein, 128, Jack Simons (who joined the SACP only later when he was in exile in Zambia): "considered that all our political purposes could be fully achieved through the legal national and trade union movements, without the need for an independent Party."
 14. Bernstein, 129.
 15. "Every group would propose one of its own members as a putative delegate, and then add the names of others it *guessed* might be members. The committee would trim the list of nominations to eliminate wrong guesses, and provide a final list, balanced to reflect the racial, gender and geographic character of the membership. Not quite Westminster style democracy, but as close as we dared to go." Bernstein, 130.
 16. The account of the founding conference of the SACP is drawn from Bernstein, 130-31. The procedure for the selection of the Central Committee is drawn from Slovo, 1995: 108, and is an amplification of the procedure described by Bernstein, 131.
 17. Bram Fischer's biographer states that the secretariat met "several times each week". Meredith, 42.
 18. Turok, 91-92, offers a glimpse into his work with Marxist study groups. Kathrada, 108, more tersely states in his memoirs that his small party unit of three or four persons "engaged in political education among ourselves and looked for potential recruits."
 19. Slovo, 1995: 84, states: "between 1952 and 1962 the Party had six underground conferences". It seems clear that the date 1952 refers to the inaugural SACP conference that all other sources cite as having taken place sometime in 1953. Slovo is most likely citing 1952 as the year in which the bulk of the preparatory work for the inaugural conference took place.
 20. Slovo, 1995: 108.
 21. Slovo, 1995: 108.
 22. Turok, 45, writes in his autobiography: "the party was very small, possibly numbering less than a hundred members throughout the country". Bram Fischer's biographer states a similar figure: "fewer than 100 members were at the core of Communist Party activity, most of them living in the Transvaal." Meredith, 42.
 23. Bernstein, 149. Bernstein, 141-56, describes at length his role in drafting both the call for the Congress of the People and the Freedom Charter in his memoirs.
 24. In his memoirs Bernstein, 140, describes how *Fighting Talk* (FT), originating as the publication of the Springbok Legion during World War II, was transformed into an independent radical journal, primarily edited by Ruth First, oriented toward the

Congress Alliance. "After the cutting of the umbilical cord to the Legion, people took *Fighting Talk* to be a limb of the COD - which it was not. It was wholly independent, Congress aligned, but answerable only to its own Board." He wrote further, 141, that "Gradually we established *FT*, not as the Congress voice but as the thinking Congressite's guide to the political scene." Also independent, and also aligned with the Congress Alliance, was the theoretical journal, *Liberation*, in which communists and non-communist nationalists and radicals published analyses and viewpoints. Michael Harmel was a major figure in the operation of *Liberation*.

25. Bernstein, 180.
26. Bernstein, 181.
27. Bernstein, 132-33.
28. Bernstein, 133.
29. Bernstein, 133.
30. The first issue of *The African Communist*, appeared in October 1959, under the editorship of Michael Harmel, informing its readers that it was a quarterly publication ".started by a group of Marxist Leninists in Africa". Party members in the Johannesburg area prepared the typewritten master on a wax stencil and printed around one thousand copies that were distributed. Immediately it was evident that demand exceeded supply, both inside of South Africa and elsewhere on the continent and beyond. Through a group of South Africa student supporters of the party in London, an appeal for assistance was made to the Communist Party of Great Britain (CPGB). The British party made "a grand fraternal gesture - arrangements for the printing and dispatch of future issues from Britain under the control of the South African group". Editorial control remained the responsibility of the SACP in South Africa, but a CPGB member agreed to act as nominal publisher to comply with British law. Subsequently, the operation outgrew the resources available in London. The ruling communist party of the German Democratic Republic undertook publishing responsibilities with copies being sent in bulk to London for distribution. The arrangements continued until the collapse of the German Democratic Republic in the early 1990s. See Bernstein, 133-34, from which this account of the start of *The African Communist* and its subsequent development is drawn. The publication of the first three issues of *The African Communist* is also discussed in Bunting, 258-60.
31. According to Bunting, 262, "the Party centre decided in consultation with the S.A. Indian Congress that Dr. Dadoo should be sent overseas to assist with the organization of solidarity work and consolidate the external apparatus of the Party."
32. The above account of the operation of the *ad hoc* SACP leadership core during the 1960 state of emergency is drawn from two sources: Bunting, 260-62, and Turok, 103-18. The Bunting account, written in the 1970's, is brief and focused upon the achievements of the core. It does not mention Turok. The Turok account, written in 2002-2003, long after the deaths of Kotane and Harmel in the 1970s, is the lone account written by a participant. Its focus is more upon how the core operated and includes Turok's very personal assessments of Kotane and Harmel, as well as assessments of Mhlaba and Fischer whom he also worked with during this period.

33. Turok, 116.
34. Turok, 116-117.
35. Turok, 117. Bunting, 258, Kotane's biographer, makes no mention in his account of the meeting at which it was decided to 'emerge' the party. But he does elaborate the nature of Kotane's opposition to 'emergence', emphasizing that Kotane ultimately accepted that it should not be done "until the Party's full weight could be thrown behind a unanimous decision".
36. See, for example, Bernstein, 218-19.
37. Bernstein, 217.
38. Bernstein, 219.
39. Turok, 119.
40. Bunting, 263.
41. Slovo, 1976: 191.
42. Slovo, 1976: 191.
43. Slovo, 1976:192.
44. The quotations are drawn from the Constitution of the South African Communist Party, as amended at the 11th SACP Congress, July 24-28, 2002, as cited on the website of the South African Communist Party:
http://www.sacp.org.za/index.php?option=com_content&task=view&id=129&Itemid=67

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"Mannenberg": Notes on the Making of an Icon and Anthem¹

JOHN EDWIN MASON

Abstract: Abdullah Ibrahim's [Dollar Brand] composition "Mannenberg" was an instant hit, when it was released on the 1974 album, *Mannenberg is Where It's Happening*. This paper shows that the song is a product of Ibrahim's efforts to find an authentically South African mode of expression within the jazz tradition, blending South African musical forms -- *marabi*, *mbaqanga*, and *langarm*--with American jazz-rock fusion. It quickly became an icon of South African jazz, defining the genre both within the country and overseas. At the same time, the South African coloured community invested the song with their own meaning, transforming it into an icon of their culture and of themselves. In the 1980s, "Mannenberg" had a second life as an anthem of the struggle against apartheid. Some called it South Africa's "unofficial national anthem." Once again, the song acquired a new meaning, this time through the efforts of musicians, especially Basil Coetzee and Robbie Jansen, who made it the musical centerpiece of countless anti-apartheid rallies and concerts. As the paper traces this narrative, it is constantly aware of the profound influence of African-American culture and political thought on Ibrahim and the coloured community as a whole.

Introduction

On a winter's day in 1974, a group of musicians led by Abdullah Ibrahim (or Dollar Brand, as most still knew him) entered a recording studio on Bloem Street, in the heart of Cape Town, and emerged, hours later, having changed South African music, forever. Together, they had created "Mannenberg," a song which quickly became a national and international hit. The album on which it appeared, *Mannenberg is Where It's Happening*, sold more copies in 1974 and 1975 than any jazz LP recorded in South Africa and reestablished Ibrahim as South Africa's leading jazz musician.² But the song was much more than a mere best seller. In the years after its release, "Mannenberg" gained almost universal recognition as "the most iconic of all South African jazz tunes."³ The release of "Mannenberg" was also the moment when it became clear that a new musical genre had emerged. Known internationally as South African jazz and locally as Cape jazz or the Cape Town sound, it was something towards which Ibrahim had been working for over a decade. "Mannenberg" was not the first and, perhaps, not even the best example of this new style. But the song was the first to bring it to a wide public. Just as significant, however, was "Mannenberg's" second act, which began several years after its

John Edwin Mason teaches African history and the history of photography at the University of Virginia. He is the author of *Social Death and Resurrection: Slavery and Emancipation in South Africa* (2003) and many articles and reviews on South African history, jazz, and popular culture. He is pursuing two multi-year documentary photography projects, one on drag racing in the American South and the other on the New Year Carnival in Cape Town. He is also an active freelance musician and a member of the French horn section of the Lynchburg (Virginia) Symphony Orchestra.

<http://www.africa.ufl.edu/asq/v9/v9i4a3.pdf>

release. During the climax of the anti-apartheid struggle in the 1980s, many South Africans embraced it as "a popular metaphor for all the townships where trouble brewed."⁴ Giving voice to the dreams of the dispossessed, it was the sound of freedom or, as many called it, South Africa's "unofficial national anthem."⁵

The idea that "Mannenberg" the best-seller would someday metamorphose into "Mannenberg" the struggle anthem would have surprised anyone who heard it in 1974. Its struggle credentials are by no means obvious. It is a song with few words, a lilting melody, and a gentle, hypnotic groove. There is, seemingly, nothing angry about it, nothing that would inspire people to stand up to the teargas, whips, and bullets of the apartheid state. And, yet, it did just that. The "Friday night song" became an anthem.⁶ This transfiguration was, in part, a function of the song's inherent beauty and Ibrahim's association with it. But more importantly, it was the work of Basil Coetzee and Robbie Jansen, two of the musicians who recorded the tune with Ibrahim on that day in 1974. They made the hit an anthem by placing it at the musical center of countless anti-apartheid rallies, demonstrations, and benefit concerts throughout the 1980s. When Coetzee or Jansen played "Mannenberg," musicians flooded the stage to jam, and evoked a collective response, a kind of politically charged ecstasy, from everyone present. The song's popularity and the political context within which it was being played allowed the musicians to create moments of intense emotion and solidarity, making the song, in the words of an anti-apartheid newspaper, "a symbol of our hardship."⁷ This, then, is a story about one song with two lives.⁸

MODERN JAZZ

We begin with Abdullah Ibrahim, the man credited with composing "Mannenberg" and leader of the recording sessions that put the song on vinyl. He was born Adolphus "Dollar" Brand, in Cape Town in 1934. In many ways, he reflects that city's polyglot nature. His ancestry is mixed, making him "coloured," in the South African scheme of things, a member of Cape Town's largest racial community and one with a rich musical heritage. Yet his musical influences cut across vast distances of time and space. His mother played the piano in a local congregation of the African Methodist Episcopal Church [AME], a black American denomination that had sent missionaries to South Africa in the late nineteenth century. She encouraged his early enthusiasm for music, and, indeed, the stately chord progressions of the AME hymnal have provided much of the harmonic foundation for his music ever since.⁹ By the time he reached his mid-twenties, he had mastered virtually all the popular musics of the day, having apprenticed in Cape Town and Johannesburg with African jazz bands, playing *marabi*, *mbaqanga*, and American jazz standards, and with coloured *langarm* dance bands, which relied on waltzes, foxtrots, and South African styles such as *vastrap* and *ticky-draai*. Immensely talented, he had quickly become one of the leading figures in the flourishing Cape Town and Johannesburg jazz communities.¹⁰

In 1959, Ibrahim, Kippie Moeketsi, Hugh Masekela, Jonas Gwangwa, Johnny Gertze, and Makaya Ntshoko formed the Jazz Epistles. It was a diverse group--Coloureds and Africans, local heroes and relative unknowns, men from Cape Town and from Johannesburg--united by their allegiance to modern jazz. The Epistles emulated New York-based African-American

musicians, such as Thelonius Monk, Dizzy Gillespie, and Charlie Parker, whose music constituted a substantial part of their repertory, as did their own compositions.¹¹ Although the Epistles were neither the first nor the only South Africans to play modern jazz, most observers at the time and since have called them the most influential. Moeketsi, the leading saxophonist of the era, called it "the best band I ever played in."¹² Although modern jazz (or bebop) formed the basis of the group's repertory, Ibrahim, at least, drew on local musical idioms in private. Masekela, for instance, recalls that Ibrahim "often regaled" fellow musicians "with folk songs from Cape Town's colored [sic] minstrel carnival."¹³ *Drum* magazine described a late night party at which he mimicked Elvis Presley, as well as coloured and African popular music.¹⁴ In public, however, Ibrahim and the Epistles avoided local music. The single album that they released might as well have been recorded in New York or Detroit. The sound is pure bebop, pure modern jazz.¹⁵

The Epistles, similarly inclined musicians, such as Chris McGregor, Cups Nkanuka, and Harold Jephtha (who were white, African, and coloured respectively), and their fans constituted what Valmont Layne calls a "hipster breakaway."¹⁶ They defined themselves in opposition to conventional South African society, whether black or white. They were urbane and cosmopolitan; they flouted South Africa's racial etiquette and, more crucially, its racial laws; they were self-consciously bohemian. This small interracial community of musicians and fans, arising in Cape Town, and to a lesser extent, in Johannesburg, emulated American beboppers and beatniks.¹⁷ *Drum* magazine, which throughout the 1950s and early 1960s chronicled all that was hip, played along, asking whether Ibrahim was "crazy," a "genius," or a "beatnik."¹⁸ While acknowledging that Moeketsi was "a great and devoted musician," it called him "the problem child of music, the naughty Puck with a profound weakness for a shapely leg."¹⁹ More recent commentary follows the same pattern. David Coplan notes that Moeketsi not only tried to play like [Charlie Parker] but to dress, talk, and act like him. Kippie played the role of the hard-drinking, irresponsible, arrogant jazz genius, damaging his reputation in both the black community and black show business, where the erratic, alienated hipster image seemed conceited, anti-social and amoral.²⁰

While modern jazz never attracted a large following, the musicians, intellectuals, writers, and activists who were among its fans ensured that its impact South African music, and on the culture generally, was substantial.

The Epistles and other South African modern jazz musicians shared more than songs, clothes, drugs, and booze with their American counterparts. They also shared their "continuous and rigorous attack on artistic convention," as well as its "alienation from society and antagonism toward its audience..."²¹ Ibrahim, who fellow Cape Town pianist Vincent Kolbe remembers as "very serious" about his art and unconcerned with commercial success, made few concessions to his audience, sometimes telling "[a]nyone who doesn't like the music or can't understand this music, please leave!"²² While South African jazz musicians generally avoided political activism, social alienation and musical inaccessibility are, as Brian Ward has noted, political statements in and of themselves, as are personal and sartorial style.²³ Those who see the Epistles as the very embodiment of the "New African"²⁴ (urban, urbane, and quasi-Americanized) have a point.²⁵ They were engaged in a kind of cultural guerilla warfare against

the laws, values, and expectations of the apartheid state. As we shall see, the state certainly viewed them and their music with deep suspicion.

Politics and music built on alienation and inaccessibility have their limitations, of course. Most importantly, neither is likely to attract much of a following. The music's complexity drove some musicians and potential fans away, making it "the vehicle for a new form of self-expression" for only "a small handful" of South Africans.²⁶ Sammy Maritz, a Cape Town bassist who played with Ibrahim often, says that many musicians were "scared to play that music" and that those who did master it found it "difficult to transfer over to the people, the audiences."²⁷ At the same time, its reliance on African-American styles and its reluctance to embrace local musical forms meant that many South Africans heard in it little that reflected their lives, histories, and cultures. This point was not lost on Ibrahim, even though it would be several years before he acted on it.

Despite its small audience, modern jazz perplexed the apartheid state, which attacked it (and less obscure jazz styles) relentlessly during the repression that followed the Sharpsville massacre of March 1960.²⁸ The police progressively shut down racially integrated nightclubs and enforced statutes which prohibited both black musicians from playing before white audiences and musicians of different races from performing together.²⁹ Commercial pressures also undermined the jazz scene as consumers turned to rock and pop. Erza Ngcukana, a Cape Town jazz saxophonist, remembers that he "had to start playing in rock and roll bands to earn a living. It was horrible...."³⁰ The Jazz Epistles broke up, and, in 1962, Ibrahim left South Africa for Switzerland and, eventually, the United States.

NEW YORK

In the early 1960s, many South African musicians--black, white, and coloured--found themselves "pressured into exile, retirement, or an early grave."³¹ Ibrahim's exile was self-imposed and intermittent. He left South Africa in 1962, motivated, he has said, by artistic as well as political concerns. With the South African jazz scene dying, he felt creatively stifled. He was also, in his words, "subject to harassment and arrest, just like everybody else."³² He settled briefly in Zurich with his wife-to-be, the singer Sathima Bea Benjamin. Not long afterward, Duke Ellington heard Ibrahim and his trio perform and was captivated. He immediately arranged for a recording session in Paris. The resulting album, *Duke Ellington Presents the Dollar Brand Trio*, marked the emergence of a major new talent on the international scene.³³ Despite the musicians' South African origins, or, perhaps, because it was recorded for the American and European markets, the influence of Thelonious Monk and Ellington himself shapes the group's sound. Little about the music is particularly South African.³⁴

By the mid-1960s, Ibrahim was living in New York City and had become acquainted with avant-garde exponents of free jazz, such as John Coltrane, Ornette Coleman, Don Cherry, Pharaoh Sanders, and Archie Shepp, and with beboppers such as Monk, Elvin Jones, and Max Roach. Although his income was as unsteady as any jazz musician's, he scored a number of professional successes. The *New York Times* published a glowing review of his Carnegie Recital Hall debut; the Rockefeller Foundation awarded him a grant to study composition with Hall Overton at the Juilliard School of Music; and, perhaps most impressively, he substituted for

Duke Ellington, playing piano with the Ellington orchestra on five occasions in 1966, while the grand old man was in Los Angeles working on the soundtrack for the film *Anatomy of a Murder*.³⁵

Ibrahim had arrived in the United States at a particularly heated moment in the life of the nation and, in particular, the African-American community. Although the slogan "Black Power" had been heard before, it truly entered the American political vocabulary on 16 June 1966, when Stokely Carmichael shouted the words at a rally in Greenwood, Mississippi.³⁶ The slogan resonated with both political and cultural meanings. On the one hand, it signaled African-American's desire to "control their own lives, destinies, and communities."³⁷ On the other, it was an "affirmation of a positive black culture and identity" that had to be respected and preserved.³⁸ Among the manifestations of this new wave of cultural nationalism was the Black Arts Movement. The movement was an "awakening" of a loose coalition of artists, writers, and musicians, who were united by a common "belief in the positive value of blackness." Jazz was its music.³⁹

Or jazz was at least the music of many of the writers and activists who made up the intellectual brain trust of the movement. For them, jazz (especially free jazz, the more inaccessible the better) was "the blackest of the arts." Cultural nationalists celebrated the music of Coltrane, Coleman, Cherry, Sanders, and Shepp, among others, men who were some of Ibrahim's closest collaborators.⁴⁰ In an interview, Ibrahim remembered that "We were all like a close-knit unit. ...we were all friends.... We practiced for many hours a day with a vengeance."⁴¹ The musicians themselves understood the relationship between culture and politics. Miles Davis once said of Coltrane: "Trane's music... represented, for many blacks, the fire and passion and rage and anger and rebellion and love that they felt...."⁴² Free jazz was certainly revolutionary, but it was deeply embedded in tradition as well. Musicians drew upon and celebrated the entire history of African-American music, from the spirituals, work songs, and blues of the nineteenth century to the contemporary soul and funk of James Brown and Aretha Franklin.⁴³ In the midst of this cultural ferment was Abdullah Ibrahim, far from home and wondering what it all might mean for him and his music.

In South Africa, the "hipster breakaway" had had little time for South African music. Morris Goldberg, a jazz saxophone player and, at one time, a Cape Town hipster himself, remembered that "We were brainwashed....Everyone was trying to be like Americans...."⁴⁴ Even Ibrahim, who, as a young musician, had played *marabi* and *mbaqanga*, *vastrap* and *ticky-draai*, performed only American-style jazz when he led his own bands or played solo piano in concert.⁴⁵ But Goldberg, who was living in New York at the same time as Ibrahim and who frequently performed with him, found that the experience of living within a foreign culture, in and of itself, led him to reexamine his South African musical roots. "The awareness of what we had indigenously came slowly," he said, "when I was here [in New York City]."⁴⁶ Ibrahim would have experienced a similar sense of displacement as Goldberg. But Goldberg, a white man, was not caught up in the black nationalist and revolutionary currents that swirled around Ibrahim. The questions that Ibrahim faced were more urgent. What, he would have wanted to know, were his blues? What were his spirituals? What were his roots?

Ibrahim answered these questions with a little cultural nationalism of his own. He began to incorporate coloured and African popular music and folk idioms in his own compositions. His

1967 concert at Carnegie Recital Hall is a case in point. Writing in the *New York Times*, John S. Wilson described Ibrahim (or Dollar Brand, as he was billed), as a musician "who mixes a strong instinct for jazz with his native musical heritage." In his music, Wilson heard "echoes of Duke Ellington and a wry touch of Thelonious Monk. But Mr. Brand kept getting back to the insistent rhythms, the dancing figures, and the chantlike melodic lines that derive from Africa."⁴⁷ Goldberg, who joined Ibrahim for part of the concert, remembered that "the influences started in Cape Town."⁴⁸

Writing about a year later, after his return to South Africa, Ibrahim offered his own account of the concert. "After the first minute," he wrote, "everything fell into place." For him, the concert had been an extended improvisation on the historical experience of black South Africans and of the coloured people of Cape Town, in particular.

Everything flooded back. I played through District Six, up Hanover Street, Doug Arendse's little place in Caledon Street, the Coon Carnival, Windemere, children's songs, up Table Mountain, through the hills of Pondoland, my mother, father, sisters, brothers -- everything.⁴⁹

The history he evoked was both celebratory and tragic. The District Six neighborhood, abutting downtown Cape Town, had once been the spiritual heart of coloured South Africa, a symbol of resilience and creativity in the face of racial oppression. By the middle of the 1960s, it had become a symbol of the apartheid state's grotesque social engineering. At the time of the concert, the state was bulldozing its buildings and relocating its people to new townships, such as, yes, Manenburg, on the outskirts of city.⁵⁰ The Coon Carnival, a mostly coloured and mostly working-class festival, traces its origins to, among other things, commemorations of the abolition of slavery, in the first half of the nineteenth century, and to the impact of visiting American blackface minstrel troupes, in the second half of that century.⁵¹ It was the Coons, as they were and are called, who sang the folk songs that Hugh Masekela remembers Ibrahim singing to his friends in private settings, although never on stage.⁵² Table Mountain and the hills of Pondoland were both shorthand for a landscape that is part of a Cape Town identity, in the first instance, and an African one, in the second.

Ibrahim's cultural nationalism was both specifically coloured and more broadly black South African. It aligned itself with the coloured and African working classes and embraced their cultures. He was slowly moving away from the abstract free jazz of the African-American avant-garde and toward a more accessible musical vocabulary. This was, in part, a matter of sheer expedience. "It got to the point where you couldn't eat; nobody wanted to listen."⁵³ But it was also a political gesture. Concerned that his music had become too esoteric, he had begun to employ a musical language that was rooted in the working-class and traditional cultures of the South Africa. In this he had more in common with Miles Davis, who, by the late 1960s, was exploring African-American popular music, than with his erstwhile free jazz colleagues. Ibrahim was not pandering to his audience. He employed the language of popular music, but, in New York, he did not produce pop. Demanding the audience's undivided attention for nearly an hour, he was, first and foremost, an artist and not yet particularly accessible.⁵⁴

THE WORLD OF DOLLAR

A sense of personal and political crisis drove Ibrahim back to Cape Town in 1968. Years of smoking and drinking had battered his body. In New York, doctors and a Native American medicine woman both told him to "straighten up." And he did, entering a period of "cleaning" and embarking on a spiritual quest that began in New York City and culminated with his conversion to Islam, in Cape Town.⁵⁵ He was also concerned about the health of his country. He saw himself as "the voice of the voiceless" and was determined to speak on their behalf.⁵⁶ Dollar Brand, the hard-drinking, alienated hipster, had given up the bottle and returned home to adopt a new religion, change his name, and espouse an iconoclastic brand of cultural nationalism in music, poetry, and polemics.⁵⁷ Capetonians, frankly, didn't know what to do with him.

Cape Herald, a local paper aimed at the coloured community, announced Ibrahim's return when it began to publish "The World of Dollar [Brand]," a series of articles by and about him. In the very first article, he declared that there was no reason for him to remain abroad; America could teach him nothing about music. "Everything," he said, "is here!"⁵⁸ The point was not historically accurate. As he would later admit, he had learned quite a bit in the United States, but he wanted the *Herald's* readers to understand that everything needed to create and sustain a vital musical culture existed in South Africa. As things stood, he wrote in another article, South African music was both insipid and inauthentic. Ignoring the ways in which jazz musicians elsewhere in the country, such as Gideon Nxumalo and Philip Tabane had, for several years, been exploring South African idioms in their compositions, Ibrahim accused South African musicians of being too interested in merely imitating Americans and Europeans.⁵⁹ They should, instead, explore their own musical roots, the "sacred" and "beautiful" music that grew in the African soil. This was the only source that could produce a vital and authentic South African sound.⁶⁰

Ibrahim could overlook Nxumalo and Tabane because his primary audience was local. While his rhetoric encompassed all South African musicians and while his subject was music, he was, in fact, addressing the Cape Town jazz community, especially coloured musicians, and the coloured community as a whole. In some articles, Ibrahim did address the coloured community directly. He insisted that coloured people who were ashamed of their folk traditions--"the *doekums* and the Coons"--were, by extension, ashamed of themselves. He urged them to see their culture and themselves through his eyes. If they did, they would see that they were "all beautiful." "Look around you and see yourself," he wrote. "You are my music. My music is you."⁶¹ The music that he had in mind were his new compositions that he had begun to create in New York. He wrote of the ways in which they drew on virtually the entire musical universe of coloureds and Africans: the jazz of Kippie Moeketsi, the *ghoema* beat and minstrel tunes of the Coon Carnival, "Shangaan and Venda and Pedi" folk songs, the Malay choirs of Cape Town's coloured Muslims.... It was meant to be a suggestive list, not an exhaustive one. He wanted to embrace the entire nation, perhaps including whites, likening its people and their cultures to the protea, the national flower, which flourished in South Africa, but could survive only in greenhouses in foreign climes.⁶² The protea also stood in for Ibrahim himself. In exile, he said, he found it "hard to play naturally." In South Africa, on the other hand, "the music just flows....

You don't have to force yourself."⁶³ Having reinvented himself and his music, Ibrahim was now inventing a radically innovative cultural identity, once coloured and inclusively South African, at once.

Ibrahim's articles seem to have had no impact at all.⁶⁴ Looking back, the Cape Town jazz impresario Rashid Lombard said that Ibrahim was far ahead of his time. "Abdullah was one hundred percent right," but no one "could comprehend" what he was saying.⁶⁵ Coloured intellectuals and activists instinctively recoiled from appeals to racial and ethnic particularity. In the absence of any direct criticism of apartheid, his celebration of distinctive coloured and African cultures seemed to resonate with the apartheid state's efforts to reinforce ethnic and racial divisions in order to keep blacks weak and divided. Politically engaged coloureds and the coloured middle class would have hesitated to embrace the Coon Carnival because they were, as Ibrahim suggested, ashamed of this and other aspects of working-class culture. But they had a political critique of the Carnival, as well. Many viewed it as nothing more than "a show which reflect[ed] and confirm[ed] the subordination of its performers," an "annual act of debasement."⁶⁶ Few coloureds of any class would have responded to his call to identify with Africans and African cultures. As Mohamed Adhikari points out, "only a tiny minority" of coloureds were interested in anything resembling black unity. Most were determined to maintain their social and physical distance from Africans.⁶⁷ Finally, it certainly did not help Ibrahim's cause that he published the articles in the *Herald*, a newspaper which devoted much of its ink to vivid descriptions of murder and rape and to effusive praise of conservative coloured politicians who collaborated with apartheid.

Musically, Ibrahim fared no better. Neither audiences nor musicians were prepared for music which blurred distinctions between high art and popular entertainment and which seemed to look back to a provincial and slightly embarrassing past, rather than forward to a progressive and cosmopolitan future. His new music was perplexing and, in the words of one Cape Town musician, "rubbish."⁶⁸ Another called it "a lot of trash."⁶⁹ Ibrahim himself has said that he couldn't get Cape Town musicians to play his new music because they were still too invested in emulating American jazz. Believing themselves to be, in Ibrahim's words, "sophisticated jazz musicians," they felt that anything related to folk and working-class music was "culturally and socially beyond their dignity."⁷⁰ Duke Ngcukana, a local musician who played, briefly, in one of Ibrahim's bands, said much the same thing about himself. In the late 1960s, he once "walked out" on Ibrahim because he did not want to play "African music, so to speak, which, for us, at that time, was below [American jazz]...."⁷¹

Audiences were equally bemused. The Cape Town jazz singer Zelda Benjamin remembers an occasion when Ibrahim sat in on one of her gigs at the Beverley, a nightclub catering to largely to coloureds, and improvised on some *moppies*, comic songs sung during Carnival by the Coons. A angry voice from the audience interrupted, saying, "Hey, man, play some music."⁷² At another time, Ibrahim treated patrons at the Kensington Inn, a coloured nightclub in the neighborhood in which he grew up, to "seemingly disconnected flights across the keyboard." After 15 minutes of this "non-stop, never-heard-before" music, they began to stand up and leave. Soon afterwards, Ibrahim himself "abruptly left the platform and walked off the premises," prompting *Drum* magazine to ask "Is Dollar's Brittle Genius Cracking Up?"⁷³

With engagements few and far between, Ibrahim was unable to support his family and felt compelled to return to the United States. When he left South Africa, in 1969, the *Herald* mourned the departure of "The Genius We Rejected." He told the paper that he was going back to New York, "where the only people who can understand my music live."⁷⁴ In an interview with *Drum*, he linked his rejection by coloured audiences to their failure to come to terms with their own identity. "[T]here have been very few concerts where I have been able to allow myself complete freedom in communicating with those who have come to hear me," he said. "In order to understand and appreciate my message," coloured people had to "look within themselves and understand their own consciousness and the reason for their being. Once over this hurdle, appreciation of what I play becomes the next natural step." He contrasted the situation that he had found in Cape Town to that which he had experienced in New York. In the United States, the suffering of African-Americans "gave rise to some of the most beautiful blues music in the world...." In South Africa, however, "there has been no reaction musically to our oppression. The local compositions reflect the character of the people--they are shallow, empty, lacking in sincerity and completely commercialized."⁷⁵ Less than a year and a half after declaring that "There's nothing out there. Everything's here," Ibrahim was gone.

MANNENBERG: THE ICON

Sometime in the early 1970s, Ibrahim, who was temporarily back in South Africa, walked into Kohinoor, Rashid Vally's small but bustling record shop on Kort Street, in downtown Johannesburg, and introduced himself. Although he had never met Vally, he knew him by reputation. Vally's passion for jazz and friendship with many musicians had made Kohinoor a legendary hangout for jazz lovers. It was also one of the few public spaces in the city where people of different races could mix comfortably. Ibrahim also knew that Vally had a successful sideline producing *langarm* dance band music for the coloured market. He wanted Vally, he said, to record him. Vally, who had been following Ibrahim's career since the 1950s, happily agreed.⁷⁶

It was in some ways a likely match, since the lives of both men revolved around music. Both were also Muslim, the one from birth and the other a recent convert. While they were, under apartheid law, members of different races --Vally was classified as Indian and Ibrahim as coloured--in practice, this presented few obstacles to their collaboration. Their temperments were complementary as well, with the moody, imperious Ibrahim balanced by the easy-going, genial Vally.

The first fruits of the partnership were two albums recorded in 1971, one of which reunited Ibrahim with Kippie Moeketsi, the ex-Jazz Epistle. Neither sold more than 2,000 copies - enough for Vally to recover his costs, but far too few to constitute a hit or make much of a cultural impact.⁷⁷ The third album, *Underground in Africa*, recorded in early 1974, was different.⁷⁸ Ibrahim moved decisively away from the demanding synthesis of free jazz and local idioms that had so bewildered Cape Town audiences. He wanted, he said, to make music "which the people understand."⁷⁹ Working with a group of Cape Town musicians whose experience was playing rock and soul, not jazz, he produced a very accessible fusion of jazz, rock, and a variety of South African popular musical forms.⁸⁰ The album sold well, and *The World*, Johannesburg's largest

"black" newspaper, called it "Dollar Brand's best LP to date." Noting that he had shifted from "serious jazz" into "the jazz-rock scene," the paper praised him for no longer being "a musician... who plays [only] for himself." He had finally become "really funky."⁸¹

Ibrahim's embrace of jazz-rock fusion, as it was called, may have surprised those who knew him, but it was not without precedent. Miles Davis, whose stature in the American jazz community was beyond dispute, was, in the late 1960s, one of the first jazz musicians to blend jazz with rock, soul, and funk. Jazz-rock fusion quickly became a major commercial genre. By 1973, Herbie Hancock's *Head Hunters*, a fusion album, became the biggest selling jazz recording of all time.⁸² Ibrahim, who was still based in New York, would have been intimately aware of these developments. While the sound of *Underground in Africa* had a distinctly South African twist, it also owed much to prominent American fusion bands of the day, such as Return to Forever and Weather Report.

Ibrahim could not have created this South African jazz-rock fusion by himself. He required the help of musicians who were as steeped in the traditions of the popular music of the day--rock, soul, disco, and funk--as he was in jazz. He found nearly ideal collaborators in Oswietie, a Cape Town band that was having great success in local clubs, playing covers of American and British pop hits and its own highly danceable blend of jazz, rock, and soul. When it came to producing *Underground in Africa*'s "really funky" sound, it was Oswietie that made it happen. These musicians also shared with Ibrahim a fluency in the musical vocabulary of the local idioms that he was bringing into his compositions. Robbie Jansen, a member of Oswietie, said that learning to play local music was as important a part of his musical education as learning to play rock and soul. "*Marabi, kwela, mbaqanga....* I knew all that stuff." It did not matter that he and the other members of Oswietie were coloured. Band leaders expected working musicians to be competent in a variety of popular styles, including those that came out of African communities.⁸³

The recording sessions that produced *Underground in Africa* also marked the beginning of Ibrahim's enduring relationship with Jansen and Basil Coetzee, another of Oswietie's saxophone players. He became especially close to Coetzee, his "blue-eyed boy."⁸⁴ Ibrahim has described the way that he and Coetzee took on the "massive task" of inventing a new musical genre. Having no models to fall back on, they had to "to create the letter, the word, the sentence, the whole story...."⁸⁵ In fact, it was not so much a new genre as an extension of the musical experimentation that Ibrahim had begun in New York and a refinement of the sound on *Underground in Africa*. It became the Cape Town sound.

Ibrahim spent the next few months working on new compositions and preparing for his next recording session. He asked Coetzee to put the backup band together and asked Vally to foot the bill. Coetzee assembled a band that included Jansen and several other members of Cape Town's coloured jazz-rock community, although only Coetzee and Jansen had played on *Underground in Africa*. Renting the studio, hiring the engineers, and paying the musicians put Vally deeply into debt. He was hoping for a hit, but never knew what to expect with Ibrahim. Ibrahim arrived at the studio with an armful of scores. Knowing that most of the musicians couldn't read music, he invited Morris Goldberg, who did read music and who happened to be in Cape Town visiting his family, to join the sessions and help him teach the compositions to the others.⁸⁶

Several days of recording produced enough material to fill four or five albums, although most of it has never been released.⁸⁷ Three or four days into the sessions, Ibrahim sat down at an old upright piano and, setting his scores aside, began to improvise. The piano had been prepared with thumbtacks in the hammers, giving the instrument a metallic timbre that was associated with *marabi*. Ibrahim has said that the sound "transported" him back to the music that he heard at rent parties in his youth.⁸⁸ As he played, he signaled first Coetzee and then the others to join in, suggesting lines and rhythms for them to play, but also allowing them the freedom to find their way in the collective improvisation. Within a few minutes, Ibrahim was ready to record. As they played, the musicians began to realize that the music they were creating was, in Jansen's words, "very special." "We felt a magic. ...We just couldn't stop, and it felt good. ...We were recording [for] days, but none of those days ever felt like this."⁸⁹ After only one or two takes, they were done.⁹⁰

The immediate question was what to call this new work of art. Ibrahim told the group that as they were playing, he had a vision of an elderly woman walking down a street in one of the townships. When Goldberg mentioned that he was going to visit his family's former housekeeper, Gladys Williams, in Manenberg, Ibrahim said, "Yeah, man, that's a great title: 'Mrs. Williams from Mannenberg.'" In the event, Vally released the LP under the more marketable title *Mannenbergs is Where It's Happening* and called the title song simply "Mannenbergs." But a photograph of Gladys Williams, made by Ibrahim himself, adorned the cover of the LP and of the subsequent CD re-release.⁹¹

Back in Johannesburg, Vally began to play the "Mannenbergs" acetates on loudspeakers outside of Kohinoor even before the LP was released. When people rushed in and demanded to know who was playing and when they lingered outside the shop listening to the music and dancing, he knew he had a hit on his hands. Once the LPs had been pressed, he sold 5,000 copies in a week, an enormous number for a jazz album in South Africa. While a second song, "The Pilgrim," filled out the LP, "Mannenbergs" was the song people wanted to hear. Vally knew that he did not have the "financial muscle" to distribute the record nationwide, so he made a deal with Peter Gallo of Gallo Records, South Africa's largest record company. With Gallo's help, 43,000 copies of the LP were sold, in South Africa alone, within seven months of its release. In Cape Town, the *Herald* took great pride in this native son and said that the record's sales were "something to crow about." At a time when the sale 20,000 copies was enough to make even a rock song a hit, *Mannenbergs is Where It's Happening* was a spectacular success.⁹²

"Mannenbergs's" popularity success was due to a variety of factors. It certainly helped that, as the jazz pianist Moses Molelekoa once said, it was "a dance song, a party song [like] most of the jazz that was coming out at that period."⁹³ It had an irresistible hook--its beautiful melody. It was driven by an infectious, danceable beat. And it was an intriguingly unfamiliar combination of familiar ingredients--the groove was *marabi*, the beat resembled *ticky-draai* (or, perhaps, a lazy *ghoema*, depending on who was listening), the sound of the saxophones was *langarm*, and the underlying aesthetic was jazz. Most South African listeners--African, coloured, and white--had something familiar to cling to and something exotic to be excited about. If some had the fleeting impression of having heard the song before, it might have been for a good reason."Mannenbergs's" melody bears a strong resemblance to "Jackpot," a *mbaqanga* tune that the Johannesburg saxophonist Zacks Nkosi recorded in about 1960.⁹⁴ In 2006, South Africa's

Sunday Times reported that Nkosi and his son, who was also a musician, "went to their graves believing that 'Mannenberg' was a rip-off of 'Jackpot.'" A number of other Johannesburg musicians have, over the years, supported Nkosi's claim of authorship.⁹⁵ "Mannenberg" was, however, much more than an *mbaqanga* melody, and the sum of its parts makes it anything but a rip-off. Its unique combination of musical vocabularies and idioms, rooted in South Africa, yet aware of international trends, helped to make it "the most iconic" composition in South African jazz history.⁹⁶

Within the Cape Town coloured community, the elements that came together in "Mannenberg" added layers of meaning to its iconic status. It became an icon of the community as a whole. The record featured a local-boy-made-good, Abdullah Ibrahim, who was feted in the jazz capitals of the world. Coetzee, Jansen, and the other musicians had become local nightclub favorites. The name of the song referred to a township that had already become a symbol of both the dispossession and the endurance of the coloured community.⁹⁷ The sweet, reedy timbre of the saxophones--Basil Coetzee and Robbie Jansen, both of whom were coloured, and the initially uncredited Morris Goldberg, a white Capetonian--unmistakably linked the song to the sound of the coloured *langarm* dance bands. There was something in the drumming that reminded people of *ghoema* and the Coons. Jansen felt that the musical factors were the most important. Coloured people, he said, were "aware that it's *their* music. ...They feel it's part of them."⁹⁸ For Ibrahim, the title, the sound, and the musicians combined to signal to coloureds that "...it's our music, and it's our culture...." The song's success was an "affirmation... that our inherent culture is valid."⁹⁹

It needs to be emphasized that "Mannenberg" reflected rather precisely the musical attributes that Ibrahim extolled in his *Herald* articles of 1968 and 1969. It incorporated the folk elements that, five or six years earlier, had evoked a sense of shame, especially among the musically and politically progressive. Why were people now prepared to embrace *langarm*, *ticky-draai*, and even *marabi*, which came out of African communities, not the coloured community? Part of the answer is, of course, that Ibrahim himself had changed. He had said that he wanted to make music "which the people understand," and he did, backing away from the demanding inaccessibility that had been his hallmark.¹⁰⁰ But the coloured community had changed as well. It was now more willing to see the value of folk and popular traditions, their own and those of Africans. To a degree, this was due to the spread of Black Consciousness ideas.

