Author: K Govender

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ADDRESS TO COMMEMORATE THE 2013 MARTIN LUTHER KING DAY AT THE LAW FACULTY, UNIVERSITY OF MICHIGAN

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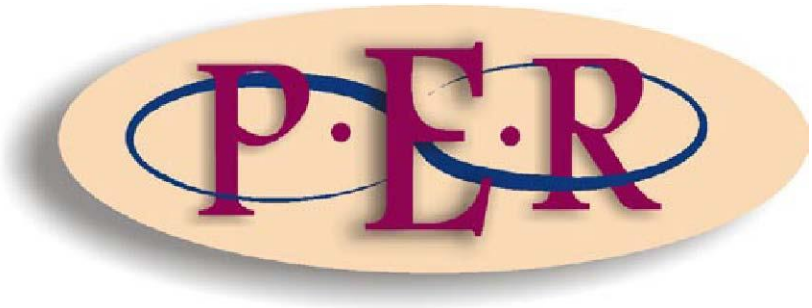

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ORATIO: ADDRESS TO COMMEMORATE THE 2013 MARTIN LUTHER KING DAY AT THE LAW FACULTY, UNIVERSITY OF MICHIGAN

K Govender*

It is indeed a privilege and an honour to be invited to deliver the Martin Luther King Day lecture at the Law Faculty of the University of Michigan.

It is a wonderful co-incidence of history that the 2nd inauguration of President Barack Obama occurs on the birthday of Dr ML King.[1] The symbolism and message of today will journey well beyond the borders of this country and give hope to millions of people around the world who seek justice and respect for fundamental human rights.

In the presentation today, I will consider the similarities and differences between Dr King, Mahatma Gandhi and Nelson Mandela and consider the benefits they have conferred on society. I will reflect on the role played by Dr King and his legacy in the monumental constitutional changes that occurred in South Africa. Ensuring substantive equality and achieving social justice was pivotal to the civil rights movement in the United States. I will examine some of the successful consequences and impacts of ensuring equality before the law in South Africa and finally offer comment as to why we have not fulfilled the constitutional promise of delivering social justice to the extent anticipated some nineteen years ago.

It seems most natural and appropriate to honour Dr King in the way this nation does annually by having a federal holiday on his birthday. This is a far cry from the controversy that the proposal generated when it was initially mooted a few decades ago. When President Reagan signed the order into effect it signalled that this nation was going to honour someone who had held a mirror to it and forced it to re-

* Karthy Govender. LLB (Lon), LLB (Natal), LLM (Michigan). Professor, University of KwaZulu-Natal. Visiting Professor, University of Michigan. Barrister (Middle Temple). Advocate of the High Court of South Africa. Email: KGovender@ukzn.ac.za. Speech delivered on 21 January 2013 at the Law Faculty of the University of Michigan in celebration of Martin Luther King Day.

1 President Obama delivered his second inauguration address on the 21st January 2013.

appraise itself, warts and all. Profound and fundamental changes occurred as a result of the activism of Dr King and the movement he inspired. I hope in this address to demonstrate that his influence extended beyond the boundaries of the United States.

Memorial addresses of this nature must acknowledge the contributions of people like Dr King, who paid with his life for his adherence to principle. But they also have to do with a bit more that. This is an opportunity to evaluate how far society has progressed towards the realisation of his vision, what needs to be done to complete the journey, and finally an opportunity for us to recommit ourselves to the attainment of a more caring and equal society.

King, Gandhi and Mandela have all acquired what has been referred to in literature as a high mimetic quality. Herman Northrop Frye, the Canadian literary theorist, draws a distinction between "high mimetic" and "low mimetic" figures. High mimetic persons are mythically and socially superior to ordinary people, whereas low mimetic figures are perceived as being at the same level as the rest of human kind.[2] Both high mimetic and low mimetic figures inspire us at different levels.

