

## *John W. Holmes Memorial Lecture*



### **Social Justice Transcending Inequalities**

*Thuli Madonsela*

Around the same time as John W. Holmes ended his career as a diplomat in the 1960s, which was in the middle of the Cold War, James Patrick Kinney penned a timeless poem titled “The Cold Within.”<sup>1,2</sup> It tells the story of six people brought together by chance on a cold night around a dwindling fire. The poem goes as follows:

Six humans trapped by happenstance  
In bleak and bitter cold.  
Each one possessed a stick of wood  
Or so the story’s told.

Their dying fire in need of logs  
The first man held his back  
For of the faces round the fire  
He noticed one was black.

The next man looking ’cross the way  
Saw one not of his church  
And couldn’t bring himself to give  
The fire his stick of birch.

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- 1 John W. Holmes Memorial Lecture presented by Professor Thulisile “Thuli” Madonsela at the ACUNS Annual Conference, Stellenbosch University, 20 June 2019.
  - 2 Hawkins 2012b.

The third one sat in tattered clothes.  
 He gave his coat a hitch.  
 Why should his log be put to use  
 To warm the idle rich?

The rich man just sat back and thought  
 Of the wealth he had in store  
 And how to keep what he had earned  
 From the lazy shiftless poor.

The black man's face bespoke revenge  
 As the fire passed from his sight.  
 For all he saw in his stick of wood  
 Was a chance to spite the white.

The last man of this forlorn group  
 Did nought except for gain.  
 Giving only to those who gave  
 Was how he played the game.

Their logs held tight in death's still hands  
 Was proof of human sin.  
 They didn't die from the cold without  
 They died from the cold within.<sup>3</sup>

The people in the poem, who are just like us today, let a fire die despite having the means to stoke it. They each had a log they could have used to keep the fire alive. However, each person looked around and saw someone who they thought did not deserve to benefit from their log and, accordingly, withheld it. In the end, they all died as a result of a difficulty they could have overcome.

Are there lessons we can learn from the poem about social justice and transcending inequality? I hope you will agree with me that the most pressing imperatives of our time are social justice and climate change. Most reasonable people agree on the latter, while the former has more denialists. Can we transcend inequality through promoting social justice?

"What is in it for us?" the sixth man would ask. But it would appear to me that, according to a person such as John W. Holmes, the question we should

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<sup>3</sup> Hawkins 2012a.

ask should not be about how we could benefit personally, but rather about how we could preserve humanity, and how we could preserve our own lives through helping and preserving the lives of others. This is what *Ubuntu* is all about.

*Ubuntu*, the ancient philosophy underpinning human coexistence in sub-Saharan Africa, says that “I am because we are; my humanity is tied up with and defined by yours. I let you die at my own peril and preserve your well-being for my own good because together we are stronger against the elements and anything we may face.” It is my considered view that all human coexistence was initially anchored in some form of *Ubuntu* or sense of humanity. That is how humans were able to preserve themselves.<sup>4</sup> Incidentally, this remains the way of social animals such as elephants.

If you agree with me that the most pressing imperatives of our time are social justice and climate change, I hope that you can also agree that these are a threat to life on our planet.<sup>5</sup> If we do not die because of climate change, we are going to die by killing each other because others feel left behind. Those that feel democracy and the rule of law are not working for them are increasingly feeling less inclined to preserve these time-tested systems regulating peaceful coexistence. The poor and other disadvantaged groups increasingly feel the survival of the group and its values is not worth it because democracy is not working for them.

It is encouraging to have you, as people concerned about human rights, including social justice, in this room. I am certain that you are also here because you believe in the Sustainable Development Goals (SDGs).<sup>6</sup> Why am I celebrating that? Because I have concluded that the social justice challenge is a challenge we could all tackle successfully if it were not for two pathologies that represent extremes in approaches to social justice.<sup>7</sup>

The one extreme is that there are some who deny that there is social injustice. They believe that if everyone would just work harder, or get themselves an education, life would be fine. They say that there is a level playing field already. That is denialism. Some of them even deny the fact that we stand on different grounds—some on lower ground, some on higher ground—and that a lot of

4 *S v. Makwanyane* 1995, paras. 130–131, 223–227, 237, 242–244, 250, 260, 263, 306–308, 310, 312, 374; Mokgoro 1998.

