

## EDITORIAL

The publication of this first issue of the *Journal of Law, Society and Development (JLSD)* takes place less than a year after the death of Dr Nelson Mandela, the founding father of our nation and an icon of South Africans' struggle for liberation.

This journal will also have been printed shortly after the death of Dr Maya Angelou, a US civil rights legend who 'will forever be remembered not only for her fiction, but for campaigning for a better life for the American people' (Nicholas 2014, 3) and for oppressed people the world over.

It is also published in the 20th anniversary year of South Africa's democracy, when we begin to ask questions about whether the Latin dictum *Vox populi vox dei* (the voice of the people is the voice of God) or the Zulu dictum *Amandla ngawetho* (power to the people) truly embodies the smooth transition from an apartheid regime to a democratically elected form of government in which the voice and the voting power of the people occupy centre stage.

After 20 years of democracy, it is apposite to refocus our attention on and seriously analyse the true concept of democracy. It is also a time to reflect on how the common man and woman understand democracy in South Africa. The main question that remains unanswered in the minds of many South Africans is whether democracy and the politics of democracy in fact reflect the political, economic and cultural aspirations of the nation. Two decades ago, a democratically elected government was ushered in, making way for an era that has laid the foundation for a government of the people, by the people and for the people, elected every five years.

The strength of a true democracy lies in the accommodation of pluralism. As Darcy (1972, 8) puts it: 'The social aggregate is homogenous, when minute, habitually gains in heterogeneity along with each increment of growth, and to reach great size requires great complexity'. The presence of strong, semi-autonomous and autonomous social, political and economic groups lays the genuine foundation for ever-changing dynamic interaction between the social, political and economic thesis and anti-thesis.

This interaction of thesis and antithesis plays itself out in the regular service delivery protests that form part of the cut and thrust of redefining democracy, a phenomenon involving the *vox populi* that is more than the mere staging of elections. The thesis in this case is that democracy, its form, laws and practices, was brought into being by the material needs of South Africans as the country emerged from the apartheid era. In that process, the relationship between social needs and nation building was causal, not merely coincidental (Darcy 1972, 8).

It is when the material needs lag behind the number of times people have voted in elections that the electorate begin to turn their obedient request for acceptable levels of service delivery into vociferous demands. It is therefore important that genuine

democracy be accompanied by meaningful action and not by empty promises dropped from the lips of politicians touting for votes.

Genuine democracy must recognise that people are different, and must both encourage acceptance of difference and plan for it accordingly. This recognition goes to the heart of pluralism: differing viewpoints and dissenting views must not be seen as rebellion against the status quo; indeed, they have to be treated as healthy symptoms of strengthening social cohesion. They must be regarded as fertile soil and ready seed with which to germinate social discourse aimed at the advancement of democratic processes. Once the processes have been put in place, implementing the political and economic systems arising from solid and deliberate democratic progress should be easier. This would have the effect of reconciling differing viewpoints, finding consensus and building confidence and trust in the people and involving them in the democratic process.

Development and democracy are symbiotic. Democracy is important for furthering socio-economic development, and socio-economic development is essential to the growth and sustainability of democracy, to its becoming deeply rooted in the people and in its stakeholders. Whatever change is brought about will always be anchored by the ethos and values that underpin democratic principles.

True democracy can flourish and reach full maturity only if it recognises and accepts that its potential for success is embedded within its people, both as individuals and as a collective. For the socio-economic systems to be efficient and effective, therefore, stakeholders must not remain idle in the midst of change, but must themselves be the agents of change and development.

It is also incumbent upon a genuine democracy to raise the socio-economic status of the citizenry. This is achieved by raising the income level of the disadvantaged not only through social grants and social welfare systems, but through education, skills training, and development in general. The reason for this is that the social security created through education, skills training and competency development is considerably more reliable, durable and sustainable than the monthly grants that put people into a state of dependency from generation to generation.

Investment in people through education and training affords them the opportunity to participate in the use of public resources and also enables them to eliminate all forms of oppression on their path towards acquiring social, political and economic rights. True democracy means giving the people meaningful access to the natural resources that enrich a country.

