

# FOCUS

## STATE AND NATION



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**Photographs**

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Email: [arvitha@hsf.org.za](mailto:arvitha@hsf.org.za)  
Website: [www.hsf.org.za](http://www.hsf.org.za)

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**Contributors**

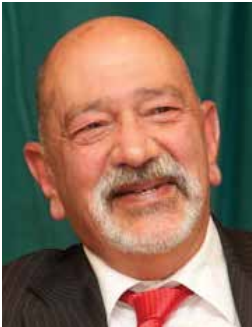
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Mike Muller  
Kameel Premhid (Review)  
Keith Scott  
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# State and Nation



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

*This edition of Focus is the last for 2015 and, again, we try to provide an overview of State and Nation in South Africa. There is an emphasis this time on infrastructural concerns. Given the drought which is affecting South Africa, it is inevitable that water must feature prominently. But drought is not only a matter of lack of rain: it is also about planning, or the lack thereof. In South Africa this problem is compounded by policy choices, and how we deal with land for agricultural purposes.*

We begin this *Focus* with **Mike Muller's** important but, no doubt, controversial piece on "Capturing the Narrative". Muller argues that in a number of areas critical to the welfare of South African society, debates have been hijacked by environmental and social advocates who, he maintains, abuse democratic processes to enforce their preferences. He argues that this constrains the ability of the state and private sector alike to take expedient action in support of national development goals. In their desire to "Capture the Narrative", activists promote approaches that are not technically feasible, thereby damaging both the wider community and environment that they claim to protect, as well as undermining the democracy that they exploit.

**Anthony Turton** argues that South Africa is facing a water crisis of unprecedented proportions. He argues that the crisis is different from the form which had been anticipated insofar as it is not about the volume of water that we have available, but rather about the architecture of governance and the role of water as a nation builder. That is the real crisis. He points out that the state is the biggest single polluter of all and in the process helps to erode the Rule of Law by entrenching the system of cadre deployment to the detriment of public health. He argues that this is simply unacceptable in a functioning democracy.

**Michael Zingel** and the Roman Catholic Justice and Peace Movement focus their attention on acid mine drainage. They highlight the problem of dangerously polluted water, especially in the Witwatersrand, and the confused policy and practice which apparently is in evidence. They do bring to the centre of the debate the involvement of communities which have been adversely affected by acid mine drainage.

An **Anonymous** contributor reviews the draft policy on the Preservation and Development of Agricultural Land. The particular Bill in question proposes to launch a project to classify all agricultural land throughout the country according to its production potential. This effectively means that the classification will have to be carried out hectare by hectare in order to be credible. This proposal is justified by the need to exercise greater control over the subdivision of agricultural land and to prevent agricultural land from being converted to non-agricultural usage. The Bill in fact will give the Minister absolute control over every farmer's farming methods. Farmers will be required to farm the land according to its optimum potential in terms of the classification, and the penalty for not complying may

result in expropriation at a lower than market price. The fact – that no one seriously believes that the Department of Agriculture, Forestry and Fisheries has the capacity to classify every available hectare in the country – need not detain us too long. What is alarming is the thought that this is the prelude to nationalization of agricultural land.

On a higher note, **Dr Keith Scott** and **Prof JJP de VVan Niekerk** tackle the problem of legalising illicit drugs. For some, including our Constitutional Court, this may very well be a bridge too far. But, by highlighting the terrible consequences of the war on drugs, they present a systematic and coherent argument in favour of the legal regulation of cannabis. Their argument, to put it bluntly, would have found great favour with the late Helen Suzman who had worked for many years with Prof. Frances Ames to decriminalize dagga, whose medical benefits are manifestly apparent to so many.

**Keith Gottschalk** reviews the case for non-nuclear power options. Whatever the merits and demerits of the nuclear option, Gottschalk's warning that government's nuclear ambitions will cost considerably more than the arms deal is an important one, in that the incentives around bribery and corruption will be considerably higher than in the arms deal.

**Graham Dominy** reviews disciplinary processes and actions in the public service. This is a sorry tale, more akin to the bad tempered Queen of Hearts in Alice in Wonderland than a democracy striving to address the social and developmental challenges which we face in South Africa. The Zapiro cartoons are not meant as a light hearted adjunct, but form an integral part of a very damning account of wide spread practice. These malpractices will continue for as long as the grey areas around the delineation between ministerial and administrative responsibilities and powers persist.

**Gareth van Onselen's** sober account of optimism, pessimism and nationalism is a searing reminder that with the death of South African optimism something else remains in its wake, a kind of prevalent fatalism. He points out that *Victimhood* is for many a way of life and that *Difficulty* is not something to be overcome but to be endured. **Matthew Kruger** is also concerned with similar themes and insofar as he offers a way of emancipation through agency, I would suggest that these two papers be read as companion pieces.

**Kameel Premhid** reflects on the recent work of the Helen Suzman Foundation in helping to create and defend independent institutions in South Africa. He considers the meaning of independence within the context of single party dominance and cadre deployment.

We end with two reviews: Richard Steyn's biography of Jan Smuts and Sello Mbatha's biography of Mmusi Maimane.





**Professor Mike Muller** is a Visiting Adjunct Professor in the University of the Witwatersrand School of Governance and was a Commissioner of South Africa's first National Planning Commission (2010-2015). A registered professional engineer with extensive experience in strategic public and development management, he advises a variety of organisations on water and development issues from local to global level and chaired the World Economic Forum's Global Agenda Council on Water Security (2012-14). He has a particular interest in Southern African integration and development including cooperative approaches to achieving regional food and water security in the face of climate challenges.

As Director-General of South Africa's Department of Water Affairs and Forestry (1997-2005), Mike led development of new policy and legislation; investment programmes that gave millions of people access to safe water and sanitation; and water-sharing negotiations with Mozambique, Swaziland and Lesotho that unlocked major water and agricultural investments. He previously worked for the Development Bank of Southern Africa (1988-2014); and managed water programmes for the Mozambique Government (1979-1988). His earlier writing on nutrition, health and development was widely commended and had significant impact on global public policy.

# 'Capturing the Narrative' is Bad for Democracy and Sustainable Development

*In a number of areas critical to the future welfare of South African society, debates have been hijacked by environmental and social advocates who abuse democratic processes to enforce their preferences. This constrains the ability of state and private sector alike to take expedient action in support of national development goals. In their desire to 'capture the narrative', activists promote approaches that are not technically feasible, damaging both the wider community and environment that they claim to protect as well as undermining the democracy that they exploit.*

## 'Market failure' or deliberately distorted discourses?

*Dams are bad; they damage the natural environment and reduce human welfare. Any system of water management that uses such infrastructure is inherently anti-democratic; if the interested parties would just acknowledge that water is essentially an economic good as well as a human right, they could sit around a table and agree how best to make it available without infernal infrastructures.*

It's a bizarre set of propositions but reflects a discourse that has been mainstreamed in Europe and North America and forcefully promoted elsewhere, including South Africa. It begs the question of how and why influential groups in a modern world, which is deluged with information, take such positions; why they abuse democratic processes to block action in ways that are detrimental to the welfare of the wider society around them as well as to the environment which they profess to protect.

Some would describe what is happening as a classic and systemic market failure. But markets are supposed to fail because of information and power asymmetries. Some people know more than others and have more power over decisions. Yet, that is no longer a good enough explanation. In many of the societal debates about the environment and natural resources that I am concerned with, the key information is generally in the public domain. And it is

usually people with access to information, although not perhaps fully understanding it, who advocate these strange positions.

I view the world through the lens of water. So I came to this puzzle after some years trying to understand how a couple of really dysfunctional paradigms had captured a mass audience and made it unnecessarily difficult to ensure that people were reliably supplied with the water they need.

My first reference was to Thomas Kuhn who, in the 1960s, had tried to explain that scientific revolutions did not come about easily. In many fields of science, there was a conventional wisdom that was very resilient to challenge even though it might confront some uncomfortable unanswered questions or anomalies. But a key feature of scientific revolutions, said Kuhn, was that they were driven not just by the failure of existing paradigms (theories; best knowledge) to account satisfactorily for what is actually observed but by the allure of those that were emerging. And the attraction of these new paradigms lay not just in their ability to explain discordant observations but in their promise of asking new questions, opening new approaches and creating opportunities to produce useful new knowledge.

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## The mythologies of renewable energy

Unfortunately, Kuhn does not help us to understand the emergence of today's inherently contradictory positions on a whole range of apparently technical questions. A few examples.

That story about dams. The critics of dams invariably live in places where their water supply can only be assured because there is storage in the system (a dam or ten). In variable climates (think California, or South Africa but even in soggy Britain), rainfall varies substantially across and between the years. Only with storage can a steady and reliable flow be made available to meet peoples' needs – and expectations.

Even worse distortions occur in the domain of energy and climate change. So there is a widespread belief that South Africans could solve our energy problems by investing in more solar power – well, we certainly have more sun than most countries, don't we? It is also claimed that solar and wind generates cheaper electricity than conventional sources. And, it is believed that our private sector procurement of solar power has caused prices to fall dramatically to just 25% of where they were 4 years ago. On the other hand, nuclear power is dismissed as unthinkable – unaffordable and dangerous.

All of those beliefs and assertions are simply wrong; more precisely, they do not meet the test of evidence or demonstration.

The most obvious example is the notion that solar power can solve South Africa's electricity problems. It can't, for the simple reason that people (and many of the economic activities on which we depend) use energy at night when no power is generated by photo-voltaic panels. At present, it is very difficult and expensive to store electricity in bulk. The best way to do it is to build pumped storage schemes that use electricity during the day to pump water to a high level dam and then let it run down at night, to generate electricity. Essentially, for solar to be the sole source of power, you



*Wind farm in New Zealand*

*And what about the other claim, that wind and solar generation is now cheaper than conventional energy. To 'demonstrate' this, advocates present a 'levelised cost' of electricity from the different sources; in these terms, the cost of electricity generated by wind and solar is indeed in the same region as many conventional alternatives.*

have to build a large hydroelectric power station. Why not just build a power station?

The problem with wind is similar. Backup generators must be built to provide power when the wind stops blowing. Since conventional coal and nuclear power stations cannot respond fast enough, gas fired power plants are used. But their owners and operators have to be paid for the times when the plant is not used as well as when it is generating. And, despite the increased cost, there is often limited saving on emissions. Worse, as operators in Ontario, Canada, have found, fluctuations in the supply of solar and wind power have in the past required nuclear power stations to shut down and be

replaced by gas. That actually increased the emissions from their systems (as has also happened in Germany after their nuclear plants were closed and coal fired stations used instead, perhaps to be replaced by slightly cleaner gas).

Reliability suffers as well. In Britain, where coal fired power stations have been closed because priority has been given to wind generation, big electricity users are reported (by the managers of its National Grid) to face power cuts in the 2015/16 winter because margins of safety are descending to South African levels.

What about the falling price of solar generation? Prices have indeed come down dramatically but this was not a South African success. It happened worldwide, the result of oversupply as many countries reduced subsidies because integration challenges were leading to soaring system costs. So if we had delayed by four years, the same investment would have bought more than treble the capacity; this is a renewable 'win'!

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*Koeberg power station*

electricity from the different sources; in these terms, the cost of electricity generated by wind and solar is indeed in the same region as many conventional alternatives. But, unlike the renewables, the 'conventionals' produce energy on demand which makes its value-in-use much greater.

Environmentalists always insist that 'externalities' of business as usual should be accounted for. But they turn a blind eye to the massive externalities associated with wind and solar generation. Those include the cost of additional backup and storage required to integrate them into a society's supply as well as the cost of grid expansions which will be used less efficiently than in conventional systems (because at least 75% of the time they will not be carrying power).

In jurisdictions like Canada and parts of Europe, where there is a market for electricity, those externalities are now visible, reflected in the negative prices 'paid' for excess solar and wind energy at times when generation is high and demand is low. Renewable producers have to pay to be allowed to put their production on the grid!

The final incongruity, in a world desirous of achieving emissions-free electricity generation, is opposition to nuclear power. Empirically, nuclear has been demonstrated to be reliable and cheap over the long term. Koeberg in Cape Town, the lowest cost unit in Eskom's fleet, is evidence of that. France's economy has been fueled by nuclear for a couple of generations now, often usefully supporting its greener neighbours. While safety concerns have been raised, the evidence is overwhelming that the risks to life and health from conventional coal and gas power are far greater. Difficulties in disposing of waste are in large measure an artifact of opposition: conditions are imposed on nuclear that are not applied to other, equally dangerous, products. But, despite the evidence, the dominant discourse about

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nuclear remains one of high cost and serious risks. Its essentially emission-free character is ignored or challenged.

## Deliberative democracy – we talk until you agree

How is it possible to maintain discourses that are so distant from the underlying information, over such a long period? Why do significant groups of reasonably intelligent people choose to abandon science in favour of belief? In the first instance, I blame German political philosopher Jurgen Habermas. Another child of the 60s, he has been trying, in a very Germanic manner, to understand the nature and future of modern democracies.

My European water colleagues loved his notion of deliberative democracy in which, as they described it:

“... actors in society seek to reach common understanding and coordinate actions by reasoned argument, consensus, and cooperation rather than strategic action strictly in pursuit of their own goals.”

*So, to manage water resources, they proposed institutions with mandates and scales that excluded most other groups; making river basins the frame for decisions about water. This isolated water management discussions from many water users and broader considerations, and allowed activists to dominate the debates, at least until they began to impact on substantial interests.*

One consequence, in water, was that practitioners have been expected to spend time sitting in endless round-table meetings trying to come to agreement with often self-appointed ‘stakeholders’ about some fairly basic conflicts of interest – the kind of conflicts that are, in the end, usually resolved, when they reach crisis point, through the exercise of political power in favour of whatever balance between technical reality, money and the majority is momentarily most practical and opportune.

But this Habermasian democracy also alerted environmental activists to other tactics, specifically creating incentives for them to move from ‘forum-shopping’ to ‘forum creation’. So, to manage water resources, they proposed institutions with mandates and scales that excluded most other groups; making river basins the frame for decisions about water. This isolated water management discussions from many water users and broader considerations, and allowed activists to dominate the debates, at least until they began to impact on substantial interests.

In Southern Africa, such narratives dominated the discourse because the activists mediated access to donor monies. So you will be told, for instance, that Botswana and Namibia are both water scarce. In fact, they share a river (the Okavango) the same size as the Orange. The latter supports more than half of SA’s economy and population in and beyond the basin. Decisions about the Okavango, in this imposed view of the world, should be taken by the 100 000 odd people who live in the basin of the river, rather than the four million people in two countries that could benefit from its waters. This suits those who want to give priority to environmental protection.

This rescaling of management has not worked so well in energy where communities are directly interconnected by technology.

Here, another stream of ideas has been tapped. Drawing on Foucault and the other post-modernists, activists have invoked the notion that subjective views and beliefs

must be given equal weight. Crudely, they encouraged the belief that any position on the subject at hand, however whacky, has to be treated with seriousness and respect.

Even for an engineer, it is clear that this is not an unreasonable position in the social domain, where it began. So in a debate about whether the denizens of Flanders or Oranje should be allowed autonomy of decision-making on their affairs, it is probably sensible to start from their perceptions about their place in the wider society. But to answer a technical question like “can a standalone solar panel supply electricity at night”, it is unhelpful and arguably inappropriate to begin with such subjective views.

But driven by a desire to enforce a Gramscian hegemony, an unholy merger of subjectivism and deliberative democracy has been applied to science and technology. Discourses based on spurious science are used to promote an illusion of social alternatives. Drawing from Habermas, these post-moderns have seen the opportunity to gatecrash the forums in which the technical discussions are held. Once there, they seek to drive the discourse using Foucaultian protection for the subjective. They demand that their unfeasible desires should be given the same weight and consideration as proposals that emerge from qualified technical processes. So, in the name of ‘capturing the discourse’, they drive Kuhnian scientific paradigms in reverse – from being better at explaining the world in which we live, to worse.

### Some examples of post-modern environmental science and its impacts

These efforts seldom achieve their desired outcomes, save to achieve paralysis, because they ensure that the debates are distorted beyond recognition – or usefulness.

Shale gas provides an instructive example. A domestic source of gas would greatly assist South Africa in making the transition from coal to less CO<sub>2</sub> intensive modes of electricity production. But exploration for shale gas, of which there is a substantial but uncertain potential, has been stalled for years by environmental objections. Drawing from campaigns in the USA, the debate has been flooded with warnings of water pollution and toxins in drilling fluids, ignoring the fact that many of the technologies associated with fracking are already in use in many parts of the country, at a far larger scale, in existing mining operations. The concerns about the impact on global warming, if any, of leakage of gas during production are equally far outweighed by the more pressing impacts, orders of magnitude greater, of coal mining and waste disposal.

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The net effect of these campaigns is to increase uncertainty about the sources of gas. Yet this will be needed if CO<sub>2</sub> emissions are to be reduced by increasing the proportion of renewables in SA's energy mix and reducing coal use. As a consequence, dependence on coal (and its production of CO<sub>2</sub>) has continued, the cost of electricity has risen while the integration of renewables will be hindered.

Back in the water domain, two examples stand out. One prolific social activist still writes regularly implying that 10 million people were disconnected from water supplies for nonpayment (by the Mbeki government). He neglects to mention that this interpretation was rejected and withdrawn by its original authors more than a decade ago. He also fails to mention that the survey from which it was drawn showed that far

more people were deprived of water through broken pipes and because overuse in one area reduced supplies in others, often for weeks at a time. This unhelpfully diverted attention from the real crisis which is municipal management and maintenance.

A similar situation has occurred in the now notorious case of acid mine drainage. Gauteng's old gold mines certainly pose a residual problem. Water drains from the surface through old shafts and stream beds and passes through the old workings, leaching out sulfate salts that, if and when they reach the surface, pollute streams and rivers. That potentially adds about 15% to the already problematic existing levels of salts that come from farms, industries and cities. The most effective way to address the problem is to stop water from getting into the workings in the first place. Ironically, a fair amount of this comes from nature conservation areas and from the 'mining' of

old mine dumps using hydraulic jets to liquify the mine waste for transport and processing. This focus on pumping out mine water and treating it at a profit contributes to the continuation not the resolution of the problem.

*But after evaluating project experience in a number of sectors, the worst risk by far, in terms of its likely impact, turned out to be the "Sting factor"; not 'ordinary' corruption but rather the impact of campaigns which mobilised a celebrity (like Gordon Sumner, aka Sting) to oppose the project.*

At a generic level, the practice head of a large global engineering organisation was recently commissioned by a group of financial institutions to identify the most serious risks that affected large projects and how they could be mitigated. Some of the risks were obvious; corruption of different forms, including blackmail by regulatory authorities as well as clients; extreme weather, political change, and economic melt-down were all on the list. But after evaluating project experience in a

number of sectors, the worst risk by far, in terms of its likely impact, turned out to be the "Sting factor"; not 'ordinary' corruption but rather the impact of campaigns which mobilised a celebrity (like Gordon Sumner, *aka* Sting) to oppose the project.

Publicly orchestrated, celebrity-supported, opposition to major projects often imposed extremely long delays as well as high costs to meet demands for project changes. I was reminded of the case of the Bujagali hydropower dam in Uganda, opposed by a group of white water rafters, with assistance from an American NGO. The project was delayed for five years, which cost the country 2% of GDP a year. My calculations suggested that this resulted in as many as 10 000 additional child deaths in the country (the consequence of increased unemployment and poverty as factories closed).

### **Motivations: round up the usual suspects**

Why are such positions pursued? As already indicated, commercial gain is a surprisingly common motive; quite often, the broader material position of the lead actors guides the positions that they take while discourses are also fabricated to 'purchase' allegiances and legitimacy in activist and academic circles. But more germane to the situation of the state in the nation, is the more or less obvious pursuit of political power and influence.

The business/environment alliance can be particularly pernicious. Many actors exploit the "green is good" narrative to sell a service or a product in which they have an interest, with environmentalists providing 'green cover' for profitable business. The panic in Gauteng over fears that acid water from the mines would dissolve the very foundations of Johannesburg is a case in point. Treating waste once it emerges is



*eMalabeni Water Reclamation Plant*

potentially a profitable business. And some of the most vehement 'expert' advocates worked for companies that sought to profit from the urgent work that they deemed necessary.

That profit depends on convincing the polity to use a particular proprietary technology or to allow private operators to process it and introduce it into the public supply, at public expense. Private operators certainly have no interest in reducing the scale of the problem by reducing water ingress; but they have been loud in their lobbying and advocacy for government to spend its public money on their proprietary solutions.

Beyond money, there is often the simple desire to impose personal preferences on the wider community. In the shale gas debate, as in the Bujagali dam case, the mobilizing forces have been a handful of wealthy landowners or foreign *hobbyists* who are defending their enjoyment of a privileged 'sense of place' at the expense of poor local residents and the wider economy.

Just the other day, a well known environmental activist explained how South Africa should deal with the intermittency and unpredictability that characterizes wind and solar energy. After waffling for a while about compressed air storage (a hugely inefficient process that involves a lot of hot air), he came to the core of his belief, if not his argument:-

*"We must get used to the intermittency and learn to value it and live with it", he said. "Look at how load shedding has reinforced family values as families have to gather together around a candle at dinner time."*

People must be free to choose to live in the dark and eat raw vegetables (provided they do not inflict unhealthy behavior on their dependent children). But the assumption

*"We must get used to the intermittency and learn to value it and live with it", he said. "Look at how load shedding has reinforced family values as families have to gather together around a candle at dinner time."*



that such choices can be enforced on the wider community is troubling particularly when the proponents can usually afford alternatives (generator and solar panel usage is overwhelmingly the privilege of wealthy classes). And the abuse of the imperfect instruments of democracy must be a concern.

