THE LAWS AND THE LEGACY OF APARTHEID

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As South Africans we do not share a common memory of the past. White South Africans and black South Africans usually share very different interpretations of the past and as a result very different expectations of what the future could or should hold. This lack of a shared memory is neither accidental nor a quirk of history or culture. The apartheid government was very deliberate in making sure that we inhabited different worlds and to a large extent remained deliberately ignorant of the very different legacies which were being created through the implementation of apartheid laws and structures. This article will explore some of those past laws and the significant ways in which they have shaped our current realities.

There were two children who lived next door to each other and were good friends. Both have bicycles. One day Dave steals Sihle’s bicycle. Sihle tried to get it back through all the means available to him but he can’t get it back. They are no longer friends or even talk to each other. After a long period of time Dave misses his friend and goes over to his house and says “Sihle let’s be friends again.” Sihle agrees, they shake hands and make up. They even have a gathering where Dave explains to their friends and family the exact circumstances of the bicycle theft and Sihle speaks about how he felt and what happened as a result of the theft. Dave admits that he was wrong. Sometime later Sihle asks Dave about his bicycle to which Dave replies “Sihle, this is about becoming friends again, not about bicycles” Dave may be sorry but Sihle still does not have his bicycle.

Now take that story and multiply it over generations where that bicycle enabled Dave’s family to gain work, travel to work, go to school and university, perhaps upgrade the bicycle, eventually buy a car, and another car, perhaps even pass on the legacy of the bicycle to his children. Whilst simultaneously maybe Sihle loses his part-time job because he no longer has a bicycle. He has to travel long distances to school or work, either walking or spending extra money on transport. Sihle is unable to use that resource to create more wealth or skills, attending training or job interviews. Sihle has no bicycle to pass on to his daughter. Sihle’s daughter also has no bicycle. The stolen bicycle has been used by Dave and his family in order to create a legacy of wealth and privilege whilst simultaneously preventing Sihle and his family from doing the same.1

The arrival of the new democratic dispensation in 1994 and the subsequent repealing of apartheid laws went a long way to, in theory, levelling the playing fields in terms of access to legal and economic

1 This story has been adapted from Swartz, Sharlene. 2016. Another Country: Everyday Social Restitution. Cape Town: BestRed. pp127-131
processes. The “miracle of 1994” might have removed the laws of apartheid from the statute books, but it did not remove the legacies of wealth and privilege which those laws were designed to create. The laws may have changed but the benefits accrued from those laws remain unchallenged. True repentance requires us to not only acknowledge and dismantle these laws but their legacies as well.2

1. THE LEGACY OF LAND

The Natives Land Act (No 27 of 1913) was the first major piece of segregation legislation passed by the Union of South Africa. It limited the amount of land which black people could own to 7% of the total land in South Africa. This was later increased to 13% under the 1936 Native Trust and Land Act. This ownable land was limited to specific reserves (which would later be known as homelands) outside of which black people were prohibited from buying or owing land. 93% of the total land in South Africa was reserved for whites, who at that time made up less than 20% of the total population. The 1913 Act also forbade “sharecropping” or tenant farming by black farmers on white owned land.

Because the land in the “native reserve” areas was under “communal” tenure overseen by African chiefs, it could not be bought, sold or used as surety. Thus, severely limiting the ability of black people to create wealth and access funding for entrepreneurship or personal development. Black people who did move to the reserves often could not find enough fertile land to use for crops and were restricted to small parcels of land not significant enough for commercial farming. Black farmers were also denied any government aid in the form of loans and as a result found it impossible to compete with white farmers who could use improved technology and expand their farmland. The reserves or later homelands, served essentially as “labour reservoirs, housing the unemployed and releasing them when their labour was needed in White South Africa.”3

The Land Act effectively created a system of land tenure which denied most South Africans of the right to own land. The 1913 Land Act was designed to protect not only the rich white farmers who would possess the majority of the land but also the landless white farm labourers who no longer had to compete with skilled or semi-skilled black labourers. The act not only disposed black people of their land but also by closing off potential avenues of income forced black people into working for white farmers and industrialists. The Land Act effectively dispossessed and locked black people into servitude.

