

SCHOLARLY REVIEW ESSAY

Reconciling South Africa

Stephen Ellman. *And Justice for All: Arthur Chaskalson and the Struggle for Equality in South Africa.* Montgomery, Alabama: New South Books, 2020. xv + 824 pp. Preface. Acknowledgements. Notes. Index. \$40.00. Hardcover. ISBN: 978-1588384287.

Carolyn E. Holmes. *The Black and White Rainbow: Reconciliation, Opposition and Nation Building in Democratic South Africa.* Ann Arbor: University of Michigan Press, 2020. 251 pp. Acknowledgements. Appendix. Notes. Bibliography. Index. \$29.95. Paper. ISBN: 978-0472054633.

Hannah E. Britton. *Ending Gender-Based Violence: Justice and the Community in South Africa.* Urbana: University of Illinois Press, 2020. xv + 190 pp. Abbreviations. Preface. Acknowledgements. Appendix. Notes. References. Index. \$24.95. Paper. ISBN: 978-0252084966.

These books address different policy challenges facing South Africa after the country's transition to democracy in 1994. Despite their disparate topics, they highlight how even the most inspirational constitution is not sufficient without ethical leadership and the backing of strong institutions.

Stephen Ellman's biography *And Justice for All: Arthur Chaskalson and the Struggle for Equality in South Africa* examines the life of a man who was instrumental in abolishing apartheid. As the first Chief Justice of the country's Constitutional Court, Chaskalson belonged to that earlier generation of ethical but also pragmatic leaders. Ellman skillfully sketches Chaskalson's life from his birth to a prosperous Jewish family to his education in elite private schools and the University of the Witwatersrand law school. Chaskalson subsequently joined the "boys club" that was the Johannesburg Bar and scaled the ranks of the legal profession, making his fortune as an insurance lawyer. Through his liberal and radical friends in the bar, he was drawn into political cases. His law school friends included men who would become some of

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South Africa's most recognized anti-apartheid activists and lawyers, such as George Bizos, Joe Slovo, and Bram Fischer. As lead counsel for the defense in *S. v. Nelson Mandela* (the Rivonia Trial), Fischer recruited Chaskalson into the defense team because of his scrupulous attention to detail. Ellman shows sympathy for Fischer's transgression of legal ethics by acting as a lawyer and co-conspirator in the charges that his clients were facing.

The book focuses on Chaskalson's work at the Legal Resources Center, a public interest law firm that successfully challenged laws restricting the rights of Africans to live in urban areas. The African National Congress (ANC) looked to him as an advisor during the negotiations to end apartheid, even though he was not identified as a political activist. It was precisely because he came out of the mainstream of the legal fraternity that the ANC viewed him as a strategic ally. He would defuse the notion that the ANC were a bunch of revolutionaries bent on taking away everything that whites owned. A further boost to his credibility was that he had been a technical advisor to the constitution-writing process in neighboring Namibia, where the parties had agreed to a set of overarching Constitutional Principles as the basis of their negotiations. Ellman writes that even though the ANC had developed the idea of Constitutional Principles for the South African process, "Arthur played a more important role on one crucial issue: how the Constitutional Principles would be enforced"—through the Constitutional Court (421). While politics dominated the negotiations, Ellman argues, every political decision "was run through the expert legal judgement" (428).

The book concludes with Chaskalson's appointment as Chief Justice of the Constitutional Court. His most important and enduring legacy was the Court's decision to end the death penalty. He also left behind a precedent that nobody in the government, not even Nelson Mandela, was above the law.

Ellman admits that the biography is "the story of a man who was a friend and a mentor" (ix). The result is a book that in parts reads too much like hagiography. He also comes close to a great-man theory of history, with Chaskalson as the great white savior who brings technical rationality to an otherwise highly emotive political process. The tendency to foreground whites is an all-too-common feature in the telling of South African history. Ellman does not even mention the assassination of Chris Hani as the event that speeded up the process in a way that no legal process could have done. An additional fault is that Ellman gets too much into the weeds of South African jurisprudence, which can be heavy going for lay readers.