Beyond profit and privilege, opportunist and populist community politics also play an important part in many environmental campaigns. It is much easier to mobilise poor communities to demand 'more' rather than to use less, even if that would improve the conditions of all, not least by releasing resources for other purposes. So campaigns to increase the allocation of free basic water have provided a popular platform for social activism, with predictable outcomes: Municipalities have curbed access to free basic water through the introduction of means testing, which inevitably excludes many of the people most in need. Meanwhile, undisciplined use continues to contribute to widespread failure of systems to provide reliable supplies.

But the approach comes to the heart of conventional politics when there are direct attempts to enforce preferences on sovereign governments. Recently, the South African head of a global environmental NGO warned government that even if it decides to proceed with nuclear power, it would be unable to obtain financing. This bravado should be understood for the blackmail that it is. It is becoming a generic tool, legitimized by environmental agencies. But it is liable to backfire; already the advent of various new financing institutions in the south is causing some panic in environmental circles which suspect that BRICS banks will be less liable to reputational pressure than their western peers.

### **Conclusion: 'capturing the narrative' but not improving outcomes**

The ability to manage and manipulate discourse and to mobilise dissent, often through the crudest untruths, is coming to characterise much of the environmental movement. Indeed, it often seems that they are more concerned with capturing the narrative than achieving societal objectives.

This is unfortunate, because, as some of these examples demonstrate, this focus often undermines their own stated objectives as well as the goals of the wider society.

As serious, they are also undermining the ability of states and nations to evolve those Kuhnian paradigms which may better address societies' technical challenges while opening opportunities to learn more and develop further.

The challenges of the future are complex and require processes of honest and informed discussion and debate. But they also require respect for decisions taken by legitimate authorities, decisions that will inevitably represent compromises.

To the extent that environmental activists seek to be part of the process, they need to contribute honestly and professionally in the technical domain even if they cannot always fully support the outcomes.

If they continue to abuse the process, even if they fail to speak out when they see it abused, they weaken the case for participative democracy and they weaken the strength and quality of the resulting outcomes. That will be bad for them and bad for our society. In the end, the challenge is not to dominate the narrative but to achieve a better world.

**DR Anthony Turton** holds two professorships: one in the Centre for Environmental Management at the University of Free State and another as part of the UNESCO Chair in Groundwater Management at the University of Western Cape. He is a founding director of the Ecological Engineering Institute of Africa where he is mainstreaming solutions, most notably with the development of an engineered wetland that is being patented. His current work is in the mining sector where he specialises in the development of strategies and technologies to mitigate the risk arising from the uranium contamination of Johannesburg; and acid mine drainage (AMD) as the gold industry reaches the end of its productive life. He has pioneered the concept of Closure Mining that makes a business case for the rehabilitation of mining-impacted landscapes.



As a Trustee of the Water Stewardship Council of Southern Africa he encourages behavioural change through positive inducement. He is co-founder of the South African Water and Energy Forum (SAWEF) that introduced the notion of the Water-Energy-Food Nexus to the public domain. He is the past Vice President of the International Water Resource Association (IWRA) and a past Deputy Governor of the World Water Council. He currently serves as Editor of the international journal “Water Policy” and sits on the editorial boards of various technical journals including “Water International”, “Water Alternatives”, the “International Journal of Water Governance” and the Springer Verlag textbook series on water resource management. He has recently been appointed to the American Society of Mechanical Engineers as a Contributing Member to the Water and Energy Group Subcommittee on Innovative Water Conservation, Reuse and Recovery Technologies for a term ending in June 2019.

# What Dare not be Spoken about Water

*Statehood in South Africa owes its very existence to natural resources. It was the discovery of diamonds along the Orange River in 1867, and the subsequent discovery of gold in the Transvaal Republic in 1886, that set in motion an unstoppable series of events triggering the Second Anglo-Boer War. The central objective of this war was control over the mineral resources of the region, not yet a country and thus not subject to one sovereign control. This violent process, involving the first use of concentration camps in which more people died of disease and starvation than on the field of battle, culminated in the Act of Union in 1910. Attempting to forge a complex mixture of cultures and identities into one coherent national state, the Act of Union created a legal and institutional framework that had as its core objective, the extraction of resources and the repatriation of the wealth created back to Britain.*

In order to exploit the full economic potential of this new sovereign state called the Union of South Africa, infrastructure was needed. This drove the process of modernization that transformed the largely subsistence 19th century agrarian economy into a 20th century industrial economy. Central to this process was water, because the largest known gold deposit on earth was located in an arid landscape, populated only by migrating herds of wildebeest, zebra and springbok.

Thus began one of the largest man-made manipulations of aquatic ecosystems on the planet. Rand Water Board was created while the ashes of the Boer War were still smouldering. The single task given to this organ was the creation of the hydraulic infrastructure on which the national economy of the South African state could be built. Predating the creation of the state itself, Rand Water Board was initially staffed by military engineers from Britain. The first order of business was securing water for the dusty shanty town that was starting to grow as prospectors, prostitutes and investors converged on the Witwatersrand goldfields. Initial water was secured from natural springs and wells in places like Ellis Park and what is now Johannesburg Hospital. As demand for water grew the massive dolomite systems west of Johannesburg were brought into production by developing the Zuurbekom well fields, still in production today.

*The capture, control, processing and delivery of water became the invisible but vital function that enabled the South African state to be built.*

As gold production grew, so did the demand for water, driving an ever expanding network of pipelines and related hydraulic infrastructure over an increasingly large geographic footprint. Attracted by the possibility of jobs, people came in their droves. This created a new set of challenges as the management of sewage started to manifest as a problem. The more Rand Water Board performed hydraulic miracles by

pumping water uphill from the Orange River basin to the growing urban sprawl along the Witwatersrand continental watershed divide, the more sewage flowed downhill into the Limpopo River basin. What Nature had dictated should be the flow of water into the Atlantic Ocean on the west coast, now became streamflow in rivers discharging into the Indian Ocean on the east coast. Rand Water Board spawned similar institutions in the Orange Free State when gold was discovered in the so-called KOSH area (Klerksdorp, Orkney, Stillfontein, Hartbeesfontein), and when the metropolitan areas of Cape Town and Durban grew. The capture, control, processing and delivery of water became the invisible but vital function that enabled the South African state to be built.

Statehood is one thing, but nationhood is a different thing all together. As the modern economy diversified it created a social structure defined by land ownership and the privilege of having safe water on tap. Economic class thus became linked with ownership of, and access to, natural resources. When we became a democracy in 1994 it is logical that this issue should become central to the political process. As we re-engineered the structure of society in a sincere attempt to seek redress and social justice, the management of water again fell under the spotlight. The new national constitution transformed the state from a structure based on four provinces, into a new structure based on nine provinces onto which was superimposed a new progressive architecture of governance. Central to this governance shift was four aspects that have now become relevant to any informed discussion on water in the context of nationhood. These are:

- Stripping of water rights from land ownership as a subtle but powerful instrument of redress.
- Nationalization of water resources under the custodial role of the state.
- Amalgamation of municipal structures designed to rationalize the allocation of resources in the quest for social equity.
- Transformation of all organs of state to reflect the social demographics of the country with the policy of cadre deployment at the heart of this process.



*Northern Cape Province, Orange River to Upington*

South Africa now has 1,085 water treatment systems supplying potable water to the nation. These plants process raw water from the nearest river, producing potable water that is then reticulated into a complex set of pipes, reservoirs and pumping stations. All of these are artefacts from our historic past, so each is embedded in a specific set of circumstances. Some are world class, such as those operated by Rand Water Board and other major water boards like Umgeni Water, but in reality there is a wide range from very small rural systems to extremely large urban systems. Of these 1,085 there are 250 reported to be operating “below standard” according to official reports.

*The total volume of water that flows in South Africa’s combined rivers on an annual average is 48 billion cubic metres (BCM). This is the total of every single drop flowing in every river irrespective of where it is located in the country.*

This is only part of the picture however. We also have 824 waste water treatment works (WWTW’s), collectively processing 5,128 ML/d (million litres) of raw sewage. This is an important number so the reader needs to reflect on what it means. We are speaking here of 5,128 million litres per day, or stated differently, 5.12 billion litres of sewage that keeps on flowing in a never-ending flood. Of this amount only 836 ML/d is processed to a safe level of discharge back into our nation’s rivers. This means that the rest – a staggering 4,292 ML/d or 4.29 billion litres – of partially treated sewage flows directly into our rivers and dams every single day. It is here that the analysis becomes interesting, because South Africa is now facing a new challenge. Official communications from the state are at great pains to announce that there is enough water in South Africa. This is partially true, so let us unpack this information in more detail.

The total volume of water that flows in South Africa’s combined rivers on an annual average is 48 billion cubic metres (BCM). This is the total of every single drop flowing in every river irrespective of where it is located in the country. This is called streamflow and is a significant part of our natural resource endowment, so let us delve deeper into this number. If one thinks of rainfall becoming streamflow,

there is a new dimension that the reader needs to grasp. Of 100 units of rain falling over the entire South African surface area during an average year, only 8 units end up in the river. A staggering 92% of all water falling as rainfall is lost before it enters the river. This loss is called evapotranspiration and it consists of two major components: evaporation of water intercepted by the large surface area of leaves; and the transpiration of water lifted from the soil by roots to be transpired via the leaves. This means that our national water constraint is the conversion of rainfall to streamflow, so let us delve a little into this aspect to better understand what we have done in the past to overcome this.

*Gauteng Province is home to around 20% of the national population, and each time someone flushes the toilet, they transfer water from the Orange River basin into the Limpopo River basin. But more importantly, these two river basins only have a 5% conversion of rainfall into streamflow.*

The annual average conversion of rainfall to streamflow is just over 8% at national level. But averages hide nuanced facts. One of these nuanced facts is that our national economic development is not evenly dispersed over the entire country. In fact there are two river basins that stand out above all else by virtue of the economic significance derived from water in those two systems. These two rivers are the Orange that naturally discharges into the Atlantic Ocean in the west, and the Limpopo that naturally discharges into the Indian Ocean in the east. Both of these rivers have their source in the Witwatersrand continental watershed divide,

which is also the physical location of the largest single urban conurbation in the world that is unique by virtue of the fact that it is not located on a river, lake or seafront. The stunning success of Rand Water Board over more than a century has created a large city that is now 100% dependent on the perpetual provision of those hydraulic miracles now taken for granted. Gauteng Province is home to around 20% of the national population, and each time someone flushes the toilet, they transfer water from the Orange River basin into the Limpopo River basin. But more importantly, these two river basins only have a 5% conversion of rainfall into streamflow. Simplistically this means that of a 100 units of rainfall that occurs naturally in either of these two river basins, a paltry 5 unit's end up in the river. But it gets more interesting, because if we take the Orange River basin, we have built dams in that system to trap a staggering 193% of the annual average streamflow. Stated differently, if we call the 5 units of water that end up in the river on an annual average 100% of streamflow, then we have built storage capacity for 193 units. In short we have almost twice as much storage capacity in the Orange River basin – our single most important water resource by virtue of its strategic contribution to the national economy – as water that flows through that system during an average year.

### **Why is this important?**

The significance of our dams is the role they play as strategic storage devices, balancing out the low flows accompanied by naturally-occurring drought, with the high flows associated with the natural rainy season. Stated differently, at national level we have built storage capacity for 38 BCM, which provides the hydraulic foundation of our national economy by virtue of the assurance of supply it enables. More importantly however, the extent of the manipulation of natural systems that has underpinned the performance of the hydraulic miracles, which have given us the economic growth that has occurred in the post Anglo-Boer War era creating



the South African state in the first place, is now manifesting as a major risk. Of the nine provinces in contemporary South Africa, seven of these are dependent for more than 60% of their local economic activity on the transfer of water from other systems, with Gauteng being 100% dependent. Turn the pumps off and overnight Gauteng ceases to function in totality, but so does 60% of the other six provinces.

Few people know about this.

The transfer of water from one river basin to another is an invisible but vital element of our national economic wellbeing. Part of that inter-basin transfer of water is by means of sewage return flows, so the risk associated with the management of sewage plant needs to be understood in more detail. Of the 5.1 billion litres of water that flow daily through our WWTW's, a staggering 4.9 billion litres returns to our rivers and dams in a partially treated condition. When compared to acid mine drainage (AMD) as a point source pollution, the only known case of persistent uncontrolled decant is into the Tweelopies Spruit with an annual average of 18 MI/d, some 238 times smaller than the daily flow of partially treated sewage (4,292 MI/d). This makes the state the biggest single polluter of water in the country. Which takes us back to the nation-building aspect of water, where we need to now ask awkward questions about the ability of the state to effectively manage a strategic resource that has now been nationalized, within an architecture of governance that is known to be under severe strain.

*Around 75% of our bulk storage capacity in large dams is known to be contaminated by Cyanobacteria that produce a potent toxin known as Microcystin. Developed countries become concerned at levels of microcystin at 10 ug/l, yet we have persistent levels between 10,000 ug/l and 18,000 ug/l and none of our 1,085 water treatment systems have the technical capacity to remove this toxin from the water.*

The 250 potable water systems we have in place are simply unable to process this highly contaminated water now flowing in our river and dams into safe drinking water, and indications are that even the best performing bulk supplier is being swamped by the increasingly high biological load entering the treatment plants. Around 75% of our bulk storage capacity in large dams is known to be contaminated by Cyanobacteria that produce a potent toxin known as Microcystin. Developed countries become concerned at levels of microcystin at 10 ug/l, yet we have persistent levels between 10,000 ug/l and 18,000 ug/l and none of our 1,085 water treatment systems have the technical capacity to remove this toxin from the water. This means that we are increasingly being exposed to a hazard that is hard to define and difficult to communicate, but also persistently denied by the state. Official government reports downplay the microcystin problem by reporting a mere 5% of the resource as being contaminated. This is possible through an inadequate standard definition supported by a dysfunctional monitoring system and tolerated by an ill-informed public.

As a young democracy we need to have an informed public. We also need that public to clearly articulate its interests and concerns to political parties that contest elections for the purpose of governing on behalf of their respective constituencies. In order to inform that debate we need the free flow of information. But more importantly we need to enable technical persons that have insight into complex matters of this nature, to speak freely without the risk of retribution by the state when and if they speak of what dare not be mentioned in public.

As we enter the pre-municipal election phase, we need to reflect on the potential of water resource management and governance as a nation-builder. We have the state of South Africa, but we are far from a commonly defined nationhood, so now is the time to dare speak of this matter in the context of water quality. Getting back to the official rhetoric of government that we have enough water in the country, the ugly reality is that it is heavily contaminated by partially treated sewage and a range of other industrial pollutants. It is true that we do not have a volumetric water constraint that the government is at pains to tell us about, but it is also true

*If we recycle our existing national water resource 1.6 times by 2030, then we can enjoy economic prosperity without having to transfer water from the Congo River and other distant sources.*

that the water we now have in our dams is no longer fit for purpose. We have an induced scarcity of water, not a natural scarcity of water. This is our collective problem as a state, so this could become the vehicle through which we start to build a collective identity as a nation. Surely the price of democracy should not be the contamination of our precious water resources with raw sewage, merely because of a failure of the architecture of progressive governance structures?

We need a robust national debate about water as the foundation to our national economy and a vehicle for social transformation to a just society in which all citizens can reach their full potential. To help focus that debate this is what we need to do:

- Become aware of the human health risks associated with chronic exposure to Microcystin toxins arising from hypertrophic dams. This needs to be embedded in schools as part of the curriculum, as well as in our national science councils and centres of research and higher learning.
- We need to be assured by the Presidency that full employment and sustained economic growth is dependent on us becoming a recycling economy. If we recycle our existing national water resource 1.6 times by 2030, then we can enjoy economic prosperity without having to transfer water from the Congo River and other distant sources. Only once the Presidency makes this announcement, will all policies be aligned, including science, engineering and technology development needed to manage the transition to a fundamentally water-constrained economy that nobody wants to admit actually exists.
- We need to convert all of our current sewage works into water recovery plant that harvests energy and chemicals as a core business, but also producing clean safe water as a by-product. Central to this is the development of technology to recover chemically pure phosphate, a mineral of growing global scarcity that we are currently giving away for free.
- We need to debate the merits of a dual stream reticulation economy in which water of different qualities and prices is used for different productive purposes. We need to embed this in our national building codes. Just as it does not make sense to flush a toilet with clean drinking water, is also makes good sense to process platinum with industrial grade grey water that has been recovered from contaminated mine water elsewhere.
- Of great importance we need to streamline the process of water use licence applications, because growing evidence suggests that the state is overwhelmed by the complexity of this process. Central to this is the granting of mining rights without regard to the impact on water. The state grants a mineral right through one department, only to have that right sterilized by a different department because of water resource constraints, creating the impression that



we have a dysfunctional state. This is translating into perceptions of risk by current and potential investors, so we need to understand the role played by regulatory compliance in the decision-making process that investors engage in before they invest in the country or a specific industry.

- We need to ask the most awkward question of all – is the time not ripe for service delivery to become a key issue in the forthcoming municipal elections? Is it fair to accept that citizens must be satisfied with sewage contaminated rivers overwhelming water treatment plants with biological loads that they were never designed to deal with? If the price of democracy is the need to be satisfied with faeces in our water, are we not selling ourselves short as a nation?

South Africa is facing a water crisis of unprecedented proportions. But that crisis is different from the form anticipated. It is not about the volume of water we have available, but rather about the architecture of governance and the role of water as a nation-builder. Sadly, those persons working on this topic have either been silenced or intimidated into submission, so there are few credible voices out there capable of injecting ideas into this national debate. The free flow of information is the lifeblood of any functioning democracy, so informed decision-makers need to know the status of sewage management in the country. A recent decision by the Minister of Water and Sanitation has caused the enforcement arm of DWS to selectively apply the law by ignoring the state as the biggest single polluter, eroding the rule of law and entrenching the system of cadre deployment to the detriment of public health. This is simply unacceptable in a functional democracy.

# Attention! Acid Mine Drainage



**Michael Zingel**, graduate of the University of Pretoria, holds a BSC Agriculture (Genetics) and MPhil Wildlife Management, and currently doing research into optimising vegetation assessments to facilitate wildlife management.

He is a Registered Professional Scientist consulting in agriculture and wildlife management.

He is a member of numerous scientific societies, including the Land Rehabilitation Society of Southern Africa and is active in the rehabilitation of opencast coal mines.

Formerly CEO of MayFord Seeds, he served on the executive bodies of national and international seed organisations including the International Seed Federation, Nyon, Switzerland.

*Acid mine drainage (AMD) is a threat to South Africa's limited water resources. As most AMD is generated in the Vaal River catchment area it endangers the most densely populated and industrialised part of the country. Extensive down-stream agricultural production that is dependent on irrigation is also threatened. There are serious consequences for having paid so little attention to AMD to date.*

AMD is water that is polluted by the effect of oxygen and water on iron pyrite. Iron pyrite occurs in association with gold and uranium in the Witwatersrand gold fields. If it becomes exposed to water and air with which it reacts, it yields iron oxide and sulphuric acid. While the iron oxide precipitates and is inert, the sulphuric acid reacts with many elements and compounds that occur with it. AMD is thus characterised by acidity, heavy metal content and elevated sulphates.

Large scale environmental degradation has resulted from mine residues from over a century of mining in the Witwatersrand goldfields and Mpumalanga coal fields. More recently efforts have been made to rehabilitate mine residue areas. Over the years a considerable effort has gone into reprocessing old Witwatersrand mine residue dumps using new technology and to dispose of tailings in ways to reduce AMD generation and radio-active pollution. However, much of the rehabilitation work has been abandoned after mine closure, or is ineffective and, worse, falls short of statutory requirements. Licence requirements are not observed, and court orders are defied.

A serious effort to gain an understanding of the AMD problem has been made by a Johannesburg faith-based community, the Rosebank Roman Catholic parish, through its Justice and Peace group's environmental task team.

## Dangerously polluted water

Water is a particular focus of this environment task group. In March each year International Water Week is observed by arranging lectures, demonstrations and tours to raise awareness and identify opportunities for social witness and engagement.

In March 2014 the group asked the Federation for a Sustainable Environment (FSE) to take a delegation on a tour of the West Rand Goldfields to witness AMD pollution and see what remediation there was at that time.

The delegation was shocked at what they saw and drew small comfort from the extent and effectivity of remediation taking place there. The experience has opened the lid on so much more AMD trouble in the country and the extent of associated radioactive pollution from gold and uranium mining.

A health hazard, on the West Rand particularly, is exposure to high levels of radioactivity in water bodies. The delegation saw Robinson Lake, formerly a popular recreation area, cordoned off with radioactivity warning signs attached to the fence.





*A view of Robinson Lake with South African Water Research Commission (WRC) insert.  
Credit: FSE*

Delegates met members of the Tudor Shaft informal settlement, living on the remains of a mining residue dump where the level of radioactivity is higher than the limits set for the Chernobyl exclusion area in Ukraine.



*Tudor Shaft informal settlement*

*Credit: Stephan du Toit, Specialist: Environmental Protection under employment of Mogale City Local Municipality.*

According to a Report by the North West University, which was commissioned by the Department of Mineral Resources in 2014, the radioactivity level in certain areas in Tudor Shaft Informal Settlement is 13.14milliSieverts per annum. The regulatory limit per source is 250microSieverts per annum.

