

Introduction

“I thought not of the present but of the past. When I walked to the voting station, my mind dwelt on the heroes who had fallen so that I might be where I was that day ... I did not go into that voting station alone on April 27; I was casting my vote with all of them.”

—Nelson Mandela¹

“Next to the man”

On 27 April 1994, South Africans voted. That day, for the first time in the country’s history, all citizens of age held franchise eligibility. The election symbolized the end of apartheid, a system of racial segregation that had pervaded since its 1948 implementation. It ushered in the presidential victory of one of the world’s most famous political prisoners and his Government of National Unity. As such, it claimed a place as one of the country’s—and one of the twentieth century’s—iconic events. Further, it became one of the century’s most substantial political transitions.

The road to 1994 had been bloody in both the short and long terms. South Africa is one of the world’s most ethnically and racially diverse societies. Within it, Khoisan people established some of the oldest human communities. State formation of groups such as the Ndebele, Pedi, Sotho, Tsonga, Tswana, Xhosa, Venda and Zulu began during the ancient era and continued through colonization. Afrikaners developed from seventeenth-century free burghers of the Dutch East India Company. Their forebears included Dutch settlers such as those led by Jan Van Riebeeck, or French and German Protestants, as well as indigenous Africans and enslaved, imported Asians. British colonization brought additional European interest, notably from Portugal and Germany. It also brought the migration of free and indentured Indians—the largest population outside

the Indian subcontinent. By the late nineteenth century, South Africa also boasted one of the world's largest Jewish populations, as Eastern Europeans ventured south to flee pogroms.

Apartheid was a response in many ways to white South Africans' search for social cohesion within this diffuse society. Public memory has largely accepted the narrative of rising Afrikaner nationalism in the wake of the South African War. This holds that in 1910 the Union of South Africa formed after the South African War and British abuses of Black and Afrikaner South Africans, including institutionalization within concentration camps. Afrikaner bitterness from that abuse, many historians and southern Africans will say, gave rise to nationalism and, eventually, apartheid. That narrative is a little over-simplified, but it is true that the phenomenon responded in part to changes wrought by British colonialism impressed upon Afrikaners. Contestations over land, labour and social and political power had largely defined the country's violent history to that point. Many nationalist leaders found a voice in the growing interwar fascist movement, and World War II veritably tore South Africa apart as the country's citizens debated whether to enter the war—and on which side.²

Like so many cautionary tales in world politics, the fringe, far-right National Party (aka the NP or Nats) did not seem like an obvious choice to claim parliamentary victory and oust fellow Afrikaner Jan Smuts from office in 1948. But it did. And apartheid, the “policy of good neighborliness”,³ built upon the country's existing segregationist institutions. It expanded laws denying land ownership to African, Asian and “Coloured”⁴ citizens and, of course, stripped those who had it of voting franchise. It culminated in forced removals, police brutality, imprisonment, banishment, exile, torture and other heinous state crimes. In time, it has come to symbolize the country's long history of conflict, exploitation and oppression, condensed into four decades, as it built upon colonial attitudes and practices of violence towards indigenous and imported South Africans. It also began to seem invincible.

By 1990, when F.W. de Klerk announced the slew of changes that culminated in public negotiations over the end of apartheid and implementation of a new politico-legal system, conflicts between the government and its opponents had reached fever pitch. The transition era unearthed centuries of animosity over the land, labour and political and social power disputes that had festered under the apartheid state's control mechanisms.⁵ Over the next four years, the country endured a civil conflict that claimed more than 10,000

lives. As Dan O'Meara reminds us, "Much of the international coverage of the run up to the poll depicted the country as edging implacably towards a place alongside Bosnia, Somalia and Rwanda as one of the horrendous ethnic conflagrations of the 1990s."⁶ In the end, election day looked different.