The periodic multi-party elections that characterise a democratic state do not of themselves produce true democracy. This is particularly true in a modern multi-party democracy where politics is often little more than a competition for power rather than an expression the popular will. That is why those who rise to power through the electoral process often jettison the mandate of those who put them in office within minutes after their victory has been announced. In South Africa, the right to consult continuously goes out the window immediately after our elections, whether local or national. Once

this happens, the populace, especially at the local government level, frequently engage in protests and demonstrations.

For true democracy to survive, therefore, it is important to ensure that those who have been elected into power do not overstay their tenure in office. Ills such as corruption, self-interest, short-sightedness, conflict, debilitating inequalities of development, and the oppression of women and children must be eradicated. To this end, there must be a clear demonstration of the intention to rise to a level of co-operation at all levels.

Very often, democracy and the democratisation process are led by the elite in society. Intellectuals and elite groups are quite often considered to be serious obstacles in the way of economic development in many developing countries. They are often accused of being anti-development, of being exploiters of their communities for personal gain, of retarding or restraining the gains of the ordinary people towards self-reliance and self-sufficiency.

The economic growth intended to support and protect democracy has often become eroded by an ever-increasing dependency of Third World countries on foreign multi-nationals and the governments linking them through foreign aid and economic concessions aimed at promoting mainly the interests of a small elite. This erosion splits the country into two nations, namely the haves and the have nots. Immediately, bitterness begins to emerge and increase, creating a wide and deep schism between rich and poor, and sometimes resulting in civil war that might take decades to end.

Democracy in South Africa is bedevilled by the existence of two economies that live side by side but which are not symbiotic. These economies have to be engineered in such a way that mutual gains become available in the end. As things stand, though, the so-called First World economy that exists in South Africa feeds on the so-called Third World economy. This parasitic relationship results from a long history of exploitation created by decades of apartheid, which forged two separate and unequal societies divided along racial lines. Spatial, legal, economic, political, geographical and other frameworks were created that enabled the dependent First World economy to grow bigger and bigger, literally killing the second economy. By their nature, the apartheid laws were geared towards maintaining Africans in a state of perpetual dependence on whites in South Africa. It is therefore important that the post-apartheid black elite and intellectuals do not become the servants of Western capitalism, the lackeys of the multi-nationals through their own government institutions, because that way could lead to social and economic instability.

It is therefore critically important that for democracy to succeed in South Africa service delivery in all its manifestations must be regarded as a pillar on which genuine democracy must be built and allowed to thrive. Popular participation must be encouraged and supported and permitted to spread its gospel of good governance. The nation's decision-making processes must involve not only the rich but also the poor continuously, not only from time to time. This means that the fundamental freedoms of thought, speech and association must be integral components of engagement at the political level

if the socio-economic agenda is to be advanced. When any of the democratic principles of engagement are ignored, nothing is left but autocracy, which has shown itself to be anathema to development in a democratic state. The ruling bureaucracy that denies democracy is often weakened (Darcy 1972, 331).

This first volume of the *JLSD* is being published to address various socio-economic, legal and political research issues, such as democracy and society, so as to find its proper niche and its feet on order to understand and carve out a path towards inclusive epistemological discussions and debate in South Africa and the world at large.

The first article in this inaugural issue critically discusses the political and economic integration in member states of the Southern African Development Community (SADC), with particular reference to the regulatory system that prevails in the energy sector.

This article enters the debate at the right time, when the African Union is grappling with issues of regional integration. Politicians are looking at what this means to them politically; economists, on the contrary, are hard at work interpreting how the most powerful economies (such as South Africa) in the SADC region would be able to influence the growth of the smaller economies. In the Economic Community of West African States (ECOWAS), the main concern becomes Nigeria, not only as the most populous country in the West African region but also the most advanced economy in the region and, most recently, the economic powerhouse of the continent. Whether Nigeria's economic dominance will cause it to swallow the economic minnows in the region and on the continent is an open question.

Specific to the SADC, the articles – after critically and meticulously discussing the challenges that continue to face the two regions – recommend remedies in the form of a single independent regional regulatory authority which would ensure that energy policies are applied equally to member states.

The second article spells out the difficulty that the current African Union Commission chair faces due to the fact that she has no leg to stand on because it 'is broken' by the fact that she is a chair of the African Union who cannot enforce her authority, be it political, economic or social, on member states. The reason for this is that the members are autonomous states that derive their political and governance mandates from their citizens and, most importantly, from their different constitutions.