### **The Roman Catholic Justice & Peace movement**

In its engagement with the challenges of the modern world, the foundations of contemporary Catholic social teaching were laid by Pope Leo XIII's great encyclical letter on capital and labour (*Rerum Novarum*) in 1891. Successive popes, the Second Vatican Council and other leaders in the Church have added to and developed this body of social teaching, most recently in Pope Francis's encyclical on the environment, *Laudato Si* (*Care for our Common Home*).

Modern Catholic social doctrine has been distinctive in its defence of human dignity and human rights, its consistent critiques of the social and political ideologies of both the left and the right, and its focus on the poorest and most marginalized people.

Institutionally, this was given practical expression in the establishment of the Vatican's Pontifical Commission for Justice & Peace in the 1960s. Local bishops' conferences, dioceses and parishes are encouraged to develop similar bodies.

Mike Zingel, the author of this article, heads the environmental task team of the Justice & Peace group in Rosebank parish, Johannesburg.

See: [www.catholicsocialteaching.org.uk](http://www.catholicsocialteaching.org.uk)



The Rosebank J&P group requested relevant state organisations to investigate the situations that they had identified. These are the Department of Environmental Affairs (DEA), the Department of Water and Sanitation (DWS), the South African Human Rights Commission (SAHRC) and the National Nuclear Regulator (NNR). The requests were variously disregarded, brushed off or dealt with in a high-handed and dismissive manner. Their further enquiries led to close involvement with the FSE. The Rosebank parish's effort has since been backed by the Archdiocese of Johannesburg, and taken up by the Justice and Peace Department of the SA Catholic Bishops Conference (SACBC).

*The World Health Organisation (WHO) standard for sulphate in drinking water is 200mg/l. Eskom requires water of between 15 and 40mg/l.*

Rosebank J&P group found that FSE initiatives to improve governance and to expose any wrong doing are being hampered by refusal of DWS to release critical information that should be available to the public. Their objections, with support from the Justice and Peace Department of the SACBC, have been raised with the Public Protector. The hope is that justice will prevail and that essential progress will be made in addressing AMD on the Witwatersrand.

### **Witwatersrand mining basins**

There are three principal groups of mining basins along the Witwatersrand: Eastern, Central and Western. As mines are worked out and close, so dewatering is discontinued. The voids steadily fill and water levels rise. This has already led to decanting of water on the West Rand. Some emerges from the sites of springs from which the Witwatersrand draws its name, but instead of the life sustaining water of the past it is AMD. The threats of decanting in the Central and Eastern basins are not as serious but nevertheless require attention to water levels and to the reduction of acidity.

The current AMD decant from the Western basin is being allowed to enter the adjacent river systems. As it is on the watershed between the Indian and Atlantic oceans, AMD is entering river systems flowing in both directions. These systems are profoundly important for South Africa's agricultural production.

Thus far, the extent of dilution has been sufficient to comply with the regulatory limit of 600 mg/l of sulphates. This limit should be regarded with caution as considerably greater dilution is needed by certain users.

The World Health Organisation (WHO) standard for sulphate in drinking water is 200mg/l. Eskom requires water of between 15 and 40mg/l. In livestock watering, it has been found that sulphate levels above 250 mg/l suppress copper and selenium intake which result in poor fertility and condition.

The potential volume of AMD for the Eastern, Western and Central Basins alone amounts to an estimated 200ML/day (1ML = 1000m<sup>3</sup>). Ten times that amount of good quality water is needed to dilute the high salinity in AMD to make it fit for use.

The anticipated increase in AMD will render the dilution effect in some of the rivers concerned, notably the Vaal River system, insufficient by 2015 – 2019, depending on rainfall. Therefore other remediation is an urgent necessity.

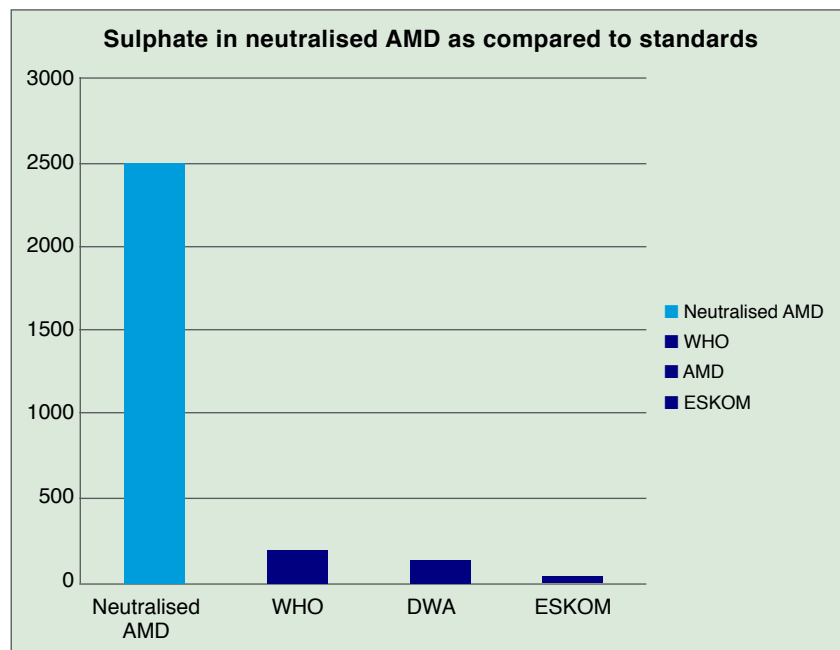
Efforts at remediation on the West Rand are concentrated on treating AMD with lime, thereby raising pH and precipitating heavy metals including uranium. However the sulphates remain and are discharged into the river systems.

AMD is a clear liquid but treatment with lime to neutralise it causes precipitation of heavy metals that discolour the liquid as shown. The precipitate is captured as sludge in a settling dam, while dissolved sulphate flows on for dilution downstream.



*Credit: Stephan du Toit, Specialist: Environmental Protection under employment of Mogale City Local Municipality.*

The World Health Organisation (WHO) standard for sulphate in drinking water is 200mg/l. Slightly higher is the standard of the Department of Water Affairs (DWA), while Eskom requires water between 15 and 40mg/l.



The treatment capacity of the plant on the West Rand is insufficient to deal with all the AMD from the Western basin. The treatment plant within the Western basin can treat 30 million litres per day but during rainfall events equivalent volumes of raw AMD may flow untreated into the receiving environment.

*The scientific community have recently identified a number of flow pathways along which AMD is generated. They have also identified points along these pathways where uranium enters, and conditions of the water that render it more or less radioactively dangerous.*

## Confused policy and practice

There are many contributing factors to AMD generation – a whole complex of consequences (real and imagined) and confusion surrounding action that should be taken. Consequently responsibility for addressing the threat, the funding required and political will to take action are seriously lacking.

This situation has led to many years of cover-ups, denial, shifting of responsibility and similar behaviour that has allowed AMD to escalate. The consequences are a hardening of attitudes in government and mining

circles brought on by an atmosphere of suspicion fostered by confusion, incompetence and malpractice and an anxious society that is wide open to sensational information and misinformation.

The scientific community have recently identified a number of flow pathways along which AMD is generated. They have also identified points along these pathways where uranium enters, and conditions of the water that render it more or less radioactively dangerous.

The identification of these pathways can facilitate the formulation of solutions as each pathway differs considerably from the others. This will reduce confusion. It will assist in the identification of who was responsible for AMD in the first place and who are responsible at the present time. It also points to what needs to be done in respect of each pathway. The relative importance of each pathway differs between the three principal gold mining basins so that the extent of the problems differ as do their solutions. Unfortunately there is resistance to the acceptance of such discoveries.

This resistance, hardened attitudes in the mining industry and government and societal anxiety threaten to demotivate the scientific community. There is a crying need to clear the air by exposing current malpractice and bad governance and to open the way for transparency, shared responsibility and giving credence to scientific advances.

Current thought in mining land reclamation in South Africa is shifting from compliance with cost as the over-riding consideration to business development with community empowerment. The objectives are job and wealth creation that will continue after mine closure. This shift will provide an enabling environment for a broad social consensus to back the necessary remedies for the AMD problem.

AMD is undoubtedly a severe problem and a threat to our country's future. However, a problem clearly understood and equitably shared can be turned into a set of opportunities. Cleaning up our current situation and embracing the positive shift in rehabilitation thought will go a long way to allowing scientifically sound approaches to AMD to materialise and win popular support. The prize is to secure the physical environment of the powerhouse of South Africa and, quite literally, the downstream economy.

# Draft Policy on the Preservation and Development of Agricultural Land

Anonymous

*At first sight, the Government's draft policy contained in the Preservation and Development of Agricultural Land Framework Bill would seem to be highly commendable.*

It is well known that following the nationalisation of mineral rights some ten years ago, prospecting and mining rights have become a great deal easier to acquire, in many instances without adequate consideration of the impact on farming operations or even appropriate consultation or cooperation with the land owner. This has been a matter of great concern to farmers in the affected areas.

Provided that the proposed policy can be successfully applied to prevent further reckless destruction of productive farming land, it might very well be seen to be a positive development by the farming community. As an example, it is proposed that all future applications for prospecting or mining licences will require an Agricultural Impact Assessment, rather than an Environmental Impact Assessment as at present. If negative, that will result in the cancellation of any conditional approvals issued by the Department of Minerals & Energy, and the refusal of any licences.

## The Bill

More detailed examination of the contents of the Bill however highlights a number of proposals which need to be questioned.

The most serious issues are the following:

The Bill proposes to launch a project to classify all agricultural land throughout the country according to its production potential. As every farmer knows, almost every "farm" (i.e. piece of land with separate title) consists of different soil types, which will possibly fall into each of the eight categories of the "Land Capability Classification System" listed in the Bill. This effectively means that the classification will have to be carried out hectare by hectare in order to be credible.

This will be a massive task and there must surely be considerable doubt as to whether the capacity exists in the country (let alone in the Department of Agriculture, Forestry and Fisheries) to undertake and complete it successfully. In a department in which even the Extension Service (providing advice on farming methods to farmers) has more or less collapsed, this is simply not realistic. It will inevitably lead to endless disagreements between farmers and the scientists employed to carry out the classification – and no doubt amongst the scientists themselves. It will also be hugely expensive. As in proposals of this kind, there will always be some doubt as to the integrity of the classifiers and their susceptibility to influence by the land owner or by other interested parties.

This proposal is justified by the need to exercise greater control over the subdivision of agricultural land and to prevent agricultural land from being converted to non-agricultural usage.

But the Bill's reach will be far greater than that, and seeks in fact to give the Minister absolute control over every farmer's farming methods. For example, farmers will be required to farm the land according to its optimum potential in terms of the classification, and the penalty for not complying may result in expropriation at a lower than market price.

In addition, agricultural land “not used for active agricultural production on a continuous basis over a period of at least three years and used far below the land’s optimal production potential” may also be expropriated. Once again, the question arises as to whether the Department will have the manpower qualified to be able to assess whether land has been used below “its optimum potential”.

*Given the already high levels of indebtedness of most farmers – very largely secured by bonds over their farms – a reduction in land prices holds serious implications for the future viability of commercial farming.*

Another example of the reach beyond the “Preservation of Agricultural Land” is the provision that “high value agricultural land should, in principle, be used for food crops, and not for any other agricultural production. In this regard, the conversion of high value agricultural land to ecotourism-related game farming or other agricultural production initiatives (e.g. essential oils), will not be allowed”. This again raises the question as to who will determine whether the land in question is in fact (all of it) “high value” or “Category 1” in terms

of the proposed classification system.

Ministerial approval (on the advice of a DAFF Technical Committee) will in future be required for leases longer than 10 years or even for the sale of high potential agricultural land. The likely delays in the sale or lease of such land will no doubt cause endless frustration, and may well result in lowering high potential land prices.

Another disturbing provision is that the Department intends introducing systems that will ensure that “purchase prices of agricultural land reflect the agricultural value of the land”. It is not clear how this provision will be enforced. But the intention would appear to be to control and indeed to reduce market prices. Given the already high levels of indebtedness of most farmers – very largely secured by bonds over their farms – a reduction in land prices holds serious implications for the future viability of commercial farming. The availability of funding from the major banking institutions will very likely be diminished. That in turn will impact negatively on future investment by new and existing farmers in farming ventures.

In order to implement these policies, the Bill proposes a series of complex processes which will be required for the approval of any changes in land use or subdivision of agricultural land, and the creation of new structures at municipal, provincial and national level. Applications for re-zoning or subdivision will have to go through 12 different steps, although strangely none of these involve any consultation with fellow farmers. Given the manpower capacity constraints, the question must be asked as to whether there is not every likelihood that these processes will simply become mired in bureaucracy.

## Conclusion

All of these provisions suggest that there is a much greater agenda than merely controlling the removal of land from agricultural production.

The inevitable impression is that this Bill has as its underlying goal increased government control over all agricultural land and, indeed, the farming of the land, and a reason to create vast numbers of jobs in an already bloated bureaucracy. Clothed in seemingly noble goals, is this in fact a disguised step towards nationalisation?



# Legalising Illicit Drugs

*All but a handful of countries signed the United Nations Single Convention on Narcotic Drugs in 1961. This treaty and two related conventions were established to prohibit the use of and trade in a range of drugs and have been used as the basis for the standardisation and enforcement of drug laws in most countries. The fundamental philosophy driving their formation and implementation is the goal of a global society free of all drugs that are deemed to be harmful, alcohol and tobacco being notable exceptions. However, nearly 60 years later, the resulting UN-driven War on Drugs has failed miserably and has inadvertently created a trillion dollar illicit drug trade controlled by international networks of powerful drug syndicates. This mistaken policy has brought about a legally sanctioned global human rights tragedy that has ruined the lives of millions of people.*

## Evidence that the war on drugs is not working

Demonstrating that the War on Drugs is not working is the fact that the use of illicit drugs and their trade has increased substantially over the years. Furthermore the growth of the drug trade has continued in spite of draconian punishments (long prison sentences and even the death penalty) that have been meted out to producers, suppliers and users of these drugs.

The main reasons why this severe, punitive global campaign to stamp out 'recreational' drug use has failed are as follows:

- *Humans have always desired psychoactive substances*

It is essential to appreciate that the centre of the fraught relationship between humans and drugs is the inherent desire of many of our species to ingest, inject or inhale a selection of substances that influence their minds (psychoactive substances). For millennia humans have used them to induce religious and spiritual experiences, enhance creativity, boost physical endurance, alleviate pain and stress, or simply for pleasurable sensations and temporary respite from life's hardships.

For aeons numerous natural substances such as caffeine-containing plants (coffee, tea, and cacao), cannabis, coca, khat, tobacco, psychoactive mushrooms and plant derivatives such as opiates, alcohol, psilocybin and cocaine have fulfilled these needs. Modern chemical advances have introduced many other substances to this psychoactive-substance inventory such as amphetamine, methamphetamine, heroin, LSD, MDMA, benzodiazepines, ketamine and others.

This primal need for some people to take psychoactive substances is at the core of the drug issue and not appreciating its importance in formulating relevant legislation has led to the ghastly situation we now find ourselves in.



**Dr Keith Scott**, General medical practitioner, Cape Town



**Professor JP de V Van Niekerk**

Previously: Dean of the Faculty of Health Sciences, University of Cape Town and Managing Editor South African Medical Journal.

Presently: Consulting Editor SAMJ and author of the 2011 SAMJ article, "Time to Decriminalise Drugs?".

- *Aspects of drug dependence*

An important but little appreciated fact is that of those who experiment with any given psychoactive substance, roughly 80% of them will NOT carry on using that drug, while most of the other 20% will continue using that substance WITHOUT becoming dependent on it. And only about 10% of those who experiment with a drug, risk developing a substance use disorder associated with that drug. These well documented findings include culturally sanctioned drugs such as alcohol, tobacco and caffeine as well as prohibited drugs such as heroin, cocaine, crack cocaine, methamphetamine, cannabis, MDMA, LSD and others. Alcohol and tobacco products are amongst the most addictive of them all.

These crucial statistics invalidate the widespread and entrenched belief that the majority of people who experiment with drugs will become dependent on them.

The evidence has established the contrary – that only a small minority of those who use either legal or illegal drugs will become addicted to these substances.

*The evidence shows that the primary drivers of addiction are the disturbed psychological states and adverse social circumstances of individuals.*

These facts counter the prevailing narrative that illicit drugs are far more addictive than legal drugs such as alcohol and tobacco. Scientific evidence has firmly established that a small (but important) percentage of a particular population group has a dependency

risk for any given psychoactive drug, while the great majority of people are not predisposed to develop substance use disorders.

- *Psychosocial cause of substance use disorders*

Increasing scientific evidence has overturned the previously held notion that the primary cause of substance use disorders is chemical addiction. The evidence shows that the primary drivers of addiction are the disturbed psychological states and adverse social circumstances of individuals.

People with well-defined mental disorders and those who have suffered unresolved psychological ordeals are known to be far more likely to use both legal (alcohol and prescribed medicines) and illicit drugs. Similarly, many of those who are in difficult and dire social circumstances attempt to find relief in one or more psychoactive substances. Chemical dependence develops later in the addiction process and, although important in the context of rehabilitation, it is seldom the primary cause of substance use disorders.

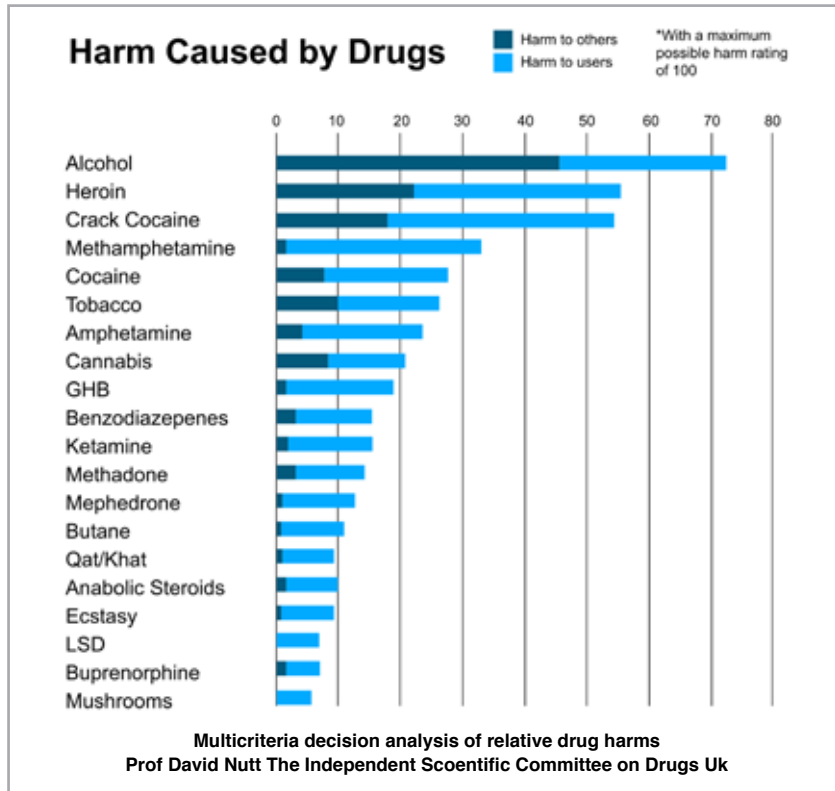
The tragic irony of the current situation is that the more the drug laws encourage the persecution of people who take illicit drugs, the more likely it is that they will seek out further drugs to make their lives more bearable. Prosecuting people who, for whatever reason, take drugs of their own choosing, makes life even more difficult for them, hampers their rehabilitation, and often results in them turning to lives involving 'real' crimes. Moreover the discriminatory harassment of those who choose to use substances other than culturally sanctioned drugs, such as alcohol and tobacco, is a clear infringement of their human rights.

As illicit drug use is a victimless crime, it should not be considered a crime at all.

- *Arbitrary selection of illicit drugs*

The UN conventions have classified the drugs into four main schedules depending on their perceived harmfulness.

The glaring omissions from these lists are two of the most harmful drugs of all, alcohol and tobacco. Excluding these two culturally sanctioned drugs from the UN lists obviously has little to do with concern over their addiction, potential or harmfulness, as alcohol and tobacco are much more harmful than most of the drugs deemed illicit by the UN.



- *Recreational users drive the drug economy*

Most people who first experiment with illicit drugs do so out of curiosity or because of peer pressure. Contrary to prevailing misconceptions only a very small minority of drug users are introduced and coerced into taking drugs by drug dealers.

A seldom discussed and uncomfortable truth is the fact that the people who are primarily “responsible” for helping to drive the drug trade are not the drug addicts (a small percentage of users) nor those who grow, manufacture and supply the drugs. As is the case with alcohol, most illicit drugs are purchased by those who use the drugs recreationally but who seldom develop substance abuse disorders. Most of the liquor industry’s profits come from people who use alcoholic beverages in moderation and not from those who have alcohol-use disorders. The illicit drug economy is similar to the alcohol economy regarding ratios of the customers with substance abuse disorders versus those recreational drug users who do not have dependence issues.

- *Drug cartels, syndicates and dealers are not the cause of the demand for illicit drugs*

Basic demand/supply economic reality predicts that if certain sectors of society want to use psychoactive drugs, there are people who will seize the opportunity to provide them with those commodities.