First emerging in the late 1960s, Black Consciousness had changed the political climate within portions of the coloured community, especially the better educated youth. Drawing in part on African-American Black Power slogans and ideology, activists within the Black Consciousness movement believed that their "primary task" "was to 'conscientize' black people, which meant giving them a sense of pride or belief in their own strength and worthiness."¹⁰¹ Among other things, this involved asserting the value, dignity, and beauty of indigenous and working-class black cultures.¹⁰² Because Black Consciousness redefined "black" to include coloureds and South Africans of Indian descent, as well as Africans, an identification with blackness encouraged coloureds to reappraise of those aspects of their culture which had formerly seemed to be retrograde and shameful. But it is easy to over-estimate the impact of Black Consciousness.¹⁰³ Robbie Jansen, for instance, knew hardly any advocates of Black

Consciousness. The few he met were university students, part of a tiny minority of coloured youth who went beyond secondary school. But Jansen did accept that to be coloured was to be black, part of an oppressed community engaged in struggle for freedom. And he believed that black was beautiful. It was, he said, "the American influence," the influence of African-American popular culture.¹⁰⁴

The music, clothing, and hair styles of black America taught Jansen and young coloured people of his generation that "it was the in thing to be black, and people started to be proud of being black."¹⁰⁵ This was hardly the first time that coloured people had looked to the United States for models of blackness. After all, this is precisely what Ibrahim and "the hipster breakaway" had done. Many coloured people knew that similar histories of slavery, oppression, cultural assimilation, and permanent minority status within white supremacist nations linked them to the African-Americans experience. While coloureds were drawn to black Americans, there were forces within South African culture which pushed them away from Africans. Rashid Lombard saw how the "divide and rule" strategy of the apartheid state had been "so effective" that a chasm of distrust and suspicion separated the coloured and African communities. The road to blackness, for him and his friends, was smoother through Harlem than through Gugulethu, the African township just on the other side of the tracks from Manenberg.¹⁰⁶

Consider the "Afro." By the late 1960s, this hairstyle, also called the "natural," had become the emblem of black pride, the new black American assertiveness associated with Black Power. African-Americans, young and old, male and female, grew their hair long, emphasizing its tight, African curls. It was a reversal of earlier attitudes that defined "good hair" as straight, "white-looking" hair and "bad hair" as kinky, "black-looking" hair. Millions of African-Americans, from political figures, such as Angela Davis and Huey Newton, to cultural heroes, such as Sly Stone and Michael Jackson, to ordinary men and women and boys and girls adopted the style.¹⁰⁷

By the mid-1970s, the Afro had come to coloured Cape Town. So many coloured people were wearing Afros that even the *Herald*, that most politically timid of newspapers, felt free to sponsor an "Afros for Africa" contest. It offered advice on how to grow and care for a good looking Afro and published the photos of the entrants.¹⁰⁸ The scores of coloured teenagers and young adults who entered were radicals, in their way. They had turned the politics of hair upside down. Most coloured people, up to this point, had gloried in their straight hair, if they had it, and desired it, if they didn't. Now, for the first time, hair that was associated with blackness was desirable. For many, the Afro was the "sign and symbol" of a new identification as "black."¹⁰⁹

Afro had come to Cape Town by way of African-American popular culture, especially soul music. Newspapers, magazines, and album covers all depicted black American soul musicians wearing their hair "natural." Responding to reader interest, the *Herald* had, since the late 1960s, profiled soul performers and promoted their music. It even acknowledged the politics of soul, explaining that its roots lay in the "suffering" of the African-American people and declaring that "The Sound is Black and Very Beautiful."¹¹⁰ As Brian Ward has convincingly argues, the "actual sound and texture" of soul music, its deep embrace of the African-American musical tradition and its disregard for white American traditions, carried a message of black pride.¹¹¹ Cultural

aspects of African-American blackness, such as music and hair styles, provided a safe passage to blackness for coloured South Africans, instilling within them a sense of pride and allowing them to see themselves as beautiful, without having, necessarily, to move physically or psychologically closer to African South Africans.

Changing political and cultural trends prepared the coloured community for "Mannenberg." It presented coloured listeners with a sound that resonated deeply with their history and experience and yet was utterly contemporary. Much about the song, especially its sensibility and the very sound of the saxophones, was uniquely and recognizably coloured. What had begun as an improvisation in a recording studio became a community icon. Instead of Ibrahim's portrait of a lady, the community had made it a portrait of themselves.

MANNENBERG: THE ANTHEM

An icon is not necessarily an anthem. The symbol of a people is not necessarily the emblem of their struggle for freedom. The song's transformation into an anthem had little to do with Ibrahim, who left South Africa again in 1975.¹¹² It is true that Ibrahim raised his political profile, in the 1980s, playing benefit concerts for the African National Congress [ANC] and in other ways closely identifying with the freedom struggle, and that local reporting of these activities allowed fans of "Mannenberg" to feel that they were somehow linked to the ANC in exile.¹¹³ But Ibrahim remained distant and elusive. Much closer to home, musicians were taking "Mannenberg" to the people. These musicians politicized the song by playing it at the innumerable rallies and concerts, linking it directly to the anti-apartheid politics of the United Democratic Front [UDF] and other progressive organizations. Without the work of these musicians--Basil Coetzee and Robbie Jansen, first and foremost--"Mannenberg" might well have remained an icon of South African jazz, the Cape Town sound, and the coloured community, but not an anthem.¹¹⁴

By the early 1980s, it was common to refer to Coetzee as Basil "Manenberg" Coetzee. According to Errol Dyers, one of Coetzee's closest musical collaborators, Ibrahim gave him the nickname by which he was to be known to fans for the rest of his life.¹¹⁵ This would certainly make sense. Coetzee was living in Manenberg when he and Ibrahim began to work together; he was the first soloist on the album; and, as many Capetonians will point out, he was a mountain [berg] of a man. He was also an astute man with a highly developed political consciousness.¹¹⁶ When political activists asked him to contribute his musical skills to the struggle, he was ready to accept. In 1982, for instance, *Grassroots*, an anti-apartheid newspaper, reported on a concert where artists "sang our songs... [and] told the story of our suffering." Among them was Coetzee: "'Mannenberg is Where It's Happening!' This was the message of Basil Coetzee and his saxophone when he played... this song which has become a symbol of our hardship."¹¹⁷ Coetzee was there to play "the popular 'Manenberg' [sic]," during the youth festival that accompanied the national launch of the UDF, in August 1983.¹¹⁸ At a 1985 benefit concert for "Famine Relief and Victims of Unrest," "madness reigned supreme among the responsive crowd," when Robbie Jansen joined Coetzee for a performance of "Mannenberg."¹¹⁹

Jansen's role in making "Mannenberg" an anthem of the struggle seems to have been as important as Coetzee's. Hilton Schilder and Errol Dyers, both of whom played at many rallies and benefit concerts with Coetzee and Jansen, remember the way that Jansen would speak in a deep, soulful voice when "Mannenberg" was played. According to Schilder, he would tell the crowd "what's happening" and talk to them about "rising up" and "being... proud of our own stuff."¹²⁰ Jansen himself said that he could "preach from the stage. ...politicize and create an awareness of change...."¹²¹ Jansen and Coetzee did not transform the icon into the anthem by themselves. While giving them the lion's share of the credit, Errol Dyers, for instance, has described the way that politically active musicians, collectively, "...put it in their faces that this would be the anthem for... fighting this apartheid thing."¹²²

Politically sophisticated musicians understood that "Mannenberg" could be a vehicle of political mobilization and the symbol of a collective fight against apartheid. Over and over again, during the 1980s, the music that they made and the message that they attached to it was the soundtrack to rallies and concerts at which thousands of people reaffirmed their commitment to the struggle for freedom. Cape Town musician Gus Ntlokwana was no doubt correct when he said that it is "too heavy a statement" to claim, as some have done, that "Mannenberg" was "unofficial national anthem" of all South Africa.¹²³ But it was very much the anti-apartheid anthem of Cape Town.

Notes:

1. Many people have contributed to this essay. I am especially grateful to Rashid Vally, Robbie Jansen, and Morris Goldberg for sharing their memories of the "Mannenberg" recording session with me. Thanks also to the Interdisciplinary Seminar, School of the Arts, University of the Witwatersrand; the South African and Contemporary History Seminar, University of the Western Cape; the McIntire Department of Music, University of Virginia; and the 2006 Gwendolen M. Carter Conference, University of Florida, for inviting me to present earlier versions of this essay. Vincent Kolbe, David Coplan, Lara Allen, and Scott DeVeaux must be singled out for special thanks.
2. Rashid Vally, interviews with author, 23 July 2005 and 18 February 2007; Robbie Jansen, interviews with author, 8 August 2005 and 17 January 2006; Morris Goldberg, interview and personal communications with author, 13 October 2006, 17 June 2007, and 18 June 2007. See, also, Rasmussen, 2000. On Ibrahim's standing in the South African jazz community, see, *The World* [Johannesburg], 23 January 1974, p. 1.
3. Ansell, p. 153.
4. Mandla Langa, quoted in Ansell, p. 153.
5. Jaggi; see, also, Coplan, p. 193; Ansell, p. 153.
6. Zayne Adams, interview with author, 25 January 2007.
7. "Our Expression: Our Music, Dancing, Poetry, Art....," *Grassroots*, November 1982, p. 15.
8. The paper is also a commentary on some of the ways in which the coloured community used African-American music and ideas as vehicles to define and redefine their own identity. This important subject has been all but ignored in studies of coloured identity. See, Adhikari, Erasmus, and Western. O'Toole's examines the two communities

comparatively, but and does not consider the impact of the one on the other. Van Wyk does touch on the impact of African-American culture in his 2004 memoir.

9. Jordan.
10. Rasmussen, 2001: p. 17.
11. Masekela and Cheers, p. 104; Jordan.
12. Rasmussen, 2001: p. 11.
13. Masekela, pp. 94, 102.
14. Dyantyi, p. 28.
15. The Jazz Epistles, *Jazz Epistle: Verse 1*, Gallo CDZAC 56 R [reissue].
16. Layne, p. 118.
17. Johannesburg had its hipsters, but the jazz scene seems to have been much less interracial. On Johannesburg, see Coplan, pp. 148-49.
18. Dyantyi, pp. 26-29.
19. "Kippie--Sad Man of Jazz."
20. Coplan, pp. 190-91.
21. DeVeaux, p. 22.
22. Vincent Kolbe, interview, in Rasmussen, 2003: p. 110; Zelda Benjamin, interview, in Rasmussen, 2003: p. 39.
23. Ward, p. 411.
24. Although not, interestingly, "new coloured." A new coloured identity would not emerge for well over a decade.
25. Maya Jaggi, "The Sound of Freedom," *The Guardian*, 8 December 2001.
26. Layne, p. 91.
27. Sammy Maritz, interview, in Rasmussen, 2003: pp. 128-29.
28. On 21 March 1960, South African police fired on a peaceful demonstration called by the Pan-Africanist Congress. Sixty-nine people died; hundreds were injured. Briefly shaken, the apartheid state responded with massive repression, outlawing the liberation movements and imprisoning hundreds.
29. Layne, pp. 121-22; Haupt, p. 174.
30. Layne, p. 127.
31. Coplan, p. 192.
32. Jordan.
33. The Dollar Brand Trio, *Duke Ellington Presents the Dollar Brand Trio*, Reprise R9-6111 (1964). Brand, 14 September 1968; Rasmussen, 2001: pp. 17, 24; Jaggi.
34. The American jazz magazine *Downbeat* noticed much the same thing about Ibrahim's playing. In an article published after the album had been recorded, it noted that he had "Aquitte obviously" been influenced by Monk, but added that his Approach is nevertheless personal and independent." [Reprinted as liner notes to *Duke Ellington Presents the Dollar Brand Trio*].
35. Wilson, p. 80. Brand, 21 September 1968; 12 October 1968; 7 September 1968.
36. Van Deburg, p. 32.
37. Julius Lester, quoted in Fredrickson, p. 294.
38. Fredrickson, p. 290.

39. Floyd, p. 185.
40. Ward, pp. 188-89.
41. Jordan.
42. Floyd, p. 190.
43. Szwed, pp. 227-8.
44. Morris Goldberg, interview with author, 13 October 2006.
45. Zayne Adams, interview with author, 25 January 2007; Zelda Benjamin, interview with author, 29 January 2007.
46. Morris Goldberg, interview with author, 13 October 2006.
47. Wilson.
48. Wilson described as "a superbly supple tenor saxophonist, who added great deal of color and flavor to one of Mr. Brand's most charming tunes." See Wilson. Morris Goldberg, interview with author, 13 October 2006.
49. Brand, *Cape Herald*, 21 September 1968.
50. Manenberg, the township, is spelled with two "n's." "Mannenbergr," the song, has been spelled with three ever since its release, even though the title refers to the township.
51. See, for instance, Martin.
52. In the United States, the word "coon" is a nasty racial epithet. Although the term came to South Africa through blackface minstrelsy, with its associated racial mockery, the word does not have the same connotations in South Africa. In 2007, most members of the Pennsylvania Crooning Minstrels, Cape Town minstrel troupe of which I am a member, and most members of other troupes that I have met unreservedly refer to themselves as "Coons."
53. Jaggi.
54. Brand, 21 September 1968. See also, Wilson. Readers can get a sense of what his Carnegie Recital Hall concert sounded like by listening to *African Sketchbook*, recorded and released, in 1969 [Enja 202⁶, and recently rereleased on CD [Enja CD 2026-².
55. *Drum*, 22 September 1974, p. 35; Brand, 27 July 1968; Jaggi. Ibrahim gave up his birth name, Adolphus "Dollar" Brand, upon his conversion to Islam.
56. Jaggi. Several of Ibrahim's poems from the period can be found in Pieterse).
57. "Dollar Starts School."
58. Lawrence.
59. Coplan, pp. 189-90, suggests that they, too, found inspiration in the example of African-American musicians of the era. In general, however, the black jazz community in Johannesburg seems to have long had fewer inhibitions about embracing local musical traditions than the jazz community in Cape Town.
60. Brand, 24 August 1968.
61. Brand, 27 July 1968 and 24 August 1968.
62. Brand, 27 July 1968.
63. Brand, 16 November 1968.
64. None of the many Cape Town musicians, music promoters, or political activists that I have interviewed remember the articles.
65. Rashid Lombard, interview with author, 5 February 2007.

66. Anderson, p. 103; Martin, p. 127.
67. Adhikari, p. 11. This point has been made many times. See, from the period, O'Toole, pp. 27-33.
68. Peacock, interview, in Rasmussen, 2003: p. 253.
69. Zelda Benjamin, interview with author, 29 January 2007.
70. Sue Valentine, interview with Abdullah Ibrahim.
71. Duke Ngcukana, interview with author, 24 January 2007.
72. Zelda Benjamin, interview with author, 29 January 2007.
73. Heyns, p. 49.
74. "Genius We Rejected," p. 9. [Emphasis in original.]
75. "Dollar's Farewell."
76. Rashid Vally, interview with author, 18 February 2007.
77. Rashid Vally, interview with author, 18 February 2007; Rasmussen, 2000: pp. 40-41, 63.
78. *Underground in Africa*, Mandla KRS 114; rereleased in 1996, The Sun CDSRK(WL) 786143.
79. "New Brand of Brand," pp. 34-35.
80. Interestingly, Ibrahim remained his demanding, inaccessible self on albums that he recorded in the United States and in Europe. See, for instance, Dollar Brand [sic], *African Space Program*, Enja 2032. While he was greatly admired by jazz fans the world over, his music became truly popular only in South Africa and, there, it was his jazz-rock fusion music that audiences craved.
81. "Dollar's Own Brand of Jazz Music."
82. Szwed, pp. 262-63. It remained the biggest selling jazz album until at least the early 1990s. *Head Hunters* has been rereleased on CD as Columbia/Legacy CK 65123
83. Robbie Jansen, interview with author, 8 August 2005.
84. Errol Dyers, interview with author, 23 January 2007.
85. Abdullah Ibrahim, interview with Sue Valentine, nd.
86. The information in this paragraph comes from Abdullah Ibrahim, interview with Sue Valentine, nd; Rashid Vally, interviews with author, 23 July 2005 and 18 February 2007; Robbie Jansen, interviews with author, 8 August 2005 and 17 January 2006; Morris Goldberg, interview with author, 13 October 2006.
87. Vally, interview with author, 23 July 2005; Rasmussen, 2000: p. 63.
88. Abdullah Ibrahim, interview with Sue Valentine, nd.
89. Jansen, interview with author, 17 January 2006.
90. Rashid Vally, interviews with author, 23 July 2005 and 18 February 2007; Morris Goldberg, interview with author, 13 October 2006.
91. Rashid Vally, interviews with author, 23 July 2005 and 18 February 2007; Robbie Jansen, interviews with author, 8 August 2005 and 17 January 2006; Morris Goldberg, interview with author, 13 October 2006.
92. Rashid Vally, interviews with author, 23 July 2005 and 18 February 2007; "Dollar: Aiming for 50,000."
93. Moses Molelekoa, quoted in Ansell, p. 153.
94. Zacks Nkosi, "Jackpot," HMV JP 602.
95. Donaldson.

96. Ansell, p. 153.
97. Gerald Samuel "Mac" McKenzie, interview with author, 15 January 2007. See, also, "Skollies are Winning the 'Battle of Manenberg.'"
98. Robbie Jansen, interview with author, 17 January 2006. [Jansen's emphasis.]
99. Abdullah Ibrahim, interview with Sue Valentine, nd.
100. "The New Brand of Brand."
101. Rashid Lombard speaks of reading pirated copies of works by Angela Davis, Eldridge Cleaver, Malcolm X, and Huey Newton. [Interview with author, 5 February 2007.]
102. Fredrickson, p. 302.
103. Mohamed Adhikari, p. 131, contends that Black Consciousness took root in the coloured community only after the 1976 student uprisings.
104. Robbie Jansen, interview with author, 17 January 2007.
105. Robbie Jansen, interview with author, 17 January 2007. Steve Biko, the Black Consciousness leader, also understood the importance of African-American popular culture in shaping attitudes toward blackness outside of the United States. In *I Write What I Like* (p. 46) he argues that Awhen soul struck with its all-engulfing rhythm it immediately caught on and set hundreds of millions of black bodies in gyration throughout the world. These were people reading in soul the real meaning--the defiant message 'say it loud! I'm black and I'm proud. This is fast becoming our modern culture. A culture of defiance, self-assertion and group pride and solidarity. Just as it now finds expression in our music and dress, it will spread to other aspects."
106. Rashid Lombard, interview with author, 5 February 2007.
107. Van Deburg, pp. 17-18, 201-02.
108. "If You Want to Get Ahead Get an Afro"; AAFros for Africa."
109. Rashid Lombard, interview with author, 5 February 2007.
110. See, for instance, Hipcat and "The Sound is Black and Very Beautiful."
111. Ward, pp. 345-46.
112. "Dollar Goes West Yet Again."
113. See, for instance, "Botswana Conference Look at Our Culture" and "Play on Dollar-There's a Message in Your Music." See, also, Horn. Rashid Lombard, interview with author, 5 February 2007.
114. Vincent Kolbe, interview with author, 10 January 2006; Alvin Dyers, interview with author, 18 January 2006; Hilton Schilder, interview with author, 18 January 2006.
115. Errol Dyers, interview with author, 23 January 2007.
116. Errol Dyers, interview with author, 23 January 2007; Rashid Lombard, interview with author, 5 February 2007.
117. "Our Expression: Our Music, Dancing, Poetry, Art... [sic]."
118. *Plainsman*, supplement to the *Cape Herald*, 20 August 1983, p. 2.
119. Van Dyk.
120. Hilton Schilder, interview with author, 18 January 2006; Errol Dyers, interview with author, 23 January 2007.
121. Robbie Jansen, interview with author, 17 January 2006.

122. Errol Dyers, interview with author, 23 January 2007.
123. Gus Ntlokwana, interview with author, 14 February 2007.

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The Ash Heap of History: Reflections on Historical Research in Southern Africa

ROBERT EDGAR

Abstract: When I began conducting research as a graduate student in southern Africa in 1973, I was following in the wake of an intrepid group of American scholars - Gwendolyn Carter, Tom Karis, Dan Johns and Gail Gerhart - who were amassing a remarkable collection of documents on the South African freedom struggle for their *From Protest to Challenge* (1972-1977) series. They challenged archival/library research that favored government or establishment sources by creating an alternative archive that laid the foundation for reconstructing modern South Africa's freedom struggle. My own experience with documentary collecting on political and religious movements over the past three decades has been unconventional to say the least - and has even involved sifting through dustbins to retrieve documents. Because of my extended relationships with individuals, groups, and communities, my own efforts at documentary collection and retrieval have yielded totally unexpected and often surprising results. This essay is a reflection on the methodology of documentary collection with a focus on two case studies from the eastern Cape: 1) the discovery and return of the long-lost Ark of the Covenant of the Israelite church group and 2) the search for the burial site of the African woman prophet Nontetha in Pretoria and the return and reburial of her remains at her home.

In 1980, I was conducting research in Lesotho on Lekhotla la Bafo (LLB), a Basotho anti-colonial movement that had been the precursor of the modern political party, the Basotho Congress Party (BCP). A decade earlier, the BCP was on its way to winning the country's first post-independence election when Prime Minister Leabua Jonathan declared the election results null and void. After the BCP staged an abortive coup in 1973, many BCP leaders fled into exile and any group linked to it in any fashion was targeted for retribution by the Jonathan regime. Hence, when I began interviewing the elderly members of Lekhotla la Bafo, they were naturally reluctant to divulge much. In one case, a person closed all the curtains and doors in his home before he spoke to me. Shortly after that encounter, I stumbled across rich source material when another historian and I located a LLB veteran, Hlakane Mokhithi, on the outskirts of Maputsoe. Although Mokhithi's memory had dimmed, he was willing to share a document that he had preserved for decades. He rummaged in an ash-heap in the burnt-out shell of a building and pulled out a piece of piece of plastic sheeting wrapped around a hand-written notebook of

Robert Edgar, has researched 20th century African political leaders in South Africa. He is currently collaborating with Dr. David Anthony on a documentary collection project on African-American linkages with South Africa (1890-1965). Dr. Edgar is Professor of African Studies at Howard University. With Hilary Sapire, he co-authored *African Apocalypse: The Story of Nontetha Nkwenkwe, A 20th Century South African Prophet* (2000).

<http://www.africa.ufl.edu/asq/v9/v9i4a4.pdf>

LLB songs.¹ This was a major find since members had not been willing to sing any of their songs to me.²

During the decades that I have been researching history in southern Africa, I experienced many other occasions when I retrieved evidence through persistently digging through other kinds of ash heaps. Whether in Lesotho or South Africa, I operated in a super-charged political environment in which I had to develop instincts and skills - not taught in the classroom - for tracking down new sources of documentation in unorthodox ways and places and coping sensitively and tactfully with a basic reality - that the "politics of inequality," as Gwendolyn Carter put it, erected barriers that impinged on all research undertakings.

For example, many Africans had an absolute skepticism of any researcher - especially a white researcher - who came into their lives. Based on long and painful experiences with political authority, their assumption was that anyone asking questions was not likely to be gathering evidence that would benefit them. There was not much I could do to overcome this stigma except to be honest and forthright and hope that with time people would begin to trust and open up to me. In some cases that took a long time. One schoolteacher who assisted me in the Ciskei and Transkei in 1974 told me years later that he had remained skeptical of me for months and kept a close eye on my behavior before he began to trust me.

Nevertheless, there were occasions when someone agreed to talk with me that I fully expected to be reticent. One such case was a venerable Communist Party of South Africa (CPSA) veteran, Edwin Mofutsanyana, who was living deep in the rugged Maluti mountains in Lesotho. He had been the CPSA's primary liaison with LLB and its leader, Josiel Lefela, since the 1930s. In 1959, as the political crisis in South Africa was reaching a boiling point, Mofutsanyana concluded that he would likely be arrested soon. He weighed his options of staying within the country or fleeing into exile. After choosing the latter, he rejected heading north in favor of seeking sanctuary in northern Lesotho, a mere twenty miles from his birthplace in Qwa Qwa. After his Nhlapho kinsmen hid him in a village nestled on Lesotho's border with South Africa, he hopped on a bus to look for Lefela at his home in Mapoteng. By coincidence, Lefela was holding court on the bus and took him in, eventually finding him a place to hide out. After working closely with Lefela and Lesotho's Communist Party during the 1960s, Mofutsanyana moved to a remote area to live, as he phrased it, "with the monkeys in the mountains."³

Over time Mofutsanyana disappeared from sight. When I became aware of his links to LLB, I had few clues to his whereabouts. Gani Surtie, a Maseru businessman whose Indian trader father had known Mofutsanyana since the 1930s, was certain he was still alive (at least he had not heard that he had died) and pinpointed the area, Kota ha Pentsi in the Leribe district, where he was most likely to be living. Armed with that scant information, I set off on a crisp wintry day in a sturdy Volkswagen Beetle on a rugged track that eventually turned into little more than a horse trail. At each trading store I made inquiries about Mofutsanyana. Just when I was ready to give up and turn back, I encountered some people who volunteered that there was a man, Tente Majara, who lived on a nearby hillside, who knew him. Indeed, when Majara, a longtime LLB member, came down to meet me, he confirmed that he knew Mofutsanyana well. After I explained my reasons for wanting to speak with him, Majara agreed to take my hastily scribbled note of introduction to Mofutsanyana on horseback.

When my note reached Mofutsanyana, it touched off a fierce debate among the villagers that he did not reveal to me for several years. Sensing a trap, some villagers warned him that I must be from the South Africa Special Branch and that my research interest in him was really a ruse to kidnap him and consign him to prison in South Africa. However, he decided to take a chance because of a recent dream in which Lefela, who died in 1965, appeared to him. The pair took off on a long jaunt in the mountains. They discussed many issues, and the end of their trek, Lefela turned to Mofutsanyana and advised him that a stranger was going to appear soon in his life and that he must speak with him. By a fortuitous stroke of luck, my note appeared the next day. Although a hardened Bolshevik in his Party heyday, Mofutsanyana culturally was a person who placed great stock in his dreams throughout his life. He ignored the cautions to steer clear of me and instead sent me a note: "I do welcome your providence given appointment whole heartedly." I did not appreciate the reference to "providence" until much later.

He set a date to meet me at Tente Majara's place in about three weeks, but given the glacial pace of mail delivery in Lesotho, his letter did not reach me until the date of the appointment had passed. After patiently waiting three days for me to show up, he rode back to his village and dispatched another letter:

Having caused me a great anxiety to know more about your dear self and your intentions, you have just vanished mysteriously, as when you came, and left me guessing about what might have taken place or happened to you .

You may probably have been trying to find out for your self if I am still in the world of the living, for which thank you most sincerely. I am still alive and more enthusiastic than ever before. If you are still in the territory, I am at your disposal - at any time. If you are on your way now I can only say it is a thousand times pities that we have not been able to know each other.

If the fates are willing.

Aurivoir tots siens.

Ed. T. Mofutsanyana⁴

After another exchange of letters, we managed to get together at Majara's place. Mofutsanyana tactfully answered my questions on *Lekhotla la Bafo*. I knew then that I wanted to talk with him more extensively about his life experiences. The following year he accepted my invitation to spend a week with me at the National University of Lesotho at Roma, and we recorded 15 hours of interviews. In subsequent years we developed a close friendship.

Although my introduction to Mofutsanyana had an unexpected and providential twist to it, I had a more conventional introduction to A.P. Mda, one of the founders of the ANC Youth League who had gone into exile in Lesotho in the early 1960s. Since I had directed my research interests to Lesotho in the late 1970s, I decided to look him up and inquire whether he would allow me to interview him about his life history. Although he had granted an interview in the early 1970s to Gail Gerhart and had appeared briefly in the now classic documentary *Generations of Resistance*, he had a reputation for being reticent to talk to academics. When we

first met in Maseru in 1983, he was coy about doing an interview but agreed that if I contacted him the following year when I was taking up a lectureship at the National University of Lesotho, he would talk to me. When we met next at his modest law office in Mafeteng, he operated in a lawyerly mode. He agreed to talk to me but set ground rules for what we could cover in interviews. I could tape him about any event in his life up to 21, but for anything after that, I had to rely on my notes. Mda's logic was that if my tapes ever fell into the wrong hands, he did not want them played back to him in court. He could more easily defend himself if it were a question of the reliability of my notes.

I learned much later that Mda, like Mofutsanyana, had consulted with his associates who gave him conflicting advice about how to deal with this American fellow and whether he should give me any time. Some advised him to proceed but with caution, while others were deeply suspicious of any American researcher. Mda later informed me that he had gone ahead with the interviews because he thought I was an energetic and thorough researcher who would systematically track down pieces he had written in the 1930s and 1940s. Indeed, he often pointed me in the right direction, telling me about letters that he had sent to obscure black newspapers and periodicals as a young man or alerting me to *nom de plumes* he used over the years. Over time we became good friends and I convinced him to be filmed in 1986 for a documentary on apartheid by a British Grenada television team. However, even after he agreed to a taped interview with another scholar, I kept my contract and continued to make handwritten notes on our exchanges.⁵

RAIDERS OF THE LOST ARK, ACT I

Although the political environment in southern Africa constrained my research in multiple ways, I diligently worked to develop social networks that over time established enduring relationships with people and groups that contributed to subsequent research projects. As I did with Edwin Mofutsanyana and A.P. Mda, I attempted to sustain contact with other people I interviewed. I also as much as possible paid return visits whenever I was in their area. These relationships often yielded unexpected dividends for my research - even decades later - but what I did not anticipate was how I inadvertently became part of the historical narrative of some groups and how they interpreted my research in spiritual terms.

Inadvertently becoming part of the historical narrative was especially the case with my dissertation study on post-World War I millennial movements in the Eastern Cape.⁶ It centered on an Old Testament group known as the Israelites that followed the prophecies of Enoch Mgijima. In 1919, he had called his followers to gather at his home at Bullhoek near Queenstown and await the end of the world. By settling on crown land, they came into conflict with the government. After local and national officials negotiated for many months to convince them to leave the land peacefully, they finally concluded that the Israelites had no intention of compromising and assembled a force of 800 police and soldiers to forcibly remove them. In the showdown on 24 May 1921, the Israelites were no match for the heavily armed police. Around 200 Israelites were slaughtered in 20 minutes in what has come to be known as the Bullhoek Massacre.

Gathering material on Bullhoek in the State Archives in Pretoria, I came across documents on other millennial movements that I had not encountered before. One was led by a prophetess, Nontetha Nkwenkwe of the King Williams Town area, who fell into a deep coma during the influenza pandemic of 1918 that killed hundreds of thousands of people in southern Africa.⁷ She had a vision in which God instructed her that he had sent this cataclysm as punishment for people's sinful practices, and more suffering would follow unless they followed a righteous path. All of this was a prelude to a doomsday that was drawing nigh. God also directed her to preach to the *amaqaba* (the 'red' or illiterate people) and to convince the present and future generations to acquire education. Although she was not inciting her followers to resist the government, Native Affairs Department officials, wanting to head off another confrontation like they had had with the Israelites, judged her to be a threat to peace and order. Since they had no grounds on which to arrest her, however, they attempted to silence her by directing a magistrate to declare her insane and commit her in late 1922 to a mental hospital fifty miles away at Fort Beaufort. A month later she was released on the understanding that she should not resume her preaching. When she violated the order in 1924, the authorities moved her six hundred miles away to Weskoppies Mental Hospital in Pretoria. Although their intent was to isolate her from her followers who regularly visited her in Fort Beaufort, that did not stop almost a hundred of her followers in 1927 from participating in a 'Pilgrimage of Grace'. They walked six hundred miles over a two-month period to visit her at Weskoppies. She remained institutionalized until her death of cancer in 1935. She was buried in a pauper's grave without a marker and officials resolutely refused to hand over her remains to her family and followers in subsequent decades.

After completing my research on these and other millennial movements in the archives and libraries, I shifted my research to two eastern Cape Bantustans, the Ciskei and Transkei, and interviewed numerous people who had first-hand knowledge of these movements. At a time when most historians were conducting their studies almost exclusively in the confines of archives and libraries, I was one of the few historians to conduct interviews in these areas. But because apartheid was in high season, I had to conform to the rules of racial engagement that the government set for researchers working in 'Bantu' or African areas. The government issued me a permit that I had to submit to the local magistrate in each district that I visited. The permit stipulated that "Lodging with Bantu is not permitted" and that I "had to behave in a dignified manner and refrain from any criticism of the administration of the Government or any of its officials."⁸ Government officials and chiefs and headmen scrutinized me wherever I went. Indeed, on several occasions, local people pulled me aside to inform me that security police were making inquiries about what I was up to. Although the permit restricted me from staying with Africans (and South African whites often warned me that I would have my throat slit in my sleep if I did so), I was allowed to reside in African areas so long as I was housed in a 'white spot', typically mission stations that were mostly staffed by German missionaries and priests.

The Israelites generally were prepared to talk with me but with some reservations. Although the Israelites had welcomed several anthropologists in their midst in previous decades, some of them questioned my motivations for digging into what had happened at Bullhoek. Why was I resurrecting such a painful episode in their past that might reopen wounds and that might lead to more unwanted government attention? Some Israelite

elders, however, were keen on relating the history of their church and took me under their wing. They introduced me to a dozen or so members who had extensive knowledge of their church's history or who had been at Bullhoek the day of the massacre. I attended a number of services, including a service of remembrance held on May 24, 1974 at Bullhoek for those who died in 1921. Although I knew that most of the Israelites I spoke to were restrained in their recollections, I was confident that I had enough written and oral documentation for my study.

For several periods of time - 1977 to 1980 and 1985 to 1990 - I was prohibited from entering South Africa, but I maintained contact with the church's historian, Gideon Ntloko, and shared with him my documentation on the Israelites. On one of the times I was *persona non grata* in South Africa, I took advantage of the government's policy of granting a bogus independence to the Transkei in 1976. Even though I did not have a visa for entering South Africa, I could cross the Lesotho border at Telle bridge into Transkei's Herschel district which was separate from the rest of the Transkei. I had no choice but to travel through South Africa before reentering Transkei. Since there were only a handful of border posts for entering Transkei, as long as the police did not stop me at a roadblock, I could make discreet detours to visit people in South Africa. One was with Ntloko in Queenstown who let me know that the security police had recently warned him against speaking with some foreign researchers who were in Port Elizabeth intending to do research on the Israelites. Not wishing to compromise the Israelites, following that incident I refrained from further visits with them until after I was allowed to reenter South Africa in 1990.

My ties to the Israelites resumed in late 1994 when I was affiliated to the Institute for Social and Economic Research at Rhodes University in Grahamstown. My curiosity was piqued by an essay by Denver Webb, a leading eastern Cape heritage specialist. He related to me that an Israelite artifact, a "wooden box containing a large parchment scroll with religious texts," was stored in the basement of the Albany Museum. When museum officials allowed me to examine the box, I found it contained a 6-foot long parchment scroll on which the Ten Commandments were inscribed in ornate script in isiXhosa.

Although I was not sure of the box's provenance, I knew that as the Israelite dwellings at Bullhoek were demolished and as the Israelites were dispersed after the massacre, the police confiscated personal and church items from Mgijima's home and the Tabernacle. These included the prophet's red gown, hats, and walking sticks, silver vessels and plates, brass bugles, lamps, and, most importantly, the Israelite Ark of the Covenant, which had originally been brought from the Orange Free State by Adonijah Ntloko and was a revered holy relic.

In late 1921, the government tried over a hundred Israelites for sedition but placed the primary blame on Enoch Mgijima, his brother Charles, and Gilbert Matshoba. They were sentenced to six-year terms with hard labor at DeBeer's Convict Station in Kimberley. Following Enoch's release from prison in May 1924, he wrote the Queenstown magistrate requesting the return of the confiscated items from the police, but they claimed that they did not have them in their possession.⁹ We now know that they were lying when they made this statement. While we do not know how long the Ark remained in their hands, the staff at the Albany Museum documented that around World War II an anonymous person donated the Ark to the museum. Although the box containing the scroll had a tag stating that it was the property of Enoch and museum officials were vaguely aware that it was something from the Israelites,

they had no idea of its significance and never displayed it in public. The Ark remained forgotten in the museum basement for over a half-century.

I was also unclear of the box's significance, so I decided to consult Gideon Ntloko in Queenstown. As I was describing my find in detail, he grew visibly excited. As a young man he had heard his uncles describing the box and scroll, and he was sure that I had discovered the missing Ark of the Covenant. Because he was concerned that the Israelite faithful would be extremely excited about this find and might have unrealistic expectations about its immediate return, he enjoined me to keep the news to myself until he had a chance to look at the Ark in person. When we met some months later in mid-1995 at the Albany Museum and viewed the Ark, he nearly passed out on the spot. He knelt and went into an extended prayer. We agreed that he would convey the good news at an appropriate moment to the Israelite leadership, and that I would talk to museum officials about what they had in the basement.

At a meeting with the museum's director, Wouter Holleman, I related the story of the Bullhoek massacre and how the Ark had eventually been deposited in his museum and what its significance was to the Israelites. Since I was leaving soon for the United States, I did not see myself as an intermediary between the museum and the Israelites. My hope was that he and other museum officials would not treat the Ark as the museum's private property even if they had no hand in its seizure from the Israelites.¹⁰ I also suggested that it would be a major public relations coup for the museum, especially in the context of post-1994 South Africa, if they cooperated with the Israelites and facilitated a transfer of the Ark. Otherwise I envisioned a scenario in which the aggrieved Israelites would be staging protests at the museum. I was elated months later when I learned that the Ark had been transferred to the Israelites in late 1995 in a moving ceremony at the Israelites' main Tabernacle in Queenstown. The Israelites re-consecrated the Ark and placed it in a vault in the Tabernacle to be displayed every three years.

I did not pick up the whole story about the transfer until the following year when I learned that museum officials initially had refused to surrender the Ark to the Israelites and instead offered to restore and display it at the museum and create a facsimile of the Ark for the Israelites. They believed that the Ark would be preserved better under their oversight. As might be expected, their stance threatened to inflame the situation, but eventually they backed down and arranged for the transfer.

After the transfer, Israelite elders debated my role in discovering the Ark. When I stopped in Queenstown in mid-1996 several elders sat down with me and related their discussions about why I, an American, was the one who had solved the mystery of what had happened to the Ark and set in motion the process for its return. Their interpretation was that an angel had possessed me without my knowledge and guided me to the Ark's location. I may have thought that I was acting out of curiosity, but they knew better.

TWO HISTORIANS IN SEARCH OF A PLOT

My study on Nontetha Nkwenkwe featured even more profound and unexpected methodological twists and turns. I had first learned of her through Native Affairs and police files that I located in 1973 in the State Archives in Pretoria. Because of the fifty-year rule then in effect, researchers were prevented from looking at documents written after 1925. I could piece

together the early stages of Nontetha's movement after she began preaching, but not what happened to her after the state committed her to a series of mental hospitals. I decided that I would follow through on leads from the documents and visit the African locations mentioned in official dispatches. Since I was going to work in the Ciskei, I arranged for accommodation at the Federal Theological Seminary in Alice. After securing permission from local chiefs in the Debe Nek area, I learned that two of Nontetha's children were still alive. In turn they informed me of the existence of the Church of the Prophetess Nontetha headed by Bishop Reuben Tsoko, one of Nontetha's leading disciples since the 1920s. After contacting him, he invited me to attend a church service, where I explained my research and arranged to interview him and church members both individually and collectively. By the time I left the area, I knew that I had gathered enough information to reconstruct the main outlines of the story. There were still remained enormous gaps, however, that were going to be difficult to fill until I had access to all the government files. Indeed, after returning to the United States to write up my dissertation, I found that I had enough source material to discuss Nontetha and her movement, but too little to write up a full study. I had it in mind to return to the story in the future, but that took another two decades, and I lost contact with Tsoko and his church.