Naturally we tend to minimize the human weaknesses and frailties and maximize the virtues, positive character traits, attributes and accomplishments of high mimetic figures. It serves our purpose to do that. Their legacy and memory operate as a yardstick by which many of us evaluate our conduct and also the conduct of those that exercise public and private power over us. Often these high mimetic figures possessed the character and attributes and represented the sort of morality that most of us aspire towards. Despite repeated imprisonment, harassment and the bombing of his home, Dr King's steadfast commitment to pursuing through non-violent protest his aspiration of a society in which individuals are judged by the content of the character as opposed to the colour of their skin contributed directly to his elevation as a high mimetic figure. For winning of the Nobel peace prize, for his soaring oratory, for changing the course of history, for fundamentally impacting on

2 French 2012 http://www.bit.ly/12t7k6a.

the morality of the United States of America and as a result of his untimely assassination at the age of 39, Dr King is regarded as one of the high mimetic figures of the world.

Decades after his death, the legacy of Gandhi is still dominant in many facets of Indian life. His teachings, principles and self-sacrifice appear as influential now in Indian society as they were at the time of independence. A similar process is occurring in South Africa with Nelson Mandela. Mandela led a liberation organization, emerged without rancour from prison after 27 years, and ruled as a national healer and reconciler in the best interest of all.

Those of us from countries like India and South Africa, with their acute challenges of inequality and poverty, need high mimetic figures to stir something within our beings and to compel us to further their vision, if only not to sully their memories and to be mindful of the sacrifices that they made in our name. In South Africa, we need the Mandela aura to get our present leaders to be better, to perform their constitutional responsibilities more faithfully, and simply to achieve more. We have fallen short of where we should be and having Mandela in the foreground reminds us constantly of this. He remains, decades after he retired, the conscience of the nation. I am not convinced that attempts to reconstruct and review all of the minutiae of the lives of such people through the prism of current moral values and norms serves our broader societal objectives. We benefit more from the image of the high mimetic figure, who sacrificed enormously for principle, towering over and leading us, than from being reminded that they possessed character weaknesses and flaws which detract from their high mimetic quality. Low mimetic figures are notable but hardly inspirational.

The comparisons between King, Gandhi and Mandela are interesting. All profoundly impacted on the course of history in their countries and were influential throughout world, and all were Time Magazine men of the year. All suffered the ignominy of belonging to communities that were subjected to legally sanctioned discrimination

and indignity. All contributed decisively to the fight against racial discrimination and domination and produced far-reaching and profound change.

All are high moral figures whose vision and legacy remain influential and undiminished. Gandhi, unlike Mandela and King, did not win the Nobel prize and this non-recognition by the Nobel Peace Prize Committee is, with respect, simply irrational. Both Gandhi and King remained steadfast in achieving their objectives through civil disobedience and passive resistance. Mandela, after initially pursuing a similar strategy, later become the commander of the African National Congress (hereafter the ANC) armed wing, *Umkhonto we Sizwe*. After the Sharpeville massacre, in which 69 people protesting against pass laws were killed by police officers, the various liberation organisations were banned and Mandela and the ANC resorted to armed action aimed at the apartheid military establishment. The banned organisations formed the view that protest and dialogue with an entirely unconstrained and unresponsive apartheid regime was an exercise in futility. The official policy of the ANC was to hit military targets and facilities of the regime, but sometimes civilians were killed by armed action aimed at the military. Mandela was convicted of offences relating to sabotage and received a life sentence. He was released after 27 years, led the ANC during the constitutional negotiations, and became the first president of a democratic South Africa.

Dr King recognized and acknowledged that circumstances in South Africa at the time were materially different from those in the south in the United States of America. He[3] said in London in 1964:

> Clearly there is much in Mississippi and Alabama to remind South Africans of their own country, yet even in Mississippi we can organise to register Negro voters, we can speak to the press, we can in short organise the people in non-violent action. But in South Africa even the mildest form of non-violent resistance meets with years of imprisonment, and leaders over many years have been restricted and silenced and imprisoned. We can understand how in that situation people felt so desperate that they turned to other methods, such as sabotage.