Because many humans have an innate desire for mind altering drugs means that there has always been and always will be a market for them. The market for alcohol and tobacco (and before the global War on Drugs, opium, cocaine, cannabis etc.) is catered for by legal industries that are subject to regulation and taxation. Before the prohibition of what are now illicit drugs, the same legal regulation and taxation policies applied to these arbitrarily outlawed substances.

*Unfortunately, while Prohibition was driven by a naive, misguided attempt to protect a nation from the 'evils' of alcohol, the contemporary drug laws, instead of being based on scientific evidence, are maintained and enforced by beliefs, political expediency, ignorance, corruption and fear.*

Unfortunately, the sponsors of the 1961 UN Single Convention on Narcotic Drugs ignored the most important lesson that prohibition of alcohol in the USA taught us – that prohibition simply does not work on any level. Therefore it is not surprising that the implementation of the UN conventions has resulted in the supply of banned drugs being taken over by an illegal industry that is only too happy to continue to service an extremely lucrative and resilient market.

The UN missteps caused this industry to flourish and has fuelled the growth and political influence of international crime – in exactly the same way that the

1920 USA Prohibition gifted the untaxed alcohol beverage market to the criminal sector, leading to a decade long organised crime boom in that country.

Unfortunately, while Prohibition was driven by a naive, misguided attempt to protect a nation from the 'evils' of alcohol, the contemporary drug laws, instead of being based on scientific evidence, are maintained and enforced by beliefs, political expediency, ignorance, corruption and fear.

## **The terrible consequences of the War on Drugs**

Apart from the fact that the UN-driven War on Drugs has failed to carry out its basic mandate to create a drug free world, its misguided policies have created two important problems.

- *A grave human rights tragedy*

The UN Conventions have misunderstood and completely failed to take into account all of the medical, social and economic dynamics that influence the use of recreational drugs. The criminalisation of people using these drugs has caused huge collateral health, social and economic damage that has impacted negatively on society and poor communities in particular. These laws resulting in the incarceration of millions of people and the execution of many others is reminiscent of those archaic, medieval laws that stigmatised and barbarically treated people with mental illnesses and those found 'guilty' of homosexual offences.

- *A global organised crime wave*

The drug laws, in South Africa and in many other countries, have enabled organised crime structures such as drug cartels, drug syndicates and gangs to access and control the trillion dollar international drug market. These powerful, interlinked groups use their massive economic strength to infiltrate and substantially weaken the very same legal structures that are expected to confront and contain those involved in the illicit drug market. Worldwide, the police and politicians at all levels are often paid accomplices in the drug trade. In South Africa, Jackie Selebi, head of the South African Police Service and Interpol was convicted of being in the pocket of drug dealers.

Organised crime bosses, both in South Africa and abroad, have stated that the last thing they want is for cannabis and other illicit drugs to be legalised. Their reasons should be obvious to all of us – it will destroy their primary source of income and put most of them out of the crime business.

Drawing on the experience of the era of prohibition in the US, the economist, Bruce Yandle, coined a phrase ‘Bootleggers and Baptists’ to describe a model of politics in which the opposite moral positions lead to the same vote. Preachers demanded the prohibition to make alcohol illegal while criminal bootleggers wanted it to continue to be illegal in order to stay in business. In our current situation those who have emotions and beliefs tied to continuing the War on Drugs will be supported by those driving the illicit drug trade as well as those who have a vested interest in opposing it, such as the police and in the US, at least, the private prison companies.

## Legal Regulation

### *Legal Regulation is a rational, humanistic alternative to the War on Drugs*

The only holistic, proven and rational way to deal with the undesirable consequences of the human penchant to use psychoactive substances is to legalise these drugs and include them in a flexible *legal regulatory* framework. Legal regulation is a well known and widely applied legal and administrative process that most countries use to tax and control the production, distribution and sale of prescription drugs, alcohol and tobacco and others.

Legal Regulation does what the War on Drugs has failed to do. It decreases drug use amongst children, fosters harm reduction measures in drug users, reduces the stigmatisation of addicts, curtails infectious disease transmission, dramatically reduces drug related deaths, controls the quality, sale and availability of drugs, substantially decreases drug-related criminal activity, reduces the profits of organised crime, lessens the opportunities for corruption amongst law enforcement officials, lowers the cost of law enforcement and reduces prison populations. It also allows for the more effective implementation of drug education programmes and drug-related health services.

*Instead, legal regulation enables governments to control where drugs are grown, manufactured and sold and who can access them. The authorities can monitor the quality, strength and composition of the products in the marketplace, which is currently impossible.*

The terms ‘legalisation’ and ‘legal regulation’ differ. While *legalisation* is merely a process that makes something that is illegal, legal, *legal regulation* provides a regulatory framework that governs the production, supply and use of drugs - any activity outside of this framework remains prohibited.

Unfortunately, a widely held misconception is that legal regulation is a radical idea and is sometimes characterised as a ‘liberalisation’ or ‘relaxation’ of the law. However, it is in fact the opposite; it is about bringing the drug trade *within* the law with strict controls that cannot be imposed under prohibition. Legal regulation certainly does not imply a free-for-all that makes drugs available to anyone, anywhere and at any time. Instead, legal regulation enables governments to control where drugs are grown, manufactured and sold and who can access them. The authorities can monitor the quality, strength and composition of the products in the marketplace, which is currently impossible.



The legal regulation of recreational drugs essentially aims to protect the young and vulnerable by controlling their availability and to educate the public about their potential harms. It aims to reduce crime by diverting to the state fiscus the profits generated by the illicit drug trade. This extra tax revenue should finance education, rehabilitation, medical services and support effective, humanistic crime fighting initiatives and provide for other expenses associated with the regulation of recreational drugs. Public health issues relating to these products would be improved by ensuring pure, standardised products along with the provision of health education and other pertinent information.

Legal regulation provides a platform to protect human rights by abolishing the unjust laws that discriminate against those who want to use psychoactive substances for recreational and medicinal purposes, without the fear of prosecution.

*Changing to legal regulation from the current legal situation need not happen overnight. It may be phased, cautious and adapted according to the results achieved. Examples of successful initiatives elsewhere in the world are available.*

Our laws make it virtually impossible to control any of the links in the drug supply chain. At present anyone of any age can buy drugs – drug dealers don't ask for ID! Under a system of legal regulation many activities, such as sales to minors, would remain illegal and subject to sanctions. Proponents of legal regulation generally support the implementation of even better, stricter regulation of both legal drugs such as alcohol tobacco and other 'recreational' drugs.

However legal regulation must be complemented by improvements in public health, education, prevention, and addiction prevention and treatment, as well as action on poverty, inequality and social exclusion.

Changing to legal regulation from the current legal situation need not happen overnight. It may be phased, cautious and adapted according to the results achieved. Examples of successful initiatives elsewhere in the world are available. If policies do not work they can be revisited and, where necessary, reversed.

Although legal regulation alone will not solve the many problems related to either currently legal or illicit drugs, it provides a far better alternative to the disastrous crime and social problems caused by drug prohibition. Local and global experience over the past 100 years demonstrates that prohibition cannot achieve these aims, and in fact actively undermines them.

### **Evidence that legal regulation works**

There is a valid concern that legal regulation of cannabis will increase its use, especially amongst minors. However in the Netherlands, where the possession and retail supply of cannabis is legal, rates of cannabis use are similar to the European average. Moreover, when Portugal decriminalised the possession of *all* drugs in 2001, drug use did not rise dramatically, as some feared and has decreased amongst young people. Now, over twelve years later, levels of drug use remain *below* the European average and drug-related crime and health problems have dropped significantly.

In many countries, tobacco use is half of what it was 30 years ago. This reduction was achieved without blanket bans or criminalising smokers; it is the result of health education and stricter market regulation, only possible because tobacco is a legal product

Levels of drug use are often equated with levels of drug harm, but the vast majority of drug use is non-problematic. Rather than narrowly focusing on reducing use, policy should seek to reduce overall harm.

We have a choice: the drug trade can be controlled either by criminals or governments. Legal regulation is the only substantiated, holistic and humanistic way to deal with the issues relating to the health benefits and harms of recreational and other drugs, their social impact and the vast crime networks that the current laws help to sustain.

When faced with a failed ideal such as the ‘War on Drugs’, some will argue, because of their beliefs, that the war should be intensified. A more helpful approach concerning drugs is to examine the facts which would result in a more acceptable human rights and positive public health approach.

As CS Lewis, the Christian writer and thinker observed: “Of all tyrannies, a tyranny sincerely exercised for the good of its victims may be the most oppressive. It would be better to live under robber barons than under omnipotent moral busy bodies. The robber baron’s cruelty may sometimes sleep, his cupidity may at some point be satisfied but those who torment us for our own good will, torment us without end for they do so with the approval of their own conscience”.

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FURTHER READING

Hari, Johann (2015) *Chasing The Scream*; Bloomsbury  
Hart, Carl (2013) *High Price*; Penguin  
Nutt, David (2012) *Drugs - without the hot air*; UIT Cambridge  
Global Commission on Drug Policy; <http://www.globalcommissionondrugs.org/>  
Transform; <http://www.tdpf.org.uk/>

# The Case for Non-nuclear Power Options



**Keith Gottschalk** is a political scientist at the University of the Western Cape.

*Intelligent persons, such as liberals supporting the Helen Suzman Foundation, often hold a range of views on complex issues, especially where more than one criterion is involved, and where some criteria may not be easily quantified.*

Newspaper editorials have criticized the Government's abuse of secrecy – what democracy classifies its future electricity plans as secret? – as it proceeds with its programme to build six to nine extra atomic power reactors totalling 9600 MW of electricity. The reason for secrecy is defensive: these plans cannot stand up to scrutiny for economic rationality. This is one requirement for the constitutionality of state decisions and choices.

Joseph Schumpeter's famous phrase about capitalism and entrepreneurship acting as "perennial gales of creative destruction" reminds us that the cost-effective blend of power generation varies during each decade. From the 1990s, imported hydropower would have been South Africa's cheapest electricity source. From the 2000s, imported gas could vie with imported hydropower. During the 2010s, solar power, both photovoltaic and concentrated solar power with storage, could start to be added to the cost-optimal mix.

The tell-tale give-away of economic irrationality in the Government's grim determination to rebuild PW Botha's atomic industry is that it is utterly price inelastic: 9600 MW regardless of the supply-side revolution noted above.

## Gaps and Silences

Public debate on security of electricity shows extraordinary gaps and silences.

First, the Government and President Zuma deserve praise for having signed a treaty in 2013 - ratified by Parliament - to import 2500 MW of hydropower, progressively rising by 2030 to 10 000 MW, from the Grand Inga project. This made no headlines in the newspapers

Energy security will be enhanced by adding to the existing "eastern power corridor", through which we already import 110 MW from the Democratic Republic of the Congo, a "western power corridor" running through Angola and Namibia to Cape Town and Gauteng. South Africa took the lead in founding the Southern African Power Pool in 1995 to facilitate greater international trading in electricity. Currently our biggest example is importing an average 1200 MW from Cahora Bassa in Mozambique, through different transmission cables.

There are also discussions about importing further hydropower from other Angola and Mozambique sites. The Energy Intensive Users' Group of South Africa will have noted that electricity from the Grand Inga project is costed at one-quarter of the same quantity of electricity from atomic power stations. Doubtless, the real costs of any government



*Cahora Bassa Dam, Mozambique*

mega-project must realistically be anticipated at double the promised costs, but atomic power shows the same escalation - or worse.

In short, the economically rational case is to import more hydropower. It is not rational for a country with South Africa's options to build more nuclear power plants.

The second silence in the electricity debate – in this case a near silence – concerns the unpredicted finds of vast gas reserves in Mozambique, Tanzania, and Kenya. This is gas that costs far less to tap than shale gas.

The Eskom-Shanduka contract proved that gas-fired power stations are the fastest to build and plug into our national grid – eighteen months. If speed is the criterion, then the rational advocacy is for combined-cycle gas-fired turbines. Atomic power stations take longer to build than almost any other alternative.

Eskom accountants and quantity surveyors can advise between the options of bringing Mozambique gas into South Africa through building pipelines, or of building gas power stations on top of the gas fields, and erecting transmission cables into South Africa.

Third, another supply-side revolution is that over the past decade the cost of photovoltaic electricity has dropped to parity with current grid retail prices. Simultaneously, the cost of Concentrated Solar Power with storage for the evening peak usage has dropped to below the cost of power from the diesel-guzzling Ankerlig and Gourikwa peaking stations.

The Energy Department proposed in 2010 that we generate 5000 MW from a solar park in the Northern Cape. There is no reason why this should not be upped to 9600

*In short, the economically rational case is to import more hydropower. It is not rational for a country with South Africa's options to build more nuclear power plants.*

or 15 000 MW. Instead, the Energy Minister announced (Cape Times 6 October) that the solar park will be for 1 500 MW – slashed by more than two-thirds after five years in which the prices of solar electricity dropped more than from any other alternative source. Distributing the solar power stations between Springbok to Hotazel and Mahikeng will ensure that rare desert rains in any one locality will not significantly lower the distributed power output as a whole.

*“When an organ of state ... contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.”* – section 217 of the Constitution

The fourth silence is over demand-side management. Even in democracies, not every policy can be popular – such as tax. Eskom bills municipalities with time-of-use charges, as mobile phone companies use. But municipalities charge their customers prices below cost during the sunset peak usage hours, and far above cost for the rest of time.

It is overdue to upgrade all retail meters to permit both time-of-use billing, and also reverse metering for those who install rooftop photovoltaics. This can be done within three years. Similarly, somewhere before WW2, municipalities fell into the bad habit of misusing electricity billing to cross-subsidize rates. They need to incrementally raise rates, with continuing exemptions for pensioners and other low-income households, to stand on their own. Electricity, like water, is an essential, to be priced to cover only its own capital, current, and reticulation costs.

*“When an organ of state ... contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.”* – section 217 of the Constitution

Many governments decide on actions and policies which do not make economic sense, but are undertaken for political or diplomatic goals. For example, no one expects economic benefits in return for the costs of a decade-long deployment of South African peacekeeping soldiers and police in the Darfur province of the Sudan. Our actions as part of the AU force are justified by their humanitarian benefits.

## The Nuclear Option

But no political benefits are obvious in choosing the atomic alternative. Politicians talk of nuclear as a strategic asset in a way they do not perceive solar, gas, or hydropower, but can never explain why it should be considered any more strategic. South Africa has a historic over-investment in atomic technologies, from the bomb to the Pebble-Bed Modular Reactor, (PBMR) with the opportunity costs hurting other sciences and technologies.

Questions asked in parliament by DA MP Lance Greyling exposed that state investment has privileged atomic research & development with four hundred times the grants and funding given to all renewable electricity options combined.

The opportunity costs of the Government's obsessions with extra nuclear power have been significant.

The R8 billion of wasteful and fruitless taxpayers' funds poured into the PBMR left them with no Energy funds to back the West Power Corridor Company, Westkor, between 2003-2008, which led to the DRC Kabila Administration pulling out of the Inga scheme for a decade because it assumed that the South African Government was not serious in its commitment. By the time new treaties were signed in 2013





*The Sasol gas pipeline in Temane, Mozambique*

and ratified by Parliament in 2014, seven years had been wasted in which the construction of the hydropower station and transmission pylons could have almost been completed.

The physicist Schleffer presented a paper back in 1995 proving that the sunlight per square metre in our Kalahari districts equals the highest in the world. This makes the Northern Cape and North-West Provinces the most economically viable globally to erect PV and CSP plants. Two decades were wasted before substantial solar power plants were constructed there.

The Mozambique gas pipeline to SASOL at Secunda was opened in 2004. Had this been replicated at the time, to flow to new gas power stations, there would have been no power failures and rationing in the past few years, angering voters and hurting our economy.

The claims that the Government's nuclear plans will not cost more than R400 billion neglect to consider several facts:

- First, the Government's atomic ambitions extend far beyond extra power stations. The Nuclear Policy White Paper in 2008 published its policy reversal: to rebuild PW Botha's entire end-to-end atomic industry, with the sole exception of atomic bombs. The electricity-guzzling uranium enrichment factories, the zirconium cladding factories for fuel elements, are all again on the state priority list. There is currently talk of also building a nuclear fuels processing plant. The atomic wish-list also includes another research reactor for Pelindaba.
- Second, atomic industry supporters never explain that their quoted costs of R400-800 billion are merely one component of the costs, termed "overnight costs". That is what the cost would be only if Eskom could pay upfront a lump sum of R400 billion. In the real world, Eskom will have to borrow this sum at compound interest – and these finance charges, adding between one-third to 40% onto the sum are excluded.

*The Nuclear Policy White Paper in 2008 published its policy reversal: to rebuild PW Botha's entire end-to-end atomic industry, with the sole exception of atomic bombs.*

- Third, the global atomic industry advises its corporate members to avoid fixed costs contracts, so that as inflation bites during the seven to ten years needed to build a new nuclear reactor, the contractor cheerfully adds this on the taxpayers' bills, raising costs by at least another third.
- Fourth, the prices claimed by nuclear power station vendors have the charming habit of excluding what they call "owners' costs". Their quoted prices exclude the costs of building the breakwaters or pipelines that pump in and out the huge volumes of cooling sea water needed. Their prices exclude the seismic raft – the massive concrete foundation and steel coils built beneath a nuclear reactor to ensure it is safe against earthquakes. They apply the same exclusion to the cost of building the administration buildings and security perimeter. No architect would dare give a client a written quotation that excluded the cost of the foundations, the outside plumbing connections, and the garden walls for a new house, but that is the practice of nuclear vendors.
- Fifth, the decommissioning of the oldest atomic power stations built in the 1950s and 1960s has only started in recent years. It is becoming evident that the total costs of the dismantling of an atomic power station, including long-term storage of its radio-active parts, can cost up to one-quarter of the original price of building it.
- Sixth, HSF supporters – indeed all defenders of the Rule of Law – will be concerned at the authoritarian mindset of some supporters of atomic power. For example, the atomic engineer Kelvin Kemm writes in THE NEW AGE (21 October) "It is time that the South African Government started ... jailing some of the Greenpeace activists - and banning Greenpeace ... from receiving any foreign funds."

*The Government's static policy - determination to build 9600 MW of atomic power stations regardless of varying cheaper options - proves that this policy is only political in motivation, and is not economically rational.*

Our Bill of Rights ensures that critics of nuclear power stations have the same rights as, for example, the atomic conglomerate Areva has, to donate foreign funds to host 24 months of events in South Africa as soft-sell for its bid.

## Conclusion

The Government's nuclear ambitions (power stations, enrichment plant, and others) will cost considerably more than the arms deal. This means that the corporate incentive to bribe will be considerably higher than it

was for arms dealers. As will the corporate war chest be used. The current corporate terminology used to camouflage bribes includes: initiation fees, facilitation fees, consultancies, success fees, and, the most outrageous of all, signature bonus fees. That is, a bureaucrat or politician is paid millions for signing documents which is part of his or her job.

The Government's static policy - determination to build 9600 MW of atomic power stations regardless of varying cheaper options - proves that this policy is only political in motivation, and is not economically rational. Otherwise, the proposed quantity of power to be generated by atomic power stations would fluctuate, depending on the price of other options in the mix.

To succeed in compelling the Government to reverse its determination to expand atomic power will require a multi-pronged campaign of the same magnitude as the one which forced the Government to reverse its policy of treating HIV-AIDs with beetroot instead of medicines.

# ‘Sentence First! Verdict Afterwards!’ A Look at the Alice in Wonderland world of Disciplinary Actions in the Public Service

*In Lewis Carroll's classic tale, Alice in Wonderland, the bad tempered Queen of Hearts rants, 'Off with their heads!' When the King of Hearts gently suggests that perhaps there should be a trial first, she yells, 'Sentence first! Verdict afterwards'. Alas, this attitude is not just in the whimsical world of Victorian children's fantasy tales, it thoroughly permeates the very fibres of South African governmental disciplinary processes: The method used to effect a sentence before a verdict, is the system of 'precautionary suspension' of officials. This has been honed into a widely used weapon in the obscene battles over patronage, position and power that make a mockery of the words 'public service'<sup>1</sup>.*

## The Process

Suspension is an effective weapon in internal power struggles because 'suspenders' do not need to provide any evidence before suspending officials and blighting careers. On the other hand, 'suspensees' have no recourse except through enduring a protracted (and often flawed or blatantly rigged), disciplinary process, unless they are in a position to initiate expensive court actions.

Laura Grant writing in the *Mail & Guardian*<sup>2</sup> suggests that government officials on suspension live the proverbial 'Life of Riley': earning fat salaries for months, or even years, on end, without having to do any work and without embarrassing action having to be taken against them. She quotes Michael Cardo, an opposition MP: 'Suspension on full pay [is a] creeping phenomenon in the public service'.

According to the Public Service *Senior Management Service Handbook*, an official may be suspended, or transferred, on full pay if there is a suspicion, or even a mere allegation, that a serious offence has been committed and the employer believes that the continued presence of the accused in the workplace may jeopardise an investigation or 'endanger the well being or safety of any person or state property'. A caveat is added: 'A suspension or transfer of this kind is a **precautionary measure that does not constitute a judgment and must be on full pay**<sup>3</sup>. The regulations do require the 'suspender' to notify the 'suspensee' of the intention to suspend and the latter has the right to make representations before the suspension order is implemented. This is an exercise in futility and I am not aware of any occasion when such a representation has persuaded the 'suspender' not to suspend the targeted official.