When photojournalists and international observers descended on South Africa that April, a few images came to symbolize "The Miracle"; long lines twisting for kilometres around polling places; elderly men and women sobbing as they emerged from the voting booth, rejoicing that they had done what once seemed impossible; children standing alongside the parents who had brought them to etch the moment into their consciousness; citizens from across South Africa smiling and chatting amiably during the long waiting hours; election winner Nelson Mandela recalled the sight of:

Great lines of patient people snaking through the dirt roads of towns and cities, old women who had waited half a century to cast their vote, saying they had felt like human beings for the first time in their lives, White men and women saying they were proud to live in a free country at last ... it was as though we were a nation reborn.⁷

Among the day's most iconic images is one of Mandela, dressed in one of his signature Madiba shirts, casting his vote.⁸ The man who became the foremost human symbol of the country's freedom struggle grins as he drops his ballot paper into the box at John Langalibalele Dube's Ohlange School in Inanda, KwaZulu Natal (KZN). Mandela's choice of location was symbolic, and not just because the African National Congress president voted (presumably) for himself at the home and burial site of the organization's founding president. Mandela chose to exercise franchise for the first time in the province where bitter clashes between factions such as the Inkatha Freedom Party (IFP) and his own ANC, often stoked by a dying NP, had nearly derailed the negotiations and election processes. The joyful dwarfed the horrific that day, but it was not without cost, as this story and its actors illustrate.

One of those actors is Gay Johnson McDougall, the woman standing next to Mandela in the iconic photo. The former director of the Washington, DC-based Southern Africa Project of the Lawyers' Committee for Civil Rights Under Law (henceforth the Project) beams as she watches him cast his ballot.⁹ She stands in the foreground against a backdrop of international dignitaries and quietly accompanies the man of the hour for one of South Africa's most significant historical moments. That an African American woman walked

Mandela to the ballot box that day is as informative as his famously symbolic wardrobe, location and semantic choices. The moment presented a visual hint at the cooperative efforts that had positioned McDougall and Mandela together, at least in spirit, for decades.

The Story

This work tells the story of McDougall's Project and its associates. It explains how a woman from Atlanta, who grew up personally knowing the Martin Luther King, Sr., family and witnessing US civil rights and Black Power leaders Julian Bond and Stokely Carmichael march down her street, who integrated her university near Atlanta, who began an illustrious legal career following graduation from Yale Law School, came to stand at "the man's" right-hand side on that April day. McDougall's and her colleagues' work expanded upon that of the American civil rights icons whom she had grown up personally knowing. King became and remains the personification of the movement, popularly held as a non-violent messiah figure and—like Mandela—often feted as much less radical than he really was. By contrast, American-born Bond and Trinidadian-born Carmichael, later known as Kwame Toure, rejected what they perceived as accommodationism within the King-associated movement. They supported Black Power as an effort to build pride and self-reliance among African Americans. During her childhood, McDougall had a front-row view of American anti-racist struggles across a wide spectrum of ideology and methodology.

Her and others' experiences domestically were brought to bear on the international Project, spanning from 1967 to 1994. In many ways, the Project's story is aspirational. Its actors imagined a new, remade country and even a new world. In that, the Project's is often a story of faith—in a system, in a god, in a methodology, in an outcome. Just as often, however, its narrative is one of doubt, fear, trepidation and uncertainty. Southern Africans and Americans often linked their common victories, but just as often suffered common and individual defeats. The early 1960s jubilation in courtroom solidarities soon gave way to the silencing and murder of apartheid's opponents during the 1970s. Later, the nihilism of the 1980s quickly moved into an exuberant transition era.

This book argues for the Project's place within historiographies of the US civil rights movement, set in a global context. It sheds light on

the bureaucracy of liberation that drove the public drama of apartheid and anti-apartheid, eventually leading to Namibia's and South Africa's democratic transitions and their attendant strife, joy, compromise, victory, disappointment and continuing work. This sometimes tedious and sometimes fascinating bureaucracy kept open dialogues between the South African government, its opponents and domestic and international constituencies. It drove conversations when they would probably have collapsed into even more brutal conflicts and, in some cases, it managed to mitigate the violence that plagued Namibia and South Africa during apartheid. While Johannesburg and Birmingham were hardly mirror images, their similarities provided space for camaraderie within the lonely work of providing legal support to political prisoners.

Within these real and perceived similarities, the Project was a highly liminal organization. Its story allows us to view the often ambiguous intersection of legal-profession and mass movement activism writ large, replete with its incumbent misunderstandings, appropriations and tensions. Whereas impassioned diasporic connections drive a large part of this narrative, so do the actions of internally conflicted, hesitant and contradictory politicians who found the law a useful tool paradoxically both to usher in and slow down change. The Project's guerilla assault on US and southern African judicial systems cast a wide net. It succeeded the banned International Defence and Aid Fund, picking up much of its mantle. Its clients included not only Mandela's ANC and the armed movement that it co-led with the South African Communist Party, but also the Pan-Africanist Congress with which it was often at odds, as well as trade unions, student groups and fellow liberation movements. It received monetary support from both pacifists and armed revolutionaries. Project workers themselves often supported radical aims while remaining grounded within a traditionally conservative profession that seemed intent on upholding the status quo.