Ellman also falls for the tendency of biographers to read the present into the past. Thus, when young Arthur was "called out" in a cricket match, "he responded by throwing the wickets about, because he felt he'd been wrongly dismissed. Perhaps this was the first dramatic demonstration of Arthur's passion for justice" (14). Or perhaps it was just a childhood tantrum. The book also suffers from so much speculation that it is sometimes hard to distinguish between Chaskalson's and Ellman's views. And then there is the customary tendency to explain leadership in terms of early childhood suffering, even for a child of privilege such as Chaskalson. We are thus informed

that when he was only four, his father died and the family went through the ordeal of moving from a mansion to a smaller house, albeit one with a backyard large enough for a tennis court. When he left commercial law, Chaskalson had made enough money that he would never have to work again, but he also warned his son, Matthew, that their lives might be more constrained. Poor Matthew.

Despite the best intentions of leaders such as Chaskalson, Carolyn E. Holmes argues, the challenge of bringing the nation together remains elusive. In *The Black and White Rainbow: Reconciliation, Opposition and Nation Building in Democratic South Africa*, she discusses the tension between the centripetal pull of nation building and the centrifugal push of democratic politics in South Africa: “The nation, as a community of sentiment, whether created before or after the genesis of a state, fundamentally relies on the ability of fellow citizens to imagine their fates as tied to or at least in concordance with one another. Democracy, especially through the contentious conduct of elections, fundamentally depends on interpersonal and institutional trust.” National solidarity becomes impossible when identities associated with past conflict continue to shape how people experience and conduct themselves in the present (115). South Africa is prevented from meeting its ideal of becoming a rainbow nation by both the resilience of past identities and the absence of any history of a vision of a united national identity: “whether exclusivist claims were based on assumptions about divine election, as with Afrikaner Nationalist definitions, or on inclusive definitions based on the spatial principles put forth in the Freedom Charter, the essential contestation over who can or should be part of the nation has been a major theme of successive movements in establishing and resisting apartheid” (43). Holmes further argues that even outside the ANC, movements such as Black Consciousness operated within apartheid’s racial categories. “By using the lived experience of discrimination at the hands of the apartheid state, Biko and his contemporaries were forced to invert, but not undermine, the state sponsored racial categories and hierarchy that dominated the lives of people in South Africa” (39).

There are several problems with Holmes’ analysis. First, not even the United States would meet her exacting standards for democratic nation building. Race makes the personal and institutional trust she prescribes hard to imagine in the US. She seems quite self-conscious of the contradiction in what she expects of others, writing about her own “hypocrisy as a researcher coming from a country with a difficult history of race relations...” (101).

Holmes also takes a roughshod approach to South African history. The Union of South Africa may have been formed in 1910, but national vision was articulated by organizations such as the South African Native Congress in the 1890s. The Freedom Charter, which she also cites, is unequivocal in its declaration that “South Africa belongs to all who live in it, black and white...” (37). She argues that “this conception of South Africa as a nation whose conditions of existence were territorial boundedness and the fact of cohabitation, provides a rather thin basis for the cohesion of a singular will of the

people” (37). However, the feeling of a territorial boundedness does not preclude a national consciousness. The reference to geography also cannot be read in abstraction from the document’s commitment to a multiracial democracy. Holmes is simply wrong on the facts about Black Consciousness. The movement is widely recognized for its rejection of apartheid-imposed definitions of race such as Africans, Coloureds, and Indians, which it replaced with a political definition of Blackness that had nothing to do with phenotype.

Most baffling is Holmes’s choice of Afrikaner and Zulu interviewees to generalize about the whole country. Could it be that this is where ethno-nationalism has been most prevalent? But even among these communities there is no direct correspondence between ethnic identities and political belonging. There is as much Zulu support for the ethno-nationalist Inkatha Freedom Party (IFP) as there is for the more cosmopolitan African National Congress (ANC). Afrikaners have left the National Party in droves to join the more liberal Democratic Alliance. The evidence simply does not bear out the argument.