The act of suspending a person accomplishes two objectives: Firstly, the 'suspensee' is removed from circulation; and secondly, the name and reputation of the targeted person is blackened by the insinuation that 'there is no smoke without a fire'. Modern



**Dr Graham Dominy** is an archivist, a historian and the Former National Archivist of South Africa. He retired on full pension with a clean service record having been retrospectively reinstated with payment of all benefits, after a protracted unfair labour practice dispute initiated by the then Minister of Arts and Culture, Lulu Xingwana. He is currently a Fellow of the Helen Suzman Foundation, an Associate of the Public Affairs Research Institute, a Research Fellow of UNISA and a member of the Human Rights Working Group of the International Council for Archives. His book, *The Last Outpost on the Zulu Frontiers* will be published in April 2016 by the University of Illinois Press.

public service suspension orders are reminiscent of the 'banning' orders imposed by the apartheid government on activists: suspension is imposed by executive fiat, not by judicial process; contact with whole categories of people (colleagues and officials), is restricted or prohibited; movements are restricted ('suspendees' are strictly forbidden from entering official premises) and all access to official communication apparatus is terminated. Humiliation is also heaped on the 'suspendees' with their official ID cards being seized, their offices searched and security guards frog-marching them out of the building in front of gawking staff and even the public.

*At senior levels reporting and recruitment structures have allowed for too much political interference in selecting and managing senior staff. The result has been unnecessary turbulence in senior posts, which has undermined the morale of public servants and citizens' confidence in the state.*

Despite the official reasons for a 'precautionary' suspension, there is a strong tendency to equate suspension with guilt in the minds of some officials responsible for the impartial administration of the legal prescripts. There was an instance at the National Archives where the suspension of two officials, suspected of involvement in irregularities relating to a film festival, was requested so that an investigation could take place without hindrance. The Human Resources section of the Department of Arts and Culture, opposed this on the grounds that it would make the persons to be investigated 'look guilty'. An admission of the Realpolitik behind suspensions if ever

there was one! However, when a suspension suits a political agenda it is implemented with vigour and alacrity.

This leads to consideration of a serious legal and structural problem which Peter Franks has described as the '...lack of a clear definition between political and administrative affairs', resulting in '...tensions and/or collusion between ministers and their directors general'<sup>4</sup>. Ivor Chipkin echoes the same theme, stressing that ministers rather than directors general, control the appointment of officials (Chipkin, 2012: 9). These are not simply isolated comments by academics; the *National Development Plan*, overseen and driven by then Minister Trevor Manuel (backed up by current Deputy President Cyril Ramaphosa), acknowledged that there is an urgent need to stabilise the relationships between politicians and top public service managers:

At senior levels reporting and recruitment structures have allowed for too much political interference in selecting and managing senior staff. The result has been unnecessary turbulence in senior posts, which has undermined the morale of public servants and citizens' confidence in the state<sup>5</sup>.

The government planning blueprint, the *Medium Term Strategic Framework*, warns of a need to 'bring greater predictability and stability to the management of the political administrative interface' and recommends the appointment of a sort of super director general in the Presidency with equivalents in provincial premiers' offices<sup>6</sup>. This is a blast from the past, harking back to the structures of the Tricameral Parliament and even earlier, when the Commission for Administration (now the toothless Public Service Commission), cast a beady eye over the national government and when the four provincial secretaries held sway over all departments of their administrations: roads, schools, hospitals, etc.

It is also clear that the current epidemic of corruption has its origins in conditions inherited from the pre-1994 bureaucracies<sup>7</sup>. In addition, there are legal and structural inconsistencies distorting decision-making processes, chief among these being the





instability at the political/administrative interface which in itself has a corrupting effect. The legal and structural issues engender an atmosphere of fear and uncertainty which makes public servants hesitate to take decisions that they are legally empowered and duty bound to take, but which may be unpopular with their political principals.

This 'turbulence' must be understood in the broader political context. Susan Booysen describes the public service as riddled with 'political factionalism and contestation for positions, corruption and deficient state capacity'<sup>8</sup>. There are economic as well as political advantages to be gained from jobs in the public service: Firstly, there is the ability to earn a salary ranging from the adequate to the very generous and secondly, there is the potential to influence the awarding of government tenders.

The Public Affairs Research Institutes's study of procurement practices describes the public service as an 'open' bureaucracy where politicians retain substantial, lawful discretion over the appointment, promotion and even dismissal of public servants. Politicians can place their own associates in office and collude with them in non-compliant behaviour. The consequences are that, by blurring lines of accountability and impairing correct lines of control, political and personal appointments can negatively affect discipline at all levels of the organisation (Burnette *et al*, 2014: 47).

This often leads to near paralysis, buck passing and the most superficial and cursory attention being paid to major issues (if they are not completely avoided), despite the number of retreats, *lekgotlas*, *bosberaads* and strategic planning sessions, that consume

*The consequences are that, by blurring lines of accountability and impairing correct lines of control, political and personal appointments can negatively affect discipline at all levels of the organisation (Burnette et al, 2014: 47).*



vast amounts of management time. The results are well bullet-pointed, template-populated, PowerPoint presentations tabled as outcomes-based strategic plans and masquerading as deep analysis. All this cogitation and the digestion of many buffet lunches, enables managers to avoid being in the office where they are required to manage and take decisions. Those officials who are prepared to take decisions, are often the ones targeted for suspension and other types of victimisation.

*Suspended investigators and prosecutors attract more publicity than officials in less glamorous positions, but there are also many victims in other parts of the public service.*

## The Cases

The list of victims is lengthy and varied. To name but a few: Glynnis Breytenbach, now an MP; Johan Booysen, an embattled cop in KwaZulu-Natal; Vusi Pikoli, former National Director of Public Prosecutions; Robert McBride, of the Independent Police Investigative Directorate; Anwar Dramat and Shadrack Sibiya of the Hawks. These are the names that have garnered most

media attention. Suspended investigators and prosecutors attract more publicity than officials in less glamorous positions, but there are also many victims in other parts of the public service. In the Eastern Cape there is Farieda Cassojee in the Department of Social Development (now reinstated after years of legal struggles).

In her case, Cassojee was suspended and also faced criminal charges, existing in a netherworld until her case finally made it to court where the charges were promptly withdrawn. There is the current case of Professor Thidziambi Phendla at the University of Venda which suggests that the tactics of suspension and the parallel process of laying spurious criminal charges to get rid of unwanted individuals are spreading beyond the confines of the public service<sup>9</sup>.

In Cape Town the head and deputy head of the Parliamentary Protection Services, Zelda Holtzman and Motlatsi Mokgatla, are on suspension. The reasons given for their suspension are 'very broad and generic' and 'insiders' believe that Holtzman and Mokgatla have been suspended because they objected to the Secretary of Parliament using a blue light on his new car and because they questioned the recruitment of members of the SAPS into the Parliamentary Protection Services; remember the 'waiters' who manhandled the EFF members out of the National Assembly<sup>10</sup>? Then there is the particular case of the Department of Arts and Culture.

Lulu Xingwana, during her period as Minister of Arts and Culture, suspended and peremptorily dismissed more than a score of managers and officials. This was brought sharply into focus with the arbitrary suspension and summary dismissal of the official responsible for the arrangements of an art exhibition at Constitution Hill. This matter was very publicly aired because Xingwana stormed out of the Opening, displaying rampant homophobic emotions and declaring that the exhibition was 'pornographic'<sup>11</sup>. Back in the Department she thundered that the official had 'embarrassed' her and he had to go! A laundry list of the most trifling bureaucratic glitches was trumped up as a charge sheet and the unfortunate deputy director was out on his ear. Fortunately, he was reinstated after Xingwana was reshuffled out of the Department.

Xingwana continued in this vein after she became Minister for Women, Children and People with Disability. In this latter department, she sought external legal advice on how to suspend and dismiss officials without even having to follow disciplinary procedures. One official was fired on returning from sick leave, the disciplinary hearing having taken place while she was in hospital<sup>12</sup>.



A further blunt instrument is the use by departments of legal representation at disciplinary hearings when the intent behind such hearings is the quick and inexpensive disposal of the matter in terms of the prescribed procedures. In order to level the playing field, the 'suspendee' is forced, at his/her own expense, to get legal representation. Not only is this prohibitively expensive but it delays the proceedings way beyond the prescribed time-frames.

Added to this is the appointment of outside and often ill-equipped presiding officers at internal disciplinary hearings so that the desired outcomes are achieved. The relevant regulations allow for the selection of outside presiding officers/chairpersons at internal hearings<sup>13</sup>, which is the norm, rather than the exception. In many cases, unregulated 'labour practitioners', lacking legal knowledge and experience, but paid by departments, preside over hearings. The result is a travesty of the intent of the Labour Relations Act and the Public Service Act and a violation of the constitutional rights of the 'suspendee'.

General Johan Booysen's case is a topical example. The initial allegations against him were horrifying – murder, robbery and racketeering. Booysen was suspended for over eighteen months before facing an internal disciplinary hearing presided over by Adv Nazeer Cassim. He was completely exonerated at the hearing and the High Court in Durban threw out the criminal charges against him<sup>14</sup>. According to the media Booysen has been suspended again, this time with fraud as the potential charge. The media claims that the incident relates to a typing error on a reimbursement form, not even signed by Booysen<sup>15</sup>. The truth is still to be determined, but the tactic is clear and commonly used in numerous other cases: suspend the unwanted individual so that s/he is out of the way, then look for charges.

*Booyesen was suspended for over eighteen months before facing an internal disciplinary hearing presided over by Adv Nazeer Cassim. He was completely exonerated at the hearing and the High Court in Durban threw out the criminal charges against him.*

The 'suspensees' do not lead cushy lives on full salaries while investigators scabble around in the official equivalent of their underwear drawers. They face mounting legal expenses, to be paid out of those 'full' salaries and find it increasingly difficult to maintain clean credit records and undertake routine banking and commercial transactions. They cannot find outside employment without resigning, which would effectively concede the cases against them and deprive them of their pension entitlements. It is a Kafka-esque world!

*Ivan Israelstam has warned, 'Never fire an employee in a fit of rage, it will come back to bite you', because '...emotionally motivated and unreasoned suspensions' are unfair labour practices.*

A minister should **not** play a role in internal departmental disciplinary processes. These are the responsibility of a director general. Furthermore, in disciplinary cases involving deputy directors and lower ranks, a minister is the appeal authority against decisions of a director general. Therefore, a minister (or his/her acolytes), demanding a 'prosecution' is not only acting ultra vires but is contaminating the objectivity of any likely appeal.

### Ministerial advisers

Ministerial advisers have no legal authority over public servants whatsoever, nor should they be able to meddle in administrative matters. The *Ministerial Handbook* is categorical:

There shall be no relationship of authority between the special adviser and the Head of Department concerned. The Special Adviser shall direct his/her inputs to the Executing Authority and refrain from interfering in the management and administration of the department, which in law is the function and responsibility of the Director General. (Annexure F, para 7)

However, there are many cases where ministerial advisers interfere directly in departmental matters because of the grey areas between a minister's and a director general's spheres of responsibility. Lulu Xingwana's then special adviser at Arts and Culture publicly stated that he did not care whether or not there were cases against certain officials: they had to be suspended, hounded until they lost their cars and houses and then dismissed without pension! In one case he even demanded to sit in on an internal disciplinary hearing and departmental legal representatives were hard pressed to stop him. This is a prime example of such grey areas where ministers and their representatives act as though they are above the law.

Another highly publicised case was that of the National Director of Public Prosecutions, Vusi Pikoli. He contends that he was suspended by President Thabo Mbeki to prevent the prosecution of Jackie Selebi, the then Commissioner of Police. Various official reasons were made public, *inter alia*, that Pikoli had erred in granting immunity to organised crime figures in order to get bigger fish and that his relationship of trust with Justice Minister, Brigitte Mabandla, had broken down. The latter was the ostensible reason for his suspension and the eventual enquiry was into his fitness to hold office. Many of the details cited as reasons for the breakdown, dated back two or three years prior to Pikoli's suspension and had not troubled Minister Mabandla or President Mbeki until reasons needed to be founded to sustain the decision to get rid of him<sup>16</sup>.

The breakdown in the relationship of trust is the fallback position when no other charges can be dredged up. Ivan Israelstam has warned, 'Never fire an employee in a fit of rage, it will come back to bite you', because '...emotionally motivated and

unreasoned suspensions' are unfair labour practices<sup>17</sup>. It is a dangerous, shallow and ill-defined position for the 'suspender', provided that the 'suspensee' has the funds, the emotional and legal support and the simple 'chutzpah' to fight back.

Back to the Queen of Hearts: The decision is made to get rid of somebody (Off with his head!), the 'suspensee' is then suspended and effectively got rid of (Sentence First!), the disciplinary hearing is secondary because the 'suspensee' is already out (Verdict afterwards!). The disciplinary process is then dragged out to impose maximum psychological, emotional and financial pressure. Pikoli gives a vivid description of the strain he and his family endured and summed it up as similar to a second initiation with the concomitant uncertainty, pain and life-learning experience<sup>18</sup>.

## Conclusion

The abuse goes on and will continue for as long as the grey areas around the delineation between ministerial and administrative responsibilities and power persist. This is also true of the complete lack of accountability for the gross wasteful and fruitless expenditure incurred by the individuals abusing the suspension system for whatever purpose. Such abuse is a blunt instrument, wielded without thought of the consequences, to achieve nefarious purposes and without consideration for the good of the state to which, in theory at least, the public service is dedicated.

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### NOTES

- 1 I must state that this article focuses on the abuse of the disciplinary procedures in the public service, not on the proper application thereof.
- 2 M&G, July 31 to August 6, 2015
- 3 SMS Handbook, Chapter 7, 6 – my emphasis
- 4 Franks, 2014: 49
- 5 NDP, 2013: 408
- 6 MTSF, 2014 – 2019: 32
- 7 Chipkin & Meny-Gibert, 2012: 102 – 112
- 8 Booyesen, 2011: 358
- 9 Nkosi, M&G: October 9 to 15, 2015
- 10 Heard, *The Witness*: September 9, 2015
- 11 Van Wyk, M&G: March 5, 2010
- 12 Bailey, *Sunday Independent*: January 13, 2013
- 13 SMS Handbook, Chapter 7, 2.7 (3)(b), 6
- 14 Broughton, *IoL*, 2014
- 15 Mashego & Harper, *news24*: August 12, 2015
- 16 Pikoli & Weiner, 2013: 255 – 279
- 17 Pretoria News: September 16, 2015
- 18 Pikoli & Weiner: 284.

### REFERENCES:

- Bailey, Candice: 'Lulu looked to sack staff without hearings'; *Sunday Independent*: January 13, 2013.
- Basic Conditions of Employment Act (No 75 of 1997)
- Booyesen, Susan: *The African National Congress and the Regeneration of Political Power*; (Johannesburg, Wits University Press, 2011)
- Broughton, Tania: 'Top cops "in plot to shaft Booyesen"'; *IoLnews*: September 22, 2014: <http://www.iol.co.za/news/crime-courts/top-cops-in-plot-to-shaft-booyesen-1.1754187>
- Burnette, Ryan et al: 'The Contract State: Outsourcing and decentralisation in contemporary South Africa 2014'; (Johannesburg, Public Affairs Research Institute, 2014)
- Chipkin, Ivor: 'The Politics of Corruption: Two Competing Definitions'; PARI Long Essay, 3, October 2012: 1 – 27
- Chipkin, Ivor & Sarah Meny-Gibert: 'Why the past matters: studying public administration in South Africa'; *Journal of Public Administration*, 47(1), March 2012: 102 – 112
- Constitution of the Republic of South Africa (Act No 108 of 1996)
- Franks, Peter E.: 'The crisis of the South African Public Service'; *Focus Journal of the Helen Suzman Foundation*, 74, November 2014: 48 – 56
- Grant, Laura: 'Suspended officials are bleeding South Africa'; *Mail & Guardian*: July 31 to August 6, 2015
- Handbook for Members of the Executive and Presiding Officers [Ministerial Handbook April 2009]
- Heard, Janet: 'Parliamentary security duo fight back'; *The Witness*: September 9, 2015
- Israelstam, Ivan: 'Never fire an employee in a fit of rage, it will come back to bite you'; *Pretoria News (Workplace)*: September 16, 2015
- Labour Relations Act (No 66 of 1995 as amended)
- Mashego, Abram & Paddy Harper: "Typing error" earns KZN Hawks head a "contemplated suspension" notice"; *news24*, 2015-08-12: <http://www.news24.com/SouthAfrica/News/Typing-error-earns-KZN-Hawks-head-a-contemplated-suspension-notice-20150812>
- National Planning Commission: *National Development Plan 2030: Our Future Make it Work*
- Nkosi, Bongani: "Where do I find justice?" NPA drops corruption charges against professor, who say the "false allegations" ruined her life'; *Mail & Guardian*: October 9 to 15, 2015
- Pikoli, Vusi & Mandy Wiener: *My second initiation: The memoir of Vusi Pikoli* (Johannesburg, Picador Africa, 2013)
- Presidency, The: Department of Planning, Monitoring and Evaluation: *Medium Term Strategic Framework: 2014 – 2019*
- Public Finance Management Act (No 1 of 1999 as amended)
- Public Service Act (No 103 of 1994 as amended)
- Senior Management Service Handbook (Pretoria, DPSA, 2003)
- Van Wyk, Lisa: 'Xingwana: Homophobic claims "baseless, insulting"'; *Mail & Guardian*: 5 March 2010: <http://mg.co.za/article/2010-03-05-xingwana-homophobic-claims-baseless-insulting>

# The Best of All Possible Worlds: Optimism, Pessimism and Nationalism



## Gareth van Onselen

obtained a Masters degree in sociology at Wits University before moving to Cape Town in 2001 and, for the next ten years, worked for the Democratic Alliance in South Africa's parliament. Among other things, he oversaw the party's research and communications, as an Executive Director. At the beginning of 2013 he left the party and moved into journalism. He now writes a column for the *Business Day* and works as a Senior Reporter for the *Sunday Times*. He has published one other title, *Clever Blacks, Jesus and Nkandla: The real Jacob Zuma in his own words* (2014), a collection of controversial quotes from South African President Jacob Zuma, that reveal his private convictions and beliefs. His second book, *Holy Cows: The Ambiguities of Being South African*, was released by Tafelberg earlier in 2015.

*But how conceive a God, the source of love  
Who on man lavished blessings from above  
Then would the race with various plagues confound  
Can mortals penetrate His views profound?  
Ill could not from a perfect being spring  
Nor from another, since God's sovereign king;  
And yet, sad truth! in this our world 'tis found  
What contradictions here my soul confound!*

*Poème sur le désastre de Lisbonne  
(Poem on the Lisbon Disaster)  
Voltaire; December 1756*

Voltaire's poem, a precursor to his magnum opus *Candide*, was written in response to the Lisbon earthquake of November 1755. However, although born of the same tragedy, unlike *Candide* it is a bleak affair – a savagely serious attack on the philosophy of optimism. No irony or ridicule hides between its lines. In it he argues evil is not the will of a benevolent God – an understandable response to sin – but rather that we all are victims, of fate and randomness and misfortune in turn. The nature of the world is a cruel one, he laments, and optimism, rather than being a fountain of hope, is a well of despair in which the ignorant swim.

A book that left an indelible mark on philosophy and literature alike – less so in South Africa, where it is rarely cited – *Candide* is a more light-hearted affair. Nevertheless, it is no less effective an assault on optimism. Like *Animal Farm* long after it, its simple satire cut deep. Certainly it left the philosophy of optimism bleeding everywhere. With it, its central tenet – that we live “in the best of all possible worlds” – was dealt a defining blow.

These days optimism is no longer a coherent philosophical theory that is practised in any serious way. It is generally regarded as little more than an attitude, a hopeful temperament. And, rather than being exclusively focused on the here and now, it tends towards the future: an allusion to better things still to come. It has become more of a belief than an analytical tool. In the new South Africa, it found a playground ideally suited to the particular outlook it offered. It thrived, fairly hardwiring itself into the national disposition.

All through the 1990s, in grand ideals like “the rainbow nation” and “the African renaissance”, a sense of optimism fed off and fuelled the belief that the country, even the continent, was moving inextricably away from a dark past and toward an ever-brighter future. But the 2000s brought with them a series of profound problems, no less grand in scale or significance. Each would reach full maturity



in the 2010s. As a result, today the increasingly prevalent assumption is that the country's once bright future is now at serious risk of having its guiding light snuffed out completely.

At the centre of this shift in the national mood sits the African National Congress. Politics suffers a somewhat schizophrenic relationship with optimism. On the one hand, any political party needs to advocate for a better tomorrow if it is to successfully enthuse voters; on the other hand, a party must be able to defend its record and make a case that, as a result of its influence, we do indeed live in the best of all possible worlds. Nationalistic thought, however, particularly when practised by a revolutionary movement, has one additional obstacle it must surmount. To be convincing, it needs to instil a sense of inevitability; for if it is a pure and unadulterated extension of the will of the people, it cannot ever be anything but successful. Were it otherwise, the people themselves would be wrong and its own *raison d'être* rendered inherently contradictory.

*The parallels between the ANC's conception of itself and philosophy of optimism Voltaire was so critical of, are more explicit than you might think. For one, the party believes it is indeed some kind of benevolent, divine force for good. It is a religious metaphor it does not just indulge but actively encourages.*

The parallels between the ANC's conception of itself and philosophy of optimism Voltaire was so critical of, are more explicit than you might think. For one, the party believes it is indeed some kind of benevolent, divine force for good. It is a religious metaphor it does not just indulge but actively encourages.