[3] King 1964 http://www.bit.ly/18ZGXMH.

Unlike Mandela, neither Gandhi nor King held high public office. Holding high public office is vastly different from being an activist or liberation figure and brings different challenges. The constraints of office sometimes require disagreeable choices to be made from competing alternatives. Major compromises were made during the negotiations. It was agreed that there would be a two-stage constitutional drafting process. The *Interim Constitution of the Republic of South Africa*,[4] agreed to by unelected leaders, would remain in place for two years after the democratic elections in 1994, while a final constitution[5] that accorded with pre-agreed constitutional principles would be drafted and agreed to by a two-thirds majority. It was agreed that there would be a government of national unity for five years after 1994. This sunset clause meant that the previous possessors of power would not be immediately negotiating themselves out of power. Finally the setting up of the Truth and Reconciliation Commission meant that all those who confessed and made full disclosure of the crimes they committed with a political objective were given complete criminal and civil indemnity. Some of these compromises may have been unpalatable to members of Mandela's constituency and his stature was decisive to the acceptance of these important compromises. Mandela and the ANC inherited a virtually bankrupt state and had to agree to an economic policy that departed considerably from their policy of economic redistribution. The deeply divided South African society coalesced around the rainbow nation vision of Mandela, and this inclusivity made the idea of black majority rule more acceptable to the economically dominant white minority.

The Mandela administration was by no means flawless. By his own admission he ought to have tackled the HIV/Aids pandemic earlier and much more aggressively, and more should have been done to deliver on the Reconstruction and Development Programme. But for us, it is much more convenient now to accentuate that which enhances his high mimetic status and overlook the flaws and failures.

4 *Interim Constitution of the Republic of South Africa* 200 of 1993.
5 *Constitution of the Republic of South Africa*, 1996 (hereafter the *Constitution*).

As their ideas develop traction and momentum, leaders of social movements achieving profound societal changes become increasing more vulnerable from persons resisting such change. The tragic assassinations of Gandhi and King had serious and lasting consequences. During the negotiations in South Africa, Clive Derby-Lewis and Janus Walus conspired to assassinate senior ANC leaders, including Mandela, in the hope that this would spark an uprising by the black community which would have to be put down by the then South African Defence Force, controlled by white soldiers, who would take control. The perverse logic was that the negotiations toward a democratic society would then be abandoned. The conspirators killed Chris Hani, a prominent leader, but were caught shortly afterwards. Recently after a marathon trial, Judge Eben Jordan[6] found various other Afrikaner right-wingers guilty of offences, including an attempt to murder Mandela.

Mandela was so central to the process that averted a race-based cataclysmic conflict and to the ushering in of the new constitutional dispensation that one shudders at what the consequences would have been had one of these assassination attempts been successful. They were not and he is now 94 years old and his face has appeared on our currency since 2012.

There is an interesting triangular relationship between the three figures and their various liberation movements. Dr King repeatedly acknowledged that he was heavily influenced by Gandhi's writings and even visited India to further his understanding of Gandhi's ideas and thinking. Gandhi's political awakening and the genesis of thinking started in South Africa when he was forced to confront undiluted racial prejudice. He was thrown off a train on a cold winter's night in Pietermaritzburg after buying a ticket to ride in the first class carriage. He started his passive resistance against discriminatory laws in South Africa and was imprisoned on a number of occasions. It is probable that Gandhi is the nexus that links South Africa and India. India and the Congress Party were firm and staunch supporters of Mandela and the ANC both

6 This is a reference to the marathon *Boeremag* treason trial that lasted 9 years. Appel 2013 http://www.bit.ly/18i47Lj.

during the liberation struggle and subsequently were at the forefront of attempts to isolate the Apartheid regime.

I now turn to consider the relationship between the civil rights movement in the United States and the struggle against Apartheid in South Africa.