I also wondered if the author were not drawing a moral equivalence between Afrikaner resentment about their loss of privilege and Zulu resentment over the Black government’s betrayal of its promises. My fears were confirmed by the author’s protestation that she seeks to draw no such equivalence (189). She castigates her interviewees for their “simplistic dualities of belonging /opposition, perpetrators/victims, and good and bad, in which they affiliated themselves largely with their own ethnolinguistic and racially defined in-group and opposed those outside it.” Another possibility is that the interviewees are more in touch with their own history.

In *Ending Gender-Based Violence: Justice and the Community in South Africa*, Hannah E. Britton also lays bare the “inescapable contradiction between, on the one hand, South Africa’s rights-based political system, and on the other hand the violence of inequality” (28). According to the Medical Research Council, upwards of one third of men in places such as Eastern Cape and Gauteng admitted to having committed sexual assault. She notes that, “No matter which study or figure is used, the message is clear:....sexual violence is shockingly widespread in South Africa.” The fact that these numbers “align with most cross-national studies of gender-based violence and intimate-partner violence globally” is no room for comfort, especially in light of the gains that state feminism has made in South Africa (17). By “state feminism” she means the gains that women have made by assuming senior positions within the state machinery. As part of government, these women also tend to think like the state, which is to attempt to make communities legible by individualizing the problem of sexual violence, so that it becomes a matter of perpetrators and victims. This results in a carceral feminism in which the solution is to lock up the perpetrator and throw away the keys without addressing the larger structural factors that produce and reproduce the violence. The carceral approach allows the government to quantify the problem and create an illusion of progress.

The strength of Britton's book is the painstaking and granular description of the communities in her study—across the racial divide and across the country—although I yearned to know in which provinces the communities are located. She identifies accelerants of gender-based violence that are more prevalent in poor communities. These accelerants include substance abuse; family violence and gang activity; poverty and inequality; and shifting gender roles. She identifies four structural factors that have shaped women's ability to respond: place, people, police, and points of contact with government institutions. Given the geography of apartheid, it is not surprising that the poor and segregated informal settlements and townships should be the ground zero of gender-based violence. Even though such violence also takes place in white areas, whites eschew the trauma centers in nearby townships and rely on white medical providers. With respect to people, an important role is played by religious and traditional leaders as well as community activists. As Britton puts it, "In some ways people may matter more than institutions in South Africa. Rather than wait on slow, corrupt, or inefficient government programs, people have been following local leaders to advance change: religious leaders, traditional leaders, community activists" (76). Notwithstanding her criticism of carceral feminism, Britton nonetheless puts the greatest emphasis on police as the most critical factor in successful responses to gender-based violence. She writes that the most successful communities were those that had "a dedicated volunteer, a competent station commander, an exceptional police investigator, a well-appointed trauma center, or a strong partnership with the community" (121).

One of the book's most instructive lessons has to do with the fourth and structural factor—the government. Britton describes how former police commissioner Jackie Selebi unilaterally and single-handedly dismantled local-level police units such as the Family Violence, Child Protection, and Sexual Offences units, all on the grounds that they were too expensive. These units were not a priority for Selebi, who was subsequently convicted and sentenced to fifteen years for his dealings with the criminal underworld. Even though some of these local-level units were subsequently re-established, the police stations never recovered from the government's neoliberal policies. Critics of the police should therefore also bear in mind that "they are underfunded, under-resourced, overworked and experiencing their own secondary trauma ..." They are also "marginalized voices in the justice system" because the ruling party views them as a political threat: "Many governments are threatened by the strength and autonomy of local communities, as they often become critics of corruption, inefficiency and hypocrisy at the national level. This is a viable, powerful threat in South Africa as well" (156). This is well said, but she might as well have included the political culture of corruption as one of the inhibiting factors in the fight against gender-based violence. The near tragic inconsistency that lies between the promise of democracy and the reality of post-apartheid

government, a reality that will be all too familiar to people from other African countries, must be acknowledged and addressed. So much for the illusion of South African exceptionalism.

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