"The organisation is Biblical in every respect", ANC secretary-general Gwede Mantashe has said, "The number three is very important, as is the number 12. Jesus had 12 disciples and in its first 100 years the ANC has had 12 presidents. We also had our own Moses. In 1993, a week after the assassination of Chris Hani, Oliver Tambo died; it was after that, in 1994, that Nelson Mandela led us through the river."

Whether or not Mandela made it to the other side is still up for debate. At least, outside the ANC it is. Inside the party, a different universe of delusion exists. Look at it from a distance and the ANC has created an impenetrable bubble, inside of which 70% of news is good and its performance has been stellar on every conceivable front, regardless of the problems it has created. Thus, it has a good story to tell. Critical introspection, that is, the ability to question not just one's behaviour but firmly held beliefs, is not easy for any political party. They are fundamental beasts. But, for the ANC, the belief has become the lens through which everything is interrogated and, inevitably, it shows only progress.

As the idea of optimism has evolved over time, it has developed a number of adjuncts, "blind" optimism being one of the more common. But it is redundant if you believe this world is the best of all possible worlds. The idea is already absolutist.

It has been a painful process for the ANC, watching its bubble shrink over time. There was an extended period when it engulfed much of South Africa within it.

James Myburgh has written of the Panglossian South African mood during Thabo Mbeki's tenure, a period in which the former President was able to feed, vampire-like off the seemingly limitless good will he had inherited. He says:



“Whatever the ANC of Mbeki did was for the best. We lived in the best of all possible countries, with the best of all possible leaders, surrounded by the best of all possible advisors, pursuing the best of all possible policies, with the best of all possible constitutions, overseen by the best of all possible courts.”

*They wander the streets, these apologists, their emotional baggage in tow, directionless. Many of the old party faithful, from Trevor Manuel to the late Kader Asmal, seem to suffer a similar crisis of conscience. What contradictions here my soul confound.*

But that is no longer the case. The current Zeitgeist would have it we live in the worst of countries, with the worst leaders, surrounded by the worst advisors, pursuing the worst policies. Only the constitution and, to a lesser degree, the courts, have been exempt. The Constitution can still be said to resonate with some small amount of optimism; although the assault on it, as a compact that betrayed rather than liberated, is starting to find an increasingly enthusiastic audience.

Among certain left-leaning liberals, so quick to hitch their moral bandwagon to the ANC of Mbeki, so quick to detach it when the road became more treacherous, this shrinking has produced a cohort of modern day apologetics. The ANC has problems, they argue, “challenges”, but its soul remains pure and our goal is to aid and to understand, to help it back onto the right path so that we may once again hitch our wagons to it. They wander the streets, these apologists, their emotional baggage in tow, directionless. Many of the old party faithful, from Trevor Manuel to the late Kader Asmal, seem to suffer a similar crisis of conscience. *What contradictions here my soul confound.*

For those brave few, led by the Democratic Party (DP), who bucked the trend in the 1990s and warned that this was not the best of all possible worlds, the price was a high one: to be labelled eternal pessimists, disinterested in hope, forever animated by despair. But their wisdom is now almost universally accepted. When the DP first identified, explained and illustrated the ANC’s policy of cadre deployment, in a document titled ‘All Power to the Party’, it was derided as McCarthyist. Today

that policy is a stock standard component of so much criticism aimed at the ruling party and its administration of the State.

Ironically, the Democratic Alliance (DA) has become the torchbearer for contemporary optimism. It describes a utopian South Africa in the year 2029, when ten years of DA governance will have transformed the country into a prosperous, effective modern democracy. To date it has provided no substantial policy framework in support of that vision. No doubt it will come, but it is remarkable the extent to which it is able to ride this rhetorical wave, given the depth and breadth of our collective despair. Perhaps it is because, inherent to it, is a prophecy of doom: *don't embrace our vision and the end is nigh*.

Desperately the ANC has tried to, once again, extend its bubble. It is locked into a way of attrition with the media, at whose feet it lays the blame for the majority of its bad public reputation. It seems to have made some progress too. The Independent Group now practices a kind of news-by-social work, as does the SABC. Endless stories of personal experiences, of personal truths and individual narratives designed to serve as metaphors for those sentiments no hard evidence can be found to illustrate. Yet, such is the extent of the decay, even it cannot hold back the tidal wave of negativity from its front pages. You have to search long and hard to find that 70% these days.

*Victimhood is for many a way of life. Difficulty is not something to be overcome, but to be endured; any small freedom won is a relative miracle against which every hardship can be favourably measured and endured.*

But it is the voting public at large that is most interesting. The ANC got 62% in the last election. That, by anyone's standard is a healthy majority. Are the masses, particularly the ANC's core, rural constituency, optimistic about the future and the ANC? There doesn't appear to be much evidence for it. Service delivery protests continue to escalate, the alliance is cracking and fracturing, water, electricity and roads infrastructure crises hamper the quality of life, unemployment remains disturbingly high and corruption is particularly acute, especially at local government level, where politicians are now almost synonymous with the disease.

No, with the death of South African optimism, something else remains in its wake, a kind of prevalent fatalism. At the crux moment in the movie of the same title, Jack Nicholson asks, "is this as good as it gets?" For many the answer would seem to yes. That does not mean there isn't resentment and anger; that too is on the rise. But it pales in comparison to the emotional apathy of the acquiescent majority. The Economic Freedom Fighters, ostensibly the flag bearers for this new rage could manage just 6% in 2014. For the rest, it was business as usual.

The great divine and benevolent force for good might well have been revealed to be as ineffective as it is self-serving, but it did do one thing in its favour: in systematically denuding South Africa of hope, it revealed much about the national character. Victimhood is for many a way of life. Difficulty is not something to be overcome, but to be endured; any small freedom won is a relative miracle against which every hardship can be favourably measured and endured.

Quite what Voltaire would make of all this is an interesting question.

Many are coming to the conclusion that the ANC is not the benevolent force for good they once thought it was. That, despite freedom and a Constitution,

fate continues to deal death and despair. Certainly we have had our fair share of Lisbon earthquakes on its watch. With this, optimism has, for the most part, been vanquished from contemporary public discourse. It is now found primarily in the dreams and aspirations of the opposition, the insular world of ANC communication or the misguided apologetics of those that yearn for an ANC that does not exist; some would say, that never did.

*Certainly that will be the defining test for the students, who were relatively slow to focus their attention on those who actually hold the purse strings, but they got there in the end and that is deeply significant. Time will tell.*

In its wake it has revealed a far more fundamental and disturbing aberration: Fatalism. Not just the acceptance that some divine force can be excused its transgressions, but an inability to identify them as transgressions in the first place. Not that there is no effect without cause, only that there is no cause. There is only effect.

For all the self-harm South Africa's myopic optimism during the age of Mbeki inflicted, the illusion that there was an ultimate ideal was kept alive. A reason, a cause, to look up. But few people's heads are raised these days. They are cast down, at the ground, where they can see their own feet firmly planted.

"A hundred times I wanted to kill myself, but always I loved life more. This ridiculous weakness is perhaps one of our worst instincts; is anything more stupid than choosing to carry a burden that really one wants to cast on the ground? To hold existence in horror, and yet to cling to it? To fondle the serpent which devours us till it has eaten out our heart? —In the countries through which I have been forced to wander, in the taverns where I have had to work, I have seen a vast number of people who hated their existence; but I never saw more than a dozen who deliberately put an end to their own misery".

So says an old woman in *Candide*, as she sets out her misery and contemplates suicide.

Perhaps the student protests that have engulfed the country are a sign of things to come, an indication that this malaise is generational. It is too early to tell. The test of it all will be the next set of elections. Certainly that will be the defining test for the students, who were relatively slow to focus their attention on those who actually hold the purse strings, but they got there in the end and that is deeply significant. Time will tell. The protests are as much a rejection of victimhood as they are an embracing of agency. For anyone looking for South African optimism to rise, these are the kinds of ashes they should be looking in for any sign of a Phoenix.

We endure so much in South Africa. For all the pretence at optimism, it is our real, defining characteristic, the ability to endure. Whether it is a virtue or a vice can be argued both ways. One thing it certainly isn't, is a reason to hope for a better tomorrow or to vote for one. Not the best of all possible worlds but a world without possibility.

# Language, Politics and the Power of Beginning

*'[T]he beginning is like a god which as long as it dwells among men saves all things.'*

Plato, *Laws*, 775

## Introduction

Moments of crisis, social upheaval or political conflict are revealing. They provide us with clues about what people value, what they think worth pursuing, how they think their goals should be pursued, and how they view the world. In a phrase, our words and our deeds both constitute us as persons and disclose who we are to the world. So, when we are trying to understand ourselves, others and our community, one place that we should look is to such moments—that is, to the words and the deeds that constitute and surround such moments.

Much has been and will be written about the student protests that gripped South Africa during October and November this year. How will a 0% increase in university fees affect the state's capacity to satisfy needs relating to housing, healthcare and basic services? Does the ANC's response set a precedent for how political and social demands and disagreements will be raised and resolved in the future? Are the 'born frees' rejecting the terms and conditions agreed to by their parents in 1994?

Many will ask and answer questions of this type over the coming months and years. In this piece, I put them aside. Rather, I consider a different type of question, one that concerns the importance and influence of ideas.

## Language: describing and justifying the student protests

What beliefs were revealed during the student protests? Many, of course, but an important one seems to be a fairly widespread commitment to the significance of and relationship among the ideas of 'structures' or 'systems', 'power', 'bodies', and 'spaces' and 'minds' that have been 'colonised'. These terms cropped up regularly on social media and more traditional fora, in the form of opinions pieces written by students, protestors and supporters. People insist that structures are everywhere; they talk about violence against bodies; they remind us that power concedes nothing without demand; and they point out that the struggle to decolonise minds and spaces is not easy.

These terms and this terminological abstruseness will be familiar to some. We find these catchphrases in certain strands of post-modern and post-structuralist theory. These theories have much to commend them. They provide us with important insights and contain arguments that we cannot ignore. Much of what they say either disabuses us of critical mistakes or forces us to rethink our own assumptions. At a time, though, when thousands of students are exercising their unique individualities, their freedom, in pursuit of common goals, reliance on these



**Matthew Kruger** holds a Bachelor of Laws from the University of KwaZulu Natal, a Bachelor of Civil Law from the University of Oxford, where he was a Chevening Scholar, and recently completed, pending his viva voce, a Master of Philosophy in Law at the University of Oxford. Matthew, who has recently returned to Johannesburg, is a Legal Researcher at the Helen Suzman Foundation.



theories is disconcerting. This is because the underpinnings of these theories share a metaphysical belief or commitment, the logical and conceptual implications of which are not always appreciated and which can be morally unacceptable.

Like their Hegelian and Marxist ancestors, some strands of post-modern and post-structuralist thought believe that people, individually and collectively, are at a fundamental level subject to facts that are external to their 'free will's'.

Whereas Hegel spoke of absolute spirit and Marx spoke of the material conditions of society,<sup>1</sup> our contemporaries now emphasise 'structures', 'systems' and 'power'.<sup>2</sup> They believe that structures or systems emerge from relations among people who are always unequal in some way. These unequal relations, which take the form

*Politics is a process of willfully exercising power, where 'power' is understood to capture the use of force, in pursuit of a desired end. On this reading, therefore, politics is a kind of will to power.*

of word and deed, generate 'power-structures'. These structures by their nature exert coercive force on and over people. This power (read, 'coercive force') is embodied in and exerted by institutions and through language (or 'discourse'). From these premises, some conclude that our thought-processes are the 'products' of such structures. They argue that our nature as embodied beings, living in the grip of these structures, determines the content of our particular

moral and political ideas. They believe that existing social and political states of affairs owe their genealogy to, *and so are products of*, previous states of affairs. With these conclusions, they elevate the significance of process to such heights that past, present and future all have an inevitable continuity.

As noted above, there is much that is of value in these theories. Indeed, I try to rehabilitate some of these ideas in the penultimate section below. But, as an ensemble, they give us cause for concern. Even if we assume that the students and commentators who speak in this way do not subscribe to a hard version of determinism—that is, to the belief that our actions are automatic consequences of processes, of forces, external to our free will—the sustained emphasis on these ideas betrays morally intolerable views of politics and humanity. Let me explain.

## Two conceptions of politics

Von Clausewitz once said that war is the continuation of politics by other means.<sup>3</sup>

This aphorism, out of context at least, can be understood in two ways. First, it may convey the idea that war is a kind of politics and that politics can be pursued with violent means rather than, say, debate and diplomacy. Second, it may be understood to mean that where the conflicting interests of different people are pursued by means of war, this type of interaction can no longer properly be described as political.

Von Clausewitz subscribed to the first of these interpretations. On this reading, politics is conflict of any kind involving a group of individuals. It entails groups of people imposing their 'will' on others, with the chosen means for doing so depending on the nature of a particular situation. Sometimes, reasoned debate will be the most effective method for doing this. Other times, it will be a 'technical', 'procedural', 'formal' or 'legal' obstacle in pursuit of the desired end. Politics is a process of willfully exercising power, where 'power' is understood to capture the use of force, in pursuit of a desired end. On this reading, therefore, politics is a kind of will to power.

This ‘will to power’ understanding of politics is mistaken. Whilst mistaken, it is right in one respect. Politics is characterised by conflict. But, this is too broad, for not all conflict is political. Rather, politics is conflict of a particular kind. It is the conflict that results from interaction of many individuals who belong to a single community.

There are two points to note in this regard. First, political conflict occurs among a plurality of individuals. Second, despite being individuals, those engaged in conflict share a common identity, for they constitute a ‘We’. This has important implications, one of which is that politics is characterised by the recognition of people as agents – that is, recognition of them as people who make choices about what to do, who weigh up different reasons, and who can, if asked, justify these reasons to each other. Recognition of this type, when coupled with the fact that people must conceive of themselves and others as being members of a community, means that politics is characterised by the mutual exchange of reasons.

*When politics is understood as a clash of produced bodies within a reified structure or system, it is not a big leap to the conclusion that violence is an instrument that can be used in pursuit of political ends.*

On this conception, therefore, politics is in essence the exchange of reasons. Since, to adapt a phrase of Cicero’s, all falls silent in the face of violence, politics and violence are by nature antithetical.

### The objectification of politics

This piece is not the place to extend the claim that politics is best understood as the mutual exchange of reasons. In this section, though, some features of the will to power conception, as well as possible consequences of this conception, which cast serious doubt on its plausibility and desirability, will be considered. In doing so, we see that some of the language used to describe and justify the protests is consistent with the idea of will to power.

As noted, some people in describing and justifying the protests liberally use terms like ‘power’, ‘structures’, ‘systems’, ‘bodies’, and ‘colonised spaces’ and ‘minds’. Some conceive of ‘structures’ as reified—meaning, concrete—objects that exist independently of and outlast the moments of decision and action that constitute them. Sometimes structures are personified, given minds and intentions of their own. Some people, but not all, think that our ideas, values and even identities are products of what social norms ‘say’. They reject the notion that these aspects of our humanity are to some extent at least contingent on the choices that each of us freely and willingly make. For some of the protestors (or, those who speak in their name) and commentators, *our specific humanity is never chosen, but is produced.*<sup>4</sup>

When politics is understood as a clash of produced bodies within a reified structure or system, it is not a big leap to the conclusion that violence is an instrument that can be used in pursuit of political ends. When our disagreements are understood as problems concerning objects—that is, produced bodies and produced systems—rather than complex problems about how to regulate the disagreement that inevitably arises from the interaction of a plurality of subjects (meaning, autonomous agents), it is in fact logical to use violence. This is because people, understood as objects, do not change their minds through the exercise of free and deliberate choice. Like helpless scattered rods, we must be bundled; we

must be molded, or if need be fractured and cut;<sup>5</sup> and when sufficiently sharpened, we must be used in the pursuit of some higher, desirable end. In this world, what matters is the ‘objective’ and the ‘efficacy’<sup>6</sup> of the means chosen in pursuit of that objective. In a phrase, essentially adopted by the EFF’s Commissar Mbuyiseni Ndlozi in a blunt and intellectually honest article about the student protests, the end will always justify the means.<sup>7</sup>

On this conception of politics, we come to see violence everywhere. When we think that we live in a world of omnipresent, reified and intentional, but anonymous, systems of forceful power, we might even come to see little difference between the ‘violence’ of ‘outsourcing’ and the violence of beating, burning, raping and killing.<sup>8</sup> In this world, violence quickly comes to be seen as a normal, natural, instrument for effecting political change. And, since violent power-structures are everywhere, the most effective response to these structures will often be a strategic, but indiscriminate, counter-attack against *anything* and *everything* that is perceived either to have or support such power.

*Because we have only lived our particular experience we cannot, except through accident, ever act on decisions that are universally valid and just. Indeed, talk of universals might itself be an illusion; a hangover from outdated liberal and humanist ways of thinking. After all, truth is power.*

Whereas violence becomes natural, reasoned debate may be seen as pointless. If it is futile to debate with forces of nature—with mountains that block the paths of new roads, or hurricanes that threaten to tear apart our communities—is it not equally pointless to debate with the forces embodied in structures? If so, ultimately there is just one way to deal with the colonial structures that in part constitute our community and the colonised minds that occupy its spaces. We overcome the power ‘immanent’ in structures and in minds with force. Instead of debate, we silence, exclude, remove or suppress people or things we perceive to be enemies. In the end, we will

not negotiate with—we will not tolerate, let alone respect—those who are not ‘one of us, one of us’.

In this world, because we are *produced*, we do not see our ‘enemies’ as subjects who are capable of transcending—through imagination and empathy—their given station, in a way that allows each of them to identify with others. Our duty as good post-modern citizens is not to debate or provide reasons for our actions and views: ‘I am not one of those who may be questioned about their Why’.<sup>9</sup> Rather, our duty is just to ‘recognise’ and accept what others say about themselves. We accept without question because we cannot escape our own gender, race, class, ethnicity, etc. Because we have only lived our particular experience we cannot, except through accident, ever act on decisions that are universally valid and just. Indeed, talk of universals might itself be an illusion; a hangover from outdated liberal and humanist ways of thinking. After all, truth is power.

We can almost hear these theorists, crying out in aphoristic ecstasy: ‘Oh my friend, man is something that must be overcome!’<sup>10</sup> Or, if you are a student at an Ivy League school in the US, you might hear the shriek of another student, when confronting someone who disagrees with their personal *Weltanschauung*: ‘Why the fuck can’t you accept that position!’<sup>11</sup> And, if they do not accept that position, or if they are perceived as not accepting that position . . . well, you might then hear someone calling for ‘some muscle’.<sup>12</sup>

These are some of the potential consequences of this post-modern talk about and conceptions of ‘power’, ‘structures’, ‘systems’, ‘bodies’ and ‘colonised spaces’ and ‘minds’.

### Politics as the exchange of reasons

Despite all of this, how many people can honestly say that they were not inspired by the efforts of many thousands of students to effect political and social change? Their actions, largely peaceful, reveal that the majority of them believe that they have an autonomous power to change the world; that the source of this power is *within* each of them, as free-willing agents; and that violence is not necessary or inevitable. The language chosen by some who claim to speak for these students does not reflect this exercise of agency. The narrative, in short, does not fit.

The fact that the narrative does not fit the facts, however, does not mean that we have no reason to be concerned. We must beware the intellectual who assumes the ‘responsibility’ of speaking ‘for the people’, who tells us what the people ‘really mean’. Whilst in the short-term they rarely influence the exercise of democratic political power of the type witnessed during the protests, over time their concepts and their narratives can be destructive.

When we view people and politics as products, we *disempower* the people sought to be empowered through mass action. Chained to the past, to structures, to the power immanent in these structures, to our colonised minds and to colonial spaces, we are thought unable to begin something absolutely new. When we act, alone or in concert, we may have the sense that we are free, but ultimately we are always subject to the cunning, the ruse, of that which lies beyond us. This is the tragic irony of the conceptions of humanity and politics underlying much of the language describing and justifying these democratic and legitimate protests.

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To avoid all of this, we must emphasise the centrality of autonomy and the exchange of reasons to politics. When our emphasis shifts in this way, it becomes clear that although structures—the *bête noire* of post-modern and post-structuralist theories—are real, their existence is coextensive with and dependent on the interaction of differently situated but equal and autonomous persons. Hannah Arendt makes a similar point when she says:

Just as there exists no human being as such, but only men and women who in their absolute distinctness are the same, that is, *human*, so this shared human sameness is the *equality* that in turn manifests itself only in the absolute distinction of one equal from another. . . . If, therefore, action and speech are the two outstanding political activities, distinctness and equality are the two constituent elements of political bodies [or, ‘structures’].<sup>13</sup>

On this approach, we see that structures are better understood as ‘activities’, rather than products, that are constituted in the interaction of equal, rather than unequal, individuals. Understood in this way, we see that contrary to the theorists discussed in this paper, force and power are quite different. Whilst both create reasons for action, the reasons are generated in different ways. Reasons created by the exercise

of power emerge from the recognition of the autonomy and equality of others—that is, from the exchange of reasons—whereas reasons created by force emerge from the treatment of others merely as means. If so, the conception of politics that I termed ‘will to power’ is a misnomer. Rather, it is a politics of force; a politics of unfreedom.

