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Book Review: Is a Poor Society an Unjust Society? A Review of *Law and Poverty: Perspectives from South Africa and Beyond*

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*IS A POOR SOCIETY AN UNJUST SOCIETY? A REVIEW OF LAW AND POVERTY:
PERSPECTIVES FROM SOUTH AFRICA AND BEYOND*

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Reviewing: Sandra Liebenberg and Geo Quinot (eds) *Law and Poverty: Perspectives from South Africa and Beyond*.¹

From 29-31 May 2011, a colloquium assembled at the law faculty of the University of Stellenbosch, *Law and Poverty: Perspectives from South Africa and Beyond* (“*Law and Poverty*”) is the collection of the essays presented at this colloquium.

Under the tacit premise that ‘poverty-eradication is not only a desirable policy-direction for South Africa, it is a *constitutional imperative*’,² twenty-seven academics, government officials, judges and activists presented essays on key theoretical and strategic questions concerning the relationship between law and systemic poverty. The variety of essays, which form the substance of *Law and Poverty*, share a certain commonality: that in poverty, constitutional rights cannot be actualised. For, in poverty everything but immediate survival seems ambiguous. Given that forty nine per cent of South Africa’s population live below a poverty line of R524 per month,³ half of the people in our country would still satisfy a means test determining them indigent. Half of the people in our country may argue that they have received no benefit from our Constitution⁴ at all. *Law and Poverty*, through thoughtful debate, seeks to change the *status quo*.

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¹ Sandra Liebenberg & Geo Quinot (eds) *Law and Poverty: Perspectives from South Africa and Beyond* (2012) Juta: Claremont. The collection was initially published under the same name in (2011) 22:3 *Stellenbosch Law Review*.

² Karl Klare ‘Concluding Reflections: Legal Activism After Poverty Has Been Declared Unconstitutional’. *Ibid.* at 423.

³ Sandra Liebenberg & Geo Quinot (eds) *op. cit.* note 1 at 1.

⁴ The Constitution of the Republic of South Africa, 1996.

Notable essays include Christodoulidis's *De-Politicising Poverty: Arendt in South Africa*⁵ which questions whether South Africa's political history is the primary impediment to poverty alleviation by drawing theoretical comparisons with Hannah Arendt's *Human Condition*; Fredman's comparative analysis *The Potential and Limits of an Equal Rights Paradigm in Addressing Poverty*⁶ which argues that 'viewing poverty through the lens of substantive equality allows us to illuminate the ways in which poverty, like status discrimination, generates stigma, social exclusion and loss of autonomy';⁷ and Wilson & Dugard's *Taking Poverty Seriously: The South African Constitutional Court and Social-Economic Rights*⁸ which argues that the Constitutional Court 'has underestimated the institutional role it can play in enabling poor people to articulate and assert their entitlements to the basic social goods.'⁹

In its preamble, the Constitution requires that 'we, the people of South Africa, heal the divisions of our past and improve the quality of life of all citizens and free the potential of each person.' It requires us to move forward with a singleness of purpose that, over-time, will lead to a united and democratic country. To ensure the progressive realisation of this stated objective, the Constitution provides for access to adequate housing,¹⁰ health care services,¹¹ sufficient food and water,¹² and social security.¹³ It further provides for a right to education¹⁴ and ensures that every child has the right to basic nutrition, shelter, basic health care services and social services.¹⁵ Where the rights of access only need to be progressively realised in accordance with the available resources of the state, the right to education and the rights of the child are unqualified. They are immediately realisable.

On 27 April 2012 our constitutional democracy reached the human age of majority. During this time we have had four general elections,¹⁶ four presidents,¹⁷ five

⁵ Sandra Liebenberg & Geo Quinot (eds) op. cit. note 1 at 59.

⁶ Ibid. at 124.

⁷ Ibid. at 125.

⁸ Ibid. at 222.

⁹ Ibid. at 223.

¹⁰ Section 26(1).

¹¹ Section 27(1)(a).

¹² Section 27(1)(b).

¹³ Section 27(1)(c).

¹⁴ Section 29(1).

¹⁵ Sections 28(1)(c) and (d).

¹⁶ In 1994, 1999, 2004 and 2009.

chief justices¹⁸ and our Constitution has been amended sixteen times.¹⁹ In certain instances, the national and international landscape has changed radically since 1994, yet, in relation to our plight to improve the quality of life of all citizens, change has been slow, at best. With the current inability of our government to actively heal the divisions of our past through improving the quality of life of all our citizens, poverty has continued to visibly erode our society unabated. It has been over eighteen years since the commencement of our constitutional democracy but still forty nine percent of our population live in deplorable conditions. Children often do not have basic access to nutrition or shelter. Recent case law suggests that our successors often do not have access to adequate education.²⁰ As for the other progressively realisable socio-economic rights, headway has been slow. This in turn, has perpetuated the cycle of poverty.

Poverty-eradication is not only a desirable policy-direction for South Africa, but a *constitutional imperative* which is not being addressed. As former Chief Justice Langa postulates in the introductory essay of the book: ‘I have walked among the shacks and I have seen little children without food. I have asked myself what the real meaning of the Constitution is in the context of the founding constitutional values of human dignity, equality and freedom.’²¹

Poverty, and its associated social and economic ramifications, has come to pervade the South African sense of morality. The sense of the normalcy of poverty dehumanises us. It feeds off our inaction and grows stronger each day that we accept its existence. It is widespread and it is systemic. It is insidious. As long as this antagonist continues to normalise, a poverty-ridden society governed by a Constitution providing for the realisation of socio-economic rights must be deemed to be an unjust society. However, within this context, *Law and Poverty* seeks to prevent this normalisation of poverty. It signifies action and does not accept that poverty can prevail. Through probative legal debate, from a variety of stakeholders, *Law and Poverty* questions the

¹⁷ Nelson Mandela, Thabo Mbeki, Kgalema Motlanthe and Jacob Zuma.

¹⁸ The late Ismail Mahomed, the late Arthur Chaskalson, the late Pius Langa, Sandile Ngcobo and Mogoeng Mogoeng.

¹⁹ The Constitution Sixteenth Amendment Act of 2009 is the last Act to have amended the Constitution. The Constitution Seventeenth Amendment Bill [B6-2011] and the Constitution Eighteenth Amendment Bill [B8-2011] are currently being considered by Parliament.

²⁰ *Section 27 and others v Minister of Basic Education and others* (NGHC) unreported Case No. 24565/12 (17 May 2012).

²¹ Sandra Liebenberg & Geo Quinot (eds) op. cit. note 1 at 5.

causes and effects of poverty and then creates the conversation as to how constitutional imperatives can be transformed into workable policies for the betterment of people prone to the cyclical effects of poverty. The strength of *Law and Poverty* resides in the contrast of its ideas; the scope of its offering; and the quality of its writing. It is a novel collection of essays, written with a common cause, which explores what the law can and cannot do in responding to the ills which poverty nurtures. *Law and Poverty* leaves the reader with an understanding of how South Africa's legal framework can effect change and how civil society has an important role to play in combating this societal ill.

The editors and authors of *Law and Poverty* must be commended for their immense effort to cultivate this debate. *Law and Poverty* is a much-needed, reasoned offering on what the law can do to champion the greatest threat to any constitutional democracy: poverty and its ability to defer the actualisation of human rights.