In 1994-95 I was on sabbatical leave in South Africa when another historian, Hilary Sapire, contacted me with the news that a colleague had alerted her to a substantial file on Nontetha in the State Archives that I had not seen in 1973. Because of her interest in Africans, western psychiatry, and mental hospitals, Sapire was preparing to do a study on Nontetha's (and other Africans') experiences in the mental hospitals and with the diagnoses of European psychiatrists. Hence, she desired to consult me about my previous research. After communicating with each other we decided to pool our research findings and write an extended essay on Nontetha's story. Having consulted the new government documentation, I decided to return to the same rural locations I had visited in 1974 to see whether I could unearth any fresh sources of information. I had no idea whether the church was still in existence, but thought that it was worth a try since the climate for interviewing people had dramatically improved since South Africa's independence in May 1994.¹¹

With a close friend, Luyanda ka Msumza, I set out on an overcast Sunday in mid-1997 to an area about ten miles from King Williams Town. We first visited the homestead of a prominent faith healer, Nomthunzi 'MaNgconde' Mali, who practices a few miles from Nontetha's home village. We observed license plates of cars from all over southern Africa, a testament to her widespread fame as a healer. While we watched one of her mass blessings, we were not in a position to penetrate her inner circle to approach her. We then drove to a nearby village where I conducted interviews in 1974 and asked some men on the side of the road if they knew whether Nontetha's church was still in existence. After confirming that it was, they directed us to an elderly woman standing nearby. Although acknowledging her membership in the church, she was reticent to speak with us. She pointed to the home of another member, a middle-aged woman, and recommended that we should talk to her.

When she appeared at the front door of her home, we did not have a chance to introduce ourselves before she began looking at me intently. She asked, "But aren't you Bob Edgar?" Her question took me by surprise. After acknowledging that I was indeed Bob Edgar, she chided me: "But what happened to you? You left many years ago and we did not hear any more from

you." She had been a teenager when I attended church services in 1974 and had a clear memory of me. She said church members placed a great stock in my visit and were very disappointed that I had disappeared and not remained in contact. She also queried me about my appearance. "Your beard is now getting gray and you're not as thin as you once were." I laughed and explained how the decades had altered my appearance. She advised us to go next to the home of the church's head, Bishop Mzwandile Mabhelu, Tsoko's successor, at nearby Thamarha Location.

I had not met Mabhelu on my initial visit in 1974, but on reaching his place and introducing myself, his eyes immediately lit up. He was visibly excited that I had returned and warmly welcomed me. Word circulated quickly in the village that I was around and, within a short time, a stream of people flocked to Mabhelu's home. I was once again surprised to learn that I had become part of their community's oral history - "the American who had visited many years before" - and I was heartened by their gracious reception. We agreed that I would return in a week's time for a feast and a meeting with the congregation, where we both would have a chance to catch up on what had happened over the course of the years. The following Sunday they shared a history of Nontetha's life that they had compiled, and they introduced me to two people, both in their nineties, who had known Nontetha as young people and who had participated in the "pilgrimage of grace" in 1927. The congregation conveyed how anguished they remained over how government officials had mistreated and institutionalized Nontetha and then refused to return her remains to her family after her death. I shared with them the documents that we had recently collected and the essay on Nontetha that Sapire and I had drafted.

After leaving them that day, I reflected on the occasion and determined that at the very least I was going to look for Nontetha's burial place in Pretoria regardless of how remote my chances were of finding it. Even if I could locate the cemetery where she was buried, what chance did I have of finding her grave in a pauper's field with no gravestones? I had two pieces of information to work with - the date of her death in May 1935 and the name of the cemetery, New, where she was buried. However, once I arrived in Pretoria and called around to the main cemeteries, I learned that there was no cemetery still bearing that name. I then decided to visit each of the cemeteries in turn beginning with Rebecca Street Cemetery, the one nearest Weskoppies Mental Hospital. When that cemetery's superintendent, Johan Green, volunteered that his cemetery's original name was Newclare, I knew I had probably found the right place. In line with segregationist policy, the cemetery had maintained separate burial areas for Europeans, Coloureds, Indians and Africans, but its register listed all burials in chronological order regardless of racial classification. After Green brought out an oversized ledger for 1935, we soon found a listing for a "Nontetho" with a burial date of 22 May. The entry noted that she had died at age 62 of liver and stomach cancer. The entry mistakenly listed her as a male, but we speculated that since she was wrapped in a blanket when she was brought to the cemetery, officials probably did not bother to determine whether she was male or female. Three bodies were normally placed in a pauper's grave, but we located the name of one other man who had been buried below her a few days earlier and ascertained that no one had been buried above her.

More importantly the ledger identified Nontetha's burial plot. Although I assumed that would not be helpful in a pauper's field, Green not only informed me that he had a detailed map of every plot in that area, but also that, with the help of surveyor's pins, he could pinpoint the precise location of her grave. Driving to that area, he showed me roughly where he thought her grave should be. Since this remarkable discovery came as I was preparing to return to the U.S., I called on Mzumza to report this news directly to Bishop Mabheli and to Nontetha's family. As I anticipated they were ecstatic to hear about these developments.

The next year was spent preparing the groundwork for an exhumation of Nontetha's grave. The Heritage Office of the Eastern Cape provincial government was exceptionally cooperative. Its staff had considerable experience in working with local communities to memorialize historical events and was sensitive to the cultural issues with which we would have to contend. They advised that we should put Nontetha's family foremost in our consultations before bringing the church or anyone else into the dialogue. In spring 1998, Hilary Sapire and I met Nontetha's descendants from several branches of her family at the East London home of Vuyani Bungu, a world champion boxer and Nontetha's great-grandson. We were fortunate that all the branches were in agreement about how to proceed.

I returned to South Africa in mid-1998 to prepare the way for the exhumation. Sapire had made contact with Coen Nienaber and his team of archaeologists, who were attached to the University of Pretoria's Department of Anatomy, about conducting the exhumation.¹² Although their specialty was Iron Age archaeology, they were receptive to performing an exhumation of a person from the recent past. They were also well versed in the complex bureaucratic process of securing the necessary permits from offices at four different levels of government in the Eastern Cape and Gauteng provinces.

All the stakeholders in the process - family members, church leaders (including 93-year old Tobi Mokrawuzana), government officials, archaeologists, a journalist, and myself - finally converged on Pretoria at the Holiday Inn on the morning of 13 July. But since Gauteng province had not issued the last permit for the exhumation, the archaeological team was not prepared to commence work until all the paperwork was in order, including having a policeman at the gravesite. Since they had only a small window for conducting the exhumation, they would not be able to reschedule for the foreseeable future. I was a nervous wreck since I felt responsible for bringing all these people together. The church leaders, however, calmed me down by assuring me that their prayers and Nontetha's spirit would see to it that the last permit was issued. Indeed, within the hour, the permit arrived and we drove immediately to the cemetery, where Green had marked off with twine a rectangular area that he was confident was Nontetha's grave.

After Nontetha's family and church leaders held a prayer service at the gravesite, a laborer cleared off a foot or so of topsoil, and Nienaber's team began their patient work. They dug six-inch trenches at the end of the grave where they expected the femurs, the strongest bones, to be. When struck, those bones would not crumble as would more fragile bones. If they did not uncover any skeletal remains, they then cleared off the six-inch layer for the whole grave. As they methodically dug down, they turned up many bones. To my untrained eye, they had to be human remains, but the archaeologists quickly identified them as animal bones that were strewn throughout the landfill that had been spread throughout the pauper's field. By the end

of the first day they had dug down three feet without any indication that there might be any bodies in the grave. I was getting very nervous about the whole undertaking.

The next day, as the archaeologists inched deeper, my sense of foreboding grew deeper since I anticipated that at least some evidence should have turned up by then. We had to wait until mid-afternoon before a team member unearthed evidence of the foot bones. With a whiskbroom, he meticulously exposed the imprints where foot bones had been before decomposing, as another team member began uncovering the skull at the grave's opposite end. Within an hour they uncovered what was left of the skeleton and made some preliminary observations of what those remains told them. They determined the rough height (a little over 5 feet), the general age (at least over 50), and the sex (female) of the person and noted that there were traces of cancer on the arm bones. They also found the remains of a second skeleton below the first. That confirmed what we knew about there being two bodies in this grave. They reasoned that since Nontetha was wrapped in a blanket when she was buried, she was likely placed on top of the wooden casket of the other person. Then, as the casket decomposed - and evidence was found of the casket - her body sank lower and lower.

The archaeologists carefully placed her remains in a storage box to be examined further by an anatomist at the University of Pretoria. Their reading of the evidence led them to determine that the remains were indeed Nontetha's. Her family and church leaders, on the other hand, were faithful to their own cultural and spiritual truths. They, too, accepted that the remains were those of their beloved prophet. In this case scientific and cultural logic came to the same conclusion.

We left that day with a great deal of satisfaction (and relief on my part). Plans were set in motion for the remains to be returned to Nontetha's home at Khulile in a few months for a reburial service. The archaeological team, which had previously worked primarily on Iron Age digs, had become personally invested in Nontetha's story and insisted that some of them accompany her remains on the long trek from Pretoria to the Eastern Cape. In a moving October 1998 ceremony attended by several thousand people, Nontetha was finally laid to rest.

Even though I was personally involved in the process, I was not fully aware of how the church interpreted my actions. In August 1999, I attended a service of the Church of the Prophetess Nontetha so that we could review all that had taken place. In a discussion after the service, a woman stood up and divulged something that they had not revealed to me before. In the 1920s Nontetha had prophesied that her followers should look to the Americans because one day they would do something miraculous for them. Her prediction then was most likely influenced by the ideas of Marcus Garvey and a popular myth that was widely circulating in the Ciskei and Transkei that African-Americans were arriving soon to liberate South Africa from white oppression. To her followers, my appearance and disappearance in 1974 was a source of discussion and disappointment precisely because I was an American. When I reappeared almost a quarter century later and played a critical role in locating Nontetha's grave, they interpreted my actions as the fulfillment of her prophecy.

RAIDERS OF THE LOST ARK, ACT II

The story of Nontetha's exhumation and reburial was featured on a news magazine on SABC-TV's evening English and Xhosa language services. These programs are religiously watched, especially in the Eastern Cape. Among the viewers were Israelite elders who remembered my earlier intervention in the return of their Ark and decided to call on me again to solve the mystery of the location of Charles Mgijima's grave. He had died in a Kimberley prison of Bright's disease on 12 March 1924 and had been buried in a Kimberley cemetery. Although his widow and a few Israelite leaders knew where his grave was, they had not followed through with a request by the prophet Enoch to erect a gravestone with his name on it. Only an iron rod marked his grave site, and they carried the knowledge of the exact place with them when they died.

After several Israelite leaders requested my assistance in locating Charles' grave, I agreed to attend an Israelite religious ceremony and to hold a meeting with a group of elders to learn all I could before agreeing to take on this project. Because of my previous involvement in helping to return the Ark, I did not want their expectations to be unrealistic. Although I may have acquired a reputation for achieving miraculous feats, I never lost sight of the fact that I was relying on my investigative skills and that I was following whatever factual leads were at hand.

The twenty-five elders and I talked for three hours on a wintry Saturday evening in the chilly Queenstown Tabernacle. They offered compelling reasons for why they wanted to locate Charles' grave. One was his pivotal leadership in the early years of the Israelites, his central role in the negotiations with the government in 1920 and 1921, and his actions as the Israelites' commander during the Bullhoek massacre, where he had been prepared to sacrifice his life. When he fell gravely ill in prison, Enoch had prayed that the Lord should take him instead so that his brother could return and hold the church together. Another reason was that they wanted his remains buried with other church leaders at Bullhoek so that he could be reunited with his ancestors. Finally, they noted that since they were involved in a partnership with the Department of Arts and Culture of the Eastern Cape provincial government to develop the site of the massacre (and a new memorial was dedicated to those slain at Bullhoek on the massacre's 80th anniversary on 25 May 2001), it was crucial for his remains to be returned to complete the process.

As our deliberations wound down, one elder took me aside and explained an unstated but crucial reason - and one that would not be voiced publicly-why locating Charles' grave was so important to them. Before Enoch died, he enjoined his followers to bring Charles' remains to Bullhoek in the family cemetery. Since that had not happened, they interpreted that as a breach of Enoch's wish and eventually the cause of generations of turmoil in the church. The Israelites split into two factions in 1947 over the laying of a stone to commemorate the 40th anniversary of Enoch's first prophecy; the forty represented their decades in the wilderness. One faction led by S.P. Mgijima of Shiloh favored laying the stone on Wednesday, 9 April, the actual date of Enoch's prophecy, while the Queenstown Tabernacle pragmatically supported holding the ceremony on the 13th, a Sunday when those who worked on weekdays could attend. Over the decades the rift between the factions grew bitter. By the 1990s, the rivalries over leadership between and within Israelite branches had grown so destructive that fistfights were breaking out in tabernacles and some members were even being killed. Israelite leaders attributed the

troubles to Charles' restless spirit, and that no healing could take place until his grave was located and his remains were brought home.

During our discussions I quizzed the elders about the availability of any documentation that might give me clues to work on. They had none, but they volunteered that a few years before, several Israelites had traveled to Kimberley to search for the grave. Their inquiries had been fruitless. Armed with a few scraps of information, I set out for Kimberley, where I consulted with officials of the Northwest Province Heritage Office and librarians at the Africana Library. The latter held municipal records and death notices, but aside from a listing with the date and cause of Charles' death, there were no other leads about where his grave might be. DuToitspan Prison, where the Israelite leaders served their jail terms, had subsequently been converted into a mining compound and its records destroyed.

My next stop was Green Point Cemetery several miles from the city center. Unlike the segregated Rebecca Street Cemetery which maintained detailed records of burials, the Green Point Cemetery was for blacks only and most of its records had been destroyed in a fire at some point. A few surviving records that were deposited in a nearby school contained no leads. The cemetery itself had fallen into disrepair. Few gravestones were still erect, and only a handful had names on them. I walked around an older section hoping to stumble on some overlooked clue, but I gave up after several hours. My search this time had faltered, but as I reflected on my experiences with the searches for the Ark and Nontetha's grave, I understood what remarkable undertakings those had been.

Conclusion

During the apartheid era, whether I was interrogating official records or negotiating with people to talk about their recollections of the past, the "politics of inequality" set the ground rules and boundaries for my research undertakings. With South Africa's independence in May 1994, however, the research landscape underwent a seismic shift. Independence unlocked the memories of many black people who previously had been unwilling or reticent to speak with me openly. While collecting oral data is challenging even in the best of circumstances, at least the apartheid state's repressive machinery was no longer such an intimidating and intrusive factor.

May 1994 also created opportunities for rectifying some of the injustices of the past that were amply documented in my researches. Although historians are encouraged to maintain their objectivity by keeping a distance from their subjects, my personal relationships with individuals and church groups compelled me to take a different path. I applied my investigative skills to search for the Israelite's holy relic, the Ark of the Covenant, which the police confiscated after the Bullhoek massacre, and Nontetha Nkwekwe's anonymous grave in a Pretoria cemetery. Those experiences exposed both the limits and possibilities of South Africa's changing landscape as South Africans grappled with the legacy of the old order and the possibilities opened up by transformation and the reconciliation process. While Albany Museum officials were initially reluctant to concede their ownership of the Ark, eventually they recognized that it belonged in the hands of the Israelites. Joined by provincial officials, they fully supported transferring it. In the case of Nontetha's remains, government officials,

archaeologists, and a cemetery superintendent as well as her descendents and church members all embraced the efforts to identify her grave, exhume her remains, and return them to her home. These experiences provide an African validation for William Faulkner's brilliant insight in *Requiem for a Nun* - "The past is never dead. It's not even past."

Notes:

1. This reference to an ash-heap also has special meaning to me because I had a Marxist colleague at the National University of Lesotho who was fond of quoting Lenin whenever he wanted to consign his enemies to the "ash-heap of history."
2. Many of the songs were translated and published in Robert Edgar, 1986: 213-37. In the early 1990s I interviewed Ntsu Mokhehle who had received his early political education under the tutelage of the LLB president, Josiel Lefela. After expressing his pleasure that I had published the volume, which he had read in exile, he gave me another LLB song which I had not collected before.
3. Robert Edgar, 2005: xi.
4. Edgar, 2005: xi-xii.
5. Gail Gerhart informed me that when she interviewed Mda in an extended session in the early 1970s he also asked her to take notes for the same reason. Ultimately I made one exception to my agreement. When Luyanda Msumza and I were collecting the writings of Mda's close friend, Anton Lembede, for an edited volume, I recorded Mda's comments on Lembede that we edited into a forward. See Edgar and Msumza.
6. Edgar, 1977; see also Edgar, 1987.
7. Edgar and Hilary Sapire.
8. Permit (Under 24 (1) of Act No. 18 of 1936). Original in possession of author.
9. Enoch Mgijima to Magistrate, Queenstown, 29 January 1925 (South African Police Archive, Pretoria).
10. The debate over who owns artifacts, museums or indigenous peoples, is explored in Cohen.
11. The conventional date for South African independence is with the formation of the first government of the Union of South Africa on 31 May 1910. Given, however, the lack of franchise rights for over two-thirds of the population at that time and the blossoming of the politics of inequality into the full blown racial domination of the apartheid era, 1948-1994, I consider the inauguration of the Mandela government on 10 May 1994 as marking the true independence of South Africa.
12. Nienaber and Steyn. The Eastern Cape Heritage Office has called on this archaeological team on several more occasions to exhume the remains of political prisoners executed by the South African state and to return them to their homes for reburial.

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South African Land Reform and the Global Development Industry

THACKWRAY DRIVER

Abstract: Over the past decade, “land issues” have reclaimed centre stage in international development debates, with Hernando De Soto's influential work on land tenure and capitalism playing an important catalytic role. Post-apartheid South Africa has been highly visible in international discussions and debates about land reform, land tenure and land administration. The three major elements of land policy in South African, namely tenure reform in the former “homelands,” restitution, and “market-based” land reform, have frequently been used as an example or model in discussions about land policy in other countries. South African land policy has frequently been used to draw contrasts with the highly publicised land reform policies in Zimbabwe. This paper will analyse the way in which the “South African model” has been deployed in debates about land and development. It will examine in particular the discussions and debates leading up to the World Bank's 2003 report “Land Policies for Growth and Poverty Reduction,” and the use to which South African examples and policies are put in the final report.

RENEWED FOCUS ON LAND REFORM

Since the mid-1990s, there has been an increasing focus on the role of land in promoting economic growth and poverty alleviation in the international academic and professional debates about development.¹ In a widely cited 1978 article in *World Development*, David Lehman pronounced the 1950s to 1970s wave of land reform as “dead.”² Since the mid-1990s, however, land has been very much alive on the policy agenda of the international development industry.

The failure of macro-economic restructuring, which characterised the mid-1980s to mid-1990s “Washington Consensus,” led to an increased emphasis on “second-generation” reforms and in particular on institutions, including land tenure generally, and specifically on tenure insecurity. Increased emphasis has been placed on the impact of extreme inequality on overall economic growth, especially in Latin America, and access to land and other assets has increasingly been seen as a key determinant of inequity (reflecting in part the extremely influential work of Amartya Sen).³ The widely debated 2000 World Bank *World Development Report* - heavily influenced by Sen's approach - outlined three key areas for action in order to reduce global poverty: promoting opportunity, facilitating empowerment, and enhancing security.⁴ Land reform was seen as a key element of “promoting opportunity,” while security of

Thackwray "Dax" Driver is CEO of the South Trinidad Chamber of Industry and Commerce. A historian by training, he has written extensively on land policy and administration in Trinidad and Tobago, as well as the history of anti-erosion policies in the mountain areas of Lesotho.

<http://www.africa.ufl.edu/asq/v9/v9i4a5.pdf>

tenure was seen as a key target element of “empowerment,” especially in the context of making the legal system “more responsive to poor people.”

The end of the Cold War and the sudden inclusion of the former Soviet bloc into the realm of international development gave further impetus to land policy issues, with the moves to privatise former collective farms and other production units, to (re) establish a land-market, and to provide restitution to former land-owners whose lands were seized in Communist era land reform initiatives. In addition to this renewed interest in land reform projects in international development debates, during the late 1980s and early 1990s, there was significant academic interest in issues of land and resource tenure. This was often as a result of increased social science research into environmental issues and the role of “communities” in natural resource management, especially in Africa and South Asia. Much of this work emphasised the complex and contested nature of land and resource rights and examined the social and historical setting of land and resource rights (for example see articles by Berry, Peters, Shipton and Goheen in the special 1992 edition of *Africa*).⁵ In the African context, this academic work often critiqued previous land tenure reform programmes, for example the World Bank funded land titling programmes in Kenya, and conservation projects, especially the establishment of national parks and game reserves, from which farmers and herders were expelled. In much of this work there were often explicit or implicit connections drawn between the impact of some of the contemporary conservation and development projects on land and resource rights and prior colonial era development projects, such as the infamous South African “betterment schemes.”

Ideas associated with “new institutional economics” have played an important role in much of the academic work on resource and land tenure.⁶ This perspective places an emphasis on institutions that mediate relations between individuals, including the market. In terms of land markets, the “new institutional economics” framework places an emphasis on property rights - the social relations between people that dictate how property is owned, accessed, used or transacted - often described in the land tenure literature as a “bundle of rights”. The new institutional economics approach to property rights meshes well with the general development studies interest in institutions, as outlined in the *World Development Report* 2000. The failure of past land reform efforts from the 1960s and 1970s has been explained in terms of a failure to understand the “institutional economics” of property rights.⁷

This increased interest in land and the institution of property rights in the international development community has led directly to increased investments into “land projects” by international development agencies. Between 1990 and 1994 the World Bank approved only three stand-alone land projects. In the 1995-99 period this increased to nineteen projects approved (with US\$700 million in funds commitment) and twenty five projects approved in the 2000-2004 period (with US\$1 billion funding commitment). In Latin America and the Caribbean, the Inter American Development Bank, the World Bank and U.S. Agency for International Development have all placed an emphasis on land administration projects, with at least US\$ 851 million in investments into these projects being committed over the past decade.⁸ Unlike the previous land reform initiatives in Latin America, the emphasis in many of these new projects has not been on redistributing land-holdings from large landlords to small peasant farmers through direct government action, but rather on improving the functioning of the legal, technical and institutional framework for land ownership, with the objective of increasing

security of tenure for poorer households. Much of the investment in Latin America has gone into land titling programmes, through which households occupying land with no formal documented title are given various forms of title documents. By contrast, much of the land-related World Bank funding in Africa is contained in either wider structural adjustment programmes or in more integrated rural development projects.

In 2000, interest in land titling projects beyond the normal confines of the development industry was given a significant boost by the publication of an extremely influential, widely read and hotly debated book by Peruvian economist Hernando de Soto. De Soto's book *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* received widespread media attention and was favourably reviewed in a whole host of international newspapers and journals.⁹ The *Economist* magazine declared that it was "the most intelligent book yet written about the current challenge of establishing capitalism in the developing world."¹⁰ The media frenzy that the book created has been fuelled by the accolades that De Soto subsequently received from a whole host of major international figures, probably most notably from former US President Bill Clinton, whose face and endorsement currently (June 2007) grace the home-page of De Soto's Institute for Liberty and Democracy (ILD). De Soto is seen as a key player in not just Latin American development circles (in which he was well known prior to 2000), but across the globe. In addition to its "think-tank" role, ILD has implemented or advised governments on a whole series of land titling projects in numerous countries (including Peru, Mexico, Brazil, Tanzania, Egypt, and the Philippines), often with USAID funding.¹¹

The arguments presented in *The Mystery of Capital* are neither new nor exceptional. The basic premise behind the book is that that poor people are unable to take part in the market-economy, and make capitalism work for them, because of the existence of a bureaucratic and legal system that does not recognise the assets that they hold (especially land). This therefore prevents them from taking full advantage of the asset to create working capital, increased income and improve the standard of their living. The solution to this problem is widespread and drastic legal reform to bring these informal assets into the formal system and to unlock the massive hidden capital that they represent. As in the new institutional economics approach, there is a particular emphasis on reforming and building trust in the institutions that regulate property (land registries, cadastres, licensing agencies etc.), but also on the possibility of massive one-off land titling programmes to bring large numbers of poor people currently occupying land in the "extra-legal" realm into the formal system. De Soto places special emphasis on the way in which European and U.S. legal systems adapted in the nineteenth century to take into account and formalise extra-legal property relations that had arisen in response to changing demand for land. Given its avowed evangelical ambitions and block-buster tone, *The Mystery of Capital* inevitably simplifies and glosses over many issues surrounding property, informality, and legal reform, but it has certainly led to a huge and seemingly growing interest in land as a key component in the development debate.

The huge interest in De Soto's book has also spawned an opposition movement to "World Bank land titling" programmes, with international peasant solidarity groups such as 'Food First' and 'War on Want' targeting De Soto as an agent of global capitalism and a (witting or unwitting) advocate for the oppression of peasants. The support that De Soto has received from the *Economist* magazine and even Margaret Thatcher has not helped his cause with left-leaning

ant-globalisation campaigners. There is now a “De Soto Watch” website, dedicated to highlighting ILD's involvement in projects around the world.¹²

THE WORLD BANK'S POLICY RESEARCH REPORT

Within the international development industry, the interest created by De Soto's work was further increased by the discussion leading up to the publication of a new World Bank Policy Research Report (PRR) on land issues in 2003. During the 1990s, the World Bank conducted or contracted a significant amount of research into land policy and related issues. In keeping with a general shift in World Bank policy, there was also a more concerted effort to consult with “stakeholders” and with research communities outside of the Bank. The previous World Bank official position paper on land reform was the 1975 “Land Reform: Sector Policy Paper” and the Bank recognised that much of the content and ideological basis of that report had either been overtaken by events, experience or subsequent research. The Bank therefore set about publishing a revised Policy Research Report on land issues to try to distil the initial experience gained through a new round of international development agency funded land projects and the new research into land tenure, especially the institutional basis of property rights.¹³

In order to try to form a broad consensus on land policies, the Bank invited a number of well respected academics to form an external technical advisory committee and invited a broad range of other bi-lateral and multi-lateral agencies, NGOs, advocacy groups and government representatives to take part in a series of regional workshops and on-line discussion forums. Some civil society groups, most notably Brazil's MST (the Landless Workers Movement), refused to take part in the consultations on the new PRR. Consultants were contracted to undertake supporting research projects in a variety of related themes and a large number of papers, discussant responses, position papers and commentaries were either presented at the four regional workshops (April-June 2002) or during the email discussion forum (December 2002-January 2003).¹⁴

Both inside and outside the PRR consultation process, the major point of debate was “market-assisted” or “negotiated” land reform programmes, especially the programmes in Brazil, South Africa and Colombia. Interestingly these land reform programmes, widely regarded as World Bank “flagship” projects, were not actually mentioned in the initial discussion draft of the PRR released by the World Bank.¹⁵ Nevertheless, the World Bank's support of these programmes became the major contentious issue in the debates around the PRR. The Bank's support of the projects was cited as the reason that some social movements refused to take part in the discussion. Speaking at a 2003 final consultation on the PRR in Washington D.C., Robin Palmer, Oxfam's Global Land Policy Advisor (a key researcher-cum-advocate on land and property rights, who took a very active role in the discussions around the PRR) stated:

for many of my colleagues and Oxfam partners such close collaboration [between Oxfam and] the Bank is highly problematic, and in some countries would be deemed quite inappropriate on account of much extremely negative past historical experience. I am thinking here of countries such as Indonesia and parts of Central and South America. The Bank would do well to remember that very many people across the world unambiguously see it as ‘the

enemy', as being totally dogmatic in its approaches (for example over market assisted land reform), as being unwilling to listen, and as being fundamentally antagonistic to the needs and interests of the poor.¹⁶

THE WORLD BANK AND LAND REFORM IN SOUTH AFRICA

Market-assisted or negotiated land reform initiatives refer to land reform projects in which the state provides grants or cheap loan financing to targeted individuals or groups to assist them in purchasing land from existing land-owners on a "willing seller–willing buyer" basis and, crucially, to provide the beneficiaries of the programme with some working capital to initiate productive agriculture. The state tends to play a facilitative role in these market-assisted programmes, helping potential beneficiaries identify suitable land, assisting in negotiations, and undertaking the necessary legal formalities to transfer the land.

The two most commonly cited market-assisted land reform initiatives are those in Brazil and South Africa. The South African land reform programme is often cited as a "pet project" of the World Bank, despite the fact that it has not been financially supported by direct Bank funding. The World Bank has, however, played an extremely important role in designing and subsequently re-designing the South African land reform programme.

The World Bank's involvement in South African land policy began prior to the first democratic elections, with a series of visits from Bank staff and consultants beginning in early 1992. Possibly the two key World Bank advocates for land reform during the current era, Klaus Deininger and Hans Binswanger, took part in some of these early consultations. In 1993, Deininger and Binswanger published an article in *World Development* making a strong case for a "rapid and large scale land reform programme," arguing that South Africa faced a choice between a large-scale reform programme or decades of peasant insurrection.¹⁷

These sentiments were regarded with suspicion by many in the southern African development studies community. Richard Levin and Daniel Weiner, writing in a book produced as part of the MacArthur-funded "Community Perspectives on Land and Agrarian Reform in South Africa" (CPLAR) project, regarded these as "unexpected sentiments." They argued that these statements appeared to be part of a "process of legitimizing the Bank's presence within South Africa," implying they were an element of an overall project to embed a "neo-liberal" development agenda rather than a genuine desire to advance the land reform agenda.¹⁸

While undoubtedly in this period the World Bank was seeking a role for itself in a post-apartheid South Africa, this view perhaps takes a too instrumentalist line, as Binswanger in particular had a long history of advocating a central role for small-scale farming within World Bank development priorities. Levin and Weiner's comment also possibly downplays the strong international moral impetus to identify with the oppressed black population of South Africa – a sentiment that would surely affect even World Bank economists. World Bank consultants did, however, clearly play a lead role in developing the rural policy agenda for post-apartheid South Africa. After 1994, the World Bank's Rural Reconstruction Programme proved to be highly influential on the new democratic government's land and agrarian policy and the basic land programme components found their way into official South African policy.

THE POST-APARTHEID LAND REFORM AGENDA

South African land policy has consisted of three major strands: land restitution, land redistribution and land tenure reform. The land restitution component has involved the process by which people or descendants of people evicted from land as a result of racially discriminatory laws or practice, since the passage of the 1913 Native Land Act, could reclaim their land-holdings. The legal basis for this process was laid out in the Restitution of Land Rights Act, 22 of 1994 and a deadline for submitting claims was set at the end of 1998. About 80,000 claims were submitted by the deadline and about seventy percent of these have been settled. Many of these settled cases were for urban land and were settled through cash compensation rather than return of land. One report estimated that by the beginning of 2005, some 9,000 rural claims, involving millions of people, remained outstanding.¹⁹ Legal amendments to the legislative framework were introduced in 2005 to extend the timeframe for dealing with the outstanding claims and for easing some of the bureaucratic burden associated with the dealing with the claims. Nevertheless, the restitution component of the overall land reform programme is the least controversial, as it clearly and directly addresses the righting of the most obvious wrongs of apartheid, and has shown a fair degree of success in implementation. Cheryl Walker describes it as the “flagship of land reform.”²⁰

The land tenure component of the overall reform programme is widely seen as having experienced the least progress. The South Africa Bill of Rights within the democratic constitution includes an entitlement to security of tenure or “comparable redress” for those whose tenure is insecure as a result of past discrimination, and requires Parliament to enact legislation to provide appropriate measures.²¹ The passage of legislation to provide greater security of tenure to labour tenants on commercial farms was passed in 1996, though it is widely seen as not having created the desired increase in security of tenure, based on the high level of evictions that continue to be reported.

Legislation concerning land tenure in the former “homelands” has been very contentious within South Africa, with a number of Bills and repeated re-drafts of Bills having been tabled. Interim legislation to give some level of protection against sale of land by chiefs or initiation of projects without consultation of occupants was also passed and subsequently extended, while a more comprehensive legal framework was being developed. The key issue has remained the level of powers to be vested in “traditional leaders” in the allocation of land and the level of individualisation of tenure. In 2004, a Communal Land Rights Act (CLRA) was passed by Parliament.

The CLRA of 2004 involves the transfer of rights over land within the former “homelands” from the state to “communities.” In a critical review of the Act, Aninka Claassens demonstrates how the Act deems communities actually to be tribal authorities, originally established under apartheid-era legislation. The CLRA does allow for the registration of “old order rights” (those created by customary law or usage) as new formally registered rights, where demand for this exists within the “community.” However, the Act gives significant powers to the Minister of Land Affairs to determine both the boundaries of community landholdings and the power to define and register new order rights. Passage of this Act has been highly controversial and it

has been severely criticised by groups representing rural women because of the potential for the Act to erode the security of tenure of women, especially un-married women.²²

The constitutionality of the CLRA has been challenged, on the grounds that it undermines certain groups' property rights. Despite the criticisms, and the legal challenges the government's stated intention is to push for the full implementation of CLRA. In his state of the nation address in February 2007, President Thabo Mbeki reiterated the government's intention to start implementing the Act, a promise he later re-stated at the opening of the National House of Traditional Leaders. Interestingly, the justification for the implementation of the Act was stated as being "in order to improve the economic utilisation of communal lands."²³ Despite this stated intention, it is unclear when or how the CLRA will be implemented, not just because of the pending legal challenge but also because of the administrative hurdles and costs associated with the Act.

While the land tenure reform component of the overall South African land reform programme has been hotly debated within South Africa, as noted above it is the land redistribution component that has received most attention outside of South Africa, and was a major issue of debate in the dialogue and consultation leading up to the World Bank Policy Research Report. The original market-assisted land redistribution programme developed in South Africa, with active World Bank support, consisted of providing a grant to qualifying households. The Settlement/Land Acquisition Grant (SLAG) was a R15,000 grant (equivalent to the National Housing Subsidy available in urban areas) which was available to anyone with a monthly salary below R 1,500 and could be used to purchase land on a negotiated basis. The SLAG programme was clearly targeted at the poor, and some preliminary research indicated that it did successfully achieve this targeting of poor households.²⁴ However, progress to meeting the overall quantitative targets in terms of hectares of land transferred was extremely slow, with only some 200,000 hectares of land being transferred through the programme before it was more or less suspended to make way for a new programme.

This new programme, the Land Redistribution for Agricultural Development (LRAD), was introduced in response mainly to the very slow pace at which SLAG had been operating. Unlike SLAG, LRAD was targeted towards emergent black commercial farmers, not just the poorest households. LRAD uses a combination of state grants and commercial loan finance (calculated on a sliding scale). Opponents of LRAD suggested at its inception that it was an 'elitist programme' that would be inaccessible to the very poor.²⁵ It has led to an acceleration in the amounts of land redistributed, but the overall delivery of land through the redistribution component is still far behind schedule if the government is to meet its stated targets for land reform.

In 1994, the government set an extremely ambitious target for delivering land reform, with the target of redistributing thirty percent of land to African owners by 1999. There is a large degree of ambiguity about the actual target figure. Government statements seem to suggest that the target of thirty percent of commercial farm land in African ownership by 2014 will be delivered through all three forms of land reform. This is backed by the figures quoted in government reports and statements. This implies that if land tenure reform is successfully implemented in the thirteen percent of land in the former "homelands" and on other state-owned landholdings, this would be included as having contributed to the overall thirty percent

target. However, the same government statements tend to also say that the target is to transfer 30 percent of land owned by “commercial farmers.” The target tends to be stated in terms of land area transferred rather than the number of individuals receiving land.

DEBATES ABOUT “MARKET-ASSISTED LAND REFORM”

Opposition to the market-assisted land reform programme in South Africa has four major aspects: firstly, that it is too slow and South Africa has been unable to meet its own targets; secondly, that it is ethically and ideologically wrong to expect victims of apartheid to contribute financially to buying back land stolen from them (and in some cases by implication, not punishing white farmers for stealing the land); thirdly, the market-basis of the programme means that it will not assist the poorest members of society; and finally, that it is based on a global capitalist “De Soto” ideology of individual property rights, which by its very nature discriminates against the poor, marginal groups, women etc. A sub-text of these complaints is that the programmes are part of a global capitalist agenda of the World Bank to wipe out peasant farmers and promote large agri-business:

The World Bank is imposing a virtually identical set of policies on widely different countries, without regard for their unique histories, cultures, or patterns of land use. The policies focus on privatizing and individual titling to create markets in land, and in some countries include credit funds by which the poor acquire debts to purchase land from “willing sellers.”²⁶

These complaints were made vigorously by some civil society groups in the discussions surrounding the World Bank's Policy Research Report in 2002-3, and continue to be made by many groups both inside and outside South Africa. Less vocally, there has been a large degree of support from within the international development industry for the overall approach being taken by the South African government. The continued commitment to the rule of law and the constitutional protection of pre-1994 property rights is seen as a key strength in the South African programme and are often presented as a contrast to Zimbabwe.

The South African land reform programme has clearly failed to meet the quantitative targets set in 1994. Department of Land Affairs figures for 2005 (the latest available) show that a total of 3.1 million hectares have been transferred through the entire programme up until March 2005. This represents about 3.7 percent of commercial agriculture land.²⁷ The Department of Land Affairs notes that its delivery rate has been increasing by about ten percent per annum, but there is obviously going to have to be a step-change in delivery if the government targets are to be met: the Department of Land Affairs (DLA) talks of delivering 2.2 million hectares per annum by 2007.²⁸ At the time of writing, the DLA Annual Report for 2006 is not yet available on their website.

This obvious failure of the programme to meet its targets was highlighted by many of those opposed to the concept of market-assisted land reform. Ironically, political pressure to increase the rate of redistribution was a chief factor in the government's retreat from the strong pro-poor emphasis of SLAG and the move to encourage more “emergent black commercial farmers” under LRAD. The World Bank Policy Research Report acknowledged the slow pace of delivery

under SLAG and LRAD, and suggested that improvements could be made through greater "community-involvement" and involvement of the private-sector.

The political issues raised by market-based land reform (righting the historical wrong) are almost entirely ignored in the World Bank's Policy Research Report, yet this is a key element of the land reform debate in South Africa.²⁹ The political issues surrounding land in South Africa are obviously heightened by what has taken place in Zimbabwe. There is a consensus in most of the literature that "recent invasions of commercial farms in Zimbabwe highlight the urgent need for bold interventions to de-racialise the structure of commercial agriculture in South Africa."³⁰ This issue is clearly at the forefront of South African government concerns. In 2001, Siphso Sibanda (DLA Director of Tenure Reform) contrasted the Zimbabwean and South African government's approach:

In South Africa too, land and land reform are unquestionably emotive issues, and matters related hereto need to be handled with circumspection and sensitivity by government. At the same time, government has taken firm control of the matter, to discourage and prevent a "tinderbox" situation similar to that now prevailing in Zimbabwe, occurring in South Africa. In this regard, the South African government has since 1994 been involved in designing and developing a land reform programme that aims to bring about a fair and equitable land dispensation in South Africa in an orderly and planned way.³¹

Dealing with the politics of land is a key issue for the South African government. The World Bank and the international development industry are not well placed to advise or assist on this issue, and there is little to be gained from debating this issue within the confines of the international development industry (as some of the peasant advocacy groups seem to demand). Political demands to increase the pace of land reform have been made increasingly vigorously by various civil society groups, most notably the Landless People's Movement (LPM), which has strong support from MST (Brazil) and the international anti-globalisation campaign.

Over the past two years, the South African government has made various statements suggesting that it could move more aggressively on land reform, including using its powers of expropriation to speed up the process of redistribution. There has been one widely reported recent case in which the government's right of expropriation has been utilised in order to resolve a dispute about the value of a parcel of land being re-distributed. It is not clear, however, how his right will be utilised in a programmatic manner to speed up delivery. In the meantime, the government continues to emphasise that it will act in a reasonable and responsible manner (though again it does not really say what this means in practice).

One of the frequent complaints by the critics of market-based land reform is that it favours better-off farmers and supports the development of global agri-business. There is a general and rather romantic rejection of individual title and private property that underlies much of this criticism. This has spawned a series of adverse reactions to the work of De Soto. The claim that the World Bank favours large over small farmers was heartily denied by World Bank officials during the consultation process to draft the land Policy Research Report. At the African regional consultation in Kampala (April-May 2002) Roger van den Brink, the World Bank's African region land policy advisor, emphasised that the World Bank policy was to support small-scale family farming and that indeed in many countries the World Bank only worked on rural projects that directly supported small-scale farming.