In the powerful letter[7] from Birmingham jail dated 16 April 1963, Dr King stated that "Injustice anywhere is a threat to justice everywhere" and stated later in the letter "Freedom is never voluntarily given by the oppressor, it must be demanded by the oppressed." These sentiments were equally as apposite to the South African crisis as they were to the United States in the 1960s. Apartheid was not simply about the separate development of people, but was premised on the superiority and supremacy of white people and the inferiority of black people. It was pernicious and inherently racist in its conception, formulation and implementation. It envisaged a society in which there was a hierarchy of dignity with whites at the top of the pyramid and blacks firmly rooted at the bottom. Laws requiring the separation of the races were directed at achieving these objectives and were the means to an end and not an end in themselves. Arguments that apartheid was a benign policy aimed at allowing each of the racial groups to develop separately and appropriately but which somehow was harshly implemented are wholly unsupportable.

The similarity in the situations and the sentiments of Dr King must have influenced the attempts by the Congressional Black Caucus (hereafter the CBC) in the United States to raise interest in and awareness about the situation in South Africa, and ultimately to change United States policy towards South Africa. Members of the CBC proposed at least fifteen bills aimed at pressuring South Africa to abandon apartheid.[8] Unsuccessful attempts were also made to get Congress to pass a resolution calling on the Apartheid regime to free Nelson Mandela and other political prisoners. All these efforts paved the way for the final passing of the *Comprehensive Anti-Apartheid Act* of 1986. The bill imposed economic sanctions against South

7 King 1963 http://www.bit.ly/fRSs.
8 A Voice Date Unknown http://www.bit.ly/11SyPLw.

Africa, called for economic divestment and included conditions that had to be met before sanctions could be lifted. President's Reagan's veto was overridden by Congress and the bill become law and influenced developments elsewhere in the world as other countries imposed economic sanctions against South Africa.

The imposition of economic sanctions was a turning point in ending Apartheid. Sanctions were part and parcel of this blanket of smothering pressure that was imposed on the apartheid regime. Internally there was widespread unrest which could not be permanently contained by emergency rule and repression. It was this pressure that finally contributed to the start of real negotiations. One thing is for sure: the Apartheid regime did not commence meaningful negotiation because of some altruistic motive to do the right thing by the black community, after the years of discrimination and indignity.

The Berlin Wall had come down and communism was collapsing in many parts of the world. President De Klerk, the last apartheid President, probably calculated that the ANC and its Communist party allies would be compromised and weakened by the profound changes occurring and that this would be an appropriate moment to engage them in negotiations. On the 2nd of February 1990 President De Klerk unshackled the political process by freeing the political prisoners and unbanning the liberation organisations. When the negotiations started, the National Party probably anticipated a constitution which provided some form of white minority veto. However, the negotiations acquired a life of their own and it became apparent that any attempt to perpetuate white minority rule in any guise would not be acceptable either to the liberation organisations or to the international community, particularly to the United States. The Constitution that finally emerged was very different from that envisaged by the National Party when the negotiations commenced. The text drew from constitutional experiences throughout the world, received millions of representations from South Africans, and came up with a draft which was acceptable to some 86% of the members of the Constitutional Assembly. This from one of the most divided societies in the world. Somehow it seemed that wisdom and events conspired to enable us to act in the national interest and come up with this

Constitution, which is probably the best deal we could have got in the circumstances.

There was no racially based white minority veto, but the bill of rights protects fundamental human rights and freedoms of individuals, associations and in some instances non-natural persons. It imposes duties on the state and on organs of state to respect rights and obligations and, in some circumstances, imposes on non-state actors to respect rights. There are two discernible visions in the Bill of Rights. There is the constraining vision, which indicates the parameters and limits of state power, and then there is the egalitarian vision, which requires the state to act to free the potential and improve the quality of life of all. In addition to protecting civil and political rights, there is a constitutional obligation on the state to take reasonable measures within available resources to provide access to housing, health care services, sufficient food and water, social security and education.