This story also provides a window into how African Americans—and especially African American women—and their allies drove change in a political arena that they viewed as the culmination of the century's Black freedom struggles. In doing so, it examines how and why both South African apartheid and American segregation became such powerful metaphors for the global colour line. It moves forward not in a linear, teleological narrative, but within the Gordian Knot that allows us to see a process where "multiple international actors—large and small—interacted in a moment of rapid and profound change".¹⁰

The reason

Courtroom struggles provide space to see where the Project fits within interlocked spaces and to nuance a struggle that we often publicly remember as binary. The Project provides a lens into the apartheid era's negotiations, compromises and limits. It moves us beyond the dichotomies of those who supported apartheid versus those who did not, and into a complex web where social constructs and relationship to political structures affected agency in powerful ways. In moving us past these binaries, the Project's story helps to illuminate a coexistence between compromise and steadfastness, accommodations and radicalism, solidarity and tension. Advocate Albie Sachs writes of this, noting, "Anyone who has been in clandestinity will know how split the psyche becomes when you work through the law in the public sphere, and against the law in the underground. Yet the causes were easy to understand and the resolution as obvious to predict—only when we ended apartheid and realigned the law with justice, could I become whole again."¹¹

This tension existed within many Project workers, as well as within South Africa's and the United States' most famous lawyers. That makes them ripe for further study. Mandela's own activism famously grew out of his profession. Elleke Boehmer expands upon the pageantry with which Madiba approached the courtroom, writing that "[a]s a lawyer himself, Mandela was more aware than most that the space of the court could be used as a political theatre. It was a place unconstrained like no other in the country by the discriminatory restrictions imposed upon the black South African majority."¹²

Peter Fitzpatrick adds that Mandela represented the ultimate cause lawyer, espousing a belief in the necessity of law and its ability to change:

It would be difficult to conceive of a situation where there was less cause for commitment to the laws, or to conceive of a person more justified in refusing such commitment. Yet Mandela advances a conception of "professional duty" which respects and even admires both the law and its judicial institution even as the pervasive legal oppressions of apartheid are brought to bear on him.¹³

But, of course, he was not the only one. These traits belonged to many colleagues within the Project, who recognized the usefulness of court as political theatre. During his presidency, the icon paid tribute to some of them, writing:

The stories of these lawyers are especially important because they illustrate the strength and courage of people to rise up in a society bent on keeping them down ... But for apartheid, how many more black men and women would have risen to careers in the law or other professions? We will never know the answer to that question, but we can at least take pride in the accomplishments of those who were able to overcome the system calculated to defeat them. The benefits of their success go not only to them and to their clients, but to the entire nation of South Africa ... Indeed, in many ways, they form the backbone of our new society. They have experienced oppression firsthand and also know the joys of freedom. They know the role that law can play to accomplish wrong, as under apartheid, and they also know what good it can accomplish in a free society. These men and women are the heroes of yesterday and the hope of tomorrow.¹⁴

That members of the profession can be regarded as “heroes” and “hope is in part a result of the Project’s work. In this, both US civil rights and southern African anti-apartheid struggles merit comparative scholarly attention. While biographies of Thurgood Marshall and his predecessors rightly proliferate, less work remains on the more recent actors who built upon their successes.¹⁵ In southern Africa, a few prominent lawyers have written memoirs or been the subjects of biographies.¹⁶ As Tembeka Ngcukaitobi points out, for these radical bureaucrats, the scale of their work is wide. “The magnitude of its (constitutional) ambition is unprecedented.”¹⁷ As such, we are still grappling with it. This grappling leaves many stories to be told—including that of the Project.