5 National Planning Commission 2012, 75.

6 “The Sustainable Development Goals are the blueprint to achieve a better and more sustainable future for all. They address the global challenges we face, including those related to poverty, inequality, climate change, environmental degradation, peace and justice. The 17 Goals are all interconnected, and in order to leave no one behind, it is important that we achieve them all by 2030” (UN 2019a).

7 Social Justice as a national imperative is also confirmed in the National Development Plan 2030 (National Planning Commission 2012, 465).

that has to do with unjust privileges that were dispensed to some and disadvantages to others in the past, sometimes through the law.

The fact that, at some stage, people with disabilities were excluded from life opportunities or prevented from doing certain things, which has placed them at a disadvantage, cannot be legitimately denied. The same applies to women. Women were not allowed to do certain things, including taking up jobs in public life as, for instance, lawyers, judges, or public office-bearers. That has placed them at a disadvantage. Colonized nations were prevented from developing. That has placed them at a disadvantage. In a country like ours, black people were denied certain opportunities and certain assets were taken from them, one of these being land, and that has placed them at a disadvantage that continues into today.<sup>8</sup>

Denial is a key impediment to the advancement of social justice. There are people who argue that there is no social injustice and that the only problem we have is aberrant discrimination that can and must be tackled. The second denial involves the belief that part of the social justice problems we face today have to do with the fact that our states have missed opportunities for advancing social justice on a day-to-day basis. Whether it is a decolonized state or a postapartheid state such as ours, or any transitional democracy, there are many missed opportunities that could have been used to reverse inequality or to help people to advance themselves.

As we are talking about denialism, let me add that I have noted that there is also a denial of climate change. But most reasonable people, at least, do not deny that climate change is an existential threat. Only a few unreasonable people do. And we know who they are; we are not going to mention them in this room. I believe that nobody in this room is a denialist of either social injustice or climate change.

This is the fourth year of the implementation of the SDGs, also known as global goals. Among these are SDG 10, which is about reduced inequality; SDG 5, which is about gender equality; and SDG 1, which aims for there to be no poverty by 2030. At the core of these three SDGs is social justice—a principle that has underpinned UN shared values from the days of the Charter of 1945.<sup>9</sup>

Are we making the necessary progress on social justice globally? You will agree with me that it appears as though some countries are doing better than others. I do not know how many people in this room are from the Scandinavian countries. They have always tended to gravitate toward an egalitarian life

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<sup>8</sup> *Daniels v. Scribante* 2017, para. 154.

<sup>9</sup> UN 1945.

and they are doing better when it comes to reducing inequality, which includes gender and other forms of inequality, and moving toward no poverty by 2030.<sup>10</sup> China has announced that it will meet its SDG on poverty ten years ahead of time in 2020.<sup>11</sup>

From these observations, it appears as though things are much better than they were a decade ago. In fact, somebody sent me a book recently after a Twitter exchange with one of my colleagues, Helen Zille, who is a struggle veteran and politician.<sup>12</sup> Our online discussions ended up with us meeting for a cup of tea and talking about these issues.<sup>13</sup> After that, the book titled *Factfulness* arrived with a message stating that we should not worry too much because things are better. I read that book, and it does assert that things are much better and that some of us just tend to exaggerate the truth. But if this is the fact and we agree that, on average, we are doing well as the book suggests, is the slogan “leave no one behind” a waste of time?<sup>14</sup> Is no one left behind? Are we all doing well? It seems to me that, in some countries and on some issues, there is progress regarding making democracy work for all through inclusive economies and good governance. But are we really doing better on social justice for all groups? It does not seem so.