One of the key arguments that permeates the Policy Research Report is the idea that there are no economies of scale in most tropical agricultural systems. Rather, the argument goes, the productivity advantages of large farms have historically been created and sustained through deliberate land, labour, marketing, and subsidy interventions by governments, and that without these interventions small farm units would be more productive producers of agricultural products than large farms (on both a per hectare and per person basis). This idea is perhaps the key intellectual theme that runs through the World Bank's Policy Research Report and is used to justify land reform on an economic efficiency basis, rather than a political or equity basis.

This argument appears not to have been significantly debated by either the advocates or opponents of the market-assisted land reform process in southern Africa, where the greater efficiency of large scale commercial agriculture is generally assumed on the basis of the past record. Sam Moyo, writing on the Zimbabwe case argues that: "To date land policy in southern Africa has not fully taken on board mainstream agricultural economics debates. These have demonstrated through global case evidence that small-sized farms tend to use their land more productively, in terms of higher unit yields and the use of labour."³²

SOME CONCLUDING COMMENTS

The South African market assisted land reform programme has been much discussed in the international development industry. This in part reflects the important role that the World Bank played in developing the strategy, but perhaps just as importantly the continued high international profile enjoyed by South Africa and the domestic and international legitimacy enjoyed by the ANC/Alliance government (despite growing civil society opposition). The World Bank Country Strategy for South Africa emphasises the exchange of ideas as being a key component in the relationship:

For South Africa, gaining access to international expertise and knowledge is at least as important as providing financial capital, and the Bank has operated as a clearinghouse and sounding board for international experts and best practice. But functioning as a knowledge bank does not involve only the transfer of knowledge to South Africa - in many areas, we can learn as much *from* South Africa as they learn from us. For example, South African efforts to build a nation based on principles of *reconciliation* and *inclusion* provide invaluable insight into how we can better deal with post-conflict situations elsewhere in the world. Analytic and policy work in areas such as land reform and inter-governmental fiscal relations have provided important lessons for other client countries.³³

This is an unusual statement in a Country Strategy paper, reflecting the exceptional position enjoyed by South Africa in international development discussions. The goodwill around land reform that existed inside South Africa in the mid-1990s may have eroded to a situation that is now currently labelled as a crisis or impasse, but there needs to be a recognition both inside South Africa and amongst the global critics of market-assisted land reform that this is a long and difficult process, or in the words of Cheryl Walker "a slow rather lumbering process."³⁴ There are few examples of countries that have successfully redistributed large scale commercial farms to smaller farmers. As the World Bank Policy Research Report notes, successful examples of major land reform have tended to involve the transfer of ownership

from landlords to tenant farmers already occupying the land, rather than redistribution of large commercial farms where the labour is provided by workers.

Ideological positions that either reject or valorise individual titling and the land market are not going to be helpful in overcoming the current impasse. There needs to be an increasing recognition of the need for a mixture of different policies and programmes to deal with specific locations with different histories, economies, social settings, and political demands. In a recent article, Cheryl Walker sums up the current land reform debate thusly: "It focuses too narrowly on the so-called 'white countryside,' underplays the importance of urban land reform and the former reserves and underestimates the contemporary challenges of agriculture."³⁵ Similar sentiments have been expressed in the CDE report and in various contributions by Ben Cousins.

The wholesale rejection of individual titling and the demonisation of De Soto favoured by some anti-globalisation campaigners should not be allowed to drive the debate on land reform in South Africa. There are many interests in South Africa, such as the National African Farmers' Union who believe "freedom lies in an escape from the oppressions of the enforced 'communal' order of the past," and who will continue to push for individual titling of former "homelands" and state-owned property.³⁶ In peri-urban areas (the domain in which De Soto's ILD has tended to work most effectively) there are significant benefits to be gained through individual titling to help break the power of 'shacklords' allocating land in return for cash and warlords building a power base through control over land.

Furthermore, the valorisation of communal tenure has clear dangers, as we have seen with the Communal Land Registration Act of 2004. Concerned about the impacts of this legislation especially on un-married women, Claassens has argued for an approach that prioritises the recognition and strengthening of use or occupation rights by individuals and families, rather than communities (i.e. Tribal Authorities), with rights and administration cascading upwards from this level to higher decision making bodies (headmen, village councils etc.).³⁷ It may be worth noting that research from Kenya indicates that women have (on occasions) been able to counter men's claims to landholdings under customary tenure through the acquisition of land under registered title, in addition to making claims under certain customary practices.³⁸

There is some evidence that the land market has, without government assistance, also contributed to the redistribution of the racial basis to land ownership. One study in KwaZulu-Natal found that between 1997 and 2001 45,121ha of land were transferred to "previously disadvantaged groups" through the SLAG project. During the same period 36,148ha were transferred to previously disadvantaged groups through private mortgage loans; 24,118ha through private cash purchases; and 16,097ha through non-market private transfers (mainly bequests). On average, the land transferred without government assistance was of higher quality, reflected in the higher total land values transferred through non-government assisted routes (R174.3 million compared with R.36.9 through government-assisted programmes). There were a total of 905 private transactions to "previously disadvantaged groups" in this period, compared with eighty-nine through the SLAG project.³⁹

The land reform process needs to involve comprehensive legal reforms to make land transfers cheaper and more effective, especially reforms that will assist in market-based transfers of land to potential African farmers. The Subdivision of Agricultural Land Act of 1970 has prevented commercial farmers from dividing up their farms, or selling portions of farms to

new black commercial farmers. Legislation of this nature exists in many countries and is based on the concept that small parcel sizes will lead to less productive agriculture. As noted above this idea is now widely rejected within agricultural economics, especially for tropical crops. The repeal of this legislation needs to be enacted, but further reforms that make title registration easier and cheaper should also be implemented. These reforms, undertaken in many countries, typically involve changes to the way in which land surveying is regulated and in the manner in which land transactions are registered so as to take advantage of new technology. This is usually termed "land administration" in most of the literature.

The opponents of the World Bank approach to land policy have criticised the concentration on land administration in many Bank projects, involving the strengthening of registries, cadastres, and mapping functions (see for example "Statement Against World Bank Market-based Land Reform," April 2002). However, it is the weaknesses in these institutions that frequently led to failure of past land reform programmes (certainly in Latin America) and one of the key challenges for South Africa is overcoming these administrative barriers:

While the various factions in the land reform debate are off looking for painless or costless ways of speeding up land redistribution in South Africa, there is the increasing risk that the real obstacles to land reform will continue to be overlooked. Insufficient financial resources allocated to land reform programmes and inadequate administrative capacity devoted to implementation must eventually receive the attention they require.⁴⁰

The tendency to contrast fluid "customary" practices with rigid "private-property regimes" should also be resisted or at least questioned. Private-property regimes have always been able to take into account wider community interests (for example through assertions of common-use rights under English common law) and they have hardly been stable, uncontested, or unchanging as some commentators assert. In the Caribbean, unique and innovative property rights, such as family land, have evolved within the context of a private-property regime and without any formal legal recognition in statute. A nation-wide systematic title registration programme in St. Lucia has not led to an erosion in family land property rights and indeed could be considered to protect non-resident family members.⁴¹

Finally, as Walker emphasises, the South African land reform programme needs to take into account the changing reality of the agricultural sector. There has been a significant decrease in the number of large-scale commercial farms in South Africa, down from about 61,000 in 1996 to 45,818 in 2002.⁴² A total of 19,736 new black farmers have reportedly been resettled through LRAD since its inception in 2001 and some estimates put the total number of African commercial farmers at 90,000 (obviously mostly in the former "homelands").⁴³

The data indicates that while new small scale commercial farming units are being created through the land reform process, many large-scale commercial farmers have been leaving the agricultural sector. This indicates that, contrary to the World Bank's views on the efficiency advantages of small farms, there is a process of consolidation underway in the large commercial sector. One factor that has to be taken into account is the fact that while small farms may have efficiency advantages at the level of production, larger units have advantages at the all-important agricultural marketing level.

Data on the South African agricultural sector indicate that the value of agricultural exports as a percent of total exports has remained fairly constant at about seven to eight percent. There

has however been a shift in commodities, with intensive horticultural sectors now contributing more than the traditional extensive commodities such as mohair, wool and hides. The horticulture sector increased from twenty-two percent of the agricultural GDP to twenty-six percent over the 1990s. The horticultural sector, especially for export markets, relies upon extremely well integrated supply chains and the ability to deliver large quantities of high quality produce on a consistent basis. The broiler industry has shown the strongest growth out of all agricultural sub-sectors in South Africa and its share of agricultural GDP rose from 6.7 percent in 1980-81 to 12.6 percent in 2000-1.⁴⁴ This sector also relies upon extremely well integrated and responsive supply-chains.

This raises both a challenge and an opportunity for the land reform process and general agrarian transformation process in South Africa. It highlights the possibilities of contract farming or other linkages between smaller-scale producers and larger units with the scale to be able to negotiate in the international marketing arena. As noted in the CDE report, there are a number of examples of commercial farming associations or groups working with or through small-scale producer groups, including making land holdings available, to integrate supply chains and improve productivity. The land reform process needs to build on these existing private initiatives to try to create a new agricultural sector that meets both the realities of the market-place and the needs of the rural poor. A quote from Carter and Zimmerman, discussing land and agrarian reform in Latin America, would seem to be equally apt for South Africa:

The rigidities of the old antagonistic agrarian politics have been shaken by the events and reforms of the last two decades. There would thus seem to be the political space for new coalitions, built not around a blind faith in either free markets or their completion negation, but rather around a more refined understanding of the role that time, markets and ancillary policies can play in resolving the agrarian question.⁴⁵

As South Africa continues to grapple with the challenge of inequality in access to land resources, calls will continue to be made for the government to either support or reject “market-based” land re-distribution and “World Bank” or “De Soto” models of land reform. At the same time, the South African experience will continue to inform global debates about land reform. While the politics of South African land reform will be played out in various arenas at national and international levels, it is important to remember that actual access to land will be determined by a series of decisions, events and actions taken by individuals and groups at the local level, rather than by global ideological debates.

Notes:

1. The phrase “academic and professional” discussions on development is used as a convenient short-hand to indicate that research in the development studies sphere encompasses work within universities, within international development agencies, such as the World Bank or the United Nations system, private consultancy groups (often contracted by the international agencies), and international and local non-governmental organisations. There are frequent overlaps between these “networks of professionals” in and out of the academy and a wide literature on the nature and implications of these networks.

2. Lehman 1978.
3. Senn 1981 is perhaps his most influential work in this regard.
4. World Bank 2000.
5. Berry; Peters; Shipton and Gohenn.
6. See for example Lipton.
7. Vogelgesand.
8. Barnes.
9. De Soto.
10. Quoted on the ILD website: <http://www.ild.org.pe>
11. See ILD website for details: <http://www.ild.org.pe>
12. www.desotowatch.net
13. It should be noted that a World Bank PRR does not set out official Bank policy on a subject, but is designed to provide guidance, generate ideas and capture knowledge on particular issues which should be used in the design and implementation of World Bank projects.
14. I undertook one small consulting project, examining the total costs associated with regularising title in Trinidad & Tobago, as part of this process and was a participant and discussant at the Latin American & Caribbean Workshop, in Pachuca, Mexico, May 2002. See Driver.
15. Palmer.
16. Quoted in Palmer.
17. Binswanger and Deininger.
18. Levin.
19. CDE.
20. Walker.
21. Cousins.
22. Claassens.
23. Address of the President of South Africa, Thabo Mbeki, at the annual opening of the National House of Traditional Leaders: Houses of Parliament, Cape Town, 23 February 2007. Retrieved March 20, 2007 from:
<http://www.thepresidency.gov.za/show.asp?type=sp&include=president/sp/2007/sp02231658.htm>
24. Deininger and May.
25. CDE.
26. FoodFirst.
27. Based on the figures in CDE.
28. Department of Land Affairs, Annual Report 2005 (April 2004-March 2005).
29. A point that I made in my commentary paper at the consultation in Pachuca, Mexico, see Driver.
30. Lyne and Darroch .
31. Sibanda.
32. Moyo.
33. World Bank, 1999: foreword.

34. Walker.
35. Walker: 823.
36. Cousins.
37. Claassens.
38. MacKenzie.
39. Lyne and Darroch.
40. Cousins.
41. Griffith-Charles.
42. Walker.
43. CDE.
44. Based on data in Fenyes and Meyer.
45. Carter and Zimmerman.

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Patrolling the Resource Transfer Frontier: Economic Rights and the South African Constitutional Court's Contributions to International Justice

HENRY J. RICHARDSON III ¹

Abstract: Coming out of the apartheid nightmare in 1994, South Africa became an immediate sovereign beacon for global justice with its path-breaking Constitution of 1996 that is the most rights-protective in the world. South Africa's Constitutional Court has garnered global acclaim for the quality of its legal reasoning and the strength of its rights-protective commitment. Decisions such as that prohibiting the death penalty under the Constitution, in a national context of growing crime rates, have inspired rights-protective legal and judicial approaches throughout the global community. This is similarly true for the Court's decisions - especially in the *Grootboom* and *Treatment Action Campaign* cases - more recently. This paper explores the Court's contributions to global justice notions through its legal reasoning in *Grootboom* and subsequent related cases. Particularly, the paper examines the Court's use of "reasonableness" as an essential element of its justiciability analysis, and asks how reasonableness here advances notions of justice regarding the particular importance to poor people in South Africa, and elsewhere, of effectively enforcing economic, social, and cultural rights as legal rights. The Court's use of reasonableness is compared with approaches on the same major issues in the reports of the United Nations Committee on Economic, Social, and Cultural Rights, which provides standards of global justice for these issues. The question here is how strongly in a justiciability analysis this Court should push its judicial authority towards having actual decisional influence on national resource priorities and allocations, including where resources are scarce. Issues and arguments are also explored as to whether the Court has done all it could do in its legal approach to these rights. Whether or not this Court 'has gone far enough' in protecting these rights, however, it has provided a model for the competence of courts anywhere to protect these rights as legal rights - notwithstanding a western legal history of strong expectations and market demands to limit them to 'aspirations.' Through principled legal analysis it has held that where great needs exist for poor people, not least those of color, judicially-enforced legal rights can provide access to critical resource transfers for their basic welfare.

Henry J. Richardson III is Professor of Law at Beasley School of Law at Temple University. Professor Richardson was International Legal Advisor to the Malawi Government for almost three years shortly after independence, and subsequently in charge of African policy on the Carter Administration National Security Council staff, a member of the Commission on the Independence of Namibia, helped monitor the 1994 South African elections, and was a constitutional advisor to the Rwandan government. He has written extensively on issues of human rights, international law, and development questions in Africa. He is a member of the Council on Foreign Relations, a past vice president and honorary vice president of the American Society of International Law, and a founding member of the National Conference of Black Lawyers.

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PROLOGUE AND INTRODUCTION

The judicial leadership of South Africa's able Constitutional Court under both that country's national Constitution and international law, in defining and enforcing economic, social and cultural rights for South Africans through holdings in important cases, has been prominent in the world community.² It has been both nationally and globally significant in the struggle to protect economic rights against what amounts to different shades of global economic apartheid. The Court's analytical strategies and jurisprudential approach in protecting these legal rights, in a nation of limited resources whose history and economy remain tortured by the results of comprehensive apartheid, are the focus of this article. Some assessment of the Court's work will be presented, as it has decided issues relative to protecting these rights, including justiciability, separation of powers, "minimum core" rights, "reasonableness," scope of remedial orders and judicial supervision, constitutional duties versus international legal duties, and judicial restraint versus the need to define a new role of judicial involvement in protecting and enforcing this particular category of human rights.

Assessments of the Court's work in South Africa can help us understand, among other things, the Court's contribution to global justice along this global frontier of potential resource transfers as a matter of legal rights, as these rights confront refusals from entrenched interests to modify processes of exclusive wealth and privilege. Since the global judicial potential and success on these issues contributes directly to an answer to Heilbroner's question below, judicial orders upholding and enforcing the economic rights of those petitioners before the Court generally represent a real or potential resource or wealth transfer across the fault-line to those particular poor people of color and all who are similarly situated on those issues.

Establishing and maintaining the legal existence and enforceability of international economic, social, and cultural rights is critical to realizing any system of justice in the world's organized nations and communities. Doing so is particularly critical for communities of color who are embedded in economic contexts and processes that are leveraged or dominated by Anglo-American, Western European and generally Northern Tier decision-makers and interests. Protecting and enforcing these rights under the rule of law is especially pertinent to the prominent late economist Robert Heilbroner's question of whether a global politics will evolve in the near future which realistically can promise a transfer of wealth and resources to people of poor and deprived communities of color, which will be of real meaning in bettering their lives.³

With the rise of rampant official free market ideology, of public equations drawn between money and public praiseworthiness, and the elevation of policy trends facilitating and demanding that Southern Tier nations welcome incoming multi-national foreign investment, there is much reason for pessimism about a positive answer to Heilbroner's question. All the more so because this question in the current global policy context inherently brings into play strategies by dominant power-holders that subordinate such poor communities, and create divide-and-conquer strategies aimed towards destroying the leverage needed to improve these communities by fragmenting their effective leadership, and undermining their political unity. In other words, the attempted claiming and enforcement of human rights, and particularly economic, social and cultural rights, tends to bring forward an array of the aggressive and

traditionally crude, as well as the subtle and carefully tailored strategies of race and class domination from above.

The priority to enforce these human rights has long established a global fault line between the haves and have-nots - a frontier patrolled by those interests able and willing to use all means, including violence, to prevent any meaningful transfer of wealth and resources. For example, this was the case - in systemic terms - for the assassination of Martin Luther King, Jr. in 1968 in Memphis, during his presence to support the economic rights of that city's public sanitation workers and during the last stages of his planning for the Poor Peoples' March on Washington later that same year.

That same frontier, fortunately, is also patrolled and mediated by a process of legal and jurisprudential invocations, prescriptions, enforcement, appraisals and determinations of the body of international economic, social and cultural rights under international law, intertwined as those rights may be with their constitutional and other legal analogues in any specified country.⁴ Under the principles of its 1996 Constitution, which I consider the most rights-protective in the world, South Africa, as a new nation of thirteen years, and its excellent Constitutional Court are barely holding their positions on this global fault line, as the nation struggles to rectify the embedded continuing problem of economic apartheid.⁵ It is a commonplace that this problem has long exhibited international and national strategies of racial and class deprivation, in the context of Northern Tier and allied internal pressures to define economic justice as maintaining a free market, foreign investment-friendly national economy.

The last part of this article will look at the Court's holdings in this regard in light of both differing and harmonious perspectives from the United Nations Committee on Economic, Social, and Cultural Rights (UN Committee on ESCR), which I take as indicative of international organizational perspectives about global justice standards.⁶ I do so to further understand this Court's decisions in particular cases, as they contribute to building perspectives of global justice around the enforcement of these legal rights, along the great length of, as well as across, the global fault line.

SOUTH AFRICA'S GLOBAL JUSTICE LEADERSHIP

Progress has indeed been made by the South African government and South Africans since 1994, in spite of large obstacles, towards meaningful transfer of resources across this fault line to meet the great needs of the many Black and Coloured South Africans. In this regard, South Africa has already given the world community much justice-leadership, even beyond the epochal anti-apartheid movement. It has given us the institution of the Truth and Reconciliation Commission, the philosophy of *ubuntu* to approach one's former enemies, and through the essential historic leadership of Nelson Mandela, it has recalibrated, for the guidance of peoples and states everywhere, the relationship between revenge and justice, through truth-telling, honesty, and reparations.⁷ But there is much yet to do, especially regarding economic justice.

To better understand the Constitutional Court's work, we should widen the frame of South Africa's post-1994 global justice-leadership. Archbishop Desmond Tutu has made the prophetic insight that South Africa is a laboratory for the world: if its peoples can work out ways to get along equitably, the world will directly profit by its example.⁸ This insight gains importance in

light of the historic symbiosis, not least in the matters of race long discussed by George Fredrickson and other scholars, between South Africa and the United States.⁹ This symbiotic linkage with the world's current sole hyperpower has had some positive recent consequences for the world community. They include the visibility of South Africa's advocacy of a more just U.S. policy towards Cuba, and greater visibility, especially through Mandela's observations, of the illegality of the U.S. invasion and occupation of Iraq in 2003.

However, the same symbiosis has had negative consequences in the vulnerability of a new South Africa, just getting organized in 1992-94, to American and European pressures to relinquish the ANC (African National Congress) Freedom Charter as the rightful economic map to address the monster distortions of the apartheid economy. Thus, its organizing leadership and processes of decision may have been prematurely prodded to adopt a free market, free-trade approach to national economic objectives, and a subsequently deep and vulnerable reliance on Western foreign investment to provide essential development capital for bringing the majority population of Black South Africa into the national economy on an equitably beneficial basis. More recently, though, the symbiosis has had further beneficial consequences for South African justice-leadership and the international community. Under strong national NGO leadership, it has served as a framework to define, at the opening of the 21st century, the principle that international trade law must provide, in conjunction with their human right to health, affordable essential medicines to people in South Africa and elsewhere who are HIV-infected, no matter the source of these medications. South Africa has further defined that such a right cannot be infringed by the claimed patent-protective legal prerogatives of American or other international pharmaceutical companies who originally developed such medicines.¹⁰ Thus, it is in this wider frame of the New South Africa's global justice-leadership that the leadership of its Constitutional Court in protecting economic, social and cultural rights under law must be understood.

THE COURT'S JUDICIAL LEADERSHIP

The South African Constitutional Court has taken a globally prominent leadership role in protecting economic rights in a series of major cases, beginning, for the purposes of this article, in 1997. Among these are the *Soobramoney* case in 1997, the *Grootboom* case in 2000, the *Treatment Action Campaign* case in 2002, and also the *Port Elizabeth Municipality* and *Jaftha* cases in 2004.¹¹

In each of these cases, as many South African and international commentators have already discussed, the Court recognized, developed and refined the justiciability of various economic, social and cultural rights. These decisions enabled the Court to protect these rights for South Africans as their legal rights under the South African Constitution, and also as rights under international law, notably codified by the *ESCR Covenant*.¹² In doing so, the Court aimed to ensure that these rights are protected as legal rights that are entitled, and not as discretionary executive, administrative, or legislative governmental policy contingencies.

The Court has decided these cases against a history, along with continuing practices, of much Western official and academic opposition to such justiciability, i.e. the notion that these rights are quite manageable by judicial courts, which should play an important role in interpreting and protecting them under law to individual petitioners. This history of opposition,

much of which stems from cold war perspectives on this entire body of rights as 'socialist' or 'communist,' has persisted notwithstanding the wide global scope of ratification of the above-noted *Covenant*.¹³ The United States signed this treaty in 1976, but has not yet ratified it, nor has it permitted itself as a nation to have the crucial national conversation about economic rights as legal rights as South Africa has done. The *ESCR Covenant* provides some ammunition for these rights' opponents by its textual definitions of *gradual* state duties, but still creates international legal obligations, to support and enforce them domestically.¹⁴ Nonetheless, in the intervening years, as the global demand for such legal protection has generally risen, there has been much United Nations and international narrative about economic rights protection and justiciability.

Led and supported by the Bill of Rights of South Africa's Constitution, its Constitutional Court has tackled the justiciability and related questions head-on in these cases to give these rights, as interpreted, a protected place in the law of post-apartheid South Africa.¹⁵ This is a country where the gaps between rich and poor people, which break largely along racial lines, are difficult and deep. Thus the Court has had to interpret the content of these rights in this context, which also features appreciable but limited national resources to reallocate the national wealth equitably among all South Africa's people. In doing so in its rulings, it has constantly confronted the potential of Court-ordered wealth transfers to classes of poor people, not previously agreed by executive or legislative decisions.¹⁶ If taken too far, this potential could render the Court - as with any independent national judiciary - more vulnerable to attack, by interests disposed to do so, for being anti-majoritarian and anti-democratic. The Court, clearly aware of these dangers, has faced them squarely in the cases discussed here, through several approaches of legal interpretation, emphasis, and remedies to be examined below.

THE COURT'S MAJOR CASES ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Since 1997, the Court has taken opportunities of litigation to focus on the justiciability and applicability of these rights. These major cases will now be discussed, roughly chronologically, although we will begin with *Grootboom* as the most globally prominent.

Gov of Republic of SA and Others v. Grootboom and Others

Irene Grootboom and others were living in deplorable conditions in an informal squatter settlement called Wallacedene. The conditions in this settlement were "lamentable" as one quarter of the households had no income; more than two thirds of the residents made less than R500 per month; children comprised approximately half of the settlement; and water, sewage and refuse removal were unavailable. Rather than stay in these conditions indefinitely, Irene Grootboom, who had previously applied for subsidized low-income housing from the municipality and had been on the waiting list for approximately seven years, left Wallacedene and established shelter on vacant land (now referred to as "New Rust") that was privately owned, and had "been earmarked for low-cost housing." Since the new squatters did not have the landowner's consent, the owner obtained an eviction notice, which the squatters ignored. Subsequently, the landowner obtained an order authorizing the sheriff to evict the parties and dismantle their structures.

The issue in this case is whether the measures taken by the State to implement the right of access to adequate housing, a right guaranteed under the South African Constitution, were reasonable. Under the Constitution, the Court has authority to review and rule on whether the Legislature is adequately providing the socio-economic rights guaranteed by the Constitution. Upon its review of the current Housing Program, the Court held that the measures taken by the State to provide access to housing were not reasonable, and that the State's available resources would not prevent them from establishing a reasonable Program.

The Court addresses the UN Committee on ESCR's concept of minimum core (if owed protection for these rights) and states that the UN Committee on ESCR's pertinent

general comment does not specify precisely what the minimum core is. The concept of minimum core obligation was developed by the UN Committee on ESCR to describe the minimum expected of a state in order to comply with its obligations under the *ESCR Covenant*. It is the floor beneath which the conduct of the State must not drop if there is to be compliance with the obligation. Each right has a 'minimum essential level' that must be satisfied by the State parties. . . Minimum core obligation is determined generally by having regard to the needs of the most vulnerable group that is entitled to the protection of the right in question. It is in this context that the concept of minimum core obligation must be understood in international law.¹⁷

Since in a subsequent case, the Court explicitly rejects adoption of minimum core, it is noted that the Court here seems to be more open to the concept, as they state "there may be cases where it may be possible and appropriate to have regard to the content of a minimum core obligation to determine whether the measures taken by the State are reasonable."¹⁸ In the end, the Constitutional Court holds that:

it is not possible to determine the minimum threshold for the progressive realization of the right of access to adequate housing without first identifying the needs and opportunities for the enjoyment of such right . . . In this case we do not have sufficient information to determine what would compromise the minimum core obligation in the context of our Constitution. It is not in any event necessary to decide whether it is appropriate for a court to determine in the first instance the minimum core content of a right.

The Court next turned to the important question of reasonableness. "In determining whether a set of measures is reasonable, it will be necessary to consider housing problems in their social, economic and historical context and to consider the capacity of institutions responsible for implementing the program."¹⁹ "A reasonable program therefore must clearly allocate responsibilities and tasks to the different spheres of government and ensure that the appropriate financial and human resources are available."²⁰ In order to be "reasonable" "each sphere of government must accept responsibility for the implementation of particular parts of the Program but the national sphere must assume responsibility for ensuring that laws, policies, programs and strategies are adequate to meet the State's obligations."²¹ "The precise contours and content of the measures to be adopted are primarily a matter for the legislature and the executive. They must, however, ensure that the measures they adopt are reasonable."²² "A court considering reasonableness will not enquire whether other more desirable or favorable measures could have been adopted, or whether public funds could have been spent better. The question would be whether the measures that been adopted are reasonable." The policies and programs must be reasonable in their conception and their implementation.

In *Grootboom*, the Constitutional Court provides a Reasonableness Test:

In determining whether a set of measures is reasonable, it will be necessary to consider housing problems in their social, economic, and historical context and to consider the capacity of institutions responsible for implementing the Program. The program must be balanced and flexible and make appropriate provision for attention to housing crises and to short, medium, and long term needs. A Program that excludes a significant segment of society cannot be said to be reasonable. Conditions do not remain static and therefore the Program will require continuous review.²³

The Court makes clear that the government has a thorough, well-funded policy and program on the housing problem in South Africa. At the same time the Court finds that "there is no express provision to facilitate access to temporary relief for people who have no access to land, no roof over their heads, for people who are living in intolerable conditions and for people who are in crisis because of natural disasters such as floods and fires, or because their homes are under threat of demolition. These people are in desperate need."²⁴ Additionally, the Court characterizes reasonable measures as those which take into account "the degree and extent of the denial of the right they endeavor to realize. Those whose needs are the most urgent and whose ability to enjoy all rights therefore is most in peril, must not be ignored by the measures aimed at achieving realization of the right."²⁵ With respect to the "reasonableness within available resources," the Court states that the Constitution "does not require the State to do more than its available resources permit. This means that both the content of the obligation in relation to the rate at which it is achieved as well as the reasonableness of the measures employed to achieve the result are governed by the availability of the resources."²⁶

In offering a remedy to Mrs. Grootboom and the other individuals, the Court does not provide applicants with immediate access to housing. "Neither section 26 nor section 28 entitles the respondents to claim shelter or housing immediately upon demand.... However, section 26 does oblige the State to devise and implement a coherent, coordinated program designed to meet its section 26 obligations."²⁷ "It is necessary and appropriate to make a declaratory order. The order requires the State to act to meet the obligation imposed upon it by Section 26(2) of the Constitution. This includes the obligation to devise, fund, implement and supervise measures to provide relief to those in desperate need."²⁸ The Constitutional Court acknowledges that Grootboom and others are living in deplorable situations, but states that there are thousands in South Africa in the same situation. Also, the Court states that Grootboom was involved in land invasion and although the province did not properly hear her case or treat her appropriately, the Court is not prepared to approve "any practice of land invasion for the purpose of coercing a state structure into providing housing on a preferential basis to those who participate in any exercise of this kind."²⁹ The Constitutional Court disagreed with the High Court's determination below that the State discharged its obligation to applicants under section 26. The High Court had held that, since section 26 does not require the State to provide applicants with minimum core entitlements, the State fulfilled section 26 by enacting reasonable legislative and other measures within its available resources, devising housing legislation in the national and provincial spheres, and targeting low-income earners regardless of race.³⁰ The High Court stated that a national provision for the desperate is not a necessary consideration in the

reasonableness of a policy, and that such provision would detract from integrated housing development as defined in the Act.³¹

Upon its review on appeal, however, the Constitutional Court found the state's policy unreasonable in that it failed to provide immediate or temporary relief for those in dire need, especially in light of the severe and indefinite nature of the housing shortage. The Constitutional Court criticized the Program as lacking an express provision to facilitate access to temporary relief for people in desperate need of access to land and shelter, and for people in crisis because of a natural disaster or because their homes are under threat of demolition. While the Constitutional Court stated that the Program is not necessarily haphazard, it questioned whether the measures are reasonable under the Constitution and deemed it not "sufficiently flexible to respond to those in desperate need in our society and to care appropriately for immediate and short-term requirements."³² The next case features facts which define a somewhat different relationship between immediate need and a justiciable right.

Soobramoney v. Minister of Health, KwaZulu-Natal

Appellant is a 41-year-old unemployed man, who is diabetic and suffers from ischaemic heart disease and cerebro-vascular disease which has caused him to suffer a stroke. His condition is irreversible and is in the final stages of chronic renal failure, but his life could be prolonged by regular renal dialysis (treatment two to three times per week). This patient has been receiving dialysis treatment from private hospitals and doctors, but can no longer afford the treatment. The hospital does automatically provide resources for patients who have acute renal failure. However, patients suffering from chronic renal failure must qualify for treatment under a special hospital Program. The primary requirement under the Program is that a patient be eligible for a kidney transplant. Due to this appellant's ischaemic heart disease and cerebro-vascular disease, he is not eligible for a kidney transplant and therefore does not qualify for the Program.

Appellant brings claim under section 27(3) of the Constitution which provides that "no one may be refused emergency medical treatment" and section 11 which requires, "everyone has a right to life." He does not argue that the guidelines issued by the Hospital (or the State) are unreasonable or not applied fairly or rationally as the Court states, "it has not been suggested that these guidelines are *unreasonable* or that they were not applied fairly when the . . . appellant did not qualify for dialysis."³³ Rather, appellant contends that patients such as himself, who suffer from terminal illness and require treatment to prolong their lives, are entitled to treatment provided by the state, including funding and resources.

Thus, the issue in the case is whether all patients who suffer from terminal illnesses and require treatment to prolong their lives are entitled, in terms of section 27(3), to be provided with such treatment by the State, and whether the State "is required to provide funding and resources necessary for the discharge of this obligation."³⁴ The Court rules against appellant's contention, finding that "it would make it substantially more difficult for the State to fulfill its primary obligations under 27(1) and (2) to provide health care services to 'everyone' within its available resources. It would also have the consequence of prioritizing the treatment of terminal

illness over other forms of medical care and would reduce the resources available."³⁵ While the State has a constitutional duty to comply with the socio-economic obligations imposed on it by the sections of the Constitution, the appellants were unable to show that the State's failure to provide renal dialysis facilities for all persons suffering from chronic renal failure constitutes a breach of those obligations.

The Court distinguishes this patient's case from a person in need of "immediate medical attention" or a person in an "emergency" and states that in order "to be kept alive by dialysis he would require such treatment 2 to 3 times a week. This is not an emergency which calls for immediate remedial treatment."³⁶ Then the Court rejects the appellant's contention that the Court should tell the legislature how to spend the budget. "These choices [about funding of health care] are difficult decisions to be taken at the political level in fixing the health budget and at the functional level in deciding upon the priorities to be met. A court will be slow to interfere with rational decisions taken in good faith by the political organs and medical authorities whose responsibility it is to deal with such matters."³⁷ The Court addresses the appellant's contention that nurses should be offered overtime hours and hospitals stay open later to handle the patients. Ultimately, the Court rejects the expenditure of additional resources and states,

If all persons in South Africa who suffer from chronic renal failure were to be provided with dialysis treatment. . .the cost of doing so would make substantial inroads into the health budget. And if this principle were to be applied to all patients claiming access to expensive medical treatment or expensive drugs, the health budget would have to be dramatically increased to the prejudice of other needs which the State has to meet.³⁸

The next case leads the Court to further refine the relationship between constitutional criteria of reasonableness and the creation of a workable remedy under the right.

Minister of Health & Others v. Treatment Action Campaign (TAC)

The applicants in *TAC* challenged the Government's Program for the prevention of mother-to-child transmission of the HIV virus. The Program only made Nevirapine (NVP), a drug used to prevent the transmission of HIV between mother and child, available to two pilot sites per province, one urban and one rural. A public sector doctor, who was not in one of the pilot sites, was unable to prescribe the drug to his patients. NVP was given free-of-charge to the South African government. However, the government would be required to spend money on infrastructure, training, counseling and other related services in conjunction with their comprehensive Program.

The issue at bar is whether the Government's Program, which offered NVP on a limited basis, sufficiently satisfied their obligations as stated by the South African Constitution.³⁹ In deciding this issue, the Court clarifies its position on Minimum Core from *Grootboom*. The Court states, "There is a minimum core of a particular service that should be taken into account in determining whether measures adopted by the State are reasonable; the socio-economic rights of the Constitution should not be construed as entitling everyone to demand that the minimum core be provided to them."⁴⁰ Minimum core was thus treated as possibly being relevant to

reasonableness under subsection (2) and not as a self-standing right conferred on everyone under subsection (1). The Court further adds, "It is impossible to give everyone access to even a "core" service immediately. All that is possible, and all that can be expected of the State, is that it act reasonably to provide access to the socio-economic rights identified in sections 26 and 27 on a progressive basis."⁴¹ "It should be borne in mind that in dealing with such matters the courts are not institutionally equipped to make wide-ranging factual and political enquiries necessary for determining what the minimum core standards called for by the [amici pleadings] should be, nor for deciding how public revenues should most effectively be spent."⁴²

The Court must determine whether the legislature's actions were reasonable, stating that "the state is obliged to take reasonable measures progressively to eliminate or reduce large areas of severe deprivation that afflict our society." Such determinations of reasonableness may in fact have budgetary implications, but are not in themselves directed at rearranging budgets. In this way the judicial, legislative and executive functions achieve appropriate constitutional balance. The Court uses the *Grootboom* model for determining reasonableness which requires that the program for realization of the economic right be: "balanced and flexible and make appropriate provision for attention to crises and to short, medium, and long term needs. A program that excludes a significant segment of society cannot be said to be reasonable." Thus, the Court held that the government's policy was unreasonable as it was inflexible in that it "denied mothers and their newborn children at public hospitals and clinics outside the research and training sites the opportunity of receiving a single dose of NVP at the time of the birth of the child."⁴³ The Court agrees with the government that there is significant cost in creating a comprehensive drug program that provides many useful services to women. However, such services are not being challenged here. Rather, it is the ability to have access to a single dose of NVP. Since, that dose of NVP is free to the State, the cost is not an issue and is within the available resources of the state.

The Court required the government to immediately remove the restriction that NVP would not be available at hospitals and clinics other than the research and training sites. Once this is done, the government should devise and implement a more flexible and comprehensive policy. However, they do not afford everyone the right to NVP. The Court also urged the government to make NVP available in more locations immediately stating, "the steps that [must] be taken to comply with the order. . . should be taken without delay."⁴⁴ The Court, though, reversed the lower court decision and did not require the State submit a revised policy that would be consistent with their decision, despite admitting that the court possessed supervisory authority and had the power to require such behavior.

The next case presents a collision between a different socio-economic right and long-held property law doctrine.

Jaftha v. Schoeman and Others; Van Rooyen v. Stoltz and Others

The appellants in these cases (two cases were consolidated into single matter) were two women. Both women, Jaftha and Van Rooyen, were single, impoverished mothers who had both acquired their homes from State housing subsidies. Should they lose their homes pursuant to a sale-in-execution, these women would be barred from receiving future state assistance.

Jaftha had two children and suffered from serious heart problems. Unable to continue payments on a loan for R250, she was forced to vacate her property following a sale-in-execution for R5000 which was permitted pursuant to section 66(1)(a) of the Magistrates' Courts Act 32 of 1944.⁴⁵

The other applicant, Van Rooyen, was an unemployed mother of three. Similarly, her home was sold-in-execution for R1000 and she was forced to vacate when she purchased vegetables on credit for approximately R190 and was unable to make her payments. It should be noted that in both cases the amount in debt was very small and the sale of the house to satisfy the small debt was considerably larger. Also, the proceedings were instituted and conducted almost entirely by the creditor or a private party. The State's function in the eviction was issuing and/or authorizing the judgment order on behalf of the debtor, as compared to *Grootboom* where the state failed to provide housing.

The issue at bar is whether the section 66(1)(a) of the Magistrates' Courts Act 32 is unconstitutionally overbroad by allowing a person's right to have access to adequate housing, a constitutional right protected under section 26(1) of the Constitution, be taken away even in circumstances where it is unjustifiable and thereby removing their security of tenure. The Constitutional Court holds that section 66(1)(a) is unconstitutional to the extent that sales-in-execution may be permitted even when not justifiable. That Court overrules the High Court and holds that the State *has* a negative obligation with respect to guaranteeing the rights in section 26.

