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“Has It Reinvented Iron Law? South Africa’s Social Industrialisation, Not Iron
Industrialisation”

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Abstract

This paper examines whether the current South African legal framework and subsequent policies post-1994 encourage and have emphatically fostered industrialisation in South Africa primarily and Southern Africa more generally. The primary contention of this paper is that the South African State, unlike fellow Southern African States, has a long history with industrialisation and should have laid the foundations for Southern Africa’s large scale industrialisation trajectory. However, the post-1994 government vision for South Africa has never had a Law and Development philosophy that prioritises and fosters industrialisation. Industrial Promotion in Africa, is understood as being concerned with drafting, strategically implementing and investing in industrially minded action plans. Through the prism of Local Economic Development policy and legislation in the Sedibeng region, this paper contends that industrialisation is still a farfetched endeavour despite industrially minded policies like the New Growth Path, and the Industrial Policy Action Plans in South Africa. Moreover, South Africa’s industrialisation agenda is compromised by the Law and Development philosophy of the African National Congress led government. At the core of this philosophy is an overestimation of social justice activity like Human Rights promotion at the expense of Asian Developmental States’ orthodox economic development activity, like industrialisation in rural and township regions of South Africa.

Introduction

This paper examines whether the current South African legal framework and subsequent policies post-1994 encourage, and have emphatically fostered, industrialisation primarily in South Africa and in Southern Africa more generally. The initial argument of this paper is that the South African State, unlike fellow Southern African States, has a long history with industrialisation and should have laid the foundations for Southern Africa’s large scale industrialisation trajectory post-1994. Yet, this paper contends that industrialisation post-1994 in South Africa is a still-borne project, due to material contradictions in South Africa’s Law and Development (L&D) focused approach to social justice considerations, rather than economic development considerations like Asian Developmental States. Moreover, the lack of industrialisation is seen in the poor planning and operationalisation of Local Economic Development (LED) in regions like the Sedibeng. Therefore, in order for material industrialisation to occur in South Africa, this paper proposes a shift away from certain tenets of L&D based on social justice considerations and substantial discussions on two matters. Firstly, a review on how South African industrialisation can compete with the low wages setting of Asian States is completed, followed by an assessment of how to re-orientate State Owned Entities (SOEs) to lead Southern Africa’s drive towards engaging with the coming forth industrial revolution using LED.

Background and problem definition

Industrialisation has long been touted as a viable solution for uplifting and advancing economic development in poverty stricken regions of the world (Johnson)¹. The acceptance that industrialisation has the ability and capacity to change the socioeconomic conditions of ordinary citizens and States, is articulated by Buzan and Lawson (2012). In their work citing (Maddison 2001:127, 263)², (Goldstone 2002:364)³ and (Christian 2005:435)⁴ they illustrate how industrialisation was able to assist Europe to lead international commerce before the 1990’s. They explain that,

¹ C. Johnson, *MITI and the Japanese Miracle: The growth of industrial policy, 1925–1975*, Stanford University Press, (Stanford, 1982).

² Maddison, A. 2001. *The World Economy*. Paris. The Organisation for Economic Co-operation and Development (OECD).

³ Goldstone, J. 2002. *Efflorescences and Economic Growth in World History*. *Journal of World History* 13: 328–389.

⁴ Christian, D. 2005. *Maps of Time*. Berkeley: University of California Press.

“Whereas in 1700, Asian powers produced 61.7% of the world’s (GDP), and Europe and its offshoots only 31.3%; by 1913, Europeans held 68.3% of global GDP and Asia only 24.5% (Maddison 2001: 127, 263). In 1890, Britain alone was responsible for 20% of the world’s industrial output and, by 1900, it produced a quarter of the world’s fuel energy output (Goldstone 2002: 364). In contrast, between 1800 and 1900, China’s share of global industrial production dropped from 33% to 6%, and India’s from 20% to 2% (Christian 2005: 435)” (2012:12)⁵.

While these summarised figures are thought-provoking, the key point to comprehend from this quote is that industrialisation led to the rise of modern Europe’s economic dominance. This dominance was based on the British Industrial revolution, which resulted from innovative technologies like steam machinery, steel works, and Britain’s leveraging its maritime dominance to control Industrialisation in the early 1880’s and 1900’s (Knick Harley 2013:22)⁶. Yet, as Knick-Harley (2013:22) notes this industrial experiment would be transposed from Britain to one of its former colonies, the United States of America (USA). The USA would go on and become the leading light of modern Industrialisation and would eventually usher in the digital age in the form of Fordism, computers, microchips, and the like (Bensel 2000:1)⁷.