We have held four elections in South Africa under the democratic constitutional dispensation, we have a free press, an independent judiciary, institutions supporting democracy that are effective and capable, a democratically elected legislature and executive and a vibrant and active citizenry. In economic terms, the fundamentals are in place. But the last few years have taught us the importance of vigilance and how quickly important gains can be rolled back. Some of those exercising public power tend to prefer to do so with minimum checks and balances and constraints. Liberation credentials are not always a guarantor of constitutional fidelity.

But how about this for being prophetic? On his way to Oslo to receive the Nobel Peace prize, after becoming aware that there were South Africans in the audience King[9] gave this advice in a speech in London in December 1964:

> If the United Kingdom and the United States decided tomorrow morning not to buy South African goods, not to buy South African gold, to put an embargo on oil; if our investors and capitalists would withdraw their support for that racial

9 King 1964 http://www.bit.ly/18ZGXMH.

> tyranny, then apartheid would be brought to an end. Then the majority of South Africans of all races could at last build the shared society they desire.

This advice, given in 1964, was heeded some quarter of a century later and the rest is history.

The underlying message, amidst the towering rhetoric, of the "I have a Dream Speech" is the quest for substantive equality in a deeply unequal society, and respect for fundamental rights. The struggle against apartheid was about ensuring substantive equality in a society that had embedded patterns of systemic discrimination. This objective of achieving substantive equality is the indelible thread that runs throughout the entire Constitution. The right to equality, the first right identified in the bill of rights, has been comprehensively interpreted and has brought about fundamental societal changes. The right recognizes equality before the law and the right to the equal protection and benefit of the law. It specifically prohibits unfair discrimination directly or indirectly on a number of grounds including race, gender, sex, marital status, sexual orientation, disability and religion. It extends this prohibition to both state and private persons. Affirmative action is deemed not to be an exception to the right to equality and is regarded as a constitutionally sanctioned means of achieving the objective of substantive equality.

When I was on the Human Rights Commission, part of my brief was to litigate in equality matters against both state bodies and private bodies. Cases against state bodies related to discrimination on the basis of disability while racial discrimination in respect of accommodation and the use of facilities was often the basis of cases brought against private persons. Most in the society understood that they could not discriminate on the basis of race or gender, but a different picture emerged when it came to discrimination on the basis of sexual orientation. A conservative society buttressed by certain religious beliefs was unwilling to extend real equality to gays and lesbians.

A few years ago a student in my class[10] at this Law School asked why the South African Constitution emphatically and unequivocally protected gay and lesbian rights to the extent that it did, given that that this was a vulnerable and marginalised community and had neither the guns nor the numbers to be a threat or serious nuisance to the nascent democracy.

It is easy to explain why we protected gay and lesbian rights as unequivocally as we did. As part of the compromise that guided us away from a cataclysmic race based conflict it was agreed that the Bill of Rights would include all universally recognised fundamental rights and freedoms. The prohibition of unfair discrimination on the basis of sexual orientation is a manifestation of this directive. The explicitness, genuineness and extent of the constitutional protection of gays and lesbians probably has more to do with the heady circumstances prevalent during the transitional period when the country was being piloted away from an authoritarian regime to a constitutional democracy. We were caught up in the thrill of creating the promised land. As Judge of Appeal Cameron[11] put it:

> The national project of liberation would not be mean spirited and narrow but would encompass all bases of unjust denigration. Non-discrimination on the ground of sexual orientation was to be a part – perhaps a relatively small part, but an integral part - of the greater project of racial reconciliation and gender and social justice through law to which the Constitution committed us.

This was the moment in time when space was created for the adoption of a number of rights, some of which were contrary to majoritarian sentiment and some of which may be construed as a nuisance by those myopically and exclusively concerned with efficient governance. Had we not taken the opportunity during this window, it is probable that the chance would never have come again. Respecting the dignity of gays and lesbians, the right to access information, and the right to just administrative action, and some of the criminal justice rights eased into the text of the *Constitution* as a consequence of our history and the need to do the right thing during the window of opportunity.

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10 Govender 2008 *Obiter* 1.