The Constitutional Court first provides a brief review on the Constitution's protection of socio-economic rights, holding that "any claim based on socio-economic rights must necessarily engage the right to dignity. The lack of adequate food, housing, and health care is the unfortunate lot of too many people in this country and is a blight on their dignity. Each time an applicant approaches the courts claiming that his or her socio-economic rights have been infringed the right to dignity is invariably implicated."⁴⁶ The Court comments on the particular importance of housing, citing the UN Committee on ESCR's view that "security of tenure takes many forms, not just ownership, but that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats."⁴⁷ Then the Court provides a historical review of "security of tenure" and its influence on section 26. It significantly discusses the history of "forced removals and racist evictions in South Africa," including how "the focus on security of tenure in section 26 of the Constitution marks an intention to reject that part of our history where invasive legislation was used to remove people from their lands and homes forcefully and to intimidate and harass with senseless eviction rendering them homeless."⁴⁸ "The situation under apartheid demonstrates the extent to which access to adequate housing is linked to dignity and self-worth."⁴⁹ Section 26 speaks directly to the practice of forced removals and summary evictions and the section is aimed at "creating a new dispensation in which every person has adequate housing and in which the State may not interfere with such access unless it would be justifiable to do so."⁵⁰ Finally, the Court is very clear and concise when it states that "the underlying problem raised by the facts of this case is not greed, wickedness or carelessness, but poverty."⁵¹

In *TAC*, *Grootboom*, etc., the applicants were claiming a *positive obligation* on the State to provide access to the socio-economic rights guaranteed in the Constitution. Contrary to those cases, *Jaftha* presents a situation where the applicants are arguing the State has a "negative

obligation under 26 [which] is not to prevent or impair existing access to adequate housing."⁵² The applicants argue that the positive obligation only applies to the State whereas the negative obligation to the right applies to everyone, including State and private individuals.⁵³ The applicants further argue, rather successfully it seems, that where the positive obligations are subject to progressive realization, such is not the case with respect to negative obligations, as they currently have their homes and it is the State's duty to protect their right of access.⁵⁴ In its holding, the Court holds that Section 26 does create a negative obligation on the State. In order for a measure to deprive a person of an existing access to adequate housing, that measure must be justified under section 36 of the Constitution.⁵⁵ The Court holds that the "fact that trifling debts can lead to sales-in-execution is not relevant to the question of whether the right to adequate housing has been limited by section 66(1)(a) but is relevant to the justifiability of this particular measure."

The Court ultimately finds the measure in *Jaftha* to be unreasonable and unjustifiable in deprivation of access to housing. The Court states, "it is difficult to see how the collection of trifling debts in this case can be sufficiently compelling to allow existing access to housing to be totally eradicated, possibly permanently, especially when other methods exist to enable recovery of the debt."⁵⁶ The Court does not create a bright line rule that taking someone's home to cover a debt would never be justifiable, and they offer these factors to be considered, including the circumstances in which the debt was incurred, any attempts made by the debtor to pay off the debts, the financial situation of the parties, the amount of the debt, whether the debtor is employed or has a source of income to pay off the debt, and any other factors relevant to the particular facts of the case.

The Court's remedy is to institute a more comprehensive and flexible form of judicial oversight over the execution process. Previously, judicial oversight only occurred at the first stage of the debt recovery process, where the creditor seeks the judgment.⁵⁷ Hereafter, the Court adopts the appellant's suggestion and holds that if a creditor wants to satisfy a judgment by executing immovable property of the debtor, they must go in front of the Court in order to get a special execution order "only if the circumstances of the case make it appropriate."⁵⁸

Section 36 of the Constitution provides an analysis of circumstances in which such a special execution order may be appropriately granted:

The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom taking into account all relevant factors including the nature of the right, the importance of the purpose of the limitations, the nature and extent of the limitation, the relations between the limitation and its purpose; and less restrictive means to achieve the purpose.

The Court states that, of the factors that section 36 enjoins the courts to consider, the nature of the right and nature and extent of the limitation are of great importance when weighed against the importance of purpose of the limitation.⁵⁹

This final case continues to confront the legacy of apartheid as related to the constitutional right to access to housing.

Port Elizabeth Municipality v. Various Occupiers

The respondents in this case comprise sixty-eight people, including twenty-three children, who have been occupying twenty-nine shacks, for between two and eight years, on privately owned land, which is within the Municipality, the applicant. The Municipality sought eviction of the occupiers in response to a petition by the people in the neighborhood. The occupiers agreed to leave the land if the Municipality provided them with suitable alternative land. The Municipality suggested Walmer, which the occupiers rejected as it is crime ridden and "unsavoury," and also because they faced possible eviction there.

The Court gives a detailed background of racism and segregation in South Africa and how the housing laws were established and enforced to foster such views. The Prevention of Illegal Eviction (PIE) and Unlawful Occupation of Land Act 19 of 1998 replaced The Prevention of Illegal Squatting Act, 52 of 1951. PIE was adopted with the "manifest objective of overcoming the abuses and ensuring that eviction in the future took place in a manner consistent with the values of the new constitutional dispensation."⁶⁰ The Act decriminalized squatting and the eviction process was made subject to a number of requirements, some in compliance with the Bill of Rights. The new system instituted "humanized procedures that focuses on fairness to all. People once regarded as anonymous squatters now became entitled to dignified and individualized treatment with special consideration for the most vulnerable."⁶¹ The court's new role was to "hold the balance between illegal eviction and unlawful occupation" with the new law guiding "them as to how they should fulfill their new complex and constitutionally ordained function: when evictions were being sought, the courts were to ensure that justice and equality prevailed in relation to all concerned."⁶² The issue in this case is whether the Supreme Court of Appeal properly applied PIE, and thus whether their order overruling the eviction order should be upheld. The Court affirms the decision of the lower court and denies the appeal.

This case turns on "establishing an appropriate constitutional relationship between section 25 dealing with property rights, and section 26, concerned with housing rights."⁶³ The State has a duty to satisfy both the land (property) rights and the socio-economic rights (as stated in *Grootboom*). There are three ways the Constitution approaches the interrelationship between land hunger, homelessness and respect for property rights. The Court considers that "the rights of the dispossessed in relation to land are not generally delineated in unqualified terms as rights intended to be immediately self-enforcing," that the Constitution acknowledges that "eviction of people living in informal settlements may take place, even if it results in loss of a home," and notes an emphasis on the need to seek concrete and case-specific solutions to the problems that arise.⁶⁴ Therefore, the role of the Court is to "balance out and reconcile the opposed claims in as just a manner as possible taking account of all the interests involved and the specific factors relevant in each particular case."⁶⁵

An action for eviction may be brought by the State or the owner of the property, and different factors will be considered. This case is brought by the State and eviction requires that, the court may grant such an order:

(1) if it is just and equitable to do so, after considering all the relevant circumstances and if it is in the public interest to grant such order; (2) the public interest includes the interest of the health and safety of those occupying the land and the public in general; (3) In deciding whether it is *just and equitable* to grant an order of eviction, the court must have regard to: (a) the

circumstances under which the unlawful occupier occupied the land and erected the building or structure; (b) the period the unlawful occupier and his/her family have resided on the land; and (c) the availability to the unlawful occupier of suitable alternative accommodation or land.⁶⁶

The Constitutional Court makes it clear that the three factors listed are not the only circumstances that a court should look at in determining whether the eviction is just and equitable; the Court suggests that courts should also examine the "vulnerability of occupiers" (as stated in section 4, the elderly, children, disabled and households headed by women). Further, it is stated that what is just and equitable "could be affected by the reasonableness of offers made in connection with suitable alternative accommodation or land, the time scales proposed relative to the degree of disruption involved, and the willingness of the occupiers to respond to reasonable alternatives put before them."⁶⁷ Each decision should depend on the specific facts of the case.

The Court's analysis of the facts and the law are as follows: the Municipality clearly meets the first part of PIE as the occupiers built the shacks on privately owned land without consent of the owner; the land owners admit that the land is vacant and it is clear that they are not using the land for productive purposes; most of the occupiers have been there for a long period of time; and some of the children attend nearby schools and the parents work close to the land. The Court takes note of the alternative land suggested by the Municipality, but however notes that the Municipality has not discussed with the occupiers what their interests are, and further the Court states the obvious problems of safety and distance of the suggested locales. Also the Municipality fails to determine whether Walmer can be safe and permanent. The Court angrily rejects the Municipality's contention that instituting a four-peg housing program adequately accommodates the homeless families. The Court cites *Grootboom* and states that when a municipality tries to evict a party they must comply with the Constitution and fulfill their obligation to housing. Due to the factors listed above, specifically the time that the occupiers were on the land, the lack of use of the land and the absence of any significant attempts to find more suitable land, the Court affirms the lower court.

THE COURT'S USE OF A REASONABLENESS ANALYSIS IN THE FOREGOING CASES

In analyzing these cases regarding protecting the pertinent socioeconomic rights as primarily constitutional rights, but also international human rights, we see that Reasonableness as a doctrine allows the Court:

- to find that a government program addressing the content of the constitutional international human right is constitutionally sufficient, without providing immediate remedy, or the known needs of petitioners before the Court;⁶⁸
- to assess the relationship of a government program to a person's constitutional right under an independent, essential value of reasonableness, with Court controlling the latter's legal definition, and its elements of comparative reasoning if any;
- to thus independently examine the details of any challenged South African government program and its merits;
- to examine the government program and the person's right in full context, including the person's need in a socio-economic context, and in the national context of resources

available to the government, plus the scope of different national needs among which the government decides priorities for allocating its total national resources, and to give more legal weight to the latter;

- to *not* define minimum core right for any constitutional/human right as a separate source of legal entitlement to the person/petitioner. Instead, the Court can use the facts of desperation and comparatively severe deprivation elements of minimum core regarding the person and her group, in social context, as one or more analytical factors (whether the government program addresses these elements of deprivation sufficiently) in assessing the reasonableness of the government program addressing that constitutional right (e.g. to housing). Thus, the Court may find the program reasonable or unreasonable without ordering an individual remedy for petitioner's known needs;
- to have a doctrine which is both contextual and absolute (reasonableness) which can be applied by the Court to all legal elements of any constitutional right *as a defining judicial trope* to administer and oversee the South African government's duty (both constitutional, and international under the *ESCR Covenant*) of "progressive realization" of all pertinent rights, regarding any person or group who may claim to enjoy benefit from any among those rights;
- to support the government as a defendant where it says: "My program with its national focus on implementing the right is *connected* to the lack of needed resources for a petitioner/person with the same constitutional/human right, even causally connected, but whether my program is reasonable or unreasonable, I am not legally liable for harm to that person because my program failed to address or give individual help to her for her admittedly severe (deadly) problem defined by the same constitutional/human right;
- to determine under what facts and contexts the Government is obligated to give children's rights/needs immediate and targeted attention, e.g. *TAC*; and
- to portray a finding under the reasonableness doctrine as both a declaratory judgment - e.g. validating the government program - or either as a basis to order a specific petitioner's remedy, or not, but in any case as a basis from which to address the issue of petitioner's individual remedy.

Thus, reasonableness, as a central part of its application-of-the-right analysis, enables the Court to control the flow of resource-transfers to poor people of color, under the particular national and global right, across the fault line. The Court exercises this control in the cases brought to it, and also through its national *stare decisis* authority.

But reasonableness here also enables the government to interpret its constitutional/international duty (within latitudes) to "progressively realize" the economic right within its national jurisdiction. It does so through programs which fail to immediately, or even through the medium term of time, transfer new economic resources to clearly deprived poor persons. In thus asserting its reasonableness, the government is allowed to maintain the fault line between 'haves' and 'have-nots' at the *status quo*. It is allowed to do so by saying under law to deprived citizens, "my programs are linked to your continuing deprivation, that you are entitled to have meaningfully met, but I am not liable for your continuing deprivation, nor for frustrating your entitlement to relief under your economic rights."

Enmeshed in these strictures of reasonableness across the fault-line, the Court has a dilemma in protecting socio-economic rights. It can continue to declare deficiencies in, or declare the reasonableness of government rights-implementing programs, but without changing their resource-transfer potential. It will thus implicitly accept the *status quo* fault-line, and in doing so help, even unintentionally, to embed it into South African constitutional law, and into global international human rights judicial precedents on these issues. Alternatively, the Constitutional Court might more actively and frequently exercise its remedial authority through judicial orders that immediately transfer some resources to petitioners according to the urgency of their deprivation, and orders which also continue to monitor both "reasonable" and "unreasonable" government programs to ensure progressive, but real resource-transfers to the same categories of deprived people under the particular economic, social or cultural right. This path implies that the Court must move towards minimum core right notions for each economic right, and towards a bolder interpretation of its own authority of judicial review.

THE COURT'S HOLDINGS AND ANALYSIS OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THESE CASES IN LIGHT OF STANDARDS OF GLOBAL JUSTICE

If we look at the comments and deliberations over the past decade of the UN Committee on ESCR, and further do so in light of pertinent issues raised by international legal commentators to the above cases handed down by the South African Constitutional Court, we see that, arguably, perspectives of global justice on the justiciability and application of economic, social and cultural rights reflect several issues.⁶⁹ One is the inclusion in the legal definition and application of minimum core rights to serve as the basis of immediate individual remedies for deprived persons petitioning the court when the state is found in violation of the right regarding them.⁷⁰ They are owed that remedy, in some tangible measure, irrespective of the availability of resources to meet it.

A second such issue, relative to the Court ordering a remedy as opposed to merely declaring that the government has violated the petitioner's economic rights, goes to the Court in its remedial orders maintaining continuing supervisory jurisdiction over the government's actions and over "progressive realization" of the petitioner's right-fulfillment, to ensure that the remedy as delivered continues to meet the essential requirements of the right. A third such issue goes, in light of the two foregoing issues, to the Court perhaps perceiving that a first phase of its work has been done, in establishing the justiciability of these rights, within the framework of constitutional separation of powers notions in South Africa and the Court's concern not to substantially modify national allocations of limited resources for meeting the spectrum of these rights and other national needs. The Court may now perceive that its obligations must enter a necessary second phase, that of deciding economic rights cases somewhat more boldly. It would do so by seeing them as not merely presenting petitioners' legal demand and need to protect their economic rights under constitutional and international law, but perhaps more so by the Court's moving, as one scholar put it, to "exercise the full transformative possibilities of the doctrine of judicial review."⁷¹ In doing so, it might address more directly and affirmatively the impact that its remedial orders protecting these rights would have on national executive and legislative decisions allocating and prioritizing the necessary national resources. It might do so by more heavily invoking certain established principles in this area of international human

rights law, such as the juridical equality of international economic, social and cultural rights and their application with international civil and political rights. The Court could thus certify that all of the judicial strategies that are available to enforce, the latter must also be applied to enforce the former economic rights. It might do so by rulings that clarify and interpret the principle of judicial review in its own national jurisdiction to include the Court's authority, in its ongoing constitutional relationship with other branches of the central and local government, to make remedial rights-protective orders, based on minimum core notions, as part of the Court's "saying what the law is," without unconstitutionally trespassing on the defined prerogatives of the national executive and legislative branches.

FURTHER REFLECTIONS IN THIS REGARD ON THE COURT'S HOLDINGS

The South African Constitutional Court in these cases has indeed looked, or at least glanced, towards a wider judicial role in protecting these rights, but generally without formally holding as such. It has, for example, invoked the principle that the Bill of Rights under the South African Constitution applies to *all law* and to all organs of state and government. It has also invoked the constitutional principle of 'accountability' which generally frames the positive duty on the state to protect the right.⁷² These invocations recall, *inter alia*, Grotius' natural law premise for international law that no sovereign or international actor can escape the normative and therefore legal assessment of its acts and their consequences, and that such assessments must be made.⁷³ On the other hand, in *Soobramoney*, the Court basically held that economic, social and cultural rights *per se* are limited, including the Court's competence to make remedial orders, by the lack of programmatic and state resources.⁷⁴

The Court has glanced towards minimum core notions of economic rights, and indicated that it sees this notion as related to its own assessment of the reasonableness of the government's program which addresses a rights-deprivation problem.⁷⁵ It has employed reasonableness as a standard to assess the South African state's providing access to the Constitution's socio-economic rights on a progressive basis.⁷⁶ But reasonableness here may limit the scope and numbers of deprived persons who have legal access to the economic right and its protections. The Court seems to be aware that it must push forward its decisions regarding each such right towards protectiveness, but whether it is doing so at the faster rather than slower affordable speed remains a question. More than one international commentator has expressed understanding that this Constitutional Court, in a young democratic state in defining the justiciability and applicability of this class of rights, was understandably erring on the side of caution, at least for the present time.⁷⁷

In *TAC*, the Court did define its remedial authority as including the competence to issue a mandatory and not merely a declaratory order as against other government organs, upon the Court's finding of the unreasonableness of a government economic rights program. Its holding here was related to its expressed concern for the deprivations facing children in the context of this case, and its finding that definite issues arose regarding children's rights and their protection. But the Court also held in this case that it was impossible to grant everyone needing it an immediate, in effect, core right remedy. The State's duty must be defined as to act to provide access to socio-economic rights under the Constitution.⁷⁸

In the *Grootboom* case, the Court did respond to the notion of minimum core right as an obligation of South Africa, and each State party to the International Covenant on Economic, Social and Cultural Rights, in connection with the Court's constitutional duty to take international human rights into account in deciding pertinent Bill of Rights cases.⁷⁹ As noted previously, the UN Committee on ESCR, along with several international commentators, has held in its Comments that minimum core is an essential notion in the legal definition of any of these rights and in their effective local application.⁸⁰

The South African Constitutional Court rejected the notion of minimum core, on the grounds, *inter alia*, that the Court does not have available to it "many years" of annual States' reports on meeting their obligations under the *ESCR Covenant*, and the information therein, which is available to the UN Committee on ESCR. It therefore has insufficient information to determine the legal definition of minimum core regarding the principles of the South African Constitution. Moreover, it is not necessary to determine minimum core in the first instance. And further, minimum core must depend on the Court identifying petitioners' needs and opportunities for the enjoyment of a particular economic right.⁸¹ In this connection the Court held, somewhat differently than it would in *TAC*, that children and the invocation of their rights cannot trump the Court's careful legal reasoning on the basic economic right before it - in *Grootboom*, the right of access to housing. There are no separate children's rights in this regard. The Court's findings on governmental reasonableness will both be affected by, and will help determine petitioner's right relative to available national resources.⁸²

Taking a cue from systems of legal equity, individualized remedies somewhat tailored to personal/group needs and potential harms in detailed context, have long been seen as an important priority of courts doing justice under the rule of law. If so, the tension facing the Court here is clear, when it refuses to order individual remedies to a rights-holder who is faced with a government program that, for whatever reason, cannot deliver rights-benefits to her, notwithstanding her clear, even desperate need and facial rights entitlement. Whether a finding of lack of programmatic or national resources, judicially administered through a doctrine of reasonableness satisfactorily resolves this tension is a separate issue. It is especially so, since the ICESCR Committee and some international scholars appear to argue that the requirements of global justice - the Court also being an international, as well as a national tribunal - would be better met if the entire judicial equation on the application of justiciable economic rights were pushed more towards judicial orders for individual remedies for rights-holders presenting severe rights-related deprivations.⁸³

The argument, in one form, is that the notion of minimum core right should be applied as a basis of the Court's defining an individual right in context and an appropriate order for a remedy. Doing so would be consistent with protecting all classes of human rights as individual rights, and also with the State duty for "progressive realization" of the right. It could be administered in context of limited national resources. If a human right cannot be applied to relieve the most distressed rights-holders in their own context, the right is directly violated.

Let us further consider the Constitutional Court's response to this global justice demand. Part of the global constitutive aims of the international human rights process, regarding national legal human rights decisions in any state, is to both recommend and contextually provide more rights-protective solutions than national laws might regularly feature. The same

aims also include sheltering under that process's international authority and legitimacy any national institution or leader who, in the name of rights-protection of vulnerable peoples, push their own national legal economic and political envelope (at the risk of local retaliation) to move under law in that direction.⁸⁴

Our assessing the Court's work here under a standard of global justice demanding more individual local rights protection can be taken as a suggestion, added to others, for the Court to push, *inter alia*, its definitions of judicial review and its concepts towards wider interpretation of its own constitutional authority to incorporate principles and interpretations of international human rights law in its protecting economic rights of local people. Likewise, our assessment of the Court's work comprises a solid prediction that if the Court rises even further in its jurisprudence towards individual rights protection within limited national resources, this will help build a national resource of rights-protected citizenry who believe their dire needs will be met under the rule of law. The Court will gain new international legitimacy, new local legitimacy and wider recognition of its judicial leadership. Under the feedback of global interdependence, this international judicial recognition will provide protection for the Court and South African judiciary within South Africa, not least among vulnerable people of color still confronting apartheid's legacy.

Indeed, there are concrete indications that there is mounting pressure regarding these questions being put on the Constitutional Court, through South African academic commentary and criticism of the Court and its use of the doctrine of reasonableness in its *Grootboom* line of cases. This pressure is demanding the Court to more directly affirm the application and enforcement of the Constitution's economic, social and cultural rights regarding petitioners in specific cases by first, moving further towards adopting a judicial interpretation of these rights that each includes a minimum core of entitlement for all qualified persons, who must include those petitioners whose contextual lives and circumstances the Court finds to be dire, desperate and long-standing regarding the right. And second, the demand is for the Court to frame remedies for violation of these rights that are individual-based in giving at least some immediate relief, especially to those rights- petitioners whose circumstances are the most deprived, and to issue appropriate judicial orders to enforce and monitor the carrying out of those remedies.

Thus, Professor Richter, writing in 2006 on the constitutional/human right to access to social security of people living with HIV/AIDS, considers the constitutionality of the pertinent government act under the constitutional right, government policy, and socio-economic rights jurisprudence. Finding that the Court in *Grootboom* and other related cases needs to be more pro-active on these issues, she concludes that the Court has focused on these cases using administrative standards rather than taking a more substantive approach to the application of these rights. She critically discusses *Grootboom's* reasonableness standard regarding the availability of national resources and its addressing the needs of those persons in crisis, including *Grootboom's* rejection of the minimum core concept. And she suggests that the Court could better "supervise" legislative actions in this regard, within legitimate separation of powers parameters.⁸⁵

Additionally, Professor Pieterse, also writing in 2006 on socio-economic rights and constitutional entitlements to health care services, indeed notes and approves that the Court has

widened its use of the doctrine of reasonableness in these cases in the direction of upholding equality-based entitlements to share in the benefits of socio-economic laws and policies, and entitlements to meaningful access to socio-economic amenities. He notes that a minimum core approach may not be the only, or even the best way for the Court to protect such entitlements. But he argues that the Court should expand further its reasonableness approach by the recognition of more positive entitlements, in appropriate circumstances, and that this could be done within the ambit of reasonableness. The Court hinted as much in *TAC*, and such entitlements should be explicitly articulated and developed. He goes further to argue that minimum core is consistent, properly interpreted, with reasonableness, but it was not properly interpreted in *Grootboom*. Indeed *Grootboom* hewed too closely to administrative law-like standards, and the Court must look beyond this approach to reasonableness towards developing an entitlement-oriented approach to health-related rights.⁸⁶

Finally, there is some indication that the Court is hearing these criticisms and working out among its Justices, a yet incomplete process, how best to refine its approach towards the application and enforcement of these rights. For example, in its 2006 *New Clicks* case, the Court reviewed the authority and work of a Pricing Committee under ministerial authority, and its pricing system for medicines relative to the viability of pharmacies throughout South Africa as that affects the constitutional(/human) right of South African people to access to health care.⁸⁷ Although Chief Justice Chaskalson did seem to take an administrative law-review approach to the work of the Pricing Committee, and the Court did find and order several regulations in this program to be amended, other Justices, while concurring, revealed a degree of tension within the Court about its best approach regarding the possible infringement of the constitutional right embedded in these facts, compared to the role of the Legislature.

Notably, Justice Sachs defined the legislative obligation to integrate the rule-making functions of a governmental program with the administrative functions of implementing the rules. If the legislature does not integrate these functions, the Court under doctrines of judicial review must do so and strike the proper balance. It must do so because the Court must ensure that constitutional principles are integrated in both functions, under its wider duty to subject all public power to judicial assessment under the Constitution, and in recalling the legacy of apartheid's control through unjust and confining administrative regulations. Thus what is at issue in this case, and in similar cases, is not the reasonableness of the original legislation, but the reasonableness of the manner in which it is given effect. Reasonableness today derives in part from the Constitution, which governs the manner in which statutes must be applied. It must be used by the Court to assess this entire spectrum of decision making, and must be heavily dependent on the nature of the interests at stake in each particular instance than on the labels to be attached. And further, when reasonableness is considered, it becomes particularly important to ensure that vulnerable sections of the population are protected. The discretion of the rule-makers becomes attenuated to the degree that the fundamental rights of the people who are most disadvantaged are affected.⁸⁸

It may therefore be suggested that Justice Sachs would push the Court in the general direction on reasonableness suggested above by Professor Pieterse relative to enforcing economic, social and cultural rights for South Africans. Justice Sachs, however, seems to emphasize that the enforcement of these rights, through the correct notion of reasonableness, is

so central to the Constitution, and to the Court's duty to guard its rights, that the Court's decisions in this area must be thoroughly grounded in constitutional jurisprudence and doctrine that are adequate to dispense justice to the most vulnerable people.

Conclusion

The question of the justiciability of economic, social, and cultural rights provides an opportunity for wealth and resource transfers to poor and vulnerable people of color, which are sorely needed in South Africa and globally. Post-apartheid South Africa has shown great global justice leadership in its rights-protective Constitution, its institutions of truth and reconciliation, and in the work of its Constitutional Court to date in confirming the justiciability of economic, social, and cultural rights under its Constitution and also under the International *ESCR Covenant* under international law as a treaty which South Africa has signed, and in defining and protecting those rights as legal rights to entitled persons.

Since 1997, the Court has particularly done so in three major cases, and two others worthy of mention, involving deprivations to vulnerable people of color related to the entitlements which various among these rights arguably guarantee, particularly the right to housing and the right to health.⁸⁹ Faced under both international law and the South African Constitution with legal definitions of states' duties regarding these rights in terms of 'progressive realization' of those duties, the Court has embedded in its holdings in these cases a flexible and judicially protective doctrine of reasonableness under which to assess the state's duty to any given petitioners, in social and economic context, regarding its policies addressing petitioners' deprivations, and as to petitioners' right in a given case to an immediate remedy through Court order.⁹⁰ In some of these cases the Court has found the government's policy affecting petitioners to be unreasonable in some way, but also in most the Court has refused to order an immediate direct remedy and ruled that petitioner's rights do not include the right to such a remedy.⁹¹

In this connection, the Court has used reasonableness to, *inter alia*, hold that these economic, social, and cultural rights, being clearly justiciable, nevertheless do not provide a minimum core right with an immediate remedy to all petitioners in need, or even to those in the direst need, relative to the content of the particular right. It has also used reasonableness to govern and balance the Court's duty to "say what the law is" and enforce economic rights as legal rights under the Constitution and international law, without, in its view, overly infringing on the final responsibilities of the government's executive and legislative officials to set priorities and allocate limited national resources along a spectrum of national needs, many of which include great needs among the population.⁹²

If we take the quasi-judicial rulings of the UN Committee on ESCR, regarding *ESCR Covenant* duties of state parties, as an indicator of global justice standards on these same issues, we find, *inter alia*, rulings that go to the essentiality for each of these rights of courts and other decision-makers to uphold the notion of minimum core right, especially for those in direst need, in order to avoid hollowing out and fatally diluting the legal authority of these human rights.⁹³ This would seem to conflict with trends of analysis and holdings although not with some views among the opinions of the South African Constitutional Court on these same rights. We find also a global legal academic literature in response to the Constitutional Court's rulings on

economic rights, as well as on the general question of the justiciability and state duties under international law towards these rights. This literature has been both favorable and critical of the Court, the latter seeing its over-caution regarding its rights holdings, its over-deference to other branches of government, and its reluctance to order individual remedies.⁹⁴

In light of the above, if we ask whether the Court has already made a contribution to global justice in providing leadership of justiciability of economic rights and on pathways of judicial management of these issues in a difficult national situation, the answer is yes. But we can also suggest that the legal evolution through the Court of enforcing these rights must necessarily enter a next phase of its decision-making. This might be defined by a greater willingness across the protection of all these rights to find minimum core rights as individual entitlements for the petitioners in direst need, and to issue orders so granting an immediate remedy addressing their deprivation. It has also been suggested that this next phase might involve the Court re-conceptualizing its own role, here, into one of protecting these rights through exercising its full potential under the doctrine of judicial review vis-à-vis other branches of government. The implications of doing so for its current heavy, but flexible reliance on reasonableness to strike the necessary balances of authority regarding resource allocation of limited national wealth are unclear, and continue to be worked out. But needed resource-transfer across the global fault line through the enforcement of these rights to, *inter alia*, poor and vulnerable people of color, cannot be denied as a prominent hallmark of global justice which all courts and governments not least those of South Africa and the United States, must respond to in meaningful ways under the rule of law.

Notes:

1. I was fortunate to have the fine research assistance of Josh Bernstein (J.D. 2006), Christa Frank (J.D. 2007), and Catherine Nguyen (J.D. expected 2009), and to otherwise be assisted by paralegals, Michael Foley and Jennifer Hairston, and by John Necci, Director of the Law Library.
2. See e.g. *Jaftha v Schoeman*, 2005 (1) BCLR 78 (CC); *Minister of Health and Others v Treatment Action Campaign and Others* 2002 (10) BCLR 1033 (CC) [hereinafter TAC]; *Government of the Republic of South Africa and Others v Grootboom and Others* 2000 (11) BCLR 1169 (CC).
3. Heilbroner, pp. 11, 96-117.
4. The South African Constitution of 1996, key to the discussion of this article, is an excellent example of the intertwining of these two bodies of economic, social, and cultural rights, both substantively and regarding the competence of the Court to consider the rights in both jurisdictions.
5. S. Afr. Const. (1996); *Grootboom*, TAC, and *Jaftha*, *supra*, as discussed on their facts herein. See also Richardson pp. 1091, 1131n.
6. The Committee is responsible for, *inter alia*, administering country reports under the *International Covenant on Economic, Social and Cultural Rights* (*International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/63/16(1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976.) [hereinafter *ESCR Covenant*,]. South Africa has signed and ratified the *ESCR*

Covenant as of Oct. 2004. In this regard, see page 22 of *Grootboom, supra*, for analysis of international law. See also, as discussed herein, the relevant comments of the UN Committee on ESCR.

7. For the TRC, see Section 47a of the *Promotion of National Unity and Reconciliation Act*, 1995 (Act No. 34). See also Tutu, 2000: 261-87 and 31-32.
8. Tutu, 2005.
9. Fredrickson.
10. Harris, p. 681.
11. *Soobramoney v Minister of Health, KwaZulu-Natal* 1997 (12) BCLR 1696 (CC); *Grootboom and TAC*, note 1; *Port Elizabeth Municipality v Various Occupiers* 2004 (12) BCLR 1268 (CC); *Jaftha*, note 1.
12. For rights under the Constitution, see *Jaftha*, *Port Elizabeth*, *TAC*, *Grootboom*, and *Soobramoney*. For rights under international law, see *ESCR Covenant*.
13. Haysom, 2005: 167; or Haysom, pp 451, 455-6.
14. See e.g. *ESCR Covenant*, Art. 11; Yamin, p. 192. Notwithstanding comparison of state duties in ESCR and political/civil rights, the duty is stated more directly in the category of international political and civil rights. As opposed to ESCR, where the duty of the state is defined as a duty to only have a process to realize the rights. See also Alston and Quinn, p. 156, stating that the right to ESCR is not any less of a duty of the state, and is an enforceable duty.
15. See e.g. *TAC* and *Grootboom, supra*.
16. See e.g. *TAC* and *Grootboom, supra*.
17. *Grootboom* at 26.
18. *Grootboom* at 27.
19. *Grootboom* at 33.
20. *Grootboom* at 31.
21. *Grootboom* at 32.
22. *Grootboom* at 32.
23. *Grootboom* at 34.
24. *Grootboom* at 47.
25. *Grootboom* at 47.
26. *Grootboom* at 47.
27. *Grootboom* at 66.
28. *Grootboom* at 66.
29. *Grootboom* at 65.
30. *Grootboom* at 12, 36.
31. *Grootboom* at 52.
32. *Grootboom* at 48.
33. *Soobramoney* at 14.
34. *Soobramoney* at 7.
35. *Soobramoney* at 11. (There was no discussion here of a "minimum core" right).
36. *Soobramoney* at 12.
37. *Soobramoney* at 16.

38. *Soobramoney* at 16.
39. See S. Afr. Const. (1996), Section 27(1) The right to access to health care; 27(2) The State must take reasonable legislative and other measures, within its available resources, to achieve progressive realization of each of these rights.
40. *TAC*, at 24.
41. *TAC*, at 24.
42. *TAC* at 25.
43. *TAC* at 45.
44. *TAC* at 72.
45. "A court, after consideration of all relevant circumstances, may order execution. against the immovable property of the party."
46. *Jaftha* at 16.
47. *Jaftha* at 18.
48. *Jaftha* at 19.
49. *Jaftha* at 19.
50. *Jaftha* at 20.
51. *Jaftha* at 21.
52. *Jaftha* at 22.
53. The Court does not reject this contention, and seems open to it, but chooses not to address its merits as it is not necessary to the outcome of this case.
54. Thus, the adequacy of State resources is not an issue here.
55. *Jaftha* at 24.
56. *Jaftha* at 27,
57. The Court further clarified: If the debtor failed to appear, which is likely considering the majority of the parties likely involved, the creditor would be able to obtain a default judgment without any other judicial intervention.
58. *Jaftha* at 33.
59. *Jaftha* at 25 (discussing reasonable and justifiable measures).
60. *Port Elizabeth Municipality* at 8.
61. *Port Elizabeth Municipality* at 9.
62. *Port Elizabeth Municipality* at 9.
63. *Port Elizabeth Municipality* at 14.
64. *Port Elizabeth Municipality* at 16.
65. *Port Elizabeth Municipality* at 17.
66. *Port Elizabeth Municipality* at 20.
67. *Port Elizabeth Municipality* at 24.
68. Or, as in *Soobramoney*, *supra*, sometimes no remedy at all.
69. See *ESCR Covenant*, General Comment 3, The nature of States parties obligations (Art. 2, par. 1) (Fifth Session, 1990); General Comment 7, The right to adequate housing (Art. 11, par. 1) (Sixteenth Session, 1997). Pieterse, 2006: 473; Richter, p. 197, as subsequently discussed herein.
70. See *ESCR Covenant on Economic, Social and Cultural Rights*, General Comment 3, par. 10, The nature of States parties obligations (Art. 2, par. 1) (Fifth Session, 1990).

71. Pieterse, 2004: 383.
72. See e.g. *TAC and Grootboom*, *supra*.
73. See *Lauterpacht*, pp. 18-53.
74. See *Soobramoney*, *supra*.
75. See e.g. *TAC and Grootboom*.
76. See e.g. *TAC and Grootboom*.
77. *Lenta*, p. 544.
78. See *TAC*, *supra*.
79. See *Grootboom*, *supra*.
80. See e.g. *ESCR Covenant*, General Comment 3, par. 10-12, The nature of States parties obligations (Art. 2, par. 1) (Fifth Session, 1990); see Pieterse, p. 473; Richter, p. 197.
81. See e.g. *TAC and Grootboom*, *supra*.
82. See e.g. *TAC and Grootboom*, *supra*.
83. See *ESCR Covenant*, General Comment 3, The nature of States parties obligations (Art. 2, par. 1) (Fifth Session, 1990); General Comment 7, The right to adequate housing (Art. 11, par. 1) (Sixteenth Session, 1997); Pieterse, 2006: 473; Richter, p. 197.
84. *Henkin*, p.167.
85. *Richter*, pp. 197, 221.
86. Pieterse, 2006: 473, 475-7.
87. *Minister of Health and Another v New Clicks SA (Pty) Ltd and Others*, 2006 (1) BCLR 1 (CC).
88. *New Clicks* at 135.
89. See *TAC*, *Grootboom*, and *Soobramoney* for the major cases; the two others are *Jaftha* and *Port Elizabeth Municipality*.
90. S. Afr. Const. (1996); *ESCR Covenant*; *TAC*, *Grootboom*, and *Soobramoney*, *supra*.
91. See *TAC*, *Grootboom*, and *Soobramoney*, *supra*.
92. See *TAC*, *Grootboom*, and *Soobramoney*, *supra*.
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Contesting Liberal Legality: Informal Legal Cultures in Post-Apartheid South Africa's Privatizing Seafood Fishery

KEN SALO

Abstract: Constructivist interpretations of law as an open and contested social field whose form is contingent upon the outcome of interacting formal and informal socio-legal practices continue to illuminate how legal fields are formed and transformed. This essay uses these insights to shed light on how the legalities of informal fishers shaped and were shaped by a legal project of the post-apartheid South African state that sought to reconstruct fisheries regulation through a liberal language of individual, universal and abstract rights in living marine resources. Based on an ethnographic survey of informal socio-legal practices triggered by South Africa's transition to a neoliberal democracy in 1994, and a brief historical survey of colonial and apartheid forms of fisheries regulation, it argues that the post-apartheid rhetoric of liberal rights transforms without transcending prior cultures of fisheries regulation based on colonial violence and bureaucratic racism. Moreover, the legal claims of informal fishers to traditional (collective and territorially-specific) forms of access and control over coastal territories expose the dominant liberal rhetoric of individual fishers freely able to transcend historically structured hierarchies of race, class and gender as grounded in ongoing practices of violent dispossession and bureaucratic racism. In contrast to an ahistorical formal rhetoric of individualized rights and an abstract legal boundary between subsistence and commercial forms of fishing, informal fishers claim a political subjectivity as historically structured collectives of subordinated artisanal fishers forced to subsist in commercial territories as both unwaged subsistence producers and low-waged commercial workers.

The Informal sector is what was left out in the process of defining a bounded working class and integrating it into a process of regulation and surveillance by a state. The dichotomy formal-informal like that of market-non-market or modern-backward arose out of the struggles of a colonial state and labour movements trying to seize control of institutions and of discourse. Such labeling has its consequences: the irregular character of those who work without being workers provides an excuse for police harassment and bribe collecting.. Still one must not take the argument of the power of labeling too far: in much of Africa the informal or "second" economy is more dynamic and impossible for the state to control.¹

Ken Salo is Assistant Professor of Environmental Policy at the University of Illinois Urbana-Champaign. His work is at the intersection of transnational legal processes, power disparities and the production of resource conflicts in Southern Africa's postcolonial polities. He has published several articles related to subsistence fisheries in the *South African Journal of Marine Science*.

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South African legal culture has had much experience of the accommodations between legalism and violence.²

POST-APARTHEID FISHING CONFLICTS

On September 26, 1996, two years after South Africa's first democratic elections, more than 500 legally unrecognized and criminalized fishers from the impoverished and racially segregated townships surrounding the City of Cape Town marched downtown to protest the persistence of apartheid rules for allocating, capturing and exporting fish and shellfish resources from the productive west coast of South Africa. They forcibly occupied a boardroom of the new parliament where apartheid-era judge Kotze was presiding over a meeting of mainly white, male Afrikaner bureaucrats, constituted as the Department of Sea Fisheries Quota Board, and held them hostage until the newly-elected African National Congress (ANC) Minister of Environmental Affairs and Tourism, Dr. Pallo Jordan, agreed to meet them. Marshaled by Informal Fishers Association chairperson Andy Johnston, they tore up hundreds of state-sanctioned permits to export high value fish and shellfish to mainly European, American and Asian commodity markets. As Johnston explains, "informal fishers had become disenchanted with the ability of the ANC government to change the corrupt, inhuman and bureaucratic apartheid fisheries policies and our actions on that day were part of a renewed defiance campaign, the scorched-sea campaign, to protest the continuation of legal practices that transformed the high protein fish food our poor coastal communities rely upon into paper. green paper. with a dollar sign on it."³ Earlier in 1996, he continued,

I led more than 2000 informal fishers on a march to defy Sea Fisheries laws as inhuman and immoral since it criminalizes poor people fishing for food to feed their families. How can you justify laws that give rich people the right to extract and export tons of seafood to foreign countries at the expense of poor families who are forced to subsist from the sea? The bottom line is that the white-owned corporations constituted during the apartheid era are now collaborating with a new black elite to monopolize access to all sea resources. We understand that resources are not limitless, but we have no other option other than to continue the illegal harvesting of fish to feed poor families that were dispossessed and displaced to apartheid ghettos.