First, just looking at the journey of John W. Holmes and his colleagues, we should be doing better on social justice given the fact that from the very conceptualization of the United Nations, social justice was at its core. This applies to social justice within nations and between nations.<sup>15</sup> The International Labour Organization (ILO) took this matter even further and social justice became the anchor of its work.<sup>16</sup>

By *social justice* we mean the just, fair, and equitable distribution of all opportunities, resources, privileges, and burdens in society. This finds expression in the equal enjoyment of all rights and freedoms by all. At the core of social justice is embracing the humanity of every person so that nobody should find it harder than others to exist in society, and nobody should bear more burdens than others.<sup>17</sup>

10 Asai et al. 2019.

11 Ministry of Foreign Affairs of the People's Republic of China 2017.

12 Generally, within a South African context, a struggle veteran refers to a person who was not only an activist but someone who was a freedom fighter, particularly against the apartheid era. For this reason, they can also be referred to as an anti-apartheid struggle veteran (Theto Mahlakoana 2019).

13 Somdyala 2019.

14 Rosling, Rosling, and Rosling Rönnlund 2018.

15 UN 2019b.

16 International Labour Organization 2008, 2019.

17 The working definition underpinning the research of the Chair and informing this lecture

It is social injustice when one group finds it unduly harder than others to access life opportunities such as justice services, education, and the acquisition or retention of assets such as land to establish, grow, and sustain a commercial or social enterprise. Social injustice is perpetrated when one-size-fits-all and impact-unconscious policies disadvantage those whose lives are divergent from the paradigm informing such policies. In this regard, persons with disabilities, women, older persons, children, young people, and rural communities tend to be disadvantaged.<sup>18</sup>

On its website, the UN states that “social justice is an underlying principle of peaceful and prosperous coexistence within and amongst nations” and that “if you want peace and development, work for social justice.”<sup>19</sup> Emphasis is also placed on the link between social injustice and the fragility of states.<sup>20</sup> The ILO has been a beacon of hope when it comes to social justice. One of its outputs is a social justice declaration that primarily addresses the question of fair globalization.<sup>21</sup>

Social justice includes remedial policies and related actions taken to level the playing field.<sup>22</sup> Such measures seek to expand the frontiers of real freedom for all by ensuring that diversity is affirmed and that generational inequality does not pose artificial barriers to inclusion and social mobility. Interestingly, social justice, inclusive of leveling the playing field, informs the thinking behind international instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women.<sup>23</sup> Accordingly, it would not be surprising if we were doing well on social justice. But are we really doing well?

Oxfam says that we are not doing well on social justice. In its report titled *Public Good or Private Wealth?* Oxfam states that it is boom time for the world’s billionaires, while it is the pits for those on the bottom rungs.<sup>24</sup>

Oxfam asserts that, in the ten years since the financial crisis, the number of billionaires has nearly doubled. The wealth of the world’s billionaires increased by 900 billion in the past year alone. Billionaires now have more wealth than

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is influenced by the UN definition (UN 2006). See also Law Trust Chair in Social Justice 2018a.

18 Madonsela 2018; Motlanthe 2018.

19 UN 2019c.

20 “Social justice is an underlying principle for peaceful and prosperous coexistence within and among nations. The ILO estimates that currently about 2 billion people live in fragile and conflict-affected situations, of whom more than 400 million are aged 15 to 29” (UN 2019c).

21 Rosling, Rosling, and Rosling Rönnlund 2018.

22 National Planning Commission 2012.

23 UN General Assembly 1979.

24 Oxfam GB 2019.

ever before. In the past year, a new billionaire was created every two days and their wealth is particularly undertaxed. Only four cents out of every dollar of tax revenue comes from taxes on wealth.<sup>25</sup>

The World Bank recently published a poverty and inequality report that states that 70 percent of South Africa's assets are in the hands of 10 percent of its richest people, who are predominantly white. The World Bank furthermore shows that the 60 percent on the bottom rung in this country, which is predominantly black, owns only 7 percent of the nation's assets.<sup>26</sup> According to Statistics South Africa, 55.5 percent of all groups in this country are poor but, if you disaggregate by race, only 1 percent of the poor are white while 64.2 percent of black African people are poor.<sup>27</sup>

The statistics also reflect race-skewed and strained access to health services, education, housing, and technology, including the Fourth Industrial Revolution. And these principally reflect the contours of past injustices, whether they were race in terms of apartheid, gender in terms of patriarchal laws and policies, or disability in terms of the welfare approach to disability. Some of the contours of inequality are age and geography related.<sup>28</sup>