The legacy of land dispossession continues today with the recent land audit claiming that black people own less than 2% of rural land and less than 7% of urban land. The legacy of the 1913 Native Land Act must not only be measured in terms of the actual act of dispossession, as significant as that is, but perhaps more significantly in the legacy which that dispossession was designed to create. Legacies of generational wealth and resources, educational and social mobility, better access to health and welfare services, increased access to job and wealth creation opportunities, as well as the subsequent access to more and better land, which land ownership opened up. Thus, expanding and increasing the circles of wealth and access to opportunities for the initial white land owners. When considering issues of restitution and transformation we must bear in mind not only the initial injustices of land dispossession but the legacies which those acts enabled to be built.

3 https://www.sahistory.org.za/article/homelands
2. THE LEGACY OF EDUCATION

The Bantu Education Act, No. 47 of 1953 enforced separate and unequal education on racial grounds. Essentially this act wrote into law an education for servitude for black children. Hendrik Verwoed, the then Minister of Native Affairs and later Prime Minister argued that black education should be inferior to that of white education as black people should only be trained for unskilled labour. “There is no place for [the African] in the European community above the level of certain forms of labour. It is of no avail for him to receive a training which has as its aim, absorption in the European community.”

Prior to 1953, the vast majority (90%) of schools catering for black children were state-aided mission schools. The act removed control of African education from the churches and required all such schools to register with the Bantu Education department and adhere to an education system designed to keep black education separate and inferior or face the withdrawal of government funding. Almost all the mission schools closed down as a result. Generally, only the Roman Catholic church attempted to keep the doors of their schools open without government funding.

Significantly though the Act saw the need for an increase in spending on black education as the apartheid government sought to create a trained black labour force. So, although the Bantu Education saw more black children attend school it was with the aim of creating a permanent underclass of labourers of black people. The conditions and resources in which black children were to be educated were thus wholly disproportionate and unequal as compared to white children. In the 1970s the average spending on black education was one-tenth of what was spent on white education. In the 1959 Extension of Universities Education Act (No 34 of 1959) universities were included under the Bantu Education system, excluding black people from white universities (mainly UCT and Wits) and created separate and vastly unequal (in terms of educational curriculum and resources) universities for different race groups (“tribal universities”).

The opposition to Bantu Education or “gutter education” became a major focus of resistance both before and after the 1976 Soweto uprising. The 1976 protest against the Afrikaans becoming, alongside English, a compulsory medium of instruction in the all schools, was the catalyst for on-going protests against the inferior Bantu Education system throughout the 70’s and 80’s. In some cases, very little education took place within the Bantu education system in the 80’s.

The legacy of decades of inferior education has meant a legacy of structural underdevelopment for black, Indian and coloured schooling, which has had a knock-on effect of early school leaving thus continuing the somewhat inevitable cycle of unemployment, crime, low-paying manual labour and generational poverty. The very legacy which the Bantu Education system was designed to promote, the permanent underclass dependent upon the white mining and industrial sectors for employment and survival.

A final and perhaps most significant aspect of the Bantu Education system was the intent to create a permanent sense of inferiority among black people. Steve Biko would write that “the most potent weapon in the hands of the oppressor is the mind of the oppressed.” Biko concluded that as a result of apartheid and in particular the Bantu Education System “the black man has become a shell, a shadow of man... bearing the yoke with sheepish timidity.”

The heart of the Black Consciousness Movement, of which Biko was a central figure was psychological empowerment, calling on black people to affirm their own humanity and self-worth, thus undoing the legacy of the Bantu Education system. Black Consciousness philosophy was captured by the powerful slogan “Black is Beautiful.” Black Consciousness today remains a significant motivating factor in movements such as Fees Must Fall.

3. THE LEGACY OF THE GROUP AREAS ACT

The Group Areas Act, (No. 41 of 1950) was the cornerstone of Apartheid policy, restricting land occupancy and ownership, of both residential and commercial property, to particular race groups in particular areas, thus eliminating mixed neighbourhoods and putting in place the building blocks for “separate development”. The Group Areas Act was a means to control the movement and life of urban Black, Indian or Coloured residents. This was further enforced through the 1952 Pass Laws Act designed to control and restrict the movements of black people within South Africa. The Pass Laws Act stipulated that all black people over the age of 16 were required to carry a passbook (or dompas) at all times proving their right to be there. It was illegal to be without a pass, the punishment for which could be arrest and imprisonment. The Urban Areas Act restricted Black people to 72 hours in an urban area unless they had specific permission from a municipal official in that area.