The white-Afrikaner acting Sea Fisheries Director at that time, Rudi Laan, warned that "although Sea Fisheries was sympathetic to fishermen who have been suffering hardship over many years. violence and rape in whatever form is not an acceptable method of problem-solving [and] the existing regulations will continue to be enforced without fear or favor and transgressors will have to account for their actions in the usual way." He ironically concluded that "Mr. Johnson was a member of the government appointed Fishing Policy Development Committee and well placed to influence future fishing [whilst working with the law rather than against the law]."⁴

Seizing the moment, populist former ANC youth leader, the late Peter Mokaba, then Deputy Minister of Environmental Affairs and Tourism (DEAT), staged a televised debate to publicly expose the misery, ecological destruction and economic inequality that apartheid fishing practices had produced. This debate brought into sharp relief the different worldviews of populist politicians, poor fishers, professional scientists, and fisheries administrators. Whilst

populists demanded that the post-apartheid government redress apartheid era injustices by redistributing resources from corporate monopolies, professionals argued that the new ANC government's authority is limited to correcting racial imbalances by appointing representatives from racially marginalized groups to corporate boards in accordance with strict criteria of economic efficiency. Despite their differences, all participants expressed full confidence in the power of South Africa's liberal constitution, with its judicially enforceable bill of rights, to reconcile their opposing worldviews.

A historical reading of these post apartheid expectations of the power of law, and especially liberal legalism, to resolve fisheries conflicts in post-apartheid South Africa is at best contested. Situated within its historical context, law appears as an inextricable part of a long and ongoing social process that dispossessed, displaced, and now excludes informal fishers from the material resources upon which they depend for their livelihoods. Liberal governments of the Cape Colony used informal fishing practices to help construct and reproduce a class of freed slaves and indentured servants that acted as a buffer between masters and slaves. Apartheid laws, in turn, restructured this buffer class, mainly through a Coloured Labour Preference policy in mid-1950, as a racial category of territorially segregated workers in the then Cape Province of the apartheid republic. These apartheid-classified Coloured workers were legally recognized as subordinate to white settlers but superior to migrant black workers. Many of these workers were forced to subsist in inshore coastal territories that were increasingly being incorporated into commercial production and in order to survive they routinely had to poach resources, violently fight low-ranking paramilitary fisheries administrators, and often bribe low-paid court officials to accept high-value fish and shellfish in exchange for bureaucratic legal favors. Viewed from this subaltern perspective, the violent taking hostage of racist, corrupt and bureaucratic fisheries administrators becomes apparent as a counter to the legally structured and often silenced violence of dispossession, displacement and territorial segregation through which commercial fishing territories are produced, reproduced and regulated in Cape Town.

Yet, despite these historically structured inequalities, populist ANC legislators insist that the liberal post-apartheid constitution can produce a better life for all.⁵ Buoyed by these promises in 1996 and their post-apartheid status as key voters in the electoral swing province of the Western Cape, informal fishers reconstituted themselves as an ANC aligned fisheries cooperative and helped an ANC-controlled national ministry appropriate the legal power to allocate fishing rights from a provincial government-controlled quota board.⁶ Bureaucratic and corporate opposition to this populist legislative victory was swift and formidable. Almost immediately, bureaucratic fisheries functionaries including marine scientists, economists, and administrators challenged the legal authority of national legislators to manage marine resources. After successfully fending off this legal challenge, populist legislators faced a more formidable corporate challenge from a network of industrialized fish processing firms. This network systematically set about using employment dispute legislation to effectively lock out (from their private fish processing factories) all employees sympathetic to the populist ANC's legislative victory and pending redistributive actions. This led to a corporate stand off with unionized fishers that eventually forced populist ANC legislators to withdraw its redistributive fiat on the eve of a crucial provincial election in March 1998. As expected, the withdrawal

provoked a wave of popular protests that helped defeat the Western Cape ANC in a regional election later that year.

Rallying against this regional setback, the populist ANC legislators moved swiftly to proudly proclaim a new act, the Marine Living Resources Act of 1998, to a packed parliamentary gallery of informal fishers who celebrated this act as finally granting them legal control over the territories in which they subsisted.⁷ However, this populist legislative victory was, once again, to prove short lived. In January 1999, a network of white controlled fishing firms, re-presenting themselves as new black-employee owned corporations, urgently petitioned a high court to rescind a ministerial decree redistributing 10-15 percent of commercial fishing rights on the grounds that it did not comply with apartheid-era legal formalities for allocating fishing rights. In a much anticipated ruling, an ANC-appointed judge, Dennis Davis, bluntly ruled that the minister's administrative fiat was invalid since it violated rules for the transition from apartheid to democratic fishing practices.⁸ Judge Davis's formalistic and terse ruling paralyzed all further legislative attempts to transform commercial fisheries production and signaled a shift in the post-apartheid state's redistributive rhetoric to a corporate friendly, techno-economic and universalistic rhetoric of individual and tradable rights.⁹

This shift from rhetoric of redistribution to a techno-econometric discourse on private, individual and tradable rights, eventually dissolved the populist ANC-led alliance with informal fishers, which then bifurcated into two main groups: an individualistic elite who opted to adopt state schema that classified them as "black-empowered" entrepreneurs and a populist collective that rejected individual rights in favor of more communal forms of access and tenure. The entrepreneurial elite used the state's rhetoric of individual fishing rights to redefine themselves as new entrants freely able to engage in joint ventures with established corporate fishing monopolies and only challenged the dominant legality as insiders.¹⁰ The populist fishworkers rejected the dominant legality since it did not recognize their collective agency as members of dispossessed communities subordinated within commercial territories. They continue to claim that communities dispossessed from their traditional territories have a preferential right to access these mainly inshore fishing zones and use a range of legal actions, political petitions, public protests and media campaigns in support of this claim.¹¹

The persistence of these pluralistic claims and socio-legal practices suggest that liberal legal schema of individual rights are not adequate to represent the range of relations, claims and legalities in South Africa's post-apartheid fisheries. In what follows, I explore how the concept of plural legalities helps us better understand the ability of a liberal legal field to regulate postcolonial relations of fisheries production during the post-apartheid period.¹² More specifically, I explore how the legal practices of informal or subsistence fishers helped form and transform a liberal legal project of the post-apartheid South African state that set out to formalize individualized and universal fishing rights as the common-sense basis on which to authoritatively resolve historically structured social conflicts between commercial and subsistence modes of fishing.

PLURAL LEGALITIES IN POSTCOLONIAL FIELDS

The ability of liberal legalism and its associated ideology of individual rights to authoritatively regulate the polarized social relations that postcolonial processes of economic development produce continue to spark intense debate in post-apartheid South Africa.¹³ Whilst some scholars argue that liberal legality is the only viable antidote against the racial, spatial and economic hierarchies upon which postcolonial relations of production rest, others argue that a culture of legality forges an impression that law, like money, acts as a universal standard that can facilitate the negotiation of incommensurables across historically structured differences and otherwise intransitive boundaries.¹⁴ Advocates of a liberal jurisprudence suggest that it could "civilize the bitter political conflicts which up till now have tended to degenerate into violent confrontation" and build a post-apartheid civility free of the violent ethno-nationalisms that apartheid-era development relied upon.¹⁵ Critics suggest that the much celebrated South African constitution allows the state to represent itself as the custodian of civility against disorder whilst guaranteeing neither a means of survival nor the right to earn or produce.¹⁶

In accord with constructivist interpretations, the power of law to resolve social conflicts is considered contingent upon its ability to authoritatively represent the juridical settlement of social conflicts as a taken for granted reality or common sense set of discursive practices with no self-evident or reasonable alternative.¹⁷ From this worldview, legality is "not only [material] practice and process, but also [symbolic] discourse, code and communication" and social order is no longer the inevitable or desirable result of a single regulatory act.¹⁸ Instead, the power of law is contingent upon the extent to which dominant legal actors are able to authoritatively silence the oppositional, subordinate or counter legalities that their actions produce. In accord with Boa Santos, I suggest that the concept of interacting plural legalities or interlegality best describes the asynchronous legalities that asymmetric social interactions produce. In this pluralistic view, the stability of a dominant legality is contingent upon the extent to which it is able to appropriate and subordinate the counter legalities it produces more than the legitimacy of a pre-selected and self-enforcing legal norm or rule.¹⁹ Richard Wilson convincingly argues that formal legality appropriates its counter legalities in non-linear movements and moves through oscillating, centralizing and pluralizing moments rather than successive stages of progressive development.²⁰ The idea of an oscillating legal field constructed through interacting plural legalities, I suggest, is echoed in Martin Chanock's conceptualization of South African legal culture as a plurality of discourses about law that "do not exist in isolation from each other . draw upon each other, sometimes critically and sometimes affirmatively. and are set in broader political and social discourses of the state and society."²¹

John Comaroff extends these insights when he argues that the power of law to re-present reality in ways that "plausibly appear to be reality itself" becomes visible only when local, micro-scale practices are resituated in their macro-scale historical contexts.²² Building on his insight, I attempt to situate the localized legalities of informal fishers in their macro-scale or transnational historical context. Following Ewick and Silbey, I restrict the term "law" to refer to those socio-legal practices commonly recognized as formalized or official and use "legality" to reference a broader ensemble of cultural practices regardless whether they originate from official or unofficial sources.²³ Such a distinction avoids the analytical false binary between

formal and informal legalities that represents law or formal socio-legal practices as unconnected and diametrically opposed to informal socio-legal practices.²⁴ Moreover, it allows a productive focus on how law produces and is produced by the informal legalities it generates and how such interactions become structured as a specific regulatory field through situated encounters between formal and informal actors. From this pluralistic and interactive perspective, the legalities of informal fishers are constitutive of fisheries law as the formalized legal practices regulating fisheries production. Stated differently, the legal field regulating post-apartheid fisheries production is the outcome of interactions between formal and informal legal practices, values and schemas in historically specific states or conditions-of-existence. Moreover, the authority of law as formal legal practices is contingent upon the extent to which it can appropriate the legitimacy attached to the more familiar informal practices. As Ewick and Silbey note, "by applying schemas from one setting in another, people are able to make familiar what may be new and strange; moreover they appropriate the legitimacy attached to the familiar to authorize the unconventional."²⁵

Ewick and Silbey's insight echoes feminist interpretations of how patriarchal power becomes normalized by appropriating hierarchical classifications of nature that have become common sense or naturalized.²⁶ In this view patriarchal power is legitimated through interpretive schema and discursive practices that associate women with nature and can, under certain conditions of existence, colonize the consciousness of westernized women. As John Comaroff insists, however, hierarchies of power usually work paradoxically and law is only temporarily able to appropriate its informal subordinate legalities and transmute these historically structured differences into a universal sameness. Colonial states, he continues, simultaneously reproduce and undermine their own hierarchically structured conditions of existence since "at the same time as they [speak] of transforming colonized peoples into civilized i.e. modern free, right-bearing citizens. they [deal] in heterogeneity by naturalizing ethnic difference and essentialising racial inequality."²⁷ This foundational contradiction means that the teleology of colonial governance always pointed toward a secular citizenship while its reality fostered a racinated world of ethnic subjection and autonomous cultural groups. For June Nash, this paradox of colonial existence is embodied in contemporary survivalist struggles of colonized and these dispossessed subsistence producers are organizing their struggles in the languages of human, ecological and cultural insecurity rather than formalized idioms of legal rights.²⁸

Against this theoretical background, the essay shifts to tracing the plurality of languages, historical moments and social movements through which a subordinate collective of informal and localized fishers produced an ensemble of informal legalities in response to a state project aimed at reframing and regulating post-apartheid fisheries conflicts through a formal discourse of liberal legal rights.

POST-APARTHEID FISHERIES AS TRANSLOCAL ENCLAVES OF COMMODITY PRODUCTION

Historical studies of commercialized territories in postcolonial polities such as South Africa suggest that they are constituted through translocal forces that sometimes work with, other

times against, and often in the shadow of the law in order to effect political, economic and cultural domination of local social formations. These forces dislocate local social connections, appropriate local cultural practices and subordinate local territories within transnational networks of commercial production in forms that appear disconnected from its translocal origins.²⁹ Moreover, translocal political, economic and cultural forces work together to rhetorically and bureaucratically authorize the deliberate violence necessary to dislocate localized social relations and produce a class of dispossessed local producers that are unable to subsist except through engaging in exploitative commercial relations of production. In these translocalized territories, where "capital no longer needs to pay for the reproduction of labour power," social relations and networks are governed less by state and inter-state processes than the unaccountable practices of intra-firm and inter-firm polities of joint corporate-state power.³⁰ These polities organize translocalized territories through a diversity of regulatory practices in a "polymorphic territoriality [of] multiple institutional and regulatory forms at sub and supra regional geographical scales" in order to produce stable enclaves where local social relations are dislocated from those in the rest of the national territory but positively articulated with transnational economies.³¹ Historically, the deliberate disconnection, dislocation and subordination of local social relations to translocal economic forces required the periodic collaboration of unaccountable para-military groups, inter-firm economic networks and despotic local cultural formations, often acting as private proxies of the state.

Since the late 1980's in Africa, local social conflicts in transnational enclaves producing agricultural commodities have increasingly been subjected to the structural adjustment programs imposed by global bureaucracies like the World Bank, the International Monetary Fund and the World Trade Organization.³² In most enclaves of commodity production these processes have over time structured distinctive, contract-labour markets that both replaced open-market exchanges and contractually bound local producers to centralized processors and purchasing units. These export-orientated contract markets have allowed transnational commercial contractors to impose production practices, price, and credit in advance of actual production, and at the expense of the subsistence needs of local producers and ecosystems, especially in negatively developing countries.³³

In concert with these worldviews on the role of translocal forces of production on local social relations and practices, the remainder of this essay sets out to identify the plurality of local and transnational legalities reshaping commercial fisheries production in the post-apartheid South African postcolony. In modernist histories, "succession is supercession, [and] where to be forward in time is to have a consciousness and awareness superior to those behind in time."³⁴ This essay takes a contrasting position that traces the trajectory of the legal field regulating fisheries production as a dynamic constellation of three idealized types of legalities, each legality in a hierarchal relation with the other two ideal types:

- Violent legalities structured by colonial practices that dispossessed, dislocated and dominated subsistence fishers;
- Bureaucratic legalities structured by apartheid practices that racially and territorially segregated subsistence fishers;

- Rhetorical legalities structured by liberal narratives of free markets, flexible labour and individual rights for subsistence fishers.

THE VIOLENT LEGALITIES OF COLONIAL PRODUCTION

Following postcolonial scholar Patrica Tuitt, the opening story of this essay can be framed as an insurgent collective of dislocated subsistence producers engaged in unsanctioned acts of violence and a rhetoric of social justice to counter the legal violence that structured their colonial state-of-existence. In this view, the unsanctioned or informal violence acts as a counter to bring a law "suffused in violence" and its bureaucratic administrators, judges, and commercial benefactors into congruence with claims of social justice.

More specifically, the opening story suggests that contemporary acts of informal violence in post-apartheid fisheries are historically justified as counter claims to the colonial violence of genocide, ethnocide and ecocide that subordinated pre-colonial territories of subsistence to translocal commodity markets centered on metropolitan Cape Town. Historiographies of colonial dispossession at the Cape confirm this perspective and trace how European merchants and settlers violently used law to dispossess native peoples of the communally organized territories on which they relied for subsistence and social reproduction.³⁵ These ethnographic, archival and archeological studies offer evidence of remnant slave-forts, jails and fortified commercial trading posts as indicative of the "colonial-capitalist" violence upon which extractive enterprises such as commercial fishing are founded. Robert Ross recounts how Portuguese looting of the Cape commons in the 1500's continued until the killing of the Portuguese admiral Francisco de Almeida in Table Bay by the indigenous Khoi-San. According to Ross, native resistance to freely provision mercantilist traders with food, firewood and water was only subdued when the premier corporation of the colonial seventeenth century, the Dutch VOC, financed a series of genocidal land wars to extirpate the native Khoi-San. In the wake of its bloody victory, the VOC granted Dutch burghers and Protestant French refugees who had settled at the Cape the legal rights to control dispossessed land, coerce labor, and oversee the transfer of profits to European commercial markets.³⁶ These records include eyewitness testimony by a Dutch VOC soldier, Otto Mentzel, of the systematic public beatings, executions and torture of slaves and captive laborers unable to meet the VOC's production quota.³⁷ This violent looting and systematic transfer of economic wealth from colonial Africa financed European industrialization and, more importantly, created the despotic and bureaucratic administrative structures that continue to regulate contemporary relations of commercial production in African enclaves. They produced a class of subservient local elites that collaborate with translocal colonizers to conceal the violence of colonial extraction under an authorizing rhetoric of civilizing native peoples.³⁸ As Timothy Keegan explains, Dutch colonialism created a triple alliance of free burghers, slaves and native Khoi as an authorizing legal hierarchy that would form the basis of a subsequent racial order, "which in its fundamentals was unaffected by the jettisoning of legal foundations of inequality in the 1820s and 1830s."³⁹

At the dawn of the nineteenth century, the scramble for more territories, cheap labour and raw materials by an industrializing Europe intensified and the colonization of African territories dramatically escalated.⁴⁰ At the Cape, British merchants unleashed a tidal wave of capital investments after Britain's victory in the Napoleonic wars in order to finance the construction of

ports, mines, mechanized ships and factories through which to extract profits more rapidly.⁴¹ In the fishing industry, this commercial impulse transformed local catches of linefish and cape barracuda or *snoek* into a commodity for export to Mauritius as reliable and cheap food for slaves working the sugar plantations recently seized from French colonists.⁴² Ironically, the cultural stigma of *snoek* as slave food has helped it survive as a contemporary staple for dispossessed agricultural and industrial workers living around metropolitan Cape Town.⁴³ The subordinate integration of the Cape into the victorious British empire and the arrival of an entrepreneurial class of English settlers in 1820 at the eastern Cape created a brief but unstable alliance between mercantile and humanitarian interests fuelled by "visions of a society built on free contract rather than on hierarchies of legal status, rights and privileges."⁴⁴

Hostilities between the feudalistic Dutch and entrepreneurial English settlers faded, however, as an association of entrepreneurial elites embarked upon systematic land wars to enslave conquered natives on wine plantations, wool farms and, later, diamond and gold mines.⁴⁵ The process of capital accumulation through colonial plunder, or colonial-capitalism, peaked in 1893 when, as Keegan describes, British imperialism under the sway of free trade capitalism awakened to the fabulous deposits of gold and diamonds in the interior of the colony. This scramble for mineral wealth created a need for cheap and reliable industrial food and marked the onset of commercial fishing at the Cape as a combination of mechanized fish trawling and centralized administrative practices.⁴⁶ The colonial state, Van Sittert argues, under guise of the bureaucratic Wolfe commission of 1892, prohibited all local competition with metropolitan trawling interests, rescinded ecological restrictions on pelagic fishing, consolidated sea territories along the Cape coast into a regional market, and demonized unwaged subsistence fishermen as uncivilized, lazy and primitive. This rapid mechanization of commercial trawling was so intense that a local corporate monopoly, Irvin and Johnson, reported a collapse of pelagic fish stock in False Bay after only twenty-six years. Moreover, False Bay's ecological collapse triggered the ecological plunder and economic enclosure of adjoining coastal bays: at Hout Bay in 1903, when a British-owned crayfish-canning company restricted local resale of crustaceans; and at Saldanha Bay in 1918 when the British-owned Oceana Corporation was exclusively permitted to exploit shoals of pelagic anchovy and pilchards.⁴⁷

This brief historical survey of socio-legal practices at the colonial Cape makes legible the violent legalities through which commercial fishing territories are produced and reproduced. The colonial conquest and commodification of communal fishing territories at the Cape required violent socio-legal schema in order to subordinate localized subsistence practices to transnational commercial economies. As evident from the current conflict described here, these violent relations in contemporary fisheries production persist and are now fuelling new, neoliberal forms of legal violence that subordinate all remnants of self-reproducing subsistence production to the shibboleth of a self-regulating and global free market.

THE BUREAUCRATIC LEGALITIES OF APARTHEID PRODUCTION

The formalizing of racist fisheries practices can be traced to a suite of administrative reforms in the 1940's that white supremacists initiated to secure access and control over lucrative shellfish and trawled whitefish markets. Emboldened by their electoral victory in 1943,

entrepreneurial Afrikaner elite from the Cape organized an apartheid state-owned company, the Fisheries Development Corporation (FDC) to challenge Anglo-owned fishing monopolies for control of these lucrative export and domestic markets.⁴⁸ As FDC chairman S. Skaife remembers, the proposed reforms were intended to "skim off profits" from the profitable Anglo-owned whitefish trawling sector for redistribution to a poor white Afrikaner working class still reeling from the devastating Anglo-Boer war. After the corporate defeat of its reforms, the apartheid state brokered a deal that gave an Afrikaner elite access to the less profitable pelagic, fishmeal-processing industry at St. Helena Bay in exchange for corporate exemption from all trawling regulations. Whilst this deal laid the basis for incorporating an Afrikaner elite into the commercial fisheries, it also reduced the regulatory power of the Afrikaner-led state to an annual bureaucratic ritual of allocating fishing rights to corporate monopolies and justifying this ritual with an abstract rhetoric of scientific fisheries management.

The collusion of an Afrikaner elite with Anglo-owned fishing corporations continued until a wave of anti-apartheid rebellion swept through South Africa's peri-urban labour reserves: Sharpeville in 1960, Soweto in 1976 and the Cape Flats in 1985. Sampie Terreblanche argues that the Soweto uprising of 1976 not only precipitated the overthrow of the racist white regime but also produced profound shifts towards new forms of social exclusion based on casual labour, structural unemployment and abject poverty. Stephen Ellis characterizes the pariah apartheid state during the mid-1980s as a militarized garrison for the private, illegitimate, and wholesale looting and export of local resources. In its death throes, lucrative contracts lured many of the apartheid state's administrators to become covert paramilitary police and corrupt smugglers of illicit weapons, ivory and high-value fish to shadow states. In a final attempt to re-impose bureaucratic control over commercial fisheries production, the destabilized apartheid state in 1988 staged a series of legislative performances that culminated in the enactment of a troubled fisheries quota board.⁴⁹ However, these legislative acts, like their predecessors in 1943, were subordinated to the commercial power of an alliance of transnational fishing corporations and local political elite. By the early 1990's, the bureaucratic apartheid state had lost all effective control over commercial fishing territories as a rhetoric of free-market-led production, deregulated trade, privatized access rights, and flexible labour markets was being imposed worldwide. In response, transnational corporations began deregulating employment conditions by offering low-wage employees market-related incentives such as share-options, management positions, and appointments on corporate boards.⁵⁰ Such workplace-based programs of incorporation into corporate schema further excluded informal workers and itinerant contract producers who, in turn, rallied around a rhetoric of social justice and equitable redistribution of resources.

THE RHETORICAL LEGALITIES OF FLEXIBLE PRODUCTION

When the ANC took political office in 1994, it encountered a commercial fishery well on the way to inclusion in a market-based world economy through a neoliberal rhetoric of private rights to property, self-regulating commercial markets, and flexible labour markets. That trajectory contrasted sharply with the ANC rhetoric of redistribution that animated its base of subordinated working peoples. In fisheries policy debates, this contradiction surfaced as tension

between collectively organized forms of subsistence production and the individualized appropriation of commercial fishing profits. The former approach argued that fisheries development is best organized through equitable redistribution of fishing rights to producer collectives of subordinated people whilst the later claimed that stable economic growth depended on creating individualized and transferable private property rights in fish.⁵¹ The analysis here explores how this paradoxical rhetoric of the post-apartheid state was articulated by informal fish-workers.

The opening story of micro-conflict shows how in 1994, populist ANC legislators set out to construct fisheries as a site for socio-legal reform. In an attempt to break with a violent, racist and bureaucratic past that criminalized their subordinated supporters, they set out to legislate the redistribution of fishing resources as restitution for past dispossession and displacement and bring the coastal commons under government control. To this effect, the ANC-led state initiated a project to reincorporate subordinated producers into state-controlled regulatory schema.⁵² This project brought to light the conflicting political claims of subordinate groups that ranged from claims by informal producers for redistribution to the relatively narrower, workplace-related claims of formally organized factory workers. It produced an unlikely alliance between a local political elite, transnational traders, established fishing factory bosses, and organized labour in an attempt to stabilize commercial fisheries through a techno-economic rhetoric of fishing rights, flexible labour markets and joint economic ventures. The main legal project of this alliance was to reconfigure subordinate political subjectivities as juridical categories of "Black empowered entrepreneurs."⁵³ In response, informal producers embarked on mobilizing an alternate rhetoric to validate their claims for redistribution of fisheries benefits from the established corporate monopolies to marginalized producers. They appropriated the human, social and environmental protection discourses encoded in international treaties on responsible fishing practices and assailed the nationalist ANC for failing to recognize their cultural rights as artisanal fishers to collectively access inshore territories as the material base for their traditional livelihoods. The populist ANC legislators in turn countered with a rhetoric that their legislative acts would decisively break with an apartheid past that forced informal fishers to sell their catch to a monopoly of five big companies and allow them to participate in an essentially privatized commercial fishery.⁵⁴

At the start of the 1999 season, the ANC made good on their rhetoric and allocated more than 400 tons of high value shellfish and whitefish to informal producers now restructured as the commercially registered and publicly traded South African Commercial Fishermens Company Ltd (SACFC), comprising more than 2000 members organized in twenty-five regional production co-operatives under the control of a holding company with assets in excess of three million rand.⁵⁵ The SACFC, however, soon became mired in conflicts between the member co-operatives and a rapidly bureaucratizing executive that, three years later, led to the violent separation of a corporatist executive from its social base of subordinated producer cooperatives.⁵⁶ More devastating to the ANC's legal victory was a campaign launched by a corporate alliance of more than sixty white factory bosses that effectively locked out unionized employees from their workplaces, left long-suffering subsistence producers without an income, and effectively halved commercial fisheries production during the 1998-1999 fishing season.

At this crucial point, the Cape High Court took a pivotal role in legally repressing the redistributive agenda of populist legislators when the ANC-appointed Judge Dennis Davis ruled that since apartheid-era legal formalities still applied, the ANC's decree to redistribute 10-15 percent of the commercial quota was formally invalid. This terse ruling paralyzed all further populist attempts to legislate fisheries reforms and stabilized the stage for further exclusion of subsistence fishers through a techno-economic rhetoric of economic efficiency, free trade and neo-liberal markets.⁵⁷

In its wake, a now restructured ANC fisheries administration finally concluded a free trade agreement in February 2002 with the European Union trade commissioner, Pascal Lamy, that would eventually allow foreign-based, transnational fishing corporations indirect access to South African fisheries in exchange for continued access by South African fruit and wine exporters to European commodity markets. In terms of this agreement, foreign fishing companies could indirectly access South Africa's territorial waters through joint ventures with local political elites.⁵⁸

With the judicial defeat of populist legislation in 1998, workplace stabilization through the incorporation of organized labour movements, and the transnational economic pressure for free trade agreements, the ANC controlled fisheries administration opted in 2001 to formalize its regulation of commercial fisheries through a techno-economic rhetoric of liberal rights, free markets and free trade. The hegemony of this liberal rhetoric, however, remains contingent on whether it can silently incorporate the lived political experiences and historical consciousness of informal and subordinate fishers.

CONCLUSION: THE LEGAL FIELD REGULATING POST-APARTHEID FISHERIES PRODUCTION

Rather than assume that state sanctioned legal projects are self-enforcing, this essay has argued that their social effects are contingent upon an unresolved struggle between disparate social formations to reconfigure the historically structured socio-legal field in which state projects are located. From this perspective, present state projects are generated as much from past legalities of colonial violence and bureaucratic racism as from a contemporary and still ambiguous rhetoric of individual and collective rights. Specifically, the analysis here suggests that the post-apartheid legal field regulating fisheries production is a dynamic constellation of abstract rhetorical legalities and repressed, bureaucratic and violent legalities. Finally, informal fishers are challenging these abstract representations of their legal subjectivity as either pre-colonial subsistence-fishers, "black empowered" petty traders and the new entrants into commercial fisheries by re-presenting themselves as victims of violent dispossession, bureaucratic administrative practices and economic exclusion.

Notes:

1. Cooper, p. 466.
2. Chanock, p. 514.
3. Personal interview with Andrew Johnston at his home in Fairways, Cape Town on July 2004.

4. *Cape Argus* 16 January 1996.
5. ANC Reconstruction and Development Program 1994:104.
6. RSA Marine Living Resources Bill of 1997.
7. *Cape Argus*, 24 March 1998.
8. Langklip Seeprodukte (Pty) Ltd and Others v Minister of Environmental Affairs and Tourism and Others (1994), (4) SA 734(C).
9. Department of Environmental Affairs and Tourism Fisheries Management 2001-2004.
10. Bato Star (Pty) Ltd v Minister of Environmental Affairs 2004 (4) SA 490 CC.
11. Andrew Johnston interview 2002; *Nosweek* no. 58.
12. Ethnographic information for this study was obtained from a variety of primary and secondary sources of fishery related data over the decade since South Africa's political transition in 1994. Direct data was obtained as an elected representative for informal fishers in a post-apartheid government inquiry into subsistence practices in 1997, a witness to a wave of public protests against pro-privatization government policies since 1999 and most recently as part of a pro bono public interest legal team supporting artisanal producers legal challenge against the government's privatization policies. During those periods, I interacted with and interviewed more than 50 key informants: including 10 fisheries administrators, 5 corporate executives, 25 women and men informal producers and petty traders, 5 unionized fish processors 5 marine scientists and geographers, 3 high court judges, 10 ANC and 5 opposition party legislators and 2 public interest lawyers. Secondary sources include materials from official and informal archives of academic journals and popular newspapers.
13. Regulation, following Boa Santos, is the antithesis of emancipation and refers to a historically structured and socially situated ensemble of socio-cultural practices, ideas and values aimed at the reconstructive management of the excesses and deficits of modernity through three, semi-autonomous principles of the state, market and community. The role of regulation in contemporary societies, according to Santos, is to guarantee the scientific and technical management of society through the juridical depoliticization of social conflict and social rebellion. Polarization, following Manuel Castells (2000: 68) is used here to refer to the "specific process of inequality that occurs when both the top and bottom of the scale of income or wealth distribution grow faster than the middle, thus shrinking the middle, and sharpening the social differences between the extremes segments of the population." Following Eve Darian-Smith and Peter Fitzpatrick (1999) the term postcolonial refers to a category of persons subject to historical processes of colonial rule that paradoxically represents their identities as inassimilable yet demands their political incorporation as emergent Western or European subjects. In the result, they argue the identity of the postcolonial is ever unresolved and the postcolonial condition exists as an ambivalent belonging to the West and, I emphasize, Western ideological and material practices that separate human from non-human nature. Comaroff & Comaroff 2004; Ellis; Bond 2002 & 2004; Cheru 2001; Moore ; Klug; Wilson; Carmody ; Desai; Terreblanche.
14. See, for example, Klug for a proponent of legal liability, while Comaroff and Comaroff (2004) argue that such an approach poses as a supposed universal standard.

15. Klug, p. 5.
16. Comaroff and Comaroff (2004).
17. Lazarus-Black and Hirsh; Silbey; Sarat and Kearns; Ewick and Silbey; Santos; Sarat and Simons (2003).
18. Lazarus-Black and Hirsh, p. 5
19. For Boa Santos interlegality is the phenomenological counterpart of legal pluralism and a highly dynamic process produced through the unstable mixings of non-synchronic legal codes.
20. Wilson.
21. Chanock, p. 23.
22. Comaroff (1994).
23. Ewick and Silbey (p. 45) distinguish at least three ideal-types of legality: "conformity *before* the law", "engagement *with* the law," and "resistance *against* the law."
24. In accord with Robert Biel, informal practices refer here to the many formally unrecognized and often even criminalized social practices through which those who are alienated from the products and places they produce struggle to transform the social hierarchies authorizing that alienation. For Biel, the durability of social hierarchies depends on how the various social agencies reproduce and transform those symbolic and material state practices that differentiate them.
25. Ewick and Silbey, p. 40.
26. Merchant; Mies.
27. John Comaroff (2001), p. 46.
28. Nash.
29. Santos; Hoogeveldt; Castells; Sassen; Dicken.
30. Hoogeveldt, p. 113; Snyder.
31. Mbembe; see also Roitman.
32. Watts.
33. Chossudovsky.
34. Korang.
35. Van Sittert (2003), Jaffe, Ross, Lees, and Worden et al.
36. Ross, pp. 20-23.
37. Quoted in Guelke and Shell, p. 819.
38. Williams; Rodney.
39. Keegan, p. 281.
40. Pakenham.
41. Jaffe.
42. Van Sittert (1992).
43. Lees.
44. Keegan, p. 281.
45. Jaffe.
46. Van Sittert (1992).
47. Stibbe and Moss, p. 62.
48. Van Sittert (2002).

49. Glazeskwi.
50. Von Holdt.
51. RSA Fisheries White Paper (1998).
52. Martin & Nielsen.
53. Employment Equity Act 1998; Promotion of Equality and Unfair Discrimination Act 2000.
54. The five companies were: Irving and Johnson Ltd (est. 1912), Marine Products (est.1942), Premier Fishing (19??), Sea Harvest (1960?) and Oceana Fishing Group Ltd (est. 1918). For the legislation, see RSA Debates of the National Assembly, 1998: 899.
55. SACFC Registered Number 97/101276/07. *Cape Argus*, 24 March 1998.
56. *Cape Times*, 3 August 2000.
57. CBN Archive June 1999; *Out to Sea in Earnest*.
58. O'Riordan.

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Media, Social Movements and the State: Competing Images of HIV/AIDS in South Africa

SEAN JACOBS AND KRISTA JOHNSON

Abstract: South Africa's mainstream print and broadcast media have attained a central role in shaping the discourse about HIV/AIDS as a result of their elevated role in politics after apartheid. Studies of media coverage of HIV/AIDS, however, have shown that despite the horrific impact of AIDS in South Africa, until recently national media coverage (both the extent as well as the content) -- with few exceptions -- does not reflect the urgency of the crisis. Instead, media coverage focuses primarily on conflicts around HIV/AIDS policy. In this essay we want to explore some of the reasons for this as well as the consequences this has had for AIDS politics. We show that while it is true that often lack of resources, "AIDS fatigue", racial tensions in newsrooms, and the conflict frame (between the state and AIDS activists) are relevant explanations for the deficient coverage of HIV/AIDS, they don't tell us much. Instead, we suggest that the concept of framing can provide us with more insight into the why of coverage. Coverage of AIDS disproportionately deflects to the political battles and blunders that have accompanied the disease's spread. When it does break with that frame, the crisis is often defined very narrowly as a health issue rather than an issue of socio-economic inequality. We suggest that President Mbeki's framing of the crisis has a censoring effect on the media, while TAC's complex relation with the media means there is often a disconnect between what TAC is saying and how its demands are being represented in the media, resulting in little effort having been given to reporting and analyzing AIDS' devastating political economy.

Introduction

South Africa has been one of the countries hardest hit by the HIV/AIDS pandemic, with approximately 5.5 million South African adults and children living with HIV/AIDS at the end of 2005.¹ AIDS in South Africa has drawn considerable public debate and media attention, not only because of its high rates of infection but also as a result of the South African government's

Krista Johnson is Director of the International Relation Program and Assistant Professor at Agnes Scott College. Krista has lived and worked in southern Africa for nearly a decade. She has written extensively on South African democratization and politics, including articles on civil society and democratization in South Africa, and nationalist and post-nationalist politics in southern Africa. Her current research interests focus on HIV/AIDS policy development in South Africa and the international political economy of AIDS and access to anti-retroviral treatment. She and Sean Jacobs are also co-editing the forthcoming *Encyclopedia of South Africa* with Lynne Rienner Publishers. **Sean Jacobs** is assistant professor of communication studies and African Studies at the University of Michigan, Ann Arbor since Fall 2005. Previously, he was post-doctoral fellow of the International Center for Advanced Studies at New York University. He holds a PhD in Politics from Birkbeck College at the University of London and a MA in political science from Northwestern University. He has held fellowships at the New School for Social Research and the Kennedy School of Government at Harvard University. He is a native of Cape Town. His research interests revolve around the relation between democracy, power and inequality. He and Krista Johnson are also co-editing the forthcoming *Encyclopedia of South Africa* with Lynne Rienner Publishers.

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response to the crisis and the pivotal role played by South African AIDS activists. Central to these debates have been efforts by various actors to frame the epidemic and society's response to it in particular ways. The media, AIDS social movement organizations (particularly the Treatment Action Campaign or TAC), and the state (particularly President Thabo Mbeki and his health minister Manto Tshabalala-Msimang) have been key actors in this regard.

This paper analyzes the place of the media in AIDS policy discourse and activism in South Africa. It discusses the relationship between the news media, TAC, and the state using the concept of framing as a lens through which to analyze the roles and impact of news media as a space of interest articulation and deliberation, and in mediating democratic debate in the public sphere. We argue that the discourses in the South African media around HIV/AIDS have limited the type of information that is presented to the public as a whole, as well as put constraints on the kinds of democratic debate taking place over an effective societal response to HIV and AIDS.

South Africa's media, especially the country's mainstream and print media, have attained a central role in shaping the discourse about HIV/AIDS as a result of their elevated role in politics after apartheid. Studies of media coverage of HIV/AIDS, however, have shown that despite the horrific impact of AIDS in South Africa, until recently national media coverage (both the extent as well as the content) -- with few exceptions -- does not reflect the urgency of the crisis. Instead, media coverage focuses primarily on conflicts around HIV/AIDS policy.

In this essay we want to explore some of the reasons for this as well as the consequences this has had for AIDS politics. We will do so by first outlining the main frames through which AIDS are constructed. We will provide analyses of the frames utilized by the TAC and by President Mbeki (as the most senior representative of the South African state). The essay will then summarize the main findings from existing studies on media coverage of the epidemic. Finally, we will speculate on the frames that are excluded from coverage. We argue that while it is true that often lack of resources, "AIDS fatigue", racial tensions in newsrooms, and the conflict frame are relevant explanations for the deficient coverage of HIV/AIDS, they don't tell us much. Instead, we suggest that the concept of framing can provide us with more insight into the *why* of coverage. Coverage of AIDS disproportionately deflect to the political battles and blunders that have accompanied the disease's spread. When it does break with that frame, the crisis is often defined very narrowly as a health issue rather than an issue of socio-economic inequality. Below we suggest that President Mbeki's framing of the crisis has a censoring effect on the media, while TAC's complex relation to the media means there is often a disconnect between what TAC is saying and how its demands are being represented in the media, resulting in little effort having been given to reporting and analyzing AIDS' devastating political economy.²

MEDIA AND MOVEMENTS FRAMING POLITICS

There is general agreement -- both among scholars, journalists and editors as well as political actors -- that media play a central role in interest articulation and deliberation in democratic society; in particular "how ideas emerge, diffuse, and affect policy."³ Some scholars have identified this process as "mediated deliberation."⁴ According to this view, "professional communicators" are at the heart of deliberation. These professional communicators are

identified as journalists and reporters, writers, commentators, and television pundits, as well as public officials and selected experts from academia, think tanks, and civil society organizations. They "not only help policy experts communicate with each other, but also assemble, explain, debate, and disseminate the best available information and ideas about public policy, in ways that are accessible to large audiences."⁵

The key issues for mediated deliberation are: "How well do professional communicators represent and serve the public? Do they convey information and ideas the public needs for developing informed policy preferences? Or do they, to a significant extent mislead citizens and distort public opinion?"⁶ Linked to ideas about interest articulation and deliberation is the concept of "framing."⁷ What we term the "news" is never a clearly and previously defined object of which the media present a straightforward, unproblematic transcription. On the contrary, the "news" is a construction. It is constituted by its presentation in the media. To be reported as news, actions have to be translated into events, and then into a "story." Recognition of an issue as newsworthy, the selection of specific events and topics, the context explicitly present or assumed, and the positive or negative judgment implied by a news report all emerge from media coverage rather than being inherent in behavior and reported word for word.⁸

A journalist writing a news report operates on the basis of background assumptions of knowledge and evaluation, commonly referred to by scholars of the media as a frame. The concept of frames, derived primarily from the work of Erving Goffman, denotes "schemas of interpretation" or "action-oriented sets of beliefs and meanings" that enable individuals to render meaningful occurrences in their life and the world at large.⁹ Frames were first applied to the analysis of the news media by Gaye Tuchman (1978), and have been used by media scholars to describe the background of news stories.

Using a frame, a journalist can represent events as part of a coherent larger reality within which readers and viewers can comprehend them. The frame adopted in a media account shapes the way particular details are presented and provides the broader context for the story. Frames are often presented in media analysis as something adopted relatively unreflectively by journalists and shared by their audience.¹⁰ They do not appear to either journalists or audience as social constructions but as primary attributes of events that reporters are merely reflecting. News frames make the world look natural. They determine what is selected, what is excluded, what is emphasized.¹¹ For media scholars, frames provide a reflection of reality but are not viewed as the product of the active construction of reality.