If we are not doing well, at least in South Africa and many other countries, what has gone wrong with social justice given the fact that the Universal Declaration on Human Rights (UDHR) has advocated for social justice or fairness between social groups for as long as it has existed? In South Africa, our Constitution entrenches individual human rights, but also at the core of that is fairness between social groups.<sup>29</sup> Our Constitution even places the duty on us to achieve equality as one of the values in Section 1. Social justice is also a specific human rights issue in Section 9 of the Constitution.<sup>30</sup>

What are we doing wrong then? Let us look first at leaving no one behind. We say we want to leave no one behind, but research we have been doing as the Law Trust Chair in Social Justice at Stellenbosch University, which has been supported by a sister organization called the Thuma Foundation with its work on enterprises and community, shows that statistics may be misleading.<sup>31</sup>

25 Oxfam GB 2019.

26 World Bank 2018.

27 Statistics South Africa 2019a.

28 Smith 2018.

29 National Planning Commission 2012, 465.

30 Department of Justice and Constitutional Development 2012.

31 Law Trust Chair in Social Justice 2018a, 2018b, 2018c, 2019; Law Trust Chair in Social Justice and Stellenbosch University Division for Social Impact 2019; Law Trust Chair in Social Justice, Sustainability Institute and Centre for Complex Systems in Transition 2018; Thuma Foundation 2019.

For example, I have spoken about poverty being at 55.5 percent nationally. I could also have mentioned that official unemployment is at about 27 percent with unofficial unemployment at about 40 percent, but that is looking at it globally. If you disaggregate the information to municipal wards, you will see a different picture. You will find wards where there is virtually no poverty and you will find wards where there is systemic poverty—where poverty is at almost 90 percent.<sup>32</sup> We have visited some of those wards in a place called Empangeni in KwaZulu-Natal.

It seems to me that the first thing that we are doing wrong is that we have a tendency to generalize. We need to go down to the municipal wards or the smallest local government units and look at the situations there. When we do household surveys, instead of doing general ones, we need to invest money into ensuring those household surveys go to every village and every municipal ward so that we truly leave no one behind. In other words, to leave no one behind, we must meet them where they are.

Another thing that I believe we are doing wrong is the SDGs. I have found that, in this country and many other African countries, the emphasis is on tracking progress with the SDGs.<sup>33</sup> But the SDGs are supposed to be a catalyst for change and their essence really is social justice. We would not have come up with the SDGs if the intention had not been to add them as a catalyst to speed up ending poverty and significantly reducing inequality by 2030, while addressing issues such as climate change and the sustainability of human existence.

But when we implement the SDGs, again we are focusing on tracking progress. It is like going into a lab and trying to measure the impact of a catalyst but, when you put your chemicals together, you do not add the catalyst. Instead, you invest a lot of money into measuring the impact of the SDGs that you never added to the mixture.

We need to invest more money toward helping government, business, and society plan for the implementation of the SDGs but, again, with the understanding that it is not a random process. The taste of this pudding will be in the eating. The eating should be us asking questions with respect to each policy, each law, and each decision we intend to make. Will it reduce inequality? Will it close the gender gap? Will hunger be history, and will it end poverty? Everything we do must be subjected to an SDG impact assessment, and not just for SDGs 1, 10, and 5.

32 Statistics South Africa 2019b; World Bank 2018.

33 Our World in Data 2019.



With the SDGs, the problem is exacerbated by indicators that are globalized. While experts are drawn from across the globe, it appears as though the voices of the experts who have been influencing the SDGs' targets and related indicators are of those who have never been to all of the villages in the world and have never seen the nature of the poverty and socioeconomic exclusion that is pervasive in those places. Naturally, by globalizing the indicators, some of the indicators are not necessarily responsive to the needs of the poorest countries.