11 *Fourie v Minister of Home Affairs* 2005 3 BCLR 241 (SCA) 250.

The South African Parliament acted quickly, through omnibus legislation, to rid the statute books of racial and gender discrimination.

It did not act as decisively in respect of discrimination on the basis of sexual orientation, despite a number of statutes which discriminated directly and indirectly on the basis of sexual orientation. It was left to individual litigants and organisations to attempt, on a piece-meal basis, to challenge laws which discriminated. In a short period of about ten years, South African law regarding gays and lesbians has journeyed from the declaration that laws criminalising sodomy were unconstitutional to the requirement that Parliament legislate and regulate gay marriages. This is an astonishing journey piloted largely by the courts, using as a vehicle the right to equality. This journey is less the result of a carefully designed and meticulously implemented legal strategy than the result of judicial determination to take rights seriously.

In 2006 the South African Constitutional Court held in *Minister of Home Affairs v Fourie*[12] that the State had acted unconstitutionally in excluding gay and lesbian relationships from the benefits and responsibilities that the law attaches to marriage. It was a violation of the right of equal treatment before the law, the right not to be subjected to unfair discrimination on the basis of sexual orientation, and the right to dignity for the state to regulate heterosexual marriages while leaving gay relationships in a state of "legal blankness".

The court took the view that the while the law may not automatically eliminate stereotyping and prejudice, it can serve as a great teacher and ultimately establish public norms that protect vulnerable persons. In order to ensure expeditious action, the court gave Parliament twelve months to enact remedial legislation and provided that if such legislation was not forthcoming within that period, then the *Marriage Act*[13] would be deemed to be amended and the words "spouse" would be read into

12 *Minister of Home Affairs v Fourie* 2006 3 BCLR 355 (CC) (hereafter the *Fourie* judgment).
13 *Marriage Act* 25 of 1961.

the statute after the words "wife" or "husband". The Court cautioned that any law based on the "the separate but equal" thinking would perpetuate marginalisation and would therefore be unacceptable. In addition it made clear that no religious organisation could be compelled to solemnize gay marriages, if to do so would be against its religious beliefs.

I recall a meeting in Durban where, on behalf of the SAHRC, I explained the reasoning of the *Fourie* judgment, the imperatives of the *Constitution* and what could be anticipated from Parliament. A traditional leader in response stated that blood would flow in the streets if Parliament extended the concept of marriage to gay and lesbian couples. Despite spirited opposition from traditional leaders and many religious organizations, Parliament passed the *Civil Union Act*,[14] as it was required to do by the Constitutional Court. The Act allows heterosexual and gay and lesbian couples to marry and to call their union a marriage, and for marriages registered under the act to attract all the civil and legal consequences of traditional marriages. Blood did not flow in the streets after the recognition of gay and lesbian marriages because in reality it had no corresponding egregious impact on the rights of others in South African society.

The broader South African society, after basking in the reflected glory of international praise for its Constitution, belatedly realized the implications of having to take rights seriously. The debate that the nation had with itself over the issue taught us important lessons about the supremacy of the *Constitution*, the role of religion in secular matters, the constraints upon majoritarianism, respect for those differently situated, the consequences of living in a secular democracy, and the need to take rights seriously. South African society grew as a constitutional democracy as a consequence.

The rising tide of homophobia in Africa is a matter of concern. It seems that the Ugandan Parliament is close to passing an "anti-homosexuality" bill which it

[14] *Civil Union Act* 17 of 2006.

perceives as according with the public sentiment.[15] The bill proposes criminal penalties for those engaging in "homosexual activities". I believe that the South African government should do much more at multilateral forums to give expression to the morality that underpins our constitutional order and robustly and assertively advance the notion of equality and respect for all. A strong voice in favour of our constitutional values may assist those discriminated against on the basis of their sexual orientation in other countries, particularly in Africa.