Historians have often viewed US-based cause lawyering and grassroots efforts for social change as existing within separate models. Americans, for instance, speak of public protests “for civil rights” as led by figures such as King, while often neglecting the role that Houston’s or Marshall’s quiet legal activism played.¹⁸ There is a propensity, for instance, to see Rosa Parks’ refusal to move from her seat on a Montgomery bus as though that would change human action itself. Rather, Parks’ protest was a *response* to and protest against the “separate but equal” allowance that *Plessy v. Ferguson* allowed in public accommodations. She and the NAACP for which she worked keenly utilized public protest to draw attention to ways in which legal change, and not merely changed public facilities, was necessary. Of course, such movements—in the court and in the public square—are conjoined. The Project’s

story demonstrates their interrelatedness. Literature on social change often treats lawyers' efforts at social change as an opaque "black box".¹⁹ This is particularly problematic in southern Africa, as it builds expectations of what the 1994 transition symbolized (a wholly new society), rather than what it actually brought about (a change in some laws).

Scholar-activists and practising lawyers such as John Dugard and Sachs carefully addressed much of this distinction through producing legal histories during the 1960s-1990s. Both wrote extensively on South Africa and Namibia, arguing against the apartheid system's illegality in the 1970s.²⁰ They joined other leaders of the profession in crafting a body of literature that emphasized South Africa's long connection to international legal precedents, and they formulated the justifications for using law as a mechanism of social change.²¹ As social change has arguably been achieved, updated studies of them largely have not.²²

Despite this lacuna, the Project is well known among many activists and legal professionals. US anti-apartheid activist and recipient of the Order of the Companion of O.R. Tambo, Sylvia Hill, commented:

When Mr. Mandela placed his vote in the ballot box, it was a collective feeling of exhilaration for Gay to be there! I think I can safely say that Cecelie Counts, Sandra Hill and myself saw her as an extension of all of our work. We were on a three-way call and simply crying with sheer victory since we started out working against Portuguese colonialism. We never thought the South African regime with its western backers could be defeated, even after Zimbabwe and Namibia had been liberated. To see Gay with Mandela was an extension of all of the US anti-apartheid movement's work. It was a political symbolism of solidarity between, as the late President of Mozambique, Samora Machel, often said, two forces fighting for a common objective. Her presence symbolized the international solidarity work against apartheid worldwide.²³

This work occurred as the Project engaged both public demonstrations against apartheid and the highly secretive operations of liberation movements, such as enhancing the mobility of clients moving into exile and facilitating conferences or other fora for people defying their banning orders. It was unique among US-based movements in that its legal solidarity was "very concrete".²⁴ As Hazel Ross-Robinson explained, this required a high level of competence across several distinct fields, because "Washington

public policy is different even than foreign public policy, and McDougall managed to maneuver both arenas".²⁵

Thus, the Project should be a staple within historiographies of both US domestic civil rights and those of international agitation against South Africa's apartheid regime. It exists at the nexus of these. Primarily, the organization sought to expand upon the gains of American desegregation victories. It existed for much of the long and fraught twentieth century. As such, it became caught between global decolonization and United Nations geo-politics, the Cold War, international struggles against racism, and the emergence of cause lawyering as a mechanism for social change. In all of this, its mission to dismantle apartheid through quiet courtroom activism—and often through loud protest—grounded it organizationally within its tumultuous era. It utilized the new mediums of long-range photography, television and even fax machines to bring courtroom drama into the public theatre. As news cycles sped up, media-savvy Project workers ensured that apartheid remained a fixture on the evening broadcast. Adwoa Dunn-Mouton, a former staff member at the US House Subcommittee on Africa and long-time anti-apartheid activist, commented on the group's significance in an era where changes in information delivery occurred unevenly:

I think it was even critical for the development of the anti-apartheid movement here (in the United States) ... we did not have the kind of direct communications with people on the ground (that exist now), and so there were really just a few accesses to know what was happening. One was through the legal community and from the activism of the Project ... because there was really a blockade of information both inside and outside, so that in order to build a movement which really informed people, you needed some real information, not just (a statement of fact that) "70% of the population is black".²⁶

In presenting this information, Project workers harnessed viewers' thoughts and emotions on their changing climate. They adeptly placed apartheid at the front and centre of a global discussion revolving around the Cold War, social change, decolonization, anti-racism and human rights. In turn, they did not always articulate their own life stories. In presenting the Project's history, I have had the opportunity to interview many of its former employees, as well as others who worked closely with it, such as the DC-based cadre of activists whose work often intersected with that of the Project. Their stories

continue to become clear. Digitized court records from trials such as those of Looksmart Ngudle, Robert Sobukwe and SWAPO comrades have amplified the voices of many clients and their families, and news archives have produced the responses of community members. Correspondence in archives from Durban to Cape Town and from New York to New Orleans have page-by-page revealed the Project's story—one that will continue to emerge as parts of its official records remain embargoed for several decades yet. These include many letters between correspondent attorneys such as Joel Carlson or Griffiths and Victoria Mxenge and their clients. They also include numerous epistles between Project directors in Washington, DC, and their staff, as well as with clients or the families of clients within southern Africa.