Accordingly, the global agenda for change in the pursuit of sustainable development tends to prioritize things that should not be a priority in developing countries. For example, in South Africa many civil society groups hope that President Cyril Ramaphosa is going to announce that the government will pay for free sanitary pads for school-going girls. This is a good thing. As a woman and gender activist, I view this step as positive with regard to advancing gender equality. But in a country where children go without food, where lack of nutrition is leading to physical stunting for some children, where some of the schools have not met the requirements of what the court has called minimum standards, where there are still mud schools and pit toilets, and where there are no laboratories, no computers, and so forth, how do you choose to prioritize sanitary pads?<sup>34</sup>

I do not think sanitary pads should not be provided; I just think they should not be provided by the government, and therefore I am part of a different quest to provide sanitary pads. That quest is driven by an organization called the Imbumba Foundation, which advocates that you and I should provide sanitary pads while government should prioritize life and death matters.<sup>35</sup> It does not mean that nobody delivers sanitary pads; it means we, as members of civil society, deliver them, for now. To raise funds, we will be climbing Mount Kilimanjaro and summiting on 9 August 2019 as part of this quest to deliver sanitary pads. We see this as a social justice issue. It is about civil society playing a part in advancing social justice through upholding the dignity and expanding the frontiers of freedom for girls.

The World Bank has labeled South Africa one of the most unequal societies in the world.<sup>36</sup> The truth is, though, that South Africa is not the only unequal society where the lot of the people on the bottom rungs in society gets worse and the fortune of the top 1 percent keeps getting better. How can this be the case, in the light of international human rights instruments such as

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34 World Bank 2018, xiv.

35 Imbumba Foundation 2019.

36 World Bank 2019.

the UDHR<sup>37</sup> and, at the African regional level, the African Charter on Human and Peoples' Rights?<sup>38</sup> Surely these instruments, like the South African Constitution, have transformative potency. The equality gap is a time bomb everywhere in the world and is borne by the rise in political fractures, nationalism, and extremism while the structural inefficiencies retard development, including economic growth. In South Africa, lack of progress on social justice along the contours of apartheid is a threat to building the democratic united nation envisaged in the Constitution, which has national reconciliation at its core.

In his address on poverty at the Law and Poverty Colloquium hosted by the University of Stellenbosch in May 2013, the late former Chief Justice Pius Langa made the following observation:

The fight against poverty has implications for national reconciliation in South Africa ... Poverty speaks to our history, to where we come from. National reconciliation therefore has to have resonance to that past. Thus, we fight poverty because we aim to correct a past that went horribly wrong. This is an aspect we should pay attention to, if only out of our own or our national self-interest. I am convinced that whilst we allow this very wide gap to exist between the poorest of the poor on the one hand, and the most affluent in our country, the reconciliation that will facilitate our development as a nation will remain a pipe dream.<sup>39</sup>

It is my considered view that what is needed is the deliberate implementation of global and national human rights and development instruments and the use of data analytics to transcend the one-size-fits-all paradigm that exacerbates preexisting disparities. I also believe that data disaggregated according to various discrimination grounds and to the lowest societal unit, such as a village or local government unit, should be employed to track progress and assess the impact or likely impact of policies on poverty and inequality. Ideally, new policies should not reinforce extractive relationships between groups and communities. This includes extractive relationships between nations. Incidentally, the matter of fair dealing and equality between nations was one of the areas of repeated attention by John W. Holmes, whose focus was international relations and peace.<sup>40</sup>

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37 UN 2015.

38 Swedish Foundation for Human Rights 2012.

39 Langa 2011.

40 Chapnick 2009.

The issue of the lack of consensus on social justice is another matter that is derailing progress on closing the social justice gap, despite favorable international and national instruments. As I indicated earlier, there are those who deny that there is social injustice, be it between groups or between nations. They argue that all that needs to be done is to ensure good governance, to provide education, and to facilitate access to employment in the open market context where all get what they work for.<sup>41</sup> The truth is that the market is skewed because of generational inequality, which is a legacy of accumulated advantages for those from groups advantaged by past injustices and accumulated disadvantages for those historically disadvantaged by the same.

Those who say all is to be blamed on colonialism and related historical extractive relationships, including slavery, are not helping to solve the problem either. In South Africa, this narrative blames everything on apartheid and colonialism. Such a narrative recently reared its ugly head when attempts were made to stop my investigation on State Capture as Public Protector. To try and stop the investigation, or at least taint the credibility of the process, I and others were branded as spies and agents of White Monopoly Capital. This narrative ignores the missed opportunities through policy dissonance, bad governance, corruption, clientelism, and cronyism, among others.<sup>42</sup> Those are two pathological extremes that need to be confronted to accelerate progress on social justice, particularly in line with the SDGs.