Yet, it is important to note that Industrialisation in the USA took the same form as in Europe, in that it was government supported and encouraged. This point is expanded upon by Shafaeddin (1998), when he states that,

“The United States was the motherland of infant industry protection not only at the intellectual level, but also in actual fact. Despite the fact that the industrial revolution contributed to rapid industrialization in Great Britain, its industrial sector benefited from trade protection and other forms of government intervention in the trade flow through the Navigation Act and by means of political power and even military power. Moreover, government intervention in both the United States and Great Britain was not confined to foreign trade, although it was more significant in that sector. The government concerned, particularly the United States, intervened in the domestic economy directly and indirectly to assist capital accumulation, institutional development and infrastructural build-up, and to provide training, R&D, etc” (Shafaeddin 1998:25)⁸.

⁵ Buzan, B and Lawson, G. 2012. The global transformation: the nineteenth century and the making of modern international relations. *International studies quarterly*, 59 (1).

⁶ Knick Harley, C. 2013. *British and European Industrialization*. University of Oxford. Discussion Papers in Economic and Social History. Number 111, February.

⁷ R. Bensel. 2000. *The Political Economy of American Industrialization, 1877–1900*. Cambridge University Press.

⁸ Shafaeddin, M. 1998. *How Did Developed Countries Industrialize? The History of Trade and Industrial Policy: The Cases of Great Britain and the USA*. The United Nations Conference on Trade and Development (UNCTAD), Discussion Papers. No. 139. December.

Therefore when discussing Industrialisation is it important to note that it cannot happen, or did not occur, without the assistance of national governments and certain strategic planning entities and policies (Ferguson 2004)⁹. Before moving on from Western Industrialisation, a slight caveat is needed when considering the rise of European and American industrialist. This caveat being the fact that the slavery of millions of Africans in the 1880’s was part and parcel of business structures in both hemispheres. This is well argued by Eric Williams in his seminal and insightful publication of 1944 *Capitalism and Slavery*¹⁰. Williams’ argument, while contentious, needed to be brought to the fore, to illustrate the fact that successful Industrialisation of the West was not a clear and simple process. It is then against this backdrop that Asian Developmental States were able to take points highlighted by Ferguson (2004) to foster their own Industrialisation path, in the post-1990s period in their rapid rise to being economic development juggernauts and leading lights of the post-Western industrial influence.

This assertion is given further backing by the German academic Stark who explains that,

“There are extremely few examples of non-Western economies that were able to achieve sustainable economic growth over a long period of time. Looking for countries beyond Western Europe and North America that could serve as reference models for a successful industrialization, the eye turns almost invariably to East Asia, where most of the remarkable economic success stories have taken place: Japan’s rapid growth in the last decades of the 19th century and the years after World War II, the economic miracle of the “Asian Tigers” in the second half of the 20th century and China’s economic success today” (Stark 2010:191)¹¹.

However, it is important to explain that discussions about the rapid and sustained economic development success of Asian Development States owes much to the thinkers of the previous era like (Johnson 1983)¹², (Yun-Han 1989)¹³, (Evans 1995)¹⁴, (Chang 2002)¹⁵ and numerous others. These thinkers and other scholars of Developmental States all agreed to the fact that the

⁹ Ferguson, M. 2004. Why The West? *Historia Actual Online*, Núm. 5 (Otoño), 127-139.

¹⁰ E. Williams. 1944. *Capitalism and Slavery*. Chapel Hill: University of North Carolina Press.

¹¹ Stark, M. 2010. The East Asian development state as a reference model for transition economies in Central Asia—an analysis of institutional arrangements and exogeneous constraints. *Economic and Environmental Studies*. Vol. 10, No. 2 (14/2010), 189-210, June.

¹² C, Johnson, *MITI and the Japanese Miracle: The growth of industrial policy, 1925–1975*, Stanford University Press, (Stanford, 1982).

¹³ Yun-Han, Chu, *State Structure and Economic Adjustment of the East Asian Newly Industrialized Countries*, 43 *International Organization*, no 4 (1989), pp.647-72.

¹⁴ P, Evans, *Embedded Autonomy: States and Industrial Transformation*, (Princeton NJ, 1995), Princeton University Press.

¹⁵ Chang, H. 2002. *Kicking Away the Ladder: Development Strategy in Historical Perspective*, London: Anthem Press.

Developmental State concept had an elementary starting point, namely that the State plays a pivotal role in economic development, and that the ‘market’ is a faulty instrument in need of some form of government guidance for the betterment of commercial or economic development (Kasahara,2013:3)¹⁶.

It is argued that this tacit acknowledgement and use of the State to encourage economic development was made more effective by using Industrialisation as the focal point of development. As earlier stated, Buzan and Lawson (2012) highlight how industrialisation enabled Europe to bypass ancient civilisations like Imperial China and India.