The Pass Laws Act was a means of continuing to ensure the provision of cheap labour whilst simultaneously enforcing the segregation of South along racial lines. The Land, Group Areas and Pass Laws Acts overlapped to create the vastly destructive migrant labour system. Whereby a black man might officially be a resident in one of newly created homelands but in order to find employment he is given a “pass” in order to work on the mines far from home. However, he is never officially a resident there, he is only a temporary resident at the approval of the apartheid government. Given the vastly unequal economics and the cheap labour system he may only be able return home once a year (perhaps not even then) to his family. These laws not only enriched white businesses off the back of cheap black labour but also significantly undermined and eroded the strong black family systems which had previously existed. The legacy of apartheid goes far beyond the laws on the statute books.

Whilst black people were restricted from owning land in areas designated as white, land under black ownership or occupancy could simply be designated as a white area and taken by the government. The current black, coloured or Indian residents would then be forcibly removed (e.g. District Six and Sophiatown) to new racially designated areas on the periphery of the city, often poorly developed and under-resourced. In Cape Town, for instance, the legacy of forced removals has significantly shaped the contours of the city with the creation of the Cape Flats, built off the devastation of existing communities, social structures, relational capital and forced removals. The longer, more expensive commutes from the townships on the periphery to work increased the financial burden on those already discriminated against because of other apartheid laws, as well as putting increased strain on family units. From the time of the Act being passed until 1983 it is estimated that 600,000 people had been removed from their homes, and communities and relocated. Most never to return!

In theory, the Act was to allow different racial groupings to develop their own “separate but equal” infrastructure, industry and institutions under their own self-government. In reality the economic power situated as it was in the hands of whites meant that white communities had far greater resources and access to resources and opportunities in order to develop their communities adequately. The legacy was the creation of separate but vastly unequal communities in terms of economic development and
spatial development, education, recreational and health facilities, access and proximity to resources as well as issues of adequate policing and safety.

In Cape Town, today, roads and railways still largely form barriers of racial and economic and social inequality. Still today former white areas have far better educational, health and recreational resources than other communities. Still today there is a far higher proportion of police and other safety related officials in former white neighbourhoods. Still today there is no inclusive housing for the poor and the marginalised in our cities. Still today the majority of the urban poor live on the periphery of our city, far from access to resources and economic opportunities, bearing the added brunt of ever increasing transportation costs and marginalisation to the edges of society.

4. THE LEGACY OF THE COLOUR BAR

The term colour bar usually refers to a series of acts beginning with the 1911 Mines and Work Act (No. 12 of 1911), which restricted black people to certain types of employment. The various acts, which included the Mines and Works Regulations Act (1912), The Minimum Wages Act (1925) and the Mines and Work Act (No. 25 of 1926) together were designed to prevent black people from competing with white people for certain categories of jobs.

Skilled labour was generally reserved for whites only, although coloureds were also permitted to perform some skilled labour jobs. The monopoly on skilled labour created not only greater prosperity for the white population but the means by which to ensure the increase of that prosperity, an employment market which guaranteed them favourable employment and opportunity for progression. Both the skills and the prosperity which those skills brought enabled further material prosperity, further access to increased skills development and career advancement, as well as access to better educational opportunities and health care. The higher skill levels, as well as the increased wealth brought with it increased societal influence in order to further increase prosperity and ensure a legacy in which that prosperity and privilege can increase inter-generationally. The legacy of job reservation can felt today not only in the skills and wealth accumulated through inter-generational job security but also in terms of ability to acquire property in desirable areas, social capital found in networks of relationships with others who have access to opportunities and resources, increased educational opportunities for children and other family members, ability to travel and enjoy family holidays, the disposable income to invest or secure inheritances or retirement plans.

Reconciliation can only come about when there is a consensus as to the injustices perpetrated. We must learn to see the past with new eyes, and we must learn to acknowledge not only the injustices perpetrated but also the legacies which these injustices created. This new seeing and acknowledging can never be mere conceptual ideas but are integrally linked to a change of heart and mind. This is what the Bible terms repentance. There can be no reconciliation without repentance and no repentance without a true and shared memory of the past.
Apartheid laws not only bestowed innumerable privileges of wealth and opportunities on white people it also systematically impoverished and marginalised the black majority. The injustice of apartheid was not just in the unjust laws, which have been removed from the statute books, but in the legacies of wealth, privilege and access to opportunities and resources which those laws were designed to create. We cannot simply remove the laws of apartheid in order for reconciliation to occur, we must also seek to dismantle the legacies of apartheid if we wish to ever see true reconciliation.