In between, there is a more subtle pathology. This relates to the tendency to see justice as “just us.” For example, if I am a woman activist for women’s rights, I will use my voice and any platform I get exclusively for women’s concerns. A justice as “just us” paradigm entails not showing concern about other issues such as injustice against gender-nonconforming persons, race injustice, nationality injustice, or the intersection of injustices. If you are black and concerned about race justice, you will use your voice only for race-related injustice. Disability injustice will not be your concern.

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41 Chapnick 2009.

42 The UK PR Regulatory Agency found the Gupta family to have commissioned a UK company to conduct crisis communication aimed at undermining an investigation. My team and I had just commenced, around April 2016, a Public Protector investigation into allegations referred to as “state capture.” It was alleged that the Gupta family was leveraging their relationship with then President Jacob Zuma and their business partnership with his son for undue influence on him and strategic organs of state, mostly state-owned enterprises, for private gain and evading accountability. The key allegation concerned the sudden dismissal of the minister of finance in December 2015 and his replacement with a person alleged to be a Gupta choice. The media labeled this state capture. See Segal 2018.

While it is important for each oppressed or left-behind group to advocate for a fair deal for itself, having each vocal group confine its voice to its own concerns creates a problem because those who cannot be heard will not be heard. I believe that we all need to transcend justice as “just us” and look at justice as “justice for all” and “all for justice.” That is why we integrate all social justice issues at the Law Trust Chair in Social Justice.

Our research as the Social Justice M-Plan team has identified the lack of a systems approach in strategies aimed at driving social transformation in the pursuit of equality as another key weakness.<sup>43</sup> When, for example, women are left behind, policy designers tend to come up with a law or a policy to advance women. Not much attention is paid to what in the system is throwing them out. I must say, though, that with regard to women, gender mainstreaming, where practiced, does mitigate the adverse impact of social impact–unconscious policies.<sup>44</sup> But not much mainstreaming occurs with the other forms of socioeconomic exclusion behind poverty and inequality. For example, when people with disabilities are left behind, the tendency is to introduce laws or policies for the inclusion of people with disabilities without auditing the impact of other laws and policies on disability. The same applies to children, older persons, and rural communities.

Earlier on, I mentioned skewed asset distribution. To recap, in South Africa the majority 60 percent at the bottom own only 7 percent of the nation’s assets. Policies that focus on the excluded groups, regarding economic participation at all levels and in all areas, do not look at how the system spits them out.<sup>45</sup> For example, on the issue of assets, banks require everyone to provide collateral to get loans needed to start, grow, and sustain businesses. Even for a study loan, you need some form of collateral, which may be a surety from a well-off family member or friend. Banks are not evil; they are businesses that have to make money. They must be assured that the risk they are taking in lending money is somehow insured or mitigated. The impact is unintentional discrimination against the poor as they have no assets for collateral.<sup>46</sup>

But in a country where those who did not have assets were denied the ability to own assets, as black people were, not only was land taken away from them, but they also were not allowed to own land until the eve of democracy. Accordingly, when you insist on a policy that requires immovable assets as a precondition for significant loans, you are excluding, by impact not design, mostly those

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43 National Planning Commission 2012.

44 African Development Bank Group 2009; Office on the Status of Women 2019.

45 Department of Justice and Constitutional Development 2012; Oxfam GB 2019.

46 James 2014.

who were prevented from owning assets by apartheid, gender discriminatory laws, and related injustices. You are, accordingly, perpetuating socioeconomic exclusion injustices of the past by impact. In other words, the risk mitigation factors of banks have a disparate impact on historically disadvantaged groups such as black people, women, and persons with disabilities, which amounts to indirect discrimination.<sup>47</sup>

I am not suggesting that banks should lend without collateral, but rather that policies should explore other forms of collateral. Could the state provide collateral? One example that is worth taking a closer look at in this regard is Shared Interest, an American organization born of the actions of those who used to support the antiapartheid movement in South Africa. The group now collects money through crowdfunding and puts it aside as collateral to mitigate the poverty trap. If you do not have assets but you do have a business plan, and you clearly seem to be somebody who is ready to run a successful business, Shared Interest helps you with collateral.<sup>48</sup> This is a model that governments could consider with a view toward undoing generational inequality and transcending the epidemic-like nature of poverty.