The concept of frames found its way into studies of social movements also following Goffman's formulation, but has been adopted more widely by social movement scholars than by media scholars.¹² Within the social movements literature, collective action frames serve to organize and simplify experience, to motivate action on the part of potential adherents and constituents, to demobilize antagonists, and to justify the movement's agenda. Taking into account cultural frames, including shared meanings, symbols, and discourses allows social movements to be viewed not merely as carriers of ideas and meanings drawn from existing ideologies or structural arrangements, but as signifying agents actively engaged in the production and maintenance of meaning for constituents, antagonists and observers.¹³ Snow et al., show that this productive work may involve the amplification and extension of existing meanings, the modification of old meanings, and the generation of new meanings.¹⁴

While social movements adopt the task of framing issues for their constituents and target audiences, the media play the double role of framing the issues and framing the social movements promoting the issues. Many potential recruits and sympathizers among the public become aware of movements and their issues primarily through the media. The media not only provide information but also create for them the frame within which they perceive and perhaps assimilate a movement's message. Media framing of the issue can support or undercut the legitimacy of a movement's claim by the way it presents the issue, and media framing of a movement's actors can likewise affect the legitimacy of those actors to press the claim.¹⁵

For these reasons, few movements can afford to ignore the media or disdain their attention but it is almost always a fraught relationship. Even if a movement succeeds at getting the media's attention, it has no guarantee that a story will present its own view of its cause or of its activists. News reports rarely present the background or structural causes of problems, but rather center on events and individuals. They often present a movement through portraits of colorful and articulate individuals. As Charlotte Ryan explains, such portrayals can fail to convey the movement's message for at least three reasons: they may make the movement appear smaller than it is, involving only a few people; the more articulate or colorful activists ("media stars") may not be representative of the constituency the movement claims to mobilize; and an account concentrating on individuals is not likely to address a problem's systemic causes.¹⁶

Because they are weaker participants in such cultural contests, movements cannot normally expect that their message will be reflected unquestionably in the media's frame(s), but can only hope that it will be presented at all. At best, they can hope that they will succeed in moving the discourse to a point where their frame is admitted as a contender and the dominant frame is recognized as susceptible to challenge.¹⁷

SOUTH AFRICAN MEDIA AFTER APARTHEID

By any mainstream standard, post-apartheid South Africa has a well functioning and diversified media. A wide range of choices for radio, television, and print media are available to an impressive majority of South Africans. Specifically, radio covers ninety per cent of the population and broadcasts in all official eleven languages. The public broadcaster, SABC, operates 20 radio stations, and in addition there are about 15 private radio stations. Over a ten-year period, South Africa's media regulator, the Independent Communications Authority of South Africa (earlier known as the Independent Broadcasting Authority) has awarded a total of 94 community radio licenses. As for television, coverage is lower but still very significant. Over sixty per cent of the population has direct access to television services. By 2007 there were 3 terrestrial and one satellite public television channels; one terrestrial private, free-to-air television station (known as ETV); a subscription-based cable service M-Net; and a digital satellite television service that dominates satellite television broadcasting in the rest of the continent. In 2007, the Government Information Service estimated that the public broadcaster's television stations reach a daily audience of almost 18 million people, ". the largest television audience in Africa."¹⁸ Only SABC and ETV produce news broadcasts.

For its part, mainstream print media includes seventeen daily newspapers. In addition, seven Sunday newspapers and twenty-four weekly newspapers publish nationally or regionally. Their circulations are modest (the largest Sunday newspaper, the *Sunday Times*, averages a weekly circulation of 500,000. Since 2002, a number of mass-based tabloids aimed at the previously neglected black consumer market, including one in the Zulu language, have emerged and have generated record increases in circulation.

Despite a number of legal reforms, changes within newsrooms and market restructuring (as noted above), the South African media is still highly concentrated and not very diverse in terms of race and class. This has consequences for their audiences, advertisers and readers. Guy Berger, a former newspaper editor and now journalism professor at one of the country's leading journalism schools, underscored this point as late as 2004 (10 years after the first democratic elections): "Wealth remains, however, largely among whites and advertising is still placed by white-staffed agencies. As a result, most media institutions stick with upmarket audiences, although some strides are belatedly made with tailored newspapers at the working-class level."¹⁹

Two points about South African media are important for the arguments below. The first is that a very small slice of the mainstream media, one that caters to a comparatively small, elite section of society, really "counts" in terms of opinion formation and key policy issues in South Africa. That media can be classed as the "elite" or "opinion-forming media." Without exception, all major political and social actors recognize this set of media as such.²⁰ The rest of the mainstream media (both regional broadsheets and the new tabloids), to the extent that they cover policy at all, often rely on the opinion-leading or elite media for news agendas and much of the tone of their coverage. The result is that while they do feature some coverage that is distinct from that in the opinion-leading media, in crucial ways they take their lead from the top tier media. Not surprisingly, data from elite surveys of opinion-leaders in the society - most notably politicians, business leaders and policy-makers - as well as anecdotal evidence, confirm that they get their news almost exclusively from these top-tier media.²¹ Also not surprisingly, they focus on issues of interest, and perspectives common to their comparatively well-off and politically connected readership.

The second is that South African media increasingly operates as an autonomous power center, to a large extent independent from the state, a rare distinction in Sub-Saharan Africa.²² As a result, since 1994 mass media has developed a separate political identity, and one that is very powerful. The actions of the news media have profound consequences for political contests.²³ This is very well illustrated in the ANC and the post-apartheid government's newfound appreciation for the media. The former liberation movement had proved historically ambivalent to media. However, its leading members - including Mandela and Mbeki - very soon after taking power note the media's new power. By the end of the 1990s the mainstream media had assumed such importance for the ANC government that by 2000, Joel Netshitenze, a senior government and ANC official, declared in front of journalists: "The democratic movement as led by the ANC should proactively engage with media issues so as to ensure a proper reflection and representation of the complex democratic transformation process in order to mobilize the masses of our people to act in unity as shapers of their own destiny."²⁴

At the occasion of the ten year anniversary of the 1994 democratic elections, the Office of President Mbeki - alluding to mainstream media - identified a dichotomy between "power and influence" as having a profound impact on government policy success.²⁵ It is also significant that since 2000 President Mbeki has written a regular weekly column for the ANC's online newsletter "ANC Today", and column topics disproportionately focus on the news media.²⁶

Similar revelations have been made by key social movements. Zackie Achmat told South African political researchers Steven Friedman and Shauna Mottiar: ".winning and retaining public opinion matters more than during the anti-apartheid struggle when support could often be assumed." According to Achmat, speaking at the time of a civil disobedience campaign mounted by TAC, the organization is very aware of the power of media frames: "TAC is not a numbers game. It is more about the ability to create a moral consensus. The button we are aiming to push (in planning civil disobedience) was that the government is morally weak."²⁷ Key to this strategy is getting the media on its side.

FRAMING AIDS MOBILIZATION AND HUMAN RIGHTS

Human rights as a collective action frame have been an important aspect of social movement mobilization around AIDS since the beginning of the epidemic twenty-five years ago.²⁸ By the 1990s, the mobilization of an AIDS movement in the United States and other industrialized countries in many ways set the scene for AIDS activism in South Africa and elsewhere.²⁹ Building on the preexisting organizational foundations as well as cultural capital and social movement history of the gay movement as well as others, the AIDS movement was not only able to push for the protection of the civil rights of people living with AIDS, but through its engagement with the medical profession and the political establishment over access to drugs, also able to insist on a correlation between health and human rights.

AIDS rights activism in South Africa is comprised of diverse groupings that have roots in various national and international rights struggles and locally within the anti-apartheid struggle and the mass democratic movement of the 1980s. Such groupings were linked to anti-apartheid health sector organizations that addressed AIDS in the context of broader political and economic struggles. Simultaneously, they were also impacted by the debates about human and legal rights discourses present at the time. Groups such as the AIDS Consortium, the AIDS Law Project, and the National Association of People Living with AIDS, form part of this tradition.³⁰ Activists in these organizations have focused on issues of legal and social equality (including gay rights) and were instrumental to the inclusion and retention of sexual orientation as one of the grounds for non-discrimination in the new South African Constitution.³¹

Like their U.S. counterparts, these groups initially tended to be dominated by gay, white, middle-class men who became highly knowledgeable commentators on AIDS and were able to formulate successful targeted campaigns. Directly influenced by American organizations such as ACT-UP (AIDS Coalition to Unleash Power), the content of such South African AIDS activism has focused on treatment and obtaining access to drugs, and their campaigns have drawn from lessons learned by AIDS activists in the West. However, South African AIDS activism crucially extends and link itself to struggles for affordable care and a working public health system, as well as to socio-economic struggles. While all these struggles connect with

anti-apartheid activism (racism persists and activists see parallels between racial oppression and the worsening unequal economic relations and access to AIDS treatment drugs), such activism also links with new activism by "new social movements" that trace these crises to the nature of post-apartheid governance (broadly defined as neoliberalism) and the negative local effects of globalization.

Organizationally, the AIDS rights movement in South Africa is centered around the Treatment Action Campaign (TAC) which was launched on International Human Rights Day in 1998, to "campaign for greater access to treatment for all South Africans, by raising public awareness and understanding about issues surrounding the availability, affordability and use of HIV treatments."³² TAC gained renown and notoriety domestically and internationally as a result of the pivotal role it played in a 1998 court case brought against the South African government by the Pharmaceutical Manufacturers Association (PMA), and more recently its landmark constitutional court victory in 2002 over the South African government pertaining to the provision of anti-retroviral treatments to prevent mother-to-child transmission. TAC is seen by many as a model for social movements around the world, a "champion" of demands for social equity and the rights promised by democratic citizenship. TAC has successfully developed a rights frame that has not only attracted a solid (cross-class) constituency domestically, but also resonates with global AIDS rights struggles focused on the issue of treatment access and more recently with broader, global socio-economic rights struggles. Finally, TAC has gained mainstream respectability. Its leader Zackie Achmat has been nominated for a Nobel Peace Prize, was included in *Time* magazine's list of "Heroes" (2003) and was described by *The New Yorker* magazine as South Africa's "most important dissident since Nelson Mandela."³³ More recently *Vanity Fair* profiled Achmat in its "Special Africa Issue" (June 2007) as one of a dozen activists, business and entertainment people, and a handful of government officials representing the "Spirit of Africa."

Framing the fight against AIDS as a human rights issue has facilitated links between TAC and transnational advocacy networks sympathetic to its cause and able to provide a receptive international political venue for its message. The human rights frame offers a collective reservoir of meaning and symbols that served to bridge gay and AIDS advocacy struggles in the industrialized countries with AIDS struggles in Africa. TAC's focus on the right to treatment, a driving force of the AIDS movement since the early days of the epidemic in the United States, strongly resonated with groups such as ACT UP and the Health Gap Coalition, but also with civil society groups more generally who are not usually associated with AIDS or health issues. For example, the very influential, and largely mainstream, international non-governmental organization CIVICUS included TAC as the ideal "case study" in an activist manual on ".how to run a local campaign linked to an international movement."³⁴

Adopting a human rights frame also afforded TAC's leadership, which initially (with the exception of Achmat) was primarily white, middle-class and male, an opportunity to build domestic support among its potential membership and base comprised overwhelmingly of poor, blacks.³⁵ Crucially, as the membership grew so did the leadership change, with a number of black women emerging as forces within the movement.

The notion of rights adopted by the AIDS movement in South Africa derives its strategic value not only from its importance during the anti-apartheid struggle, but also because of its

importance in the democratic transition and the forging of a new democratic political culture.³⁶ The success of TAC rests on 'frame bridging' whereby AIDS activists are able to link the struggle against AIDS with the anti-apartheid struggle for democracy and equal rights, highlighting the ideological congruence between the two frames. Similarly, the coincidence between South Africa's transition to democracy and the intensification of its AIDS epidemic allowed activists to bring HIV/AIDS into national debates on constitutionalism and defining the content of democratic rights in the new dispensation. AIDS activists have successfully engaged in 'frame amplification' that sought to clarify the meaning of South Africa's new bill of rights while invigorating a particular interpretation of those rights, and the responsibility of government to uphold them.³⁷

This is often expressed in TAC's grassroots mobilization and advocacy strategies that tap into the experiences, tactics and slogans of the anti-apartheid struggle. These include publicly confronting government ministers (for example creating the "Wanted for Murder" poster campaign against the ministers of health and of trade and industry), marches, challenging the police to arrest TAC activists, and the illegal (but very open) importation of AIDS drugs into South Africa. TAC campaigns such as the Christopher Moraka Defiance Campaign (around drug patents) not only recalled the "Defiance Campaign" of the early 1950s, but also the internationalism of the anti-apartheid campaigns.³⁸

THABO MBEKI AND AIDS AS A DISEASE OF "POVERTY" AND UNDERDEVELOPMENT

Since 2003, the South African government has slowly begun implementing a comprehensive HIV/AIDS Care, Management and Treatment Plan, which includes the world's largest public sector antiretroviral rollout program. Many local and international observers, as well as TAC, lauded the government's stated policy change and Mbeki has ceased making controversial public remarks about the epidemic. But by mid-2007, the government's AIDS policy was still accompanied by mixed messages on the part of political leadership and dragging its feet on treatment programs. Minister Tshabalala-Msimang has publicly endorsed discredited AIDS "treatments" such as that of Tine Van der Maas, a Dutch nurse who promotes garlic as a "remedy" for HIV, and Mathias Rath, a German "vitamin entrepreneur" who claims ARVs are toxic and that people living with AIDS should take vitamins instead.³⁹ In 2006, Stephen Lewis, the United Nations Special Envoy for HIV/AIDS in Africa, told the International AIDS Conference in Toronto that the South African government's AIDS policy was ".obtuse, dilatory and negligent." As Lewis reminded the conference: "Between six and eight hundred people a day die of AIDS in South Africa. The government has a lot to atone for. I'm of the opinion that they can never achieve redemption."⁴⁰

Thabo Mbeki became President of South Africa in May 1999. Up until that time, Mbeki's record on AIDS had been fairly low-key, and his public view -- with one exception -- had been in line with the orthodox responses to the epidemic. Mbeki had impressed AIDS activists later associated with the TAC while still Deputy President by condemning stigma against HIV-positive South Africans when a leading AIDS activist who had declared her status was stoned to death. In this case, Mbeki pleaded with South Africans not to treat people with HIV "as if they have an illness that is evil." Mbeki supported TAC's 1999 campaign for the drug AZT as

treatment for HIV-positive pregnant women (to diminish the likelihood of their children being born with the virus). Most crucially, Mbeki and TAC agreed in fighting the high prices of AIDS drugs and the resultant profits for multinational pharmaceutical companies. The only indication that Mbeki had unconventional views about the causality of AIDS and the efficacy of AIDS drugs was when he promoted "research" in 1997 into the use of a toxic drug, Virodene (it contained an industrial solvent that caused severe liver damage).

Two years later, Mbeki told the country's National Council of Provinces that the anti-retroviral drug AZT was probably toxic, and began corresponding with so-called "AIDS dissidents" (mainly United States-based) who dispute that HIV caused AIDS. In 2000 Mbeki convened a presidential AIDS panel to "shed light" on the causes of AIDS. The panel comprised scientists who believed in the causal link between HIV and AIDS as well as so-called "dissidents" who did not. Mbeki went on to question whether HIV causes AIDS, further promoting the cause of the "dissident scientists".⁴¹

Responding to international pressure and condemnation, President Mbeki then wrote a letter to various heads of state, outlining the case for his "uniquely African" reading of the AIDS epidemic:

Whereas in the West HIV-AIDS is said to be largely homosexually transmitted, it is reported that in Africa, including our country, it is transmitted heterosexually. Accordingly, as Africans, we have to deal with this uniquely African catastrophe. It is obvious that whatever lessons we have to and may draw from the West about the grave issue of HIV-AIDS, a simple superimposition of Western experience on African reality would be absurd and illogical.⁴²

What is important to note is that Mbeki combined his very public association with denialist science with an "extremely intelligent social critique" about the relationship between AIDS and poverty.⁴³ At the 13th International Conference on AIDS in Durban, where he continued his doubts about the causality of AIDS as well as alleged the toxicity of AIDS drugs, Mbeki highlighted the relationship between poverty and illness, specifically AIDS, and concluded that "the world's biggest killer and the greatest cause of ill health and suffering across the globe, including South Africa, is extreme poverty."⁴⁴ Mbeki also combined his poverty-AIDS link with a critique of multinational pharmaceutical companies.

That there is a relationship between poverty and illness is indisputable, and rather uncontroversial. There was nothing confusing about pointing out the obvious correlation between good health and wealth on the one hand, and poor health and poverty on the other. Medical researchers, doctors and activists share this view.

If AIDS is redefined as a disease of poverty, then the socio-economic conditions in which one lives becomes as relevant a factor as sexual practices and behavior, in understanding the spread of AIDS. If AIDS is redefined as a disease of poverty, then one is compelled to confront the reality that the overwhelming majority of people killed by the epidemic worldwide and in South Africa, have been poor, exclusively black, Africans. Indeed, redefining AIDS as a disease of poverty shines the spotlight on the fact that Africa's underdevelopment, created and maintained by racism in the interest of Western countries and the profit motives of multinational pharmaceutical companies, debilitates the health of its citizens.

This is a position that TAC has also publicly taken, linking it to the lack of access to antiretroviral medicines. In fact, in 2003 Achmat had stated: "The only reason we don't have this

medication in South Africa is because we are poor, not because it does not exist."⁴⁵ That same year Achmat would also write:

The vast majority of people who die avoidable and predictable AIDS-related deaths are black people who use the public health services. People who have access to medicines are predominantly (black and white) middle-class people who have access to private health care. The continued denial of anti-retroviral and other essential medicines reinforces the suggestion that black lives have no value to those in power. It suggests that the lives of the majority of people living with HIV/AIDS are expendable.⁴⁶

Mbulelo Mzamane, a South African scholar and activist, makes the point more forcefully:

The countries that are responsible for, and that profit from, underdevelopment also find ways to capitalize on the poor health it causes. We also know for a fact that they then sell over-priced drugs - often surplus, sometimes banned from use in their own countries because of harmful side effects - to the developing countries. Newer or patented drugs (such as AZT) are proffered at exorbitant prices, often unaffordable to developing economies.⁴⁷

If we were to focus on the broader political issues that such a perspective raises then debate would necessarily have to turn to topics of international patent laws and other structural barriers that contribute to global socio-economic and health disparities and to specific inequalities of race and class inside South Africa with consequences for sexual taboos, the access to treatment of people with AIDS or the vulnerability of certain populations (migrant workers, sex workers, poor and mainly black women).

However, Mbeki's "denialism" fundamentally changed the meaning or at least the practical consequences of this rhetorical move. According to researcher Mandisa Mbali, the case for a link between poverty and AIDS "cannot be made, in a denialist way, to the exclusion of mainstream scientific explanations of the viral cause of AIDS in the body of HIV-infected individuals."⁴⁸ Dr. Malegapuru Makgoba, former president of South Africa's state-supported Medical Research Council, who publicly rebuked President Mbeki's denialism, noted in a speech to the Nobel Symposium: "All diseases are made worse by poor social conditions. This is so obvious that you would not find a doctor who would say otherwise. However, to conflate this factor with causation by clever wordplay is very dangerous."⁴⁹ The result of Mbeki's convoluted public utterances on HIV/AIDS was therefore that the link between poverty and AIDS became overwhelmingly associated with denialism.

The case may also be made that denialism also deliberately obscures and/or complements the prevailing ethos around economic policy within government. In this regard, denialism is a "convenient clause to avoid the drastic increases in public spending that would be required to roll out combination HIV treatment."⁵⁰ The South African government's economic policy -- despite rhetoric to the contrary -- promotes, privatizing (officially referred to as "restructuring") essential basic services (such as water and electricity) and reducing spending on services such as health. This is a particularly important factor in the context of an inherited public health sector that was and is still severely under-resourced for services to the poor, black majority -- now also the bulk of those affected by HIV/AIDS. Neoliberal economic and social policies reduced the amount of state resources available to spend on AIDS programs. According to Johnson, "more importantly, they slowed the pace of transformation in the health sector, thus

continuing apartheid era institutional and economic legacies and prolonging bureaucratic incapacity to implement AIDS programs effectively."⁵¹

What this meant for health policy -- and crucially for AIDS policy -- was that all social policy now had to comply with the restrictions of government expenditure in accordance with the new economic framework, the Growth, Employment and Redistribution policy (GEAR) adopted in 1996.⁵² So for example, while the Department of Health proposed de-emphasizing a focus on "first-world curative facilities" that serve a few to a system that emphasized primary health care closer to the majority of people, even then any positive effects that transformation might have engendered have been retarded, primarily because "of fiscal constraints imposed by GEAR, and neoliberal, market-oriented precepts demanded by world trade."⁵³ How this economic policy framework constrains government policies on AIDS is obscured by a discourse highlighting greed of pharmaceutical companies or de-emphasizing the medical aspects of AIDS.⁵⁴ The remainder of the paper will discuss the media coverage of AIDS, summarize what frames are included and speculate on what is excluded and why.

MEDIA FRAMING OF THE AIDS CRISIS

In general, South Africa's mainstream media coverage of HIV/AIDS has been characterized, with few exceptions, by indifference or a lack of urgency as to the epidemic's impact, a failure to systematically examine the reasons behind stigma and denial, and not adequately engaging with or seeking out the views of people living with AIDS, who if approached are presented as victims or denied any agency.⁵⁵ Coverage is also characterized by "the virtual absence of the voice of the people, the individuals living with HIV/AIDS or those immediately affected."⁵⁶ Reporters seldom interrogate the "big picture" context, particularly the impact of changes in economic policies (discussed above) on the ability of state structures to implement a comprehensive AIDS treatment and prevention program or how larger debates about the right to public health care services would impact any large-scale societal response to the epidemic.

As for what does get reported, the bulk of the coverage focuses on the conflict between government and AIDS activists over the causality of AIDS and the appropriateness of treatment. The media also provided space for the dissident "debate" around the causes of HIV and AIDS to flourish.⁵⁷ A recent study by the Perinatal HIV and Research Unit at the University of Witwatersrand Journalism Program showed that over fifty per cent of "the key messages" in media reports about the HIV/AIDS epidemic during March-May 2002 and in 2003 focused overwhelmingly on this conflict. The result has been that in the process "other key issues related to the epidemic" were marginalized.⁵⁸ The study indicated that mainstream coverage of HIV/AIDS is characterized by sensational reporting, especially when it comes to the science of AIDS or questions of the relation between AIDS, the law, "media freedom" and privacy.⁵⁹ The effect for public knowledge about AIDS is devastating. The controversy means ". most South Africans are left confused, bewildered and with no hope; but with the knowledge that only scandals such as Sarafina and the quackery of Virodene are what our government and science system are about."⁶⁰

A separate study conducted by Media Tenor reports that for the period January 2004 - August 2005 less than one percent of the coverage in leading print and electronic media

reported on the epidemic.⁶¹ Coverage of other topics such as business, the economy, crime, politics, and education far surpassed that of AIDS. The media's leading focus in AIDS reporting has centered on issues of treatment (36% of all reports in 2004) and reports addressing prevention comprising 32.3%. In terms of treatment, the use of anti-retrovirals (ARVs) has by far been the leading issue (74%) with nutrition and traditional medicines being the other main topics. This is hardly surprising since the issue of ARV treatment has dominated the AIDS discourse in South Africa in recent years.⁶²

From the literature and utterances of journalists it is clear that the conflict "frame" shapes the way the media understand its information role with regard to the AIDS epidemic. Media coverage can be distinguished by what Helen Schneider describes as the very public disagreement and almost complete non-accommodation between senior politicians in the African National Congress and the government as well as a range of non-governmental actors in South Africa. "In a cycle established by early criticism of government around Sarafina II in 1996, public debate on AIDS has been dominated by a series of responses and counter-responses in which actors have competed to set the agenda for AIDS in South Africa," according to Schneider.⁶³ As a result, the coverage rarely highlights the stark reality that millions of South Africans are infected with HIV and will die within the next decade.⁶⁴

As for specific media, most observers agree that while the public broadcaster has been responsible for broadcasting a number of AIDS documentaries on its television and radio programs, incorporating AIDS education into its "lifestyle" magazine programming, and encouraging producers of soap operas and drama series to include AIDS themes, SABC's television and radio news coverage of the epidemic has taken the opposite tack.⁶⁵ In 2005, for example, SABC Africa (the satellite news channel of the SABC) broadcasted a documentary produced by Tine van der Maas.⁶⁶ At the same time, media researchers have pointed to a number of instances in SABC radio programming where denialist statements were uncritically re-broadcasted. These include incidents of "misreporting important scientific findings or facts, omitting to report important findings and promoting pseudo-scientific responses to the epidemic."⁶⁷

Private broadcast media has also not been exempted from promoting pseudo-science. Van der Maas was later given ample time to explain her remedies on one of the most popular talk shows in Johannesburg (on Radio 702) presented by Tim Modise, one of the country's most recognizable talk show personalities. In 2005, the presenter of a talk show on Khaya FM, a radio station in Johannesburg, told listeners that HIV is not sexually transmitted, that "ARVs are toxic and will destroy your liver," and "the reason people have been dying is because of bad nutrition and lifestyle and not HIV and AIDS."⁶⁸

In April 2006, the Johannesburg daily newspaper, *The Citizen*, ran a full-page opinion editorial by David Rasnick and Sam Mhlongo, two doctors associated with AIDS denialism claiming that HIV cannot be transmitted heterosexually and used the responses to the article's distortions (including Rasnick's false claim that he was affiliated to the University of California, Berkeley) to create "the impression that a controversy existed in the scientific community when in fact there is no such controversy."⁶⁹ When questioned about their actions, these media (and the Broadcasting Complaints Commission that hears public complaints of radio and television coverage) claim "free debate" and accuse those questioning them of being fanatical. For

example, when TAC confronted the investigative magazine *Nosweek* over its publication of an article by journalist Rian Malan (he had argued there was a conspiracy between UNAIDS and other AIDS researchers to inflate the size of the AIDS epidemic), the editor Martin Welz accused TAC's national spokesperson Nathan Geffen of intolerance.⁷⁰

Not all media, however, can be accused of these shortcomings or willful distortions. *The Sowetan*, which for a long time was one of only two regional newspapers reporting to a majority black readership, is credited with covering the epidemic most consistently.⁷¹ Its editors had also been the first to create space for a person living with AIDS to write about his experiences in a weekly mainstream newspaper column ("Just call me Lucky"). It is significant, however, that the salary of columnist Lucky Mazibuko was partly paid by the United Nations.⁷² Other newspapers such as *The Star*, *The Sunday Times* and *Mail & Guardian* have intermittently reported on the issues relating to implementation of AIDS treatment as well as humanizing (and granting agency to) people living with AIDS. The *Mail and Guardian* in particular prints an "AIDS Barometer" with the most important statistics on HIV infections and AIDS deaths.

While some of these papers have a dedicated health reporter (e.g. *Business Day*, *The Star*), where their reporting has strayed from the predictable conflict frame, the majority have relied for their content on the health news agency, Health-E News. Established in 1999, Health-E News, focuses on ". HIV/AIDS, public health and issues regarding health policy and practice in South Africa."⁷³ They provide print feature articles for newspapers and magazines (including investigative reports around AIDS) as well as broadcast packages for national and community radio stations. Articles are produced either on commission or through Health-E News' initiative. From its offices in Durban (the epicenter of the South African epidemic), Health-E News has provided probably the most consistent and nuanced reporting and analyses of the epidemic. Its reporting has won international prizes and its small team of journalists -- Kerry Cullinan, Anso Thom and Khopotso Bodibe -- is unrivaled when it comes to AIDS coverage. Nevertheless, Health-E News' editors complain of declining interest in AIDS stories on the part of most mainstream print and broadcast outlets.

So given that good AIDS reporting is actually readily available to editors, why do they not use it? For one, "news values" -- the value that a potential buyer or reader of news ascribes to any story -- may explain the dominance of conflict frames.⁷⁴ Journalistic news values place a high value on celebrities and prominent figures in society (in this case Achmat, Mbeki and Tshabalala-Msimang), as well as scandal, conflict, violence and controversy. "These values are often at the expense of the 'ordinary,' the 'marginal,' the 'everyday' (regardless of their importance) and the economically disempowered (the 'non-market')."⁷⁵

As for their independently produced content, reporters for most of the newspapers generally lack adequate resources and experience. Most dedicated AIDS-beat reporters are overworked, they operate alone (no newspaper or broadcaster assigns a team of reporters to cover HIV/AIDS), and get little support from newsroom managers. The absence of a dedicated AIDS reporter(s) at a number of news outlets, budget cuts in newsrooms, and the fact that experienced reporters have left the industry to work in government or the private sector, means that young cub reporters are often assigned to cover AIDS. These reporters are not always familiar with the issues, but - even more worrying -- are often ignorant of the basic science of HIV and AIDS with the result that they often uncritically report denialist viewpoints.⁷⁶ Because

of time pressures and established patterns of "collecting" news, reporters who do occasional reporting of AIDS often merely "follow-up" on previous stories and the public statements or press releases of civil society organizations, public representatives or government officials in conflicts such as that of over the causality of AIDS. Researchers and scientists have complained that journalists rarely contact them to provide correct information on controversies related to AIDS.

A third reason cited for the inconsistent and occasional coverage is what journalists and researchers refer to as "AIDS fatigue." Editors sometimes use the explanation that readers and viewers are saturated with and turned off by HIV/AIDS and as a result they don't see the point of regular coverage. As Judith Soal, a former health writer for the *Cape Times*, points out: "Editors, like everyone else, often glaze over AIDS stories. Once they've done the shock horror stats story on World AIDS Day, that's enough for the year."⁷⁷

A fourth reason for the conflict frame stems from the tendency within the media to treat the state as a monolith and to treat the relationship between TAC and the government as one that is solely confrontational. There is a tendency to collapse the "South African state" into the public utterances and actions of President Mbeki and health minister Tshabalala-Msimang. This is despite the fact that a number of other national ministries play key roles with regards to AIDS policy and implementation (finance, trade and industry, for example). The same goes for the role of provincial governments, who are central to implementation of AIDS treatment and prevention strategies. Reporters seldom write about those provincial governments who have implemented treatment programs (e.g. Western Cape and Gauteng) and provincial administrations' relations to non-governmental organizations such as Medicins Sans Frontiers or TAC, or interrogate some of the issues related to implementation of such treatment programs and reveal the divergent politics over AIDS politics within government or the ruling party. In the case of the government-TAC relationship, TAC has insisted on "a political strategy that always preferred collaboration with government rather than conflict."⁷⁸ In fact, "TAC does not question the underlying commitment of the ANC to better people's lives, and there is, in fact, sympathy and appreciation for the governance challenges of post-apartheid reconstruction."⁷⁹ According to Heywood (a senior TAC leader) this has often brought the TAC leadership into conflict with its volunteers -- largely working class, poor, mainly black and often HIV positive -- who insist that TAC "does not succumb to middle-class sensibilities or political loyalties."⁸⁰

Finally, media research points to a more compelling reason for the conflict frame: the coverage reflects racial divisions within newsrooms and between news outlets.⁸¹ There is some basis for this argument. Black journalists, often sympathetic to the poverty-frame on AIDS and because of widely held racist beliefs about black people's sexuality, have accused their white colleagues of insensitive reporting. There is some truth to these claims. One white reporter has suggested her colleagues in the media see themselves as "outsiders" when reporting the epidemic as a disease of those who are poor and black.⁸² In fact, studies show that most South African audiences and readers, rather than being turned off by AIDS reporting, would welcome more reporting on the epidemic: "It may be that journalists, coming most often from that sector of society that feels relatively immune from the disease, are bored with the subject."⁸³ AIDS "fatigue" may say more about journalists themselves, as one (white) journalist opines: "Those

with private health care -- still mostly white -- are more able to conceal its effects or delay the onset of AIDS by taking anti-retroviral drugs and having healthy lifestyles."⁸⁴

There is also evidence that black journalists stay away from reporting on AIDS or don't report on other aspects of the epidemic for fear of alienating the new mainly black-run government. The ANC still enjoys considerable support among the black majority because of its central role in the struggle against white domination and many black journalists are no different.⁸⁵ It can also be argued that given the small size of South Africa's political and literary elites, some journalists are reluctant to personally offend people in government that they are close to.

White journalists in turn risk being labeled racist. The majority of reporters that consistently cover AIDS for the main news outlets (both broadcasting and print) are white. As a result, they are easy targets for charges of racism from the government. Minister Tshabalala-Msimang has accused critics (including journalists) of the President's handling of the epidemic of "bad-mouthing the black government," while some government officials have accused white journalists of being anti-government as well as racist.⁸⁶

The account outlined above is certainly valid as far as it goes, but it does not tell the whole story. For example, claims of lack of resources are conveniently absent when many news outlets assign well-resourced teams of reporters, including "investigate units," to other more "sexy" or circulation-friendly topics or issues.⁸⁷ Similarly, the claim that readers/listeners/viewers are tired of hearing about AIDS is contradicted by public opinion surveys and focus groups. Research among poor and semi-literate people in an informal settlement outside Durban reveals that "98 percent of people in the area would welcome more reporting on the epidemic in print and broadcast media."⁸⁸ Finally, it may be true that newsrooms are racially divided, but it is also true that Mbeki's media critics have been both white and black. *The Sowetan*, the newspaper that is most often praised for comprehensive coverage of AIDS (in terms of column inches) and for initiating a genre-breaking column on AIDS, is ninety percent black-staffed with a mostly black readership. It is also true that the denialist stance is not widely held among South Africa's black political and journalism class, but is the preserve of a small, very vocal and powerful group around the President. As a result, we argue that focusing on the conflict frame means that researchers miss a number of more compelling rationales for the coverage. We point to three of these below.

The first relates to the idea that President Mbeki may have been very successful in claiming "the symbolic copyright on discussions of poverty" around AIDS to the extent that discussions of poverty are automatically associated with denialism.⁸⁹ As a result, journalists may be reluctant to explore any relation between poverty and AIDS as this may be construed in a highly polarized environment as supporting Mbeki or Tshabalala-Msimang. This is clearly reflected in public remarks made by one of Health-E News' reporters, Anso Thom:

Yes, the President had made astute observations around the link between poverty and HIV/AIDS. He had managed to put this approach firmly on the agenda, but unfortunately he had also contributed to making it impossible for any further debates to take place. It had become a debate of you are either for anti-retrovirals or you are against anti-retrovirals in which case you are a dissident. This places us (journalists reporting on the epidemic) in a very difficult situation. I, for one, agreed with some of the statements the president and the minister

had made around poverty, nutrition and so on. But in their minds it was an either or. In mine it wasn't. It was distressing to watch how newspapers were keen to keep reporting on the epidemic purely driven by utterances from the health minister, who had by now been dubbed Dr. No or Dr. Garlic or Dr. Beetroot or Dr. Doolittle.⁹⁰

Secondly, we have suggested earlier that there is a strong case to be made that denialism may be a cover for the government to avoid confronting how its own economic policies will undermine any state-led intervention.⁹¹ Given that the bulk of elite media in South Africa have remained very supportive of the GEAR proposals, particularly in the way it removes certain key economic policy issues from the public realm and from political debate within the democratic process, one could argue that South Africa mainstream media may be reluctant to enter into any debate where a concerted response to the AIDS epidemic includes a discussion about economic restructuring, especially as it involves investment in (and major restructuring of) the health system.⁹² But it is also shying away from confronting a situation defined by Johnson as a one where welfare and social rights, for example, are no longer political issues addressed at the societal level, but are now individualized and "must be negotiated within the context of privatized economic relations."⁹³

Similarly the uncritical and insubstantial approach by the media to South African mining and industrial corporations (treated differently in coverage from multinational pharmaceutical corporations) and private health care providers also does not bode well for a systematic discussion of the epidemic, its impact, and the most appropriate response(s). According Achmat, there is currently no public debate about the responsibility of private sector employers, especially mining corporations, for their HIV+ workers or workers living with AIDS. Only by threatening to publicly embarrass these companies -- in one case TAC threatened to run a public campaign called "Killing Fields" to shame the mining corporation Goldfields for its slow response to implement a treatment program for infected workers -- do these companies react positively.⁹⁴ Reporters also seldom interrogate the social productive forces that flow from these corporations' role in the South African economy that drive the disease, such as migrant labor. This oversight in not interrogating corporations' role in the epidemic's spread, is suggested by Kerry Cullinan in a comment about journalists' understanding of "sexual culture" on the mines:

When [the media] does consider 'culture,' this is often a catch-all code word for attitudes seen to be barriers to behavior change, and it is usually the 'culture' of those who have little power. For example, we read . the 'culture of masculinity' of Carletonville mineworkers is to go to sex workers. But what about the 'culture' of the mining industry, which has been built on migrant labor, single sex hotels?⁹⁵

Our final point relates to the human rights frame and the way the media reports AIDS activism, in particular the activism of the Treatment Action Campaign. Evidence from media surveys, transcripts from journalist forums, and the reflections of TAC and (some) government spokespeople confirm that mainstream media are more sympathetic to activist groups, especially the TAC than to the state. Part of the reason for this is that TAC recognizes the media's logic, shortcomings and daily work patterns and is savvy about constructing media frames. "By creating *newsworthy* [my emphasis] events that cannot be ignored by the commercial media (public marches, confrontations with the Health Minister and the civil

disobedience campaign among them), it inverts a news agenda that has a focus on what the government does and does not do."⁹⁶

As a result, TAC has successfully ratified its status as not only the privileged interlocutor for the AIDS movement but also about the AIDS pandemic. TAC not only provides much of the information for reports about them, but in media coverage AIDS has become fused with the organization, its aims and its spokespeople. In this regard, it is clear that groups such as TAC have cultivated the mass media and influenced the way their movement is framed. Indeed a sign of its success is the frequency with which movement leaders are quoted in the media, often to provide background or analysis. Achmat, Mark Heywood (TAC treasurer) and Nathan Geffen (TAC national spokesperson), have in the recent past become household names in treatment news because they can be cited in almost every HIV treatment piece.⁹⁷

According to Nathan Geffen, as a result the media has been a substantial resource in the success of the organization's campaigns. In 2003, TAC mounted a civil disobedience campaign that involved a number of illegal actions leading to arrests or publicly confronting government ministers. Despite its militant posture during this campaign, according to Geffen, "for the most part the media stayed on TAC's side." This was also true of other TAC campaigns, including one in which they publicly and illegally imported generic AIDS medicine into the country.⁹⁸

Yet, while TAC's image as an AIDS activist organization has been positively framed in the media, it is less clear that the wider issues and policy goals it promotes have been similarly portrayed. In fact, coverage of TAC often indicates a disconnect between what TAC is saying and how its demands are being represented. TAC's successful media image largely results from the media's framing of AIDS as a health issue, and not as an issue of socio-economic rights and social justice, which is how policy objectives are being increasingly defined within the movement.⁹⁹ For example, TAC founder Zackie Achmat has written that TAC "unashamedly pursues a social democratic, pro-poor and pro-human rights agenda."¹⁰⁰ Indeed, Achmat and other TAC leaders have been unequivocal about the class and racial nature of AIDS infections as tied up with South Africa's political economy (see earlier). Despite this explicit attempt to infuse race and class into media discourses of AIDS, coverage is still dominated not by the broader questions of access to health care but by clashes between TAC leaders and the ANC, particularly President Mbeki, which makes for good copy and headlines.¹⁰¹ Secondly, media coverage focuses on the plight of AIDS sufferers as victims in need of help, but becomes uncomfortable when these same people make explicit demands: The media, Mark Heywood suggests, display "ambivalence . when the poor do away with decorum, display unmediated anger and break with the law."¹⁰²

According to Heywood, the media's tendency to focus on people they are comfortable with, like Geffen and himself or Achmat -- white like most journalists or media-genic such as Achmat -- meant the media missed the "social significance" of TAC's mobilization: that "many more people with HIV who were poor and black" who had to deal with extreme forms of stigma and denial in their communities, had joined the movement to fight for access to affordable treatment. This new activist and leadership base provided the "social weight" and broad support that TAC needed to confront multinational pharmaceuticals companies and later the South African government, but also increasingly defined TAC's agenda. However, one would not know that from the media coverage.¹⁰³

In conclusion then, the media is sympathetic to TAC insofar as HIV/AIDS can appear as a sort of natural disaster and it can appear as a "loud and non-threatening" movement who opposed the government for opposition sake.¹⁰⁴ But when TAC presses redistribution and public responsibility for the welfare of South Africa's poor more broadly, its analysis is muted or shut out.

