

A note from the Commissioning- Editor

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

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

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

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

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

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

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

Procedural Justice

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

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

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

Poverty, policy choices and injustice

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

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

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

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

Education and Injustice in South Africa

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

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

The state, justice and transformation

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

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

Justice, Forgiveness and a Culture of Impunity

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

Peoples' War, Political Culture and the Role of Intellectuals

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