My core message is that many facially neutral laws and policies exacerbate social injustice without intending to do so. We then make inroads into the system for excluded groups, but fail to establish how and why the system spits them out again and leaves them behind. At the Law Trust Chair in Social Justice Chair, we have come up with a Marshall Plan-like comprehensive antipoverty and equality acceleration strategy called the Musa Plan for Social Justice, also referred to as the Social Justice M-Plan. The flagship key result area of the Social Justice M-Plan is assisting governments to use data analytics to plan for inclusiveness and avoid one-size-fits-all approaches that unduly create or exacerbate existing disparities.<sup>49</sup>

The central idea is that, when government designs a policy, it needs to use data analytics to predict how such a policy may unintentionally exclude a marginalized group or impose a disproportionately greater burden on it. An example referenced in the M-Plan Concept Paper is a decision by government to raise the value-added tax (VAT), which is already a form of regressive tax, by 1 percent. The increase was implemented to generate revenue to increase the number of students covered by the government bursary system known as the National Student Financial Aid Scheme. This was in response to the #FeesMust-

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47 James 2014.

48 Shared Interest 2019.

49 Law Trust Chair in Social Justice 2018a.

Fall student uprising, which demanded free tertiary education.<sup>50</sup> While the 1 percent VAT increase made everyone pay the same extra amount for goods and services, it was the poor who were disproportionately affected as 1 percent is a significant cut from their meager income.

Social injustice is not only perpetrated when historical disparities are exacerbated. Failure to embrace material differences in human packaging is also a form of social injustice. For example, some of the legal tools or concepts used today were developed at a time when some people were not regarded by the law as persons. This is the case with women and slaves. In labor law, for example, there still are countries that do not recognize maternity rights. This is because the paradigm of a working person behind the design of labor laws was a man and, when women came into public workplaces, the paradigm remained unchanged.<sup>51</sup> In South Africa, women were, until a century ago, not allowed to practice law and were excluded from the Legal Practitioners Act's definition of a person. After women's admission as lawyers, the paradigm that informed the male-centric arrangements did not immediately fall away.<sup>52</sup>

Finally, dear colleagues, our view, as the Law Trust Chair in Social Justice, is that a lot of the social injustices perpetuated in the world are due to the abandonment of *Ubuntu*. *Ubuntu*, which I believe is the spirit that propelled John W. Holmes and his colleagues when designing international human rights instruments, is about human solidarity. *Ubuntu* holds that "I am because we are; I will advance you so that we can both survive because, together, we have a better chance of survival in the world." Animals still do that; they still help each other.<sup>53</sup>

Sadly, today, humans struggle a lot with helping each other without the expectation of an immediate payoff. With *Ubuntu* you help out of compassion, out of symbiotic ecosystem considerations, and out of sustainability thinking. This is what I believe drove the visionary actions of John W. Holmes and his contemporaries in conceiving and designing global instruments such as the Charter of the United Nations and the UDHR. Such thinking is the foundation of South Africa's constitutional democracy as it is also the basis for the SDGs.

Without disruption of systemic generational inequality, social justice is a pipe dream. What is encouraging is that there are some legal and political luminaries that appreciate and are prepared to speak the truth about social justice insofar as it relates to redressing the ugly and complex shadow of past

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50 M. Langa 2017.