The book

Growing from these sources, this work brings the aforementioned twentieth-century global themes into further conversation with one another. I begin here by introducing them. The rest of the work unfolds within four parts, each dealing with a decade of the Project's existence. Within Part One, my first and second chapters discuss how divergent legal systems within the United States and southern Africa paved the way for the growth of cause lawyering. That phenomenon, pioneered by US civil rights lawyers, involved taking a series of interrelated cases to court in hopes of challenging broad legal codes—in this case, those governing issues such as access to amenities and education, public dissent, or the ability to leave South Africa. Further, I attempt to contextualize the international trends that both expanded US civil rights work and South African apartheid and served as drivers of twentieth century geo-politics. This section ends with Chapter Three, which chronicles the Project's beginning, wherein South African lawyer Joel Carlson sought assistance from Americans he believed to be both experienced and sympathetic. And it discusses the Project's first effort—supporting lawyers involved in the Trial of the Namibians. That trial saved the lives of its defendants, and it provided a way for local lawyers to challenge South Africa's occupation and treatment of Namibians when South African politics and international courts seemed to condone it.

Section Two focuses on the 1970s, the Project's first full decade of existence. The fourth chapter moves us back to the United States, attempting to understand how the Project's efforts to bring (mostly unsuccessful) litigation against American companies operating in South Africa reflect a global shift

towards cause lawyering to address political problems. This utilization of courts to achieve social change grew out of the US civil rights era, and by the twenty-first century it has become an almost routine tool for many drivers of would-be social change. Chapter Five discusses how the rise of Black Consciousness in South Africa and black student movements within the United States transitioned the Project's conservative courtroom methodologies into something a little more progressive. Chapter Six builds upon this in analysing the role of African American women within the Project and within global freedom struggles generally. These two chapters show us the evolution of the Project from an entity tied to prominent US politicians to one led by grassroots organizers. They also chronicle the ways in which some of the first Americans benefiting from desegregation mandates continued to change their work and living spaces long after appearing in those lonely classrooms.

In Chapter Seven, I discuss South Africa's turbulent 1980s, as reflected in the Project's many prominent inquests into deaths in detention. This chapter begins Section Three, which chronicles the tumultuous 1980s. The decade was not violent only within South Africa, and this is made clear in Chapter Eight, where I assess the Free South Africa Movement's success in building upon US civil rights victories to challenge the country's foreign policy. In Chapter Nine, the Project's workers end where their predecessors began, with a trial involving Namibian political figures. Here, I utilize the plight of the Cassinga detainees—the organization's last legal battle—to move toward sanctions and the Cold War's end. The work's fourth and last section describes socio-political change during the 1990s and their contemporary legacies. Chapter Ten discusses some of the mechanics of South Africa's transition to democracy and the Project's role within it. I aim to shed light on the process's major compromises and outcomes. Finally, I conclude the work by offering brief commentary on the endurance of legal mechanisms within both southern African and American anti-racist movements.

I intend this book's readership to constitute a wide variety of academics, lay readers and students. Some will be familiar with southern African contexts, some will be familiar with US contexts, some will be familiar with neither, and some with both. Therefore, I provide more in-text and footnoted explanations than academic works typically entail, and I do so in the interest of readability. At the same time, I have attempted to keep the text moving so that more specialized readers can glean new information. This is an imperfect process, but I hope that it has yielded a more widely appreciable book. The Project, its workers and the historiographies around it deserve such.



Gay McDougall and Nelson Mandela stand at a voting booth in Inanda, KZN, 27 April 1994. Mandela's choice of McDougall to accompany him to the ballot box reflected the close ties between the Southern Africa Project and the African National Congress.

Chris Sattlberger, UN Photo Archives #32419. Used with permission.