The article on the search for and seizure of evidence in cyber environments shows how important it is to have international legal sanctions in place in order to fight against cyber criminals and to ensure that criminals can run but cannot hide.

The article on the proposed model for the appointment and dismissal of the National Commissioner of the South African Police Service shows how problematic it is to appoint the National Commissioner of Police in South Africa. It attempts to demonstrate how the South African president, despite all the powers vested in him by the Constitution of the republic to appoint the commissioner, could not retain them to serve the full term of their tenure because the two who were appointed before the current Commissioner Phiyega, namely Jackie Selebe and Bheki Cele, could not complete

their terms of office. Instead, they were dismissed and left office in disgrace. Jackie Selebe was jailed for collusion and corruption and is currently on medical parole. Bheki Cele was out in the political wilderness for some time until his recent comeback into the political fold as Deputy Minister of Agriculture in the 2014 Zuma administration following the national elections held on 7 May 2014 in which the African National Congress emerged victorious.

The article also provides a comparative analysis of how the commissioners of police are appointed in other African countries such as Ghana, Sierra Leone, Zimbabwe, Nigeria, Namibia and Uganda. The article states that, with the exception of Ghana, where the National Police Commissioners are appointed by the president acting in consultation with the Council of State, in the abovementioned African states the presidents do not have to consult when making such appointments.

The Stephen de la Harpe's article on harmonising public procurement in the SADC argues for the need for public procurement to become harmonised in the Community; discusses the benefits of harmonisation and the obstacles to harmonising public procurement, and shows how socio-economic issues are dealt with in the Model Law and the PGPA, the Government Procurement Agreement (GPA), and the position of the Common Market for Eastern and Southern Africa (COMESA) vis-à-vis harmonisation.

De la Harpe's article concludes by stating that the harmonisation of public procurement in the SADC will deepen the socio-political and economic cooperation between member states in the region. He points out that through harmonised procurement regulation the transfer of skills and technology will be enhanced.

The articles presented for publication have been especially chosen to match the interdisciplinary nature of the journal. The *JLSD* is for us a vehicle through and in which various disciplines meet and express and share their interconnectivity across different academic fields. This is an opportunity for political science to communicate with sociology, law, geography, economics, religion, etc, on matters of common interest without any one of them either becoming territorial or enjoying territorial advantage or becoming dominant.

Interdisciplinary synergies enable dialogue between the disciplines of law, social sciences, the exact sciences and the natural sciences, none of which should claim an outright monopoly of epistemological discourse. Such synergies should also serve to promote an understanding of how societies are affected daily by the different scientific disciplines.

It is in this spirit, therefore, that the concept paper that gave birth to the genesis of the *JLSD* stated from the outset that this will be a journal that will also accommodate articles from disciplines other than Law.

In addition, the *JLSD* intentionally targets designated groups in order to address the imbalances of the past. It is aimed specifically at developing female, black and younger researchers and scholars through its transformation programmes. It would be difficult to imagine transformation at an institution of higher learning such as a university that does not include addressing issues of human resource development. Recent statistics indicate

that in 20 years' time more than 50 per cent of the current staff at Unisa would have retired. Given this fact, it would seem to be prudent for the South African universities to start now with building the future generation of academics. If preparations are not initiated immediately, our universities might find it difficult to cope with the shortage of staff and have to rely on the importation of foreigners, which might prove to be expensive in the long run. It is therefore in this spirit that the College of Law at Unisa has instituted this initiative of developing its own corps of young academics and researchers.

As an institution of higher learning Unisa contributes directly in growing nourishing and strengthening democracy in South Africa through teaching, learning and research. It contributes through the production of knowledge generated by students and the teaching staff in general. These are part of the intellectual elite who form part of the ruling class. It is this class as part of the middle class that generates ideas that shape the foundations, principles, traditions and culture of our democracy. As Marx and Engels (1972, 44), 'the ideas of the ruling class are in every epoch the ruling ideas: i.e. the class which is the ruling material force of society is at the same time its intellectual force.'

The six articles presented in this journal try to grapple with challenges that face our young democracy, comparing it to other democracies in the world. They try to find answers, through the studies of multi-, intra- and transdisciplines, to problems that present challenges to our young democracy.

As Nelson Mandela once said: 'After climbing a great hill, one only finds that there are many more hills to climb.' He further stated that 'it always sounds impossible till it's done'. The same may be said of the bringing into being of this journal.

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