Regrettably sometimes the need for regional co-operation and good neighbourliness appears to take precedence over the need to remain faithful to some of the key premises of the *Constitution*. During apartheid the oppressed in South Africa benefitted from strong voices speaking in support of those discriminated against, and it is wholly wrong for the present government not to do so now.

Importantly in his inaugural address this morning President Obama acknowledged that the founding value of equality before the law extends to gays and lesbians and unequivocally linked their struggle for equality to that of the civil rights movement. This communicates to the legislature and the government in Uganda that the President of the United States of America does not share their view on the morality of persecuting and prosecuting gays and lesbians and will say to those who are being persecuted that they are not alone. These statements will inform United States foreign policy and will decisively impact on marginalised communities who lack the ability to influence popular sentiments and who cannot rely on domestic law to eradicate unfair discrimination.

The President's[16] comments accord with Dr King's interpretation of social justice, which he explained thus:

> All I am saying is that all life is interrelated, that somehow we're caught in an inescapable network of mutuality tied in a single garment of destiny. What

15 Sokari 2012 http://www.bit.ly/MWkkfm.
16 Wallis 2010 http://www.huff.to/147jpTY.

> affects one directly, affects all indirectly. You can never be what you ought to be until I am what I ought to be. This is the interrelated structure of reality.

The promise of the South African *Constitution*, as expressed in the preamble, is to improve the quality of life of all citizens and to free the potential of each person. In order to achieve this objective, poverty must be eradicated, we must provide effective education, reduce unemployment, improve health care and improve the quality of life of people. Progress has been made. After a poor start, South Africa has rolled out a significant anti-retroviral distribution programme to deal with the pandemic of HIV/aids. According to the millennium report by the South African Government,[17] the percentage of indigent families receiving some free basic services increased considerably between 2004 and 2007. The percentage of indigent families receiving free water increased from 61.8% to 73.2% in 2007. The percentage of those receiving free electricity increased from 29.2 % in 2004 to 50.4% in 2007. 38.5% of indigent families received free sewerage and sanitation facilities in 2004 and this figure increased to 52.1% in 2007.

Some 15.3 million South Africans receive social grants from the government.[18] According to the Department of Settlements, some 3 million homes have been provided between 1994 and 2011, providing shelter to approximately 13 million people. [19] Some state health facilities are free and about 60% of pupils attend no fee schools. Commendably social spending now comprises some 58% of the budget.[20] There has no doubt been a statistical improvement in the fight against poverty.

However nineteen years into the democracy, we have not eradicated poverty and neither have we reduced inequality appreciably.

Approximately 20% of the South African budget of more than a trillion rand is spent on education. This is a sizeable proportion and yet we do not see an appropriate

17 Statssa 2010 http://www.bit.ly/oRkrfA.
18 SAPA 2012 http://www.bit.ly/zkv8J3.
19 South African Government Information 2013 http://www.bit.ly/h7A1RF.
20 SAPA 2012 http://www.bit.ly/wWQO7D.

return on our investment. A large percentage of pupils do not complete Grade 12 and drop out early from school, and a very small percentage of African learners leave school proficient in Mathematics and Science. Effective education remains one of the few avenues open to indigent children, who depend totally on the state to break out of the cycle of poverty and hopelessness. We are lagging behind our poorer neighbours in some indices on effective education. Last year was a bad year for education. A government which was able to successfully host the 2010 soccer World Cup, with all its demands, was not able to deliver text books to children in rural areas in Limpopo province on time for the 2012 academic year. The National government had to take over the executive responsibilities for education in two provinces. This should have been done earlier.

There is a clear and discernible difference in the quality of education provided by private schools and fee paying public schools on the one hand and public schools attended by the vast majority of African children on the other. This disparity in the levels of education provided is accentuating the inequality between the different segments of our society, whereas education should have been the means of reducing inequality. One of the pernicious legacies of apartheid was the inferior education provided to African children. Providing appropriate, effective and relevant education should be one of the main objectives of the post-apartheid transformative government. Not doing so would perpetuate one of the worst legacies of Apartheid. There needs to be the political will to ensure proper investment in school infrastructure and importantly there needs to be proper management of schools. The system works best when there is a strong union and a strong management representing their respective interests. In South Africa in the sphere of public education there is a very strong Teachers Union and a much less assertive and capacitated management. We need to get the balance right again, with teachers spending the required hours in the classroom and a proper system of oversight, supervision, accountability and performance appraisal and rewards for excellence. Encouragingly there is a real awareness amongst the various segments of society that something needs to be done about this and done urgently.