*First, in these societies, the oppressor always recognises, in some way or another, the autonomy and the equality of the oppressed. Without this basic recognition, the society would be totalitarian and these phenomena would not exist.*

As noted, structures emerge *in* the interaction of autonomous persons; they come into *being* when people engage each other as agents. Thus, they are not physical but normative phenomena. The same is true for social and political ‘spaces’. If the ‘space’ about which students so often talk is normative, rather than physical, in nature this means that it belongs to that group of phenomena that ‘never outlast the moment of their realization’.<sup>14</sup> In other words, because spaces (like structures) do not survive the fleeting moments of the actions—the exchange

of reasons, through word or deed—that constitute them, they are characterised by perpetual appearance, disappearance and reappearance.

The normative nature of ‘space’ has a number of important implications. First, the existence of the spaces that characterise our communities is not the result of the deeds of those now dead.<sup>15</sup> Second, because space emerges from or in activities, it is not a finite object. Third, public spaces—just like the life of the mind—cannot *be* controlled, owned, dominated or colonised.

So, for example, in universities there is never competition over space, for space is not a limited resource. Rather, there is a competition and exchange of ideas among those people *now* engaging as free and equal beings. It is in this sense that our universities ought to provide ‘intellectual spaces’, *in which* no ideas are ‘safe’ from criticism. When a group does not engage others in this way, but controls or dominates them (or, after managing to halt this form of interaction, then itself controls or dominates, through physical coercion or by, for example, ‘Africanising knowledge’<sup>16</sup>), their words and deeds work to undermine or destroy the space—that is, the intangible relation arising in our interaction as agents—that exists between them and those now subject to their force. The effect of domination and control is to suffocate ideas and exterminate the identities that did exist in the now extinguished space.

Where a group is totally subject to the domination of another, structures, spaces and power do not exist—at least as between the oppressor and the oppressed. The totality of the rule, which by definition is purely violent, means that these phenomena *cannot* exist. In these societies, in the Gulags and the concentration camps, where survival is paramount, self-defense will often be the only way to survive.

Outside of totalitarian regimes, the political phenomena of structures, space and power can co-exist with injustice. Three points must be noted regarding unjust—albeit not totally unjust—societies. First, in these societies, the oppressor always recognises, in some way or another, the autonomy and the equality of the oppressed. Without this basic recognition, the society would be totalitarian and these phenomena would not exist. Second, the structures, power and spaces that exist in these societies are not themselves unjust. Since equality is a ‘constituent



element' of these phenomena, injustice is contrary to their natures. Third, there is only one way to end these forms of injustice whilst retaining the structures, spaces and power that do exist and are essential to the constitution of our social and political identities. When we confront these forms of injustice, we must appeal to the oppressor's basic recognition of the equality and autonomy of the oppressed. In doing so, we must facilitate the exchange of reasons among *all* people. This is necessary because when violence *alone* is used, we might dethrone the oppressor, but doing so will always be at the expense of our own existential annihilation. All falls silent in the face of violence.

### Conclusion: the power of beginning

We must reject the way of thinking about people and politics that is captured by much of the language that has been used to describe and justify the student protests. We must adopt a conception of politics that emphasises autonomy and the exchange of reasons—that is, our unique capacity as differently situated individuals *to come together*, deliberate and decide what *we* truly should do.

*'There is no way to undo what has been done, no way not to suffer it—but you can do more than merely suffer it: you can take it as your point of departure. You can, in short, begin.'* The power to change the world, to begin something new, dwells within each of us.

It is this power of women and men to free themselves from the chains of the past, to begin something that is entirely new, that is captured in Plato's claim that 'the beginning is like a god which as long as it dwells among men saves all things'.<sup>17</sup> In South Africa, where the wrongs of the past remain with us, where the hurt is still real, recognising and harnessing this potential is vital. As Patchen Markell puts it: 'There is no way to undo what has been done, no way not to suffer it—but you can do more than merely suffer it: you can take it as your point of departure. You can, in short, begin.'<sup>18</sup> The power to change the world, to begin something new, dwells *within* each of us.

In many respects, South Africa is a manifestly unjust society. But, it is not totally unjust. Only when we recognise that the injustices that do mark our society are the result of the choices that we *freely* make, and remake again and again, will we be in a position to eliminate them. Only when we commit to talking and listening to one another—to all people, who in their absolute distinctness are the same—will we be able to move forward, together, as a community.

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\* I must extend my thanks to Rachel Robinson and Jacob Reynolds, as well as my colleagues at the Helen Suzman Foundation, for their contributions towards the development and correction of my ideas in this piece. The mistakes remain my own.

#### NOTES

- For a very recent example of the determinist tendencies that accompanies Marxist thought, see Jeff Rubin, 'The shadow of liberation: Representivity and the commodification of race' (last accessed at: <http://www.dailymaverick.co.za/opinionista/2015-11-13-the-shadow-of-liberation-representivity-and-the-commodification-of-race/#.VKW1jdRKM8>, on 13 November 2015), where he argues that 'it is not colour that determines the way police, or management, behave, but their role in the social division of labour in class structured societies'.
- Standard examples are Michel Foucault and Judith Butler.
- Carl von Clausewitz, *On War* (Michael Howard and Peter Paret (trs.), Princeton University Press, New Jersey 1984) 87.
- The idea that humanity is 'produced' is a central theme in the influential and powerful work of Judith Butler, *Undoing Gender* (Routledge, New York 2004). It is borrowed from Marxists, who speak about 'class societies' that 'naturally reproduce themselves in all the particularities of form' (cf. supra note 1).
- Michel Foucault, *The History of Sexuality: The Will to Knowledge* (Robert Hurley (tr.), Penguin Books, London 1998) 96.
- Ibid* at 102.
- See Mbuyiseni Ndlozi, 'The #FeesMustFall movement, Liberalism and the Pursuit of Peace' (<http://www.dailymaverick.co.za/opinionista/2015-11-09-the-feesmustfall-movement-liberalism-and-the-pursuit-of-peace/#.VKGm9lrKM8>, last accessed on 10 November 2015). Wielding Robespierre's pen, Commissar Ndlozi argues against the ideas of peace, reason and dialogue, instead advocating passion and violence. On the ends justifying the means, he says: 'Both the media, and the general liberal crowd, began to patronise an entire movement, which from the start expressed itself with full determination that nothing, not even the police will stop it, from achieving its ends.' In the same vein, he later says that the 'legitimacy of the protest is the power of its mission'.
- See Sarah Godsell, '#WitsFeesMustFall Op-Ed: On violent protest and solidarity' (<http://www.dailymaverick.co.za/article/2015-10-19-witsfeesmustfall-op-ed-on-violent-protest-and-solidarity/#.VjJslNlrKM8>, last accessed on 3 November 2015).
- This phrase comes from Friedrich Nietzsche, *Thus Spoke Zarathustra* (R.J. Hollingdale (tr.), Penguin Books, New York 1969) 149.
- Ibid* at 83.
- See [https://www.youtube.com/watch?v=9IEFD\\_JVYd0](https://www.youtube.com/watch?v=9IEFD_JVYd0) (last accessed on 9 November 2015).

- 12 Austin Huguélet and Daniel Victor, "'I Need Some Muscle': Missouri Activists Block Journalists' ([http://www.nytimes.com/2015/11/10/us/university-missouri-protesters-block-journalists-press-freedom.html?\\_r=0](http://www.nytimes.com/2015/11/10/us/university-missouri-protesters-block-journalists-press-freedom.html?_r=0), last accessed on 12 November 2015).
- 13 Hannah Arendt, *The Promise of Politics* (Schocken Books, New York 2005) 61-2.
- 14 Hannah Arendt, *Between Past and Future* (Viking Press, New York 1961) 44.
- 15 So, for example, when Cecil John Rhodes died, his participation in the constitution of these spaces ceased. Obviously, this does not mean that some of his deeds do not still exert an influence over the lives of South Africans. But, the past (and its influence on the present) is a fact, not an action. Ontologically, it is different to phenomena like structures, power and space. This difference between the nature of facts and actions means that they present us with different challenges. The failure to recognise this difference hinders efforts to resolve these challenges and also has consequences of the type explored in this paper. Cf. Elias Phaahia, 'Transforming the Socio-Academic Space in the University', 2015 (76) *The Journal of the Helen Suzman Foundation*, 54.
- 16 On the desire to 'Africanise knowledge', see Shose Kessi, 'Time to decolonise our universities' (<http://www.iol.co.za/sundayindependent/time-to-decolonise-our-universities-1.1843798>, last accessed on 9 November 2015). As pointed out to me by Tony Kruger, my father, there is an irony here, for the concept of 'knowledge' with which these writers are working was first shaped by European and US—that is, non-African—scholars.
- 17 Plato, *Laws*, 775, quoted in Dana Villa, *Public Freedom* (Princeton University Press, New Jersey, 2008) 105.
- 18 Patchen Markell, 'The Rule of the People: Arendt, Arché and Democracy' *American Political Science Review* 100, no. 1 (2006) 1-14, 10.

# When Politics and Law Collide: Combatting Corruption in South Africa

## Reflections on the Work of the Helen Suzman Foundation in Creating Independent Institutions

### Introduction

*The Helen Suzman Foundation (HSF) has maintained an active public-interest litigation 'practice' since its original foray into the courtroom some five years ago.<sup>2</sup> Since then, what was originally an ad hoc decision has become a regular and useful mechanism of intervention within the suite of operations that the HSF uses to protect and promote the rule of law. As a policy think-tank, first and foremost, our hesitancy to rely on litigation to influence governance is understandable. We would prefer that 'bad' decisions are not made in the first place. But, where they are, it is still preferable that the policy process is susceptible to reasoned discourse and influence. Regrettably, that is not the case and, too often, policy issues have to be settled in court. As such, it would be remiss of the HSF to let its recalcitrance contribute to the erosion of our hard-won constitutionalism.*

Accordingly, the HSF has sought to intervene where the independence of constitutionally-protected institutions has been threatened by political interests. These institutions are a necessary check and balance on the exercise of power. Given our political context, where the ruling party enjoys an impregnable majority, the work of those institutions takes on special meaning. At the heart of protecting them and, by extension, the public, is whether we uphold the high degree of transparency and accountability we opted for in 1994.

### The ANC's History and what that means Today

The African National Congress (ANC) National General Council (NGC) is always worth paying attention to. Apart from allowing hotheads within the party to let off steam, it can also, sometimes, provide a useful insight into the country's policy trajectory for the next few years. The recent gathering at Gallagher Estate, where President Jacob Zuma flatly refused to seek a third term, was no different. Curtailing media freedoms, reducing the number of provinces, and withdrawing from the International Criminal Court all speak to a common theme: the ANC is hellbent on shutting down sites of opposition. Whether this, as DA National Spokesperson Phumzile Van Damme, MP, suggests, is evidence of an "ANC in decline"<sup>3</sup> is debatable. What many fail to give proper account to is the ANC's history.

The ANC's attempts to centralise power should come as no surprise. Its supposed reaction to declining political fortunes may coincide with its ideological mission – as encapsulated by the National Democratic Revolution – but, it does not explain it.



**Kameel Premhid** is a Researcher at the Helen Suzman Foundation. He holds a BA and LLB from the University of KwaZulu-Natal, Durban, and recently completed an MSc in Education (Higher Education) at the University of Oxford where he was a Rhodes Scholar. Kameel has recently returned to Johannesburg and hopes to pursue a career at the Bar

As Dr James Myburgh, writing for Politicsweb,<sup>4</sup> puts it:

*“One of the key themes in racially-minded Western commentary on Nelson Mandela’s passing has been the United Kingdom and United States governments were wrong to believe, in the 1980s and before, that the ANC was not a Marxist-Leninist organisation ... (suggesting) that the Western powers had been hoodwinked by Pretoria into believing that the ANC was a communist organisation.*

*Essentially what these authors are doing is taking the results of the largely liberal democratic negotiated settlement in the mid-1990s, which took place after the fall of the Soviet Union, and then projecting it back in time ... This despite the fact that there is no serious scholar of the ANC-in-exile (or of today for that matter) who would argue that the liberation movement was not profoundly influenced by Marxist-Leninist ideology or that the fall of the Berlin wall did not come as a huge shock to its cadres. ANC and SACP leaders of that period are themselves quite open about this.*

*To say this influence was important, and is enduring, opens the door to (understanding) a number of other misconceptions”*

*Corruption blurs the lines between party and state, and attacking independent institutions serves to centralise power. Holding onto power is essential to achieving the ultimate goals of the revolution.*

Chief among those is the mischaracterisation of corruption. Contrary to popular belief, it is not merely about wealth accumulation. While greed may partially explain it, the systematised use of corruption as a political tool by the ruling party points to something more. Arguably, given Myburgh’s characterisation of the ANC’s origins, the ANC may be predisposed to corruption. Corruption blurs the lines between party and state, and attacking independent institutions serves to centralise power. Holding onto power is essential to achieving the ultimate goals of the revolution.

## The Meaning of Independence

While the Constitution of the Republic of South Africa acknowledges independence, it does not explicitly define it. At best, our understanding has been derived from combining specific concepts (such as the “separation of powers” and “checks and balances”) to come up with a substantive meaning.

From these, independence is considered to have two components:

- First, personal independence, referring to the individual and their personal conditions of service, remuneration, etc. The focus of this is whether these enable the individual to carry out their duties with more or less independence.
- Secondly, structural independence, referring to the design of institutions and the systems they operate in. The focus of this is whether the system allows the institution to be more or less independent.

Even with these guidelines, independence remains loosely defined. Within the context of the HSF’s work, independence refers to the ability of an individual or an institution to conduct its constitutionally-mandated work with no undue political interference. Independence, then, is an understanding that despite politicians’ popular mandate, individuals and institutions will need protecting from potential victimisation. Independence, in this sense, is a constraint on the untrammelled exercise of power by the Executive.

Further, independence is not absolute. While it is highly valued, it is unrealistic that any individual or institution could be so independent that it answers to no one. Implicit in independence is the spirit of accountability. Independent institutions hold others accountable and they, in turn, answer to someone else. Independence operates with a system of separation, checks, and balance of power.

Independence, then, goes beyond the traditional executive/judicial/parliamentary triumvirate. These institutions are fairly well balanced, with a certain respect for their independent and legitimate purviews. What has been alarming has been the erosion of independence within other sectors of the state, so as to concentrate power in the hands of the Executive. Notably, the triumvirate balance is not perfect, nor that it is always respected. Rather, independence in this is more obvious. The Constitution is most clear on the nature and content of the relationship, with each of the constituent arms of state enjoying explicitly defined roles. Such is the source of their authority. Given this detail, political actors (involved in the formal and informal political processes) are more readily able to appreciate erosions and act on them.

*Single-party dominance means that the ANC enjoys significant political control over institutions that should be holding it accountable. Made worse by proportional representation, the party leadership is able to assert its will over party members and state institutions in order to limit the degree to which it is accountable.*

The real difficulty is with respect to how independence is understood in circumstances where branches of state, notably Parliament and the Executive, may ostensibly be exercising their power for legitimate reasons but is aimed at the opposite effect.

This is with specific reference to the entities of state which are crucial to the effective governance of state but which may not enjoy as much protection as those like Parliament.

Two notable factors, namely single-party dominance and cadre deployment, bear special consideration.

### Single-party Dominance

In theory, single-party dominance in a competitive electoral system should not be a problem. Notwithstanding institutional checks on a ruling party's power, any party should be able to compete and freely to assert its dominance.

The problem in South Africa is that, even though political competition is theoretically equal, the ruling African National Congress ('ANC') enjoys a huge advantage over its competitors. The ANC has a lock on an impregnable majority in spite of significant inefficacy and incompetence. This is not necessarily the problem, but the certainty of its majority immunises it from the positive effects of such competition. Such a sense of impunity allows it to erroneously believe it is beyond political reproach.

Single-party dominance means that the ANC enjoys significant political control over institutions that should be holding it accountable.<sup>5</sup> Made worse by proportional representation, the party leadership is able to assert its will over party members and state institutions in order to limit the degree to which it is accountable. Hence, Parliament – which is vested with significant authority – being lacklustre, at best, in its oversight role.



However, a confluence of factors, including internal strife and external competition has meant that the ANC's hegemony is fraying. Combined with an increasingly critical media and frustrated electorate, the ANC is undoubtedly in trouble. Though not yet fatal, this increases the sense that the ANC's weakness has become terminal.

Understanding these changes are essential to contextualise the ANC's behaviour. As the Financial Times noted with respect to Vladimir Putin in Russia,<sup>6</sup> hegemony is at their most dangerous when they are in decline, not demonstrating strength. To that extent, Van Damme's comments may be correct, however, the 'writing on the wall' may underscore the ANC's eagerness to achieve its revolutionary goals, not replace it.

*The ANC's history of Marxist-Leninism is instructive. Even though it may have ostensibly abandoned a Marxist belief in socialism, it maintains its Leninist authoritarian means through which to achieve it. Cadres are crucial because they put the party first.*

This nervousness and acute sense of self-preservation may explain why otherwise independent institutions are deliberately manipulated or acted against. The logic is that potential sites of opposition must be limited or shut down.

However, because the Constitution is clear, institutions such as Parliament, the Judiciary, the media, and other spheres of government and Chapter 9 Institutions, are easier to protect.

## Cadre Deployment

The threat to the independence of institutions is more relevant with respect to the ANC's policy of cadre deployment, most acutely felt in institutions that do not enjoy explicit protections.

Adopted in 1997, cadre deployment refers to the appointment of loyal ANC members ('cadres') to all institutions of state. The object is to extend and concentrate power within the party. It can be viewed as a mechanism of state capture.

The ANC's history of Marxist-Leninism is instructive. Even though it may have ostensibly abandoned a Marxist belief in socialism, it maintains its Leninist authoritarian means through which to achieve it. Cadres are crucial because they put the party first. So, even though socialism has fallen by the wayside, putting the party at the centre of national life as a means to maintain power has not.

It is clear how this undermines both personal and structural independence:

With respect to the former, deployees are expected to do the ANC's bidding. There is little/no regard to what the duties are imposed by the office they occupy. This means that they either operate with a party bias or submit to the party agenda. They may do both. Where incumbents are already appointed and are unwilling/unable/untrusted to carry out the party agenda, a variety of mechanisms can be used to remove them from office.

With respect to the latter, the effect of cadre deployment is to blur the distinction between party and state where, implicit in the constitutional order is a requirement for the separation of powers. This is also noted where state apparatus is rearranged to adopt mechanisms of control that increase the relative power of political actors who have oversight and management responsibility.

Cadre deployment also has another inadvertent consequence. As the normalisation of internal political contestation within the ANC increases, the capture of party/state power becomes more crucial. Cadre deployment, then, is used to appoint political allies into well-paying and powerful positions. The *quid pro quo* is one of mutual interest: the secondary actor (employee) is expected to look after the interests of the primary actor (deployer) in exchange for the primary actor's continued patronage.<sup>7</sup>

Worryingly, the pernicious effects of cadre deployment are hidden behind the need for racial transformation. While demographic change in many institutions may be both desirable and necessary, strict demographic representivity is used as a fig-leaf for installing party deployees into key positions. Notwithstanding the reductionist stigma that attaches to deserving black appointees, the ANC ironically seems to believe it to be true. Appointees are thought to think and

function in a particular way because they happen to be black.<sup>8</sup> This not only erodes the confidence in black professionals and institutions of state, but also makes opposition to questionable transformation practices easily assailable as being anti-transformation. Indeed, that defence is often used as a smokescreen to escape real accountability. It has often proven successful with devastating effect.

*These institutions are being targeted because an independent exercise of their mandate means that they have become sites of opposition as they threaten significant political interests.*

## The Centralisation of Criminal Justice Sector

The most notable impact of all these factors has been in the administration of the criminal justice system, specifically, the Directorate of Priority Crime Investigation (DPCI), Independent Police Investigative Directorate (IPID), and National Prosecuting Authority (NPA).

These institutions are being targeted because an independent exercise of their mandate means that they have become sites of opposition as they threaten significant political interests.

- First, President Jacob Zuma faces 783 charges of fraud and corruption. These institutions have, in various ways, sought his prosecution. Undermining their independence for his personal liberty is one consideration; but so is the impact it would have on the ruling party if its leader were to be arrested.
- Secondly, part of President Zuma's strategy has been to appoint people to particular positions who may have knowledge of his culpability, but whose political responsibility it remains to protect him. In doing so, he has effectively co-opted them into his agenda making them less likely to protect the independence of these institutions, as their futures are also potentially at stake; and
- Thirdly, control of these institutions is vital as they have been used as weapons in political disputes between various internal. Eroding their independence means they can be manipulated to do the bidding of their political masters.

The consequence of this is that crime fighting institutions, whose responsibility it is to detect and combat crime, are highly unstable as their mandate, top leadership, and personnel are subject to ad hoc, irregular, and damaging changes. Notable examples include:

- The destabilisation of the Hawks through appointing and suspending Heads of the unit for seemingly political purposes;

- Appointing key figures within the NPA who stymie efforts to prosecute important ANC members and affiliates; and
- Persecuting independent-minded officials, such as Johann Booysen and Robert McBride, who have acted in a way to stop political interference.

Much of the HSF's work, then, relates to litigating on issues of design that affect either the personal or structural independence of our institutions. An understanding of the politics is essential, as it provides background context to many of these legislative manoeuvres. While the HSF does not concern itself with partisan considerations, as it acts in the public interest, the political details take on special meaning when assessing the impact of the HSF's work. The public are entitled to have a criminal justice system that is independent, free and fair. This means that the HSF will act. But, it also means that it must act with restraint, in recognition of the same separation of powers it strongly advocates. It is fair to discipline constitutionally questionable political impulses when they spill over into the conduct of state affairs; it is indefensible to attack legitimate exercises of state power merely because we may disagree with it.