51 Madonsela 1995.

52 Madonsela 2012.

53 Hawkins 2012b.

injustices.<sup>54</sup> Constitutional Court Justice Edwin Cameron captures the legacy of advantage and disadvantage, together with the duty to remedy such through positive measures, in the following terms:

My whiteness bought me privileges apartheid was designed to secure for whites. It secured for me access to first-rate high school and an excellent university ... I was a beneficiary of apartheid's affirmative action for whites but, growing up poor, my life benefited lavishly from private gestures of generosity. The Constitution seeks to offer this generosity and support to us all. It gives us a framework in which mutual support and generosity are the key. And it obliges government, on behalf of all of us, to create a society in which all of us can live in dignity ... The Constitution offers us a chance to repair and remedy our country.<sup>55</sup>

It is clear from Justice Cameron's sentiment that the duty to ensure socio-economic inclusion rests with the whole of society and not government alone. The thinking underpinning the SDGs holds, furthermore, that the duty to advance social justice and other SDGs is shared within nations and between nations. In this regard, I am encouraged by John W. Holmes's legacy of drawing attention to the socioeconomic determinants of peace. I was particularly encouraged by his assertions about Canada and its role in the world. According to Patrick Lennox, in 1997 John W. Holmes said: "The first priority of Canadian defence policy is not and has not been for a century the defence of Canada. It is the defence of an international system favourable to our security and survival."<sup>56</sup> In my view, such a system would be one based on "justice for all" not justice as "just us."

This takes us back to "The Cold Within." We all have a responsibility to use our logs to keep the fire burning for everyone. What dying fire are we challenged to revive right now? For me, the dying fire is democracy, it is the rule of law, it is social cohesion, it is the flame of peace and, ultimately, it is our common survival. We stand to lose on these matters because as long there is injustice somewhere, there cannot be sustainable peace anywhere.

The answer to why we should be concerned about social justice, accordingly transcends compassion and comes to center on self-preservation and preserving our common habitat. We pursue justice, including social justice, because

54 Albertyn 2007, 254; Davis 2010, 97; Du Plessis 2000, 388; Langa 1998, 149, 2006, 354–358; Liebenberg 2010, 24–25; Motlanthe 2018; Van der Walt 2006, 16.

55 Cameron 2014.

56 Lennox 2010, 381.

it is the glue that binds society and the thread that maintains peaceful coexistence between nations. Adam Smith once said, “Justice ... is the main pillar that upholds the whole edifice. If it is removed, the great, the immense fabric of human society ... must in a moment crumble into atoms.”<sup>57</sup>

The UN Charter and the UDHR sought to support the entire establishment for peaceful coexistence within and between nations. Through not adequately remedying historical injustices and insisting on one-size-fits-all policies, we have left many behind. Not only are those who are unfairly excluded from opportunity refusing to take it lying down, but their exclusion also denies our nations the human contributions that they could make. The African Institute for Mathematical Sciences (AIMS) believes that the next scientist of Einstein epic proportions could be in a village somewhere in Africa.<sup>58</sup> If we do not ensure that generational inequality does not deny girls and boys from disadvantaged groups in villages and other hidden pockets of society the opportunity to free their human potential and thus contribute fully to society and the world, we might miss that Einstein coequal.

In *Daniels*, Justice Cameron summarizes the social justice challenge of our time in the following manner: “The past is not done with us; ... it is not past; ... it will not leave us in peace until we have reckoned with its claims to justice.”<sup>59</sup> What is encouraging is that if we take action to affirm the humanity of those left behind, the humanity of all, including the beneficiaries of unjust historical disparities, will be liberated. This is what Charlotte Maxeke, the first African woman graduate in South Africa, had in mind when she said: “If you definitely and earnestly set out to lift women and children up in the social life of the [black people], you will find the men will benefit, and thus the whole community both white and black.”<sup>60</sup>

Thank you, ACUNS, for organizing this event and opening a conversation about social justice. I do believe that your deliberations will contribute to a better understanding of the imperatives of our time. They are also likely to contribute to the emergence of a greater sense of urgency in terms of finding our logs and putting them in the fire to ensure that, as humans, we do not just survive, but that we all thrive.

Ethiopians say that “when spider webs combine they can tie up a lion.” Together, we are equal to the lion of hunger, poverty, inequality, and climate change, and the concomitant threat to the rule of law, sustainable democracy,

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57 Smith 2019.

58 AIMS 2019.

59 *Daniels v. Scribante* 2017, para. 154.

60 South African History Online 2019.



and peace. Together, we can be the midwives of the peaceful world we yearn for. At the core of that peaceful world is justice for all that is anchored in the equal enjoyment of all human rights and freedoms. That would be a world where social justice prevails.

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