Recently President Zuma,[21] referring to the 2011 census report that white households possess six times the level of wealth of black households, cautioned that this level of disparity is not conducive to national reconciliation. He is clearly correct in that analysis, but I wonder if there is an acknowledgment that his government could have done better and ought to have done better in reducing that level of disparity after nineteen years in office. A much more robust focus on effective teaching and learning in public schools would contribute to this. Fixing the education system quickly cannot be something beyond the wit of this government.

I think the three high mimetic figures that I referred to earlier would applaud some of the gains that we have made, particularly in respect of civil and political rights, but would be profoundly concerned that we have not impacted more on the levels of poverty and inequality in our society. The imperative now must be to reduce the levels of inequality because it is the moral and right thing to do, but also because not to do so would ultimately pose a risk to the very social order and constitutional democracy that we are so justly proud of.

21 Primedia Online 2013 http://www.yhoo.it/WE0A0T.

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List of abbreviations

ANC	African National Congress
CBC	Congressional Black Caucus
SAHRC	South African Human Rights Commission

ORATIO: ADDRESS TO COMMEMORATE THE 2013 MARTIN LUTHER KING DAY AT THE LAW FACULTY, UNIVERSITY OF MICHIGAN

K Govender[*]

SUMMARY

The paper commences by considering the similarity between Dr King, MK Gandhi and Nelson Mandela and argues that they are high mimetic figures who inspire us to be better. Their legacy and memory operate as a yardstick by which we can evaluate the conduct of those exercising public and private power over us. Each remains dominant in his respective society decades after passing on or leaving public life, and the paper suggests that very little societal value is had by deconstructing their lives and judging facets of their lives through the prism of latter day morality. We gain more by leaving their high mimetic status undisturbed.

There is a clear link between their various struggles with King being heavily influenced by the writings and thinking of Gandhi, who commenced his career as a liberation activist in South Africa. King was instrumental in commencing the discourse on economic sanctions to force the Apartheid government to change and the Indian government had a long and committed relationship with the ANC.

The second half of the paper turns to an analysis of how Dr King's legacy impacted directly and indirectly on developments in South Africa. One of the key objectives of the Civil Rights movement in the USA was to attain substantive equality and to improve the quality of life of all. The paper then turns to assessing the extent to which democratic South Africa has achieved these objectives and concludes that the picture is mixed. Important pioneering changes such as enabling gays and lesbians to marry have taught important lessons about taking rights seriously. However, despite important advancements, neither poverty nor inequality has been

[*] Karthy Govender. LLB (Lon), LLB (Natal), LLM (Michigan). Professor, University of KwaZulu-Natal. Visiting Professor, University of Michigan. Barrister (Middle Temple). Advocate of the High Court of South Africa. Email: KGovender@ukzn.ac.za. Speech delivered on 21 January 2013 at the Law Faculty of the University of Michigan in celebration of Martin Luther King Day.

appreciably reduced. One of the major failures has been the inability to provide appropriate, effective and relevant education to African children in public schools. Effectively educating previously disadvantaged persons represents one of the few means at our disposal of reducing inequality and breaking the cycle of poverty. Fortunately, there is a general awareness in the country that something needs to be done about this crisis urgently. The paper notes comments by President Zuma that the level of wealth in white households is six times that of black households. The critique is that comments of this nature do not demonstrate an acknowledgment by the ANC that, after 19 years in power, they must also accept responsibility for statistics such as this.

KEYWORDS: Martin Luther King; Mahatma Gandhi; Nelson Mandela