*The HSF's main contribution was to argue that the Constitution, when read with the Republic's obligations in terms of international law, required that, regardless of location, an independent corruption fighting agency was necessary.*

## The HSF's Work

The HSF's ongoing litigation work against the state emphasises challenges to institutional independence, which cannot be divorced from macro-political issues.

### *Glenister*<sup>9</sup>

The central issue was whether the DPCI, as an elite and specific corruption fighting unit, was sufficiently protected by being moved under the operational command and control of the South African Police Service (SAPS). The SAPS is a more

politically controlled institution, and the concern was that the DPCI relied on the independence it was previously guaranteed when it operated under the constitutionally independent NPA. The HSF's main contribution was to argue that the Constitution, when read with the Republic's obligations in terms of international law, required that, regardless of location, an independent corruption fighting agency was necessary. In line with the HSF's arguments, the Constitutional Court ('CC') did not object, in principle, to locating the DPCI within the SAPS but rather objected to locating it within an entity that undermined the independence it was expected to have.

### *The Hawks and the HSF*<sup>10</sup>

This case follows on from the *Glenister* judgment, and examined whether the remedial steps taken by Parliament to create a functionally independent specialised anti-corruption entity was justifiable. The HSF achieved partial success in that certain features of the legislation (mostly relating to personal independence) were invalid. Even though the HSF did not secure the CC's support in all its arguments, that other features (namely, structural independence) were also impacted, the partial victory was enough for the CC to order that the legislation be redrafted.

### *Lieutenant-General Anwar Dramat*

This case follows the HSF's earlier success above, where the unlawful suspension of the Head of the Hawks, in violation of the CC's earlier judgment, was challenged

and set aside. The High Court affirmed the judgment and the SCA refused to hear an appeal. The consequence is that the earlier decision stands. However, the success was qualified in that Dramat was offered a significant payout to drop his challenge (which he accepted).

### *Independent Police Investigative Directorate (IPID)*<sup>11</sup>

This case follows on from both *Glenister* and *Helen Suzman* above, and effectively argues that the attempt by the Minister of Police to suspend the Executive Director of IPID, Robert McBride, the police ombudsman that cleared Dramat whom the Minister was found to have unlawfully suspended, violates the independence afforded to it by the Constitution and existing interpretations.

### **Judicial Service Commission (JSC)**<sup>12</sup>

The central issue was whether the JSC's interpretation of section 174(2) of the Constitution, which calls for the judiciary to be transformed so as to generally reflect the racial and gender demographics of South Africa, is reconcilable with the requirement in section 174(1) to only appoint the best candidates. The JSC, in effect, applied a soft quota by stating that it would be impermissible to appoint more than two white men to the Bench in a single round as it would "do violence to the Constitution". The value of the HSF's work is threefold:

- First, to test the validity of this interpretation (the HSF fully supports transformation; a soft quota is manifestly unlawful);
- Second, to establish important precedent with respect to access to information (as a result of preliminary proceedings which focus on whether confidentiality attaches to *prima facie* unlawful decisions); and
- Third, to discipline the tactic of stacking the bench with candidates who may simply be very susceptible to being Executive-minded it judges to be more susceptible to be Executive-minded.

This is aimed to strengthen the independence of the judiciary which carries the ultimate responsibility for protecting our constitutional order.

The HSF is also keeping a watching brief on the following cases:

#### *Hawks*

This litigation centres on whether the newly appointed Head of the DPCI, Maj-Gen Ntlemeza, is a fit and proper person. This is required by the legislation governing appointments (which was part of the subject matter of *Glenister* and *Helen Suzman Foundation* above). This is after several adverse findings were made against Ntlemeza in a separate matter where a High Court Judge questioned his trustworthiness and honesty. It is obvious that the Head of the DPCI's credibility needs to be beyond reproach. Ntlemeza, who seems to be favoured by the Minister for his political deference, is, thus, a concerning appointment.

#### *National Prosecuting Authority (NPA)*

This centres on the extent of the right to interfere in the dismissal of the Head of the NPA. This goes to the heart of the independence and trustworthiness of

*It is obvious that the Head of the DPCI's credibility needs to be beyond reproach. Ntlemeza, who seems to be favoured by the Minister for his political deference, is, thus, a concerning appointment.*

the prosecutions service to not show political favour. Additionally, the new tactic of using significant pay-outs to get troublesome appointees out of office is also worth noting.

## Conclusion

The HSF does important work to ensure the protection of our independent institutions that are, regrettably, under attack. In a constitutional state where the law is supreme but the ruling party has an impregnable majority, creating tension between public and political interest, this work takes on particular significance. Many of these institutions are deliberately targeted because of their power to bring the ruling party to heel. This is especially the case under the Zuma presidency. President Zuma and his allies who now control the police, the prosecutions service, and the independent authorities that are supposed to monitor them, are all motivated by personal and partisan interest. Personnel are appointed for political purposes, incumbents are forced out, golden handshakes are given, and sometimes even controversies are manufactured. One conclusion which is difficult not to draw is that they are being used to protect the President and those who support him. The HSF has no personal enmity against President Zuma or the ANC for that matter. Rather, we take seriously our defence of the rule of law to ensure that our Constitution is supreme and applies equally to all. The HSF will to develop the understanding of functional independence as its work is increasingly important in combatting political interference that threatens the entire edifice of our constitutional order.

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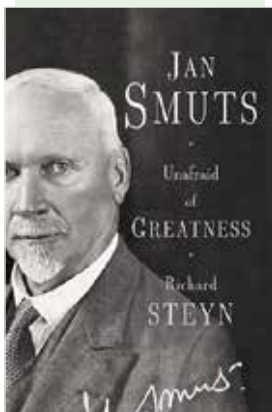
### NOTES

- 1 This article is based, in part, on a speech by the author entitled "When Politics and Law Collide: Combatting Corruption in South Africa Creating Independent Institutions" delivered to the Pan-African Conference on Public Service Accountability & Policy Advocacy in Centurion on 15 October 2015.
- 2 *Glenister v President of the Republic of South Africa and Others* 2011 (3) SA 347 (CC)
- 3 <http://www.politicsweb.co.za/news-and-analysis/anc-resolutions-will-close-down-the-democratic-spa>
- 4 <http://www.politicsweb.co.za/news-and-analysis/the-anc-before-the-collapse-of-communism>
- 5 <http://hsf.org.za/resource-centre/focus/focus-72-democracy-and-its-discontents/where-have-all-the-independent-politicians-gone-k-premhd/view>
- 6 <http://www.ft.com/intl/cms/s/0/c8b034ac-44ca-11e5-b3b2-1672f710807b.html#axzz3oeyBwmu7>
- 7 Although the nomenclature used here is particularistic to the ANC, it is not unlikely that a similar power relationship will develop with other political parties too.
- 8 The ANC makes a fundamentally illiberal mistake in thinking that any (black) deployee is naturally beholden to it. It denies that deployees, and black people generally, have any agency at all.
- 9 <http://www.saflii.org/za/cases/ZACC/2011/6.html>
- 10 <http://ewn.co.za/2015/07/24/About-Court-grants-interdict-to-Robert-McBride>
- 11 Ongoing. <http://hsf.org.za/projects/justice/litigation/helen-suzman-foundation-takes-judicial-service-commission-to-court>



## BOOK REVIEW

**John Laband** is Professor Emeritus at Wilfrid Laurier University, Canada; a Life Member of Clare Hall, University of Cambridge; a Fellow of the University of KwaZulu-Natal and a Research Associate at Stellenbosch University. His latest book is *Zulu Warriors: The Battle for the South African Frontier* (Yale University Press, 2014).



**JAN SMUTS: UNAFRAID OF GREATNESS**  
By Richard Steyn  
ISBN 9781868426942  
Published by Jonathon Ball Publishers, 2015

# *Jan Smuts: Unafraid of Greatness* by Richard Steyn

*Almost my earliest conscious memory is being taken by my parents to watch as Field Marshal Jan Smuts' cortege passed solemnly along the streets of Johannesburg on 15 September 1950. For the grownups who raised me, his demise long remained an epochal event, matched only by Churchill's death in 1965. People of every generation have their particular heroes who – despite some inevitable shortcomings – embody their own aspirations and values on a gigantic scale. Smuts was certainly such an icon, his stage was not confined to South Africa but encompassed the world. In our own times, the only South Africans to have enjoyed similar international stature are President Mandela and Archbishop Tutu. Who knows Smuts today? The superb statue by Sydney Harpley outside the South African National Gallery in Cape Town – which abstractly embodies the philosopher-soldier-statesman's brilliant, questing intellect and indomitable spirit – is only another 'symbol of colonialism' to be subjected to spray-paint and abuse by those who would be hard-pressed to assess Smuts in a reasonably informed manner.*

That is why Richard Steyn's masterful new biography of Smuts is so timely. It's not as if there is not already a compendious quiversful of hefty and comprehensive biographies available – and Steyn is very clearly familiar with them all. But, as he states in his preface, he took the decision to write a compact book that distills the secondary sources into an easily readable account for a new generation which has everything to learn about Smuts and why he was a world figure. And I should add that, for readers of my generation who are more familiar with Smuts' story, this study reminds us of how he attained greatness in so many areas, yet failed utterly to address the pressing need to create equitable political, economic and social relations between the black and white peoples of South Africa.

Steyn has neither eulogized Smuts nor condemned him out of hand. Rather, he has written a balanced, dispassionate, but not unsympathetic, account that appreciates those qualities and activities which made Smuts extraordinary, yet never glosses over his foibles, blind spots and contradictions, and is properly critical when Smuts failed to live up to his own high principles.

The book is sensibly structured into two sections. The first is a straightforward account of Smuts' life and career, securely set in the context of his times, which Steyn deftly etches in for those who are unfamiliar with that history. Steyn follows Smuts, the supremely intelligent but initially socially maladroit descendent of seventeenth-century Dutch settlers in the Cape Swartland – he was never to lose his distinctive Malmesbury 'brei' – to his lonely time at Christ's College,

Cambridge, to the Transvaal where he was President Kruger's young but effective State Attorney, and through the South African War of 1899–1902 where he forged a formidable reputation as a guerilla general. Steyn then takes us through the post-war period when Smuts shared with General Louis Botha a grand vision of Afrikaners and English living united under the protection of the British Empire and became the architect of the Union of South Africa in 1910. However, as Steyn makes clear, these efforts at nation-building only earned Smuts the abiding mistrust and hatred of unreconciled Afrikaners who labelled him a sell-out to the British. The First World War, which was the making of Smuts on the international stage, only exacerbated these bitter sentiments. But Smuts could afford to ignore the parochial cavillers because, in 1916, he was appointed commander-in-chief of the Imperial forces in East Africa and joined the Imperial War Cabinet in 1917. In the immediate aftermath of the war, Smuts enjoyed perhaps his greatest hour when it was his vision that inspired the founding of the League of Nations.

*Smuts, Steyn writes, impatiently mistimed the calling of a general election in 1948, and the Oubaas was defeated at the polls, ceding the country to the Nationalists who immediately asserted Afrikaner dominance and began constructing the apartheid state.*

Between the two World Wars, Smuts served as prime minister from 1919 to 1924, and, after a long period in opposition, as deputy prime minister in Dr Hertzog's coalition government from 1933 to 1940. As Steyn ably shows, this ill-fated epoch of economic and social tension that saw the radicalization of politics and the forming of the purified National Party was draining for Smuts who, nevertheless, saw it as his duty to carry on, even though excoriated as the betrayer of Afrikanerdom. The Second World War made these divisions even more acute. Herzog's government fell in 1940 over the question of South

Africa entering the war. Smuts, once again prime minister, rallied South Africa for the war effort and re-entered the world stage as a member of the Imperial War Cabinet, becoming one of the most influential leaders on the Allied side. It was his inspiration that was paramount in establishing the United Nations in 1945. Yet the greater his stature grew internationally, the more he was held in suspicion and contempt at home by the Nationalists under Dr Malan. Smuts, Steyn writes, impatiently mistimed the calling of a general election in 1948, and the Oubaas was defeated at the polls, ceding the country to the Nationalists who immediately asserted Afrikaner dominance and began constructing the Apartheid state.

The second section of the book takes a thematic approach, fleshing out various elements suggested in the preceding narrative of Smuts' career with sensitivity and insight. Steyn investigates the mainsprings of Smuts's character, his self-possession, religious sensibility, physical courage, stoicism, sense of purpose and service, and his tendency to believe that what he did was always best for his country. He shows us Smuts' patriarchal life at home at Doornkloof, his Spartan farm, with his extended family, his children and Isie, his wife, the Ouma so beloved by the troops in the Second World War. Her relationship with Smuts was always secure, though she had to put up with his constant absences and with his close friendships with a relay of intelligent, beautiful, and sophisticated women whom he found to be his most sympathetic companions. He was the confidant and wise adviser of kings and statesmen. Walking in the mountains or the veld was his recreation, and he became an expert botanist, specializing in veld grasses, and as a synthesiser of various branches of scientific knowledge, a pioneer ecologist. That pursuit was part of his quest to find order in complexity in his philosophy of Holism (made much

clearer by Steyn than in Smuts' dense and complex book, *Holism and Evolution*) in which Smuts saw the disparate elements of the universe contributing to mankind's evolution into a whole greater than its individual parts.

Yet – and this is the truly damaging proviso – Smuts, as Steyn uncompromisingly points out, was unwilling to confront the huge issue of race in South Africa. True, he threw himself into trying to reconcile Boer and Briton in the bitter aftermath of the South African War, but this was at the expense of blacks, and in 1910 he successfully advocated that the 'native problem' should be shelved for future Union parliaments to solve. It never was while he was in government. This failure seems to fly directly in the face of Smuts' recognition of human rights as enshrined in the Charter of the United Nations he had been so instrumental in framing. Yet, as Steyn explains, Smuts never believed that human rights were synonymous with political or racial equality. He clung to the values of his youth that saw it as the paternalistic duty of the advanced nations (by definition Western and Christian) to assist the backward nations along the path to civilization. So, while he considered ways of ameliorating the conditions of South African blacks, Smuts never envisaged their being elected to parliament or running the country.

This major failure of vision and, ultimately political common sense must tarnish Smuts' otherwise indubitable greatness. Even so, for much of his lifetime, segregationist views were perhaps too entrenched in white society and in political parties to be seriously questioned, let alone revised. But challenged they certainly were in the aftermath of the Second World War by emerging nations and liberation movements. Perhaps, if Smuts had been a younger man, and had he held on to power in 1948, South Africa would not have had to endure apartheid rule. Wisely, Steyn does not speculate. Rather, he leaves us in contemplation of an extraordinary man, a giant figure, and one of South Africa's very greatest sons – despite his flaws.

## BOOK REVIEW

### Kameel Premhid

is a Researcher at the Helen Suzman Foundation. He holds a BA and LLB from the University of KwaZulu-Natal, Durban, and recently completed an MSc in Education (Higher Education) at the University of Oxford where he was a Rhodes Scholar. Kameel has recently returned to Johannesburg and hopes to pursue a career at the Bar

# *Mmusi Maimane: A New Way for South Africa* by Sello Mbatha

*Sello Mbatha's book comes at an opportune time. Published shortly after Mmusi Maimane's election as Leader of the Democratic Alliance (DA), it is the first book attempt to put Maimane and the DA's journey into context. With the 2016 local government election just around the corner – and the party hoping local gains will lead to Provincial ones – Mbatha's task is unenviable. Regrettably, despite the relevance of the book's focus, it fails to substantiate the claim in its title.*

Frankly, this is not a serious book. The author's intent to provide "a grassroots account by a grassroots person" is neither particularly new nor incisive.

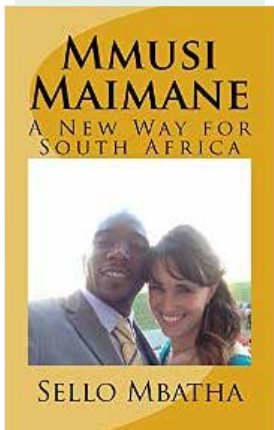
Being self-published, with minimal professional assistance, this book is 'Mbatha uncut'. The lack of honesty in assessing the African National Congress (ANC), the near hagiographic analysis of Maimane, and serious formatting flaws (including 38 unreferenced pages of DA policy) are an indictment on Mbatha's authorial prowess. Ironically, this book provides ammunition against the increasingly popular self-publishing model. Professional assistance may have righted these wrongs.

Self-publishing has, to a degree, rebalanced the asymmetrical power that publishers have in platforming and publishing certain points of view. This is good. In a vibrant society, where intellectual rigour is valued and ideas are given the greatest import, less restrictive means to contribute to public conversations must be welcomed. But, like the comments section on Politicsweb regularly demonstrates, free speech also needs limit. Self-publishing should never come to replace our standards of what is acceptable in debate, nor cloak the questionable beliefs and prejudices of authors in greater moral legitimacy than it deserves.

This book is a damp squib. Whether it is a metaphor for, rather than a reflection on, Maimane's political career will hopefully fall to another author to do more judiciously.

In spite of its weaknesses, Mbatha's offering is the vignette against which the DA under Mmusi Maimane may be analysed.<sup>1</sup>

First, Mbatha's widely shared race reductionism of what Maimane's blackness means for the DA, and South Africa, must be rejected. That Maimane is black is important. It partially neuters the DA's detractors. It may also offer new perspective. But, a change of leader is one thing. What the party looks like in Parliament, for example, is quite another. The act of boxing Maimane into a predetermined idea of what he must necessarily be by virtue of his race, including that it necessarily



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equips him to better speak to black voters, is deeply illiberal. It buys into the ANC's problematic conception of transformation as a bean-counting exercise which, by-and-large, benefits privileged and politically connected elites rather than the masses it is supposed to serve. The challenge, then, for the DA and others – including Mbatha – is not to treat black voters as a homogenous group that will now swing to the DA because it is led by a black man.

Secondly, Mbatha – and the DA – must avoid the tempting race-reductionist comparisons of Maimane with other notable black leaders, especially Nelson Mandela and Barack Obama. Equally, they must avoid positioning the party as the inheritor of Nelson Mandela's ANC. These comparisons perniciously serve as a blue print for Maimane's legacy. Paradoxically, it is not a limitation that white males face. None should. That Theresa May – a potential British Conservative Party Leader – is consistently compared to Margaret Thatcher and Angela Merkel proves the point. Demographically similar leaders should not be held up as prototypes who determine the trajectories of those who follow them. Differences between the individuals aside, these contrasts are inauthentic. In the second case, the DA runs the risk of becoming an 'ANC lite'. The canonisation of Nelson Mandela, and the ANC and South Africa under his leadership, is either intellectually lazy or dishonest or both. Nelson Mandela was no saint and his interpretation of reconciliation is, poignantly, being contested by many black people today. The eagerness with which the DA is willing to adopt 'Mandela's mantle' is ahistoric and self-serving. It creates a meretricious linear progression from Mandela's politics to Maimane's conveniently ignoring the DA's long liberal tradition along the way.

*He and the party should be brave enough to admit error and be open to correction. Strength lies in rectifying obvious problems, not trying to deflect attention away from them.*

Thirdly, there are also questions about how Maimane and the DA handle criticism. Their dealing with *Business Day* columnist, Gareth Van Onselen, is troubling if instructive. Maimane has curiously maintained radio silence even though he has been happy to engage weaker opponents – wielding racial tropes or gossip – have sought to undermine him. He has been less keen where Van Onselen, among others, has been surgical in his scrutiny. There are lessons to be learned in over-engaging one's critics, but deferring to lieutenants also has its drawbacks. Whereas Maimane's predecessor, Helen Zille, caused consternation for her trigger-happy pot shots aimed at those she disagreed with – whether via Twitter or her newsletters – Zille's obstinacy to have her own voice heard won begrudging respect. When mouthpieces for Maimane start defining how he thinks and what he believes, then it is natural to doubt their authenticity and his capacity to engage. In an age of stage-managed politics being rejected in favour of genuine 'self-ness', a la Bernie Sanders and Jeremy Corbyn on both sides of the Atlantic, Maimane should consider the same. And, this should be the case even where his views are questionable. He and the party should be brave enough to admit error and be open to correction. Strength lies in rectifying obvious problems, not trying to deflect attention away from them.

Maimane's race is no substitute for the challenge the DA faces. And the DA attempting to be a better version of the ANC similarly does not wash. The scars of Apartheid run deep and the psyche of liberation, actively perpetuated by the ANC, has a strong hold over many. The DA's real challenge is how it makes its liberal agenda the countervailing narrative to the ANC's nationalist one. It is not an easy task but, as the ANC becomes more ideologically divided and their



crisis of governance grows, there are opportunities which can be capitalised on. As the flagship liberal party of South Africa, it would do well to demonstrate its philosophical commitments in action, starting with how it represents itself to South Africa – warts and all. In a political environment where trust is missing, the DA taking South Africa into its confidence and seeking their goodwill for its honesty does not seem amiss.

Mbatha – and the DA – would benefit from a thorough think-through of these issues. If Mmusi Maimane and the DA are the new path that South Africa needs to buck its downward trend, we stand to gain a great deal more from acknowledging political realities and taking difficult, though necessary, decisions to address them. In an age where policy and personality are dictated by polls and popular opinion, having the courage of one's convictions would be a welcomed change.

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NOTE

- <sup>1</sup> This article was written in early October and, thus, does not take recent events into account like Maimane's handling of the Dianne Kohler-Barnard affair and the #FeesMustFall protests.



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