Conclusion

One of the key assumptions of this paper, based on our initial discussions of 'mediated deliberation' and framing, is that mass media (especially the country's mainstream press and broadcasting media) are key sites of struggles over who is a full member of the polity and struggles over the control and distribution of resources. As one of the authors have argued elsewhere, it follows that understanding the implicit and structural as well as explicit and intentional ways in which mass media help define the physical and human geography of the public sphere is essential for comprehending changing notions of citizenship, public goods and rights, as well as its implications for forms of political organization and democratic debate.¹⁰⁵

In this paper, we examined the attempts of various actors inside South Africa to frame the AIDS epidemic and in turn society's response to it. We focused in particular on AIDS social movements, the state, and the media, treating them as political actors in their own right. We argue that while it was inevitable that key leadership within the South African government's controversial stances on HIV/AIDS was bound to dominate media coverage the media not only trivialized coverage of the epidemic or encouraged sensational or factually incorrect reporting, but, more importantly, obscured and prevented public debate of the HIV/AIDS epidemic beyond a sensational, misguided conflict-driven "debate" between government and social movements over the causes of HIV/AIDS. What it exposed in the process is the real limits in the kind of information that is presented and the kind of debate that takes place in the South African mainstream media. And as we argued, these features are of course tied to the very inequalities and democratic deficit that media is expected to help correct.

Notes:

1. UNAIDS, *2006 Report on the Global AIDS Epidemic*. <http://www.unaids.org>. Accessed on June 20, 2006.
2. For a more comprehensive treatment of this debate see the Ph.D. dissertation research of Claire Decoteau (forthcoming).
3. cf. Page 1996; Swanson and Mancini 1996; Roselle 2002. In particular, Roselle 2002: 10.
4. Ibid.
5. Page 1996: 5.
6. Ibid., 6.
7. See also Johnson 2006.
8. Hammond 2004. "News values" also have a strong impact on how HIV/AIDS gets reported. The fact that conflict is a strong news value largely determines the type of coverage TAC is given when it confronts government.
9. Benford and Snow 1996: 614.

10. Hammond 2004.
11. Gamson 1985: 618.
12. e.g. Snow et. al 1986; Snow and Benford 1988.
13. Snow and Benford, 1998.
14. Snow et al. 1986; Gitlin 2000; Hall et al. 1978.
15. Hammond 2004; Bob 2005.
16. Ryan, 1991: 98-105; cf. Bob 2005. Individual framing often have ideological roots. For example, media underscores individual freedom and individual agency rather than that of communities, groups or social movements.
17. Ryan 1991: 70.
18. GCIS 2007: 142.
19. Berger 2004.
20. The elite or what could be referred to as the opinion-leading media refers to the daily publications *Business Day* and *Business Report*, and the weekly *Financial Mail* as well as the *Sunday Times*. The formerly alternative paper, the *Mail and Guardian*, is also part of this group of media, though it is not as central. Similarly, the SABC3 television news as well as the news bulletins and actuality programs of SAfm, the public broadcaster's flagship radio station, form part of the opinion-leading media (see Jacobs 2004; McDonald and Jacobs 2005).
21. Bruce 2007.
22. Nyamnjoh 2005.
23. Media's elevated political role is as much a consequence of favorable legal reforms, changing market conditions, the decline in mass political organizations linked to the apartheid political parties or the liberation movements, and the fact that the political decision-making in the new state and the politics of globalization, demanded or compelled "mediated" and elite-centered forms of governance and representation (cf. Swanson and Mancini 1996; Page 1996; Jacobs 2004; Jacobs and Krabill 2005).
24. Quoted in Duncan 2003: 1-3.
25. Duncan 2003: 4.
26. See <http://www.anc.org.za/ancdocs/anctoday/>. Accessed July 1, 2007.
27. Friedman and Mottiar 2004: 113.
28. Epstein 1996.
29. See Ernst 1997; Scheider 2002.
30. Schneider 2002: 157.
31. cf. Cameron 2005.
32. Friedman and Mottiar 2004.
33. Power 2003.
34. CIVICUS n.d.
35. Power 2003.
36. Friedman and Mottiar 2004.
37. Johnson 2006.
38. Robins 2004: 664-665.
39. Specter 2007.

40. Stephen Lewis, Remarks to the Closing Session of the XVI International AIDS Conference, Toronto, Canada, 18 August 2006.
41. This summary relies on the chronology in Power 2003. See also Heywood 2004.
42. Mbeki 2000a.
43. Decoteau 2007.
44. Mbeki 2000b.
45. Ibid.
46. Achmat 2003. See also Friedman and Mottiar 2004: 24.
47. Mzamane 2003.
48. Mbali 2004: 108.
49. Makgoba 2001: 3.
50. Ibid., 110.
51. Johnson 2004: 108: 112.
52. See Heywood 2004: 20.
53. Ibid.
54. Mbali 2004: 108. See also Decoteau 2007: 8-9.
55. Cullinan 2004: 2.
56. De Wet 2004: 105.
57. For example, even the *Mail & Guardian* published an op-ed by David Rasnick, an American biochemist who disputed the idea that HIV causes AIDS (see Power 2003). It should be noted, however, that since the *Mail & Guardian* has consistently attacked denialism and the editor has taken a stance against promoting that "debate."
58. Panos Institute, 2006. This study is also discussed in Findlay 2004.
59. Geffen 2006; Cullinan 2001; Geffen 2006; Heywood 2007.
60. Makgoba 2001.
61. Media Tenor "SA Media's blind spot on AIDS," 2004 (accessed at <http://www.mediatenor.co.za>.)
62. Ibid.
63. In 1995 the ministry of health commissioned the playwright Mbongeni Ngema to produce a sequel to the musical/film *Sarafina*, but this time with an AIDS theme. Questions were raised by a range of critics (AIDS organizations, the media and parliamentarians) as to the commissioning process, the total payment to Ngema (approximately R14,3 million). The Office of the Public Protector was charged with investigating the process and funding for the play was later stopped. The minister of health at the time Nkosazana Zuma, despite all the criticism, remained in her portfolio. Schneider 2001.
64. Ibid.
65. Examples include *Take Five*, a teenage magazine program, and *The Felicia Mabuza Shuttle Show* (Levine 2003: 66). Drama and soap operas that have explicitly had AIDS storylines include *Soul City*, *Yizo Yizo*, *Tsha Tsha* and *Isidingo*.
66. Geffen 2006: 5.
67. Ibid.
68. Geffen 2006.

69. Ibid., 6-12.
70. Geffen 2006: 23. See also Findlay 2004.
71. Findlay 2004: 73-74.
72. Swarns 1999. See also the website of the 2003 documentary film *State of Denial* (directed by Elaine Epstein) in which Mazibuko's impact is discussed (http://www.pbs.org/pov/pov2003/stateofdenial/special_lucky.html).
73. http://www.health-e.org.za/about_us/index.php. Accessed on July 20, 2007.
74. Findlay 2004: 72.
75. Ibid.
76. See *Treatment News*, November 2006. See also Geffen 2006.
77. Soal 2000.
78. Heywood 2004: 19.
79. Ibid., 20.
80. Heywood 2004: 21.
81. Findlay 2004: 69.
82. Cullinan 2001.
83. July 29, 2004.
84. Cullinan 2001.
85. Heywood (2004) summarizes a number of instances where black journalists came to the aid of Mbeki. In July 2000, Mathatha Tsedu, who was editor *The Star* at the time wrote in an opinion editorial: ". [T]o understand why Mbeki is being so violently attacked. one has to look at the profiteers from this mess. Drug companies mounted a slick public relations exercise, backed by *rent-a-demo props* who thrust drugs forward as the solution" (p12; my emphasis). On March 10, 2002, Thami Mazwai, a former editor of *The Sowetan* and a board member of the SABC, criticized former President Nelson Mandela in the Sunday newspaper *City Press* (aimed at a predominantly black readership) for making negative comments about Mbeki's handling of the epidemic. In the same article Mazwai also smeared TAC, charging that TAC ". which is leading the hysteria against the government, had full-page adverts in the national media about six weeks ago. Knowing what these adverts cost, where does this NGO get the fortune it spent on advertising and the legal battles against the government? Is it not that some major pharmaceutical companies are funding them?" Heywood also recalled the instance in April 2003 when *The Sowetan* (it had changed editors by then, but still carried the Lucky Mazibuko column) published an opinion article by a spokesperson for the ruling party's youth league equating TAC with PAGAD, a shadowy paramilitary group formed in 1996 who had committed acts of terror against government targets between 1998 and 2000. In the article TAC was also described as "just a harmless but very loud pressure group whose salaries are paid by Americans. This is a conglomeration of drug-dealers who serve as marketing agents of toxic drugs which are not even used where they come from, America" (quoted in Heywood 2004: 17). The ANC Youth League activist was the guest of a popular radio station's talk show (MetroFM) that same night where he repeated his allegations unchallenged to the host.
86. See Cullinan 2001: 3.

87. Findlay 2004: 69.
88. "Research dispels notion of 'AIDS fatigue'," *Business Day*, June 29, 2004.
89. Decoteau 2007: 15.
90. Thom 2004: 4.
91. Mbali 2004: 105.
92. Louw 1995; Peet 2002; Jacobs 2004.
93. Johnson 2006: 664.
94. Achmat 2004: 81.
95. Cullinan 2004.
96. Findlay 2004: 76.
97. *HIV/AIDS Indaba*, April 2005.
98. Geffen quoted in Friedman and Mottiar, 2004. See also conclusions of January 2003 MediaTenor media analysis: "The treatment of HIV/Aids dominates Aids-related issues in the media, who have taken on the treatment issue with great vigor, acting as a watchdog over government actions" (HIV/Aids and the South African media," Mediatoolbox.co.za, January 28, 2003. Accessed on December 12, 2004.). Other references include Treatment Action Campaign (2003).
99. It should be noted, however, that TAC has been accused by other social movement leaders of actively participating in this kind of framing. See for example the analysis of TAC by Friedman and Mottiar's (2004: 7). According to Dale McKinley of the Anti-Privatization Forum: "We link GEAR and its neo-liberal stance (e.g. privatization) to the problems we are highlighting. TAC never makes any mention of the macroeconomic framework" (Ibid). However, TAC's response can also be characterized as strategic: the movement is at pains to minimize tensions between its white "middle class" supporters and its black "grassroots."
100. Achmat 2004.
101. Panos Institute 2006; Stein 2000, 2003; Cullinan 2001; Soal 2000.
102. Heywood 2004: 22.
103. Ibid., 5
104. Heywood 2004: 22. Herman Wasserman (communication studies, University of Newcastle-upon-Tyne) has argued that the ". interpretation of democratic politics [in South African mainstream media understands] the public sphere as being about opposition and a certain type of contestation, that is "controversial" and "newsworthy" (Personal Communication, July 12, 2007).
105. Krabill and Jacobs 2005.

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BOOK REVIEWS

Colonialism in Question: Theory, Knowledge, History. Frederick Cooper. Berkeley: University of California Press, 2005. 327pp.

In this strongly analytical historiographical exploration of colonialism, Frederick Cooper challenges a range of accepted concepts, raising crucial questions concerning key issues of identity, globalization and modernity. Rather than taking a particular stance on many of these issues, he prefers to engage with them intellectually, opening them to questioning. In so doing, he draws out the complexities and distinctiveness of various forms of colonialism, taking on many of the beliefs which pass as 'postcolonial theory.'

Colonialism in Question: Theory, Knowledge, History consists of three main sections. Addressing colonial studies and interdisciplinary scholarship, Cooper begins by giving a historical overview of the rise and fall of colonial studies, exploring the relationship between anthropology and colonial studies. He draws on and synthesizes the wealth of new scholarship in African, imperial and world history to argue for a more balanced and contextualized understanding of colonialism than that offered by the works of Partha Chatterjee, Homi Bhabha, Ranajit Guha, Franz Fanon, and Edward Said, as well as a number of historians who followed in their footsteps. Surveying recent scholarship on colonial studies, Cooper's study addresses the changing focus, not as a succession of turns, but instead as overlapping and often conflicting perspectives, all in relation to the shifting politics of decolonization.

Cooper suggests that the insights gained from several decades of critical theorizing about imperial formations, colonial difference and postcoloniality must be recognized, as he calls for greater conceptual clarity among all those interested in questions related to colonialism. The second part of the volume turns to three central and related concepts that, he argues, epitomize the current direction of scholarship in colonial studies and in other interdisciplinary areas of research. Rethinking the concepts of identity, globalisation and modernity, Cooper draws out the limitations of such concepts, problematizing a terminology which is so often taken for granted. His use of case studies serves to illustrate the need for these categories to be understood in the often-conflicting ways in which they are deployed.

So it is that part three of *Colonialism in Question* moves from the critique of generalizing claims in the scholarship of colonial studies to examine the possibilities of history. Using two case studies, Cooper demonstrates a method of going about the study of colonial history without falling into the traps he identified earlier in his argument. The first is a wide-ranging comparative essay on the historiography of empire, from ancient Rome to the contemporary United States. It challenges the notion that ostensibly modern empires are inherently different from ancient or non-Western empires. A second case study draws on Cooper's previous research on post-World War II tensions between French and British imperial ambitions.

<http://www.africa.ufl.edu/asq/v9/v9i4reviews.pdf>

Although a challenging book that deals with often-difficult concepts, *Colonialism in Question* is clearly written and accessible on many different levels. A comprehensive introduction gives an overview of the topics covered in the book, while extensive notes expand on certain points, giving suggestions for further reading where necessary.

Charlotte Baker
University of Nottingham

Reversing Sail: A History of the African Diaspora. Michael A. Gomez. Cambridge: Cambridge University Press, 2005. 219 pp.

Marcus Garvey famously remarked that “a people without knowledge of their history is like a tree without roots.” *Reversing Sail* retraces and documents the rich, diverse history and culture of the African diaspora. This reversing sail that Michael Gomez captains resonates an important message: if we are to truly appreciate the contributions and complexities of Africa and its diaspora then we have to journey back to its past that predates slavery, colonialism and exploitation. The metaphor of reversing sail is even more powerful because it echoes the Akan concept of sankofa - literally, to return in order to move forward.

Gomez embarks on the ambitious odyssey of chronicling millennia of African history and culture from ancient Egypt to the late 20th century Diaspora. It is here that both the stellar contribution as well as the key weakness of the book is to be found. The noble effort of documenting Africa and its Diaspora's history ends up rushing and oversimplifying much of its meaningfulness and complexity.

The book is not a classic and does not need to be. However there is great value in its eclectic compilation of arguments and sources scattered in a plethora of places. It presents an accessible and readable narrative of a story that is far from linear. *Reversing Sail* and its thrust for a new approach to African history must be credited with emphasizing that the scourge of slavery is not the event that places Africans and their descendants into “history.” Africa's recorded history preceded both the slavers as well as the racism that blessed them on their way from Europe to Africa. Its primary readership will be undergraduates and its lack of proper textual notation is heavily compensated for by a very helpful list of further readings.

Apart from the readability of the text, the structure is also quite uncomplicated. The book is divided into two parts. The first is “Old World Dimensions” and tells the story of Africa prior to European contact and the journey through the middle passage to the Americas that resulted in “Maafa.” In the first chapter, Gomez skillfully navigates the story of African antiquity and is careful to (re)iterate that Africa's ancient history is not just that of Egypt, Ethiopia and Nubia, but extends across the Horn of Africa. The main impetus of this recounting of antiquity is to debunk the myth that Africa and its progeny were “fated to be subjugated” and more importantly, to reveal the intellectual debt that Western and human civilization owes to Africans and their systems of learning and progress.

The depth of the relationship between Africans and religion is adequately addressed. From the spirited discussion of “Africans and the Bible” which outlines the complexity of the text and its unfolding as history, to the realization that the Bible has been used both as a guide for

liberation and African pride [given their critical role in the text itself], as well being the “divine justification for African slavery and subjugation.”

In Chapter 3, Gomez continues to examine religion and the African diaspora by examining “Africans and the Islamic World.” He assesses how “millions of Africans entered Islamic lands, where they made important contributions to extraordinary civilizations...” (p. 29). In detailing this penetration of Africans into the Islamic world, Gomez continues to connect the dots that lead to the birth and development of African slavery in the modern world.

Part 2, “New World Realities,” begins the torturous journey of Africans to the New World . The “energetic Europe [that] burst on the world scene” (p.59) was bent on the exploitation and enslavement of Africans as the vehicles for its progress and enrichment. Gomez is however quick to reveal that it was “several global developments [that] gave rise to the transatlantic slave trade” (p. 59). Nonetheless the highlighting of the varied events that led to slavery is in no way an attempt to abrogate primary European culpability for the dehumanization of Africans. Throughout the next few chapters *Reversing Sail* is a critical assessment of the reality that “Europe’s...economic prosperity was fundamentally related to exploitation of Africans,” an argument so rightly credited to historian Eric Williams. (p. 82).

The chapter entitled “Asserting the Right to Be” outlines the way in which scattered Africans had to reassert their freedom to a system of oppression that had dehumanized them for centuries. More importantly the chapter reveals the persistent interconnectivity of the struggle against slavery. From the slave revolts all over the Caribbean , Latin America and the U.S. to maroonage to the intellectual assault of abolitionists, it was obvious that the links between the African diaspora were parts of a chain that always went back to Africa . The ‘transatlantic moment’ through the middle passage “did not completely rupture ties to the homelands” (p. 79).

The final two chapters complete the circumnavigation of the African diaspora to their ancestral homeland in the form of physical and psychological reverse of sail or repatriation. It was apparent that Africa’s progeny “were reversing sail in their minds and hearts, if not with their bodies” (p.162). Not only did the diaspora reconnect with Africa but it also created sub-diasporas such as Caribbean blacks migrating to the U.S. in the 19 th and early 20 th century. The mobility of the African diaspora meant the dynamic melding and reshaping of culture, politics and the inevitable challenge against all the forms of oppression blacks had become subjected to (p.193). The final word in this “gem” of a book points to the reality that the reconnections with Africa , the place of origin and human civilization, needs to be deeper and more practical given the current era of despair and impoverishment across the black world.

Reversing Sail has accomplished its goal of being “an interpretive history of the journey of people of African descent.” The book is a meaningful primer for persons who doubt the simplicity of the declaration that Africa and Africans did not enter history as slaves and impoverished nations.

J. Omar McCalpin
Brown University

Popular Intellectuals and Social Movements: Framing Protest in Asia, Africa, and Latin America. Michiel Baud and Rosanne Rutten, eds. Cambridge University Press, 2005. 222 pp.

As part of a larger effort to capture the public imagination and galvanize support, social movements invest considerable time and energy developing frames that interpret and articulate a particular understanding of social reality. The stakes for movements are potentially enormous: organizations that can offer meaningful and resonant frames are better equipped to mobilize activists, influence public opinion, and ultimately, enhance their leverage—all of which can significantly improve their chances of affecting political change. The importance of framing has not escaped social movement scholars, many of whom have provided careful analyses of how movements develop, contest, transform, and deploy a range of possible frames in a variety of movement settings. This attention to framing has quite properly incorporated cultural considerations into movement scholarship (thereby balancing out an otherwise strongly structural tendency) by refocusing on the content, identities, and messages of movements, not just the organizations and political environments in which they operate.

Yet this attention to framing has been somewhat skewed, insofar as scholars have spent much of their time examining framing *processes* and *mechanisms* rather than on the individuals who perform the actual work of constructing meaning and interpreting reality. This lack of agency is a critical gap that this volume, edited by Michiel Baud and Rosanne Rutten, seeks to fill. In their introduction, Baud and Rutten note that although “framing is the work of individuals...many studies tend to invest social movements with an agency of their own, and fail to take a closer look at the men and women who are instrumental in interpreting conditions and articulating demands” (p. 2). The eight essays they have assembled address this issue from a number of different angles. Together, the authors cover a diverse range of movements and countries, from the importation and transformation of Gandhi's non-violent principles from India to the United States, to the impact that different formative experiences had on groups of nationalist intellectuals in Mali and Nigeria, to framing disputes and factionalism within al-Qaeda.

Given the diversity of topics and geographies, it would be easy for a volume of this type to lack a set of integrating themes apart from their basic focus on the individuals involved in framing processes. Fortunately, Baud and Rutten are able to tease out a number of ideas that draw connections among these contributions and advance our thinking beyond the simple declaration that “agency matters.” At the very least, this book pushes us to consider “whose agency matters—and how?” Not all individuals are equipped to engage in framing, and not all individuals who articulate frames succeed in persuading others of their interpretation. In fact, success in framing requires a certain minimum amount of credibility and standing within a movement. This credibility is not necessarily tied to one's status or occupation. Indeed, the book is built on the premise that framing work can be carried out by a range of popular or organic intellectuals.

At the same time, as several contributors argue, an individual's authority to promulgate a frame (and the success of that frame) is often contested by others inside the movement. Pablo S. Bose's work on the movement opposing India's Narmada dam traces one such dispute, as grassroots activists challenged the individuals who had served as very public ambassadors and spokespeople for anti-dam forces. The point of contention in this case stemmed from activists' perception that these prominent individuals lacked the local knowledge and ties to represent

the interests of activists in an authentic and legitimate way. Quintan Wiktorowicz's chapter on intra-movement framing contests focuses on this point as well, arguing that that in al-Qaeda, actors disputed each others' frames by engaging in various strategies to discredit and challenge the expertise, commitment, and religious values of opponents. These chapters suggest that we must rethink the mechanisms associated with frame disputes. The struggle over framing that occurs in all movements is not only about the content of possible alternatives but also about the character, identity, and credibility of the individuals who do the framing.

A second key theme of this book involves the role that popular intellectuals play as cultural brokers, mediating between local activists and a broader political environment. This brokerage role is possible because popular intellectuals inhabit two worlds simultaneously: they tend to emerge from the grassroots, and thus enjoy specific and grounded knowledge of a particular movement, its participants, and their preferences. At the same time, the individuals have easier access to an external political community, including fellow intellectuals in other societies and movements. This middle position, which calls to mind Sidney Tarrow's recent work on "rooted cosmopolitans," makes it possible for popular intellectuals to act as two-way transmitters. On one hand, they are able to take advantage of their transnational linkages to access innovative movement frames, tactics, and strategies, and then repackage them to appeal to local actors. Sean Chabot's work on American civil rights leaders traces this type of interaction, as he notes how religious leaders in the south emphasized the compatibility of non-violence with Christian doctrine in order to ensure a sympathetic public hearing. Reverse transmission is also possible, as Joanne Rappaport shows in her study of indigenous rights groups and the intellectuals who took local discourses and brought them to the attention of national audiences.

Taken together, this book offers some interesting insights into framing processes and explores its ideas through eight detailed case studies located in countries that are often understudied in the movement literature. As such, this book would be of interest to those interested in social movement theory as well as those with a particular empirical interest in movements located outside of Europe and North America. While the book is somewhat narrow in scope—it does not explore, for example, the various ways in which states can and do attempt to influence who engages in framing or what frames are even possible—it reminds us that messages require a messenger, and that we would be well served to pay attention not just to the frames, but the individuals who stand behind them.

Devashree Gupta
Carleton College

Prisoners of Freedom: Human Rights and the African Poor. Harri Englund. Los Angeles: University of California Press, 2006. 260 pp.

Harri Englund seeks to engage with what he deems "one of the most obvious features of the new era, the unprecedented public interest in human rights" (p. 5) by examining how the rhetoric of human rights gets translated as practice in Malawi. Englund provides an insightful and strong critique of neoliberal freedoms and human rights activism. Based on extensive field

research from Malawi as well as comparative sources in Zambia, Englund addresses how human rights narrowly defined can hamper struggles against injustice. Freedoms, based on abstract concepts of individualism, can actually undermine democratization rather than promote liberation. His original and compelling argument adds a critical dimension to both the intellectual debates and practical applications of democracy and human rights.

The central argument in *Prisoners of Freedom* contends that equating human rights with political freedoms serves to undermine struggles against poverty and injustice. Englund attempts to move beyond empirical debates about human rights in order to explore how things actually function in practice on the ground. To address how Malawians encountered human rights policies, Englund examines four major themes: the politics of translation, the effect of civic education projects, the limitations of legal aid, and the “moral panic” of the poor as a collective response to new policies. In his multi-lingual analysis, he argues that in many cases human rights documents are not only inaccurately translated into various languages, but that the translations are in fact detrimental to human rights. Further, he believes civic education projects — designed to empower the “grassroots” — actually serve to create a further distinction between the teachers of rights and those presumed to be in need of instruction rather than to promote change. Legal aid, particularly aid granted from international sources, is hampered by its focus on individual claims rather than structural problems. Finally, he explores the “moral panic” of 2003 in Lilongwe as an example of how the poor expressed their frustrations over their virtues, needs, and expectations not being met.

While each of Englund's eight chapters is compelling and effectively argued, his third chapter illustrates the best in thorough, well-argued scholarship. He brilliantly brings to life the intricacies of civic education in Malawi and questions whether such programs have succeeded in either alleviating poverty or creating room for debate about how best to do so. Englund's strength lies not only in his demonstrated deep knowledge of, and passion for, his study, but also in his ability to weave together vast and complex field data into an organized, thoughtful framework that keeps readers focused and engaged. He succeeds in both linking and drawing distinctions between universal concepts and local realities. Englund demonstrates that “the very idea of human rights may, despite its universalist pretensions, assume a highly particular content” (p. 146) to argue for alternative forms of democracy, ones that are more flexible in their approach to human rights and take into account the realities of peoples' lives and needs.

If Englund seeks to expand the definition of human rights and examine how injustice is experienced by the poor, his argument could be further strengthened if he included more in-depth analysis about gender. In his discussion about the balance between rights and responsibilities, Englund uses the debate about “too much freedom” to illustrate how youth and women were blamed for social subversion rather than seen as victims of structural inequality. While he points out that “the potential in the translated human rights discourse to incite subversion became apparent in generational and gendered tensions” (p. 66), he does not draw out what these inequalities are or how his perspective could effectively address them. Further, in another section where he outlines Malawian fears about the safety of schoolchildren, he mentions that the fears were heightened by the mutilated bodies of women and a schoolgirl, but provides no analysis of this gendered violence.

While critics may argue that Englund does not give enough credit to local, national, and international attempts to improve the conditions of Malawians, a careful reading of his work reveals an analysis that encourages increased collaboration rather than a dismantling of

programs. Englund sets out to expand the definition of democracy of human rights, and provides vast data to argue that what “freedom” means for the poor often does not correspond to limited notions of individual political freedoms.

Overall, Englund is convincing and effective in his fresh and critical questioning of how limited notions of freedom and democracy serve the poor. *Prisoners of Freedom* is an bold and important addition to scholarship about human rights because it traces how philosophical notions are put into practice. Further, the book is exceptionally well-structured and researched. Englund's work will be of interest to activists and international aid workers as well as scholars of African history, economics, and politics. Although well-written and argued, *Prisoners of Freedom* as a classroom text is dense in parts and would be best used in upper-level undergraduate or graduate courses. This excellent book ultimately demonstrates that the practice of human rights is more important in the implementation of justice than mere abstractions about individual political freedoms.

Emily Musil

University of California, Los Angeles

Women in African Parliaments. Gretchen Bauer and Hannah Evelyn Britton, eds. Boulder, Colorado: Lynne Rienner Publishers, 2006. 235 pp.

Women in African Parliaments is a comparative study of women's representation in legislatures in many Africa countries, based on qualitative data. Sources include interviews, newspapers, publications and unpublished papers by scholars, etc. With women moving into new and groundbreaking political leadership positions globally (Liberia , Chile , Germany and Jamaica), this book is very timely.

Divided into many chapters, this book addresses the reasons for the increase in women's political representation, the issues related to women's representation in legislatures, and the impact of women's MPs on legislation. It also argues that the mode of electing women to parliament, and the interpretation of the reserved seats, has also meant that women representatives have found it difficult to challenge the government in controversial matters (for example, in Uganda). It attributes the use of quotas as one big factor in the rise of women's political power in these selected Africa countries. Timothy Longman shows that in political gender balance, Rwanda leads the world (p.144). Women compose more than 30 percent of the South African and Mozambican parliaments respectively. Also, half of Rwandese members of parliament are women. Uganda is also a trend-setter having had the 6 th highest women MPs in 2005, first Female VP in Africa – Dr. Speciosa Wandira Kazibwe (Tripp, p. 113). Women also hold one third of local council seats – a leader worldwide in female representation in local government.

Despite these facts, the title of the book is rather too general and might be misleading. There are varied cultural, ethnic, religious, and particularly historical experiences in a continent made up of up to fifty-two countries. Five case studies make broader comparative observations across the continent problematic. However, the authors keep to their stated theme. The case

studies show that there are similarities in factors that facilitated women's increasing participation in their respective parliaments. For example, the book establishes the link between the election of women members of parliament in some of these countries to political office with lengthy liberation and nationalist struggles, revolutions or democratic transitions. The emergence of a democracy movement in Rwanda in the early 1990s is an example (Longman, pp.133, 142). The same applies to South Africa and Namibia .

Gretchen Bauer also observes that women contributed in many ways: "As armed combatants, 'radical, mothers,' community activists inside Namibia , university and vocational students trained abroad, and the backbone of exile camps in neighbouring countries" (p.97). Furthermore, the specific situation for women in post genocide Rwanda also drew more women into the political area. This was associated with their experience in civil society and as refugees in Uganda which formed an important basis for their entering politics.

The book successfully attributes the rise in women's representation to other factors such as information and communication technologies (ICTs), increasing educational opportunities that gave rise to stronger female leadership, changing donor strategies (p. 113), and global women's movements. For example, there was a strong presence of Rwandan women in civil society (for providing social needs) before the 1994 genocide. Women's organizations in Rwanda also promoted government's policies of setting aside reserved positions for women as well as encouraged the population to support the candidacy of women through educational programmes. In addition, some of the countries studied have drawn up constitutions, and laws that use a gender-neutral language forbidding discrimination on the bases of sex (p. 99-100).

Brief historical backgrounds are appropriately used to enhance the reader's understanding of prior situations, and the book illustrates that similarities of experience may not necessarily mean identity in their interpretation for women MPs - they vary depending on country. Women's political representation translated into women-centered policy initiatives substantively in some of these countries, but not equally in all of them. For example, South African women MPs have made key "cultural changes to the environment of parliament that honor and accommodate the domestic obligations of members of parliament" (Britton, p. 70).

At the same time, Jennifer Leigh Disney's view is that women's political representation does not necessarily translate into women-centered policy initiatives. As Bauer observes: "In contrast to the situation in South Africa, women MPs in Namibian have not managed to make their national legislatures more women or parent-friendly" (p. 104).

There was clear diversity in the existence of country-specific variations in constraints towards advancing women's rights (p. 119) – sometimes marriage is a basic criterion for women contenders, and single women and divorcees spend time explaining their status. There are problems of state manipulation of women leaders (p. 112), and the use of female-friendly policies to serve other purposes. In Senegal, religious constraints result in women's inability to make major gains in achieving political power (Greavey, pp. 154, 157, 166).

One interesting aspect of the book is that it highlights the point that women's successes in elected office and in activist organizations do not always seem to be reinforcing each other. The solution according to Shireen Hassim (p. 179), is effective transformation as it will help women parliamentarians accomplish more goals. Applying this solution to the breadth of the African experience becomes problematic. Africa is a continent. Expanded case studies are needed to counter this problem. Overall, this book shows that until women are fully represented in politics, laws will not reflect the realities of their lives (Disney, chapter 2). A recent United

Nations Children Fund (UNICEF) report, titled *The State of the World's Children 2007*, shows that women's involvement in government tends to result in gender-friendly policies. Yet, women are underrepresented in legislatures around the world due to lower levels of education, social attitudes and their greater work-burden.

With appropriate its title, this book is suited for parliamentarians, middle and senior level government executives and officials, women and men in local governments, political parties, research and training institutes, and civil society organizations and non-government organizations who are leading or participating in governance reform initiatives in their respective countries, especially in Africa.

Chineze J. Onyejekwe
Northern Arizona University

Fiscal Disobedience: An Anthropology of Economic Regulation in Central Africa. Janet Roitman. Princeton: Princeton University Press, 2005. 233 pp.

Travelers in Central Africa know the risks of mobility in an age of declining economic fortunes and increasing violence, whether from poor roads or from authorities demanding gifts, money, and proofs of identity. Traders and workers struggle to operate as officials and independent entrepreneurs exact payments or pillage trucks and stores. Since many supposed bandits are in fact directly or indirectly serving government authorities themselves, it is little wonder that so many Africans have questioned the legitimacy of African states and challenged the ability of the state to monitor and organize commercial activity. How do different people and institutions construct what are legitimate and illegitimate forms of obtaining wealth and intervening in commerce? This study examines the political rationalities and discursive foundations of economic regulation in northern Cameroon during the 1990s. Drawing extensively from Michel Foucault's concept of governmentality and the ability of power relations to both control and create subjects, this book seeks to uncover varied understandings and techniques of fiscal classification dating back to the era of the Sokoto caliphate. For historians and anthropologists trying to understand the problematic nature of state economic regulation and constructions of licit and illicit behavior, this is a fascinating work, even if much of the author's contentions lie on a relatively thin amount of evidence that cry out for further research.

This study should be considered a collection of related essays rather than a coherent anthropology of fiscal regulation. In keeping with the author's post-structuralist framework, the book eschews linear narratives. Roitman contends that political sovereignty over economic and other matters should not be taken as a given, but rather as a concept that emerges from configurations of power that are continually remade and undermined. Such state-sponsored initiatives as forcing Africans to pay taxes in francs, the creation and dissolution of prices controls, and the use of censuses to track mobile and fluid communities helped to construct subjects of fiscal regulation. She takes a genealogical approach to trace the emergence of political rationalities and vocabularies, such as the efforts by colonial and post-colonial regimes

to insert and impose notions of tax and price on people in northern Cameroon. Older Hausa market hierarchies determined what made a price just through the exclusion or subordination of non-Muslims or newcomers, and continue to influence understandings of what are acceptable or unacceptable economic behaviors and actions today.

A strength of this book is its presentation of informal economic activity as not a sign of the weakness of state authorities, but rather as a constructed area of activity that allows for the production of wealth and state intervention. Despite many public condemnations of unregulated economic activity, officials themselves regularly permit and engage in smuggling and robbery. Young men engaged in demanding payments, taking spoils from passing trucks, or selling gasoline without any permits contend they are entrepreneurs seeking wealth and opportunity, and argue in varied ways that they ought to be or in fact are favored by state authorities. Colonial officials presented mobile traders and state-appointed chiefs as both agents of order and unscrupulous producers of wealth much as their contemporary counterparts in the military-commercial nexus are embodied as both vicious criminals and disciplined businessmen in northern Cameroon. Ethnographic discussions of the views of petrol vendors, wary robbers who prefer to present themselves as foot soldiers seeking to make a living amidst bigger power struggles, and debates over proper behavior by butchers make for interesting reading. More analysis of these excerpts would have strengthened this book.

However, there are some serious conceptual and methodological problems here. It is hard not to share the author's mixture of concern and respect for her informants, but how representative are they of informal commerce and state interventions in the economy as a whole? Women traders are almost entirely absent from this account. It is highly unlikely that they would engage in shaping and challenging fiscal regulation in the same way as the entrepreneurial armed and mobile young men who take center stage here. Are conditions elsewhere in the "Lake Chad Basin," from northern Nigeria to southern Chad and the western Central African Republic the same as northern Cameroon, as the author seems to suggest? The historical accounts of understandings of proper and improper ways of appropriating wealth and constructing economic categories from the Sokoto era to French colonial rule are insightful, but would be better seen as recommendations for further inquiry than reliable in themselves, since they draw on second-hand accounts or a selection of colonial reports. One would think that the period of German rule might get some attention as a transitional period of plural understandings of fiscal regulation, for example. It actually is never discussed at all. Finally, one needs to be forewarned about the prose that awaits them in this book. What may appear to some as provocative exegeses of Foucauldian concepts can appear to others as rough going.

This book merits reading as an inspiration for new research approaches and as a creative mediation on governmentality in a post-colonial context. However, if one is searching for a comprehensive review of informal and formal economic activity in northern Cameroon, or in contemporary Africa generally, they should look elsewhere. Instructors selecting books for undergraduate classes should stay away from this work, but it would make for interesting reading for graduate courses on economic anthropology or the state in modern Africa.

Jeremy Rich
Middle Tennessee State University

Developmental Local Government: A Case Study of South Africa. Jaap De Visser. Oxford: Hart Publishing, 2005. 313 pp.

The book seeks to find an answer to the critical question of what institutional choices a transitional state needs to make in order to facilitate the emergence of a developmental local government. The author examines the claim that decentralization is good for development. The strength of this book lies in the author's tenure as a local governmental researcher in South Africa. He had also advised and trained many municipalities thus knowing what was happening on the local level.

The book interrogates the role of the state in achieving development. The author looks at the conventional wisdom in the developing world which concluded that development is best achieved through a centralized development strategy. The author argues that the failure of this centralized development strategy has brought about the emergencies of decentralization to local government as one of the means to turn the tide of underdevelopment. Sustainable development is at the very heart of South Africa's Reconstruction and Development Programme, as it places many of these concerns, and in particular meeting basic needs, at the centre of the agenda of the growth process itself. Sustainable development is not something that can happen easily. It requires, amongst other things, a massive educational effort so that citizens are made aware of the need to manage resources wisely to achieve the maximum benefits at the minimum cost, not only to fulfill their own needs today, but those of their children tomorrow and of future generations.

The author further argues that decentralization is an indispensable tool towards development. It enhances government's capacity to gauge people's needs and strengthens the link between state and society. He further argues that decentralization has important positive consequences for the ability of people to exercise choice by holding their government accountable. This is important as it allows voters to exercise their votes more intelligently in local elections than in national elections. Furthermore decentralization meets the increasing need for local articulation of identity in a fast globalizing world environment. The author defines development as a quest for the improvement of material well being, enhancement of choice, and equitable redistribution. The aggregate of these three is best achieved through a decentralised effort.

The author argues that participation empowers local people. Community empowerment means far more than having an access to social grants by donors and government. Capacity indeed needs to be strengthened and build up, but not as a prerequisite for supporting a community. Rather the approach should be learning by doing and building capacity through experience, including allowing space for trial and error. Expertise is best found in local knowledge and know-how. The book also covers detailed functions of a municipality that includes the role of elected councillors and ward committees. The book also provides a comprehensive overview of the South African design for local government.

Three institutional principles were proposed by the author that should inform the decisions made by transitional states in creating an environment that is conducive to development at local government level. The South African legal framework for local government was used as a case-study and assessed against the backdrop of these principles. These principles are proposed to assist in making institutional choices that seek to unlock local government's development

potential. The principle of autonomy is critical to ensure that local governments can fully exploit their potential to respond to people's needs. Autonomy is comprised of local democracy, power and financial autonomy.

The principle of supervision seeks to ensure that national government maintains oversight over the decentralized development effort. Supervision comprises regulation, evaluation/intervention and redistribution. The third principle of cooperation emphasizes a spirit of cooperation as a prerequisite for success. The balancing act between autonomy and maintaining supervision should not take place in an institutional vacuum: certain elements should be entrenched in the institutional framework along the lines of a principle of cooperation. The principle requires four elements to be addressed in the institutional design: a normative framework for intergovernmental relations, the institutionalisation of vertical as well as horizontal integration, and the inclusion of mechanisms for inter-governmental relations.

The author for the first time produces an institutional model for developmental local government that is not only based on development and decentralization theories but is also tested in practice. With this book, Jaap De Visser has provided a detailed analysis of a developmental local government in South Africa and proposed an institutional model for developmental local government. The author makes a strong recommendation for a decentralized system as an indispensable tool towards development. The important conclusion from the South African case study is that decentralization at local government level is good for development. The case study was comprehensive and it addresses the aim of the book.

Didibhuku Wellington Thwala
University of Johannesburg