Yet, literature focusing on Developmental States such as Japan, the Republic of Singapore, Malaysia, Hong Kong, Taiwan and South Korea all point to the fact that by the beginning of 1990’s they had begun to use Industrialisation as a starting point for their economic development. Therefore, Industrialisation would once again turn the fortunes of one continent around, and what was the beginning of what many now call the ‘Asian century’ (Wade 1990, and¹⁷ Hsiung 2001)¹⁸. It is against this background that this paper explores whether the aforementioned period from a Law and Development (L&D) perspective can replicate itself in Africa generally, and South Africa in particular. Argued differently this paper explores whether Industrialisation can change the economic development trajectory of Africa (South Africa) in much the same way it did for Europe firstly, and Asia currently. However, it is important to discuss two inter related points about Developmental States and Industrialisation to tease out this paper’s main contentions.

Firstly, this paper is not overly concerned with the concept of Developmental States, but with its close relation with Industrialisation. To begin with, while Johnson and other scholars rightfully highlight the success of Asian Developmental States, it is important to note that African post-colonial States can be argued to have been early users of the ‘Developmental State’ concept.

¹⁶ S. Kasahara. 2013. The Asian Developmental State and the Flying Geese Paradigm. No. 213. November. The United Nations Conference on Trade and Development (UNCTAD).

¹⁷ R. Wade. 1990. Governing the Market: Economic Theory and the Role of Government in East Asian Industrialization, Princeton: Princeton University Press

¹⁸ J. Hsiung, (2001) Twenty-First Century World Order and the Asia Pacific: Value Change, Exigencies, and Power Realignment, New York: Palgrave

Mkandawire and Soludo (1999)¹⁹ argues that the first generation of post-colonial African States implemented Developmental State type policies and approaches. Mkandawire and others argue that at different points in time some newly independent African States [a] invested in educating their population, thus engaging in human capital development (1997:5)²⁰, [b] used public finances to build infrastructure and attempted to create employment for local citizens (Adedeji 1981)²¹ [c] adopted industrial policies and thinking (Killick 1992:40)²².

Yet, the crucial argument for the Republics of Zimbabwe, Tanzania, Abdul Nasser’s Egypt, and certain other African States, was that to be considered a Developmental State the government played an active role in developing and coordinating economic development policies (Shizha and Kariwo 2011:5)²³, (Okereke and Agupusi 2015:1)²⁴, (Waterbury 2003:4)²⁵ and (OAU 1980:4)²⁶. Therefore the concept of a Developmental State is not the primary focus of this paper, but rather why African States (and South Africa in particular) did not continue the Developmental State ethos with regard to furthering or advancing Industrialisation policies and initiatives?

This paper contends that the South African governing party of over two decades - the African National Congress (ANC)-failed to learn from aspirant African Developmental States and functional Asian Developmental States post-1990. This failure is even more concerning when one looks to South Africa’s brutal past of British Colonialism and Afrikaner nationalist ideology of Apartheid, in which white minorities wealth on industrial policies and actions were built (Nattrass and Seekings 2010)²⁷. Therefore it is the contention of this paper that the South African State has long had a relationship with industrial policy and action plans. Moreover, for a brief

¹⁹ T, Mkandawire and C, Soludo, *Our continent, our future: African perspectives on structural adjustment*, (Trenton, NJ, and Asmara, Eritrea: Africa World Press, 1999), p.113.

²⁰ T, Mkandawire and C, Soludo, *Our continent, our future: African perspectives on structural adjustment*, (Trenton, NJ, and Asmara, Eritrea: Africa World Press, 1999), p.113.

²¹ Adedeji, A. (1981) *Indigenization of African Economies*. London: Hutchinson Publishing Group.

²² T. Killick. 1992. *Explaining Africa’s Post-Independence Development Experience*. Overseas Development Institute. London.

²³ E. Shizha and M. Kariwo. 2011. *Education and Development in Zimbabwe: A Social, Political and Economic Analysis*. Sense Publishers.

²⁴ C. Okereke and P. Agupusi. 2015. *Homegrown Development in Africa: Reality or illusion?* Routledge. Taylor and Francis Group. London and New York.

²⁵ J, Waterbury, *The Egypt of Nasser and Sadat: The Political Economy of Two Regimes*, (Princeton, N.J, 2003), Princeton University Press, p.4.

²⁶ The Organisation of African Unity (OAU). 1980. *The Lagos Plan of Action for the Economic Development of Africa, 1980–2000*. Lagos.

²⁷ N, Nattrass and J, Seekings, *State, Business and Growth in Post-Apartheid South Africa*, IPPG Discussion Paper Series, Thirty Four, (2010).

period in time South Africa possessed some of the leading industrialisation firms and companies in the form of Suid-Afrikaanse Coal, Oil and Gasmaatskappy-currently South African Synthetic Oil Limited (SASOL), Elektrisiteitsvoorsieningskommissie/Electricity Supply Commission (ESKOM), and Iron and Steel Corporation (ISCOR, now Mittal Steel) (Roberts 2010:249)²⁸, (Black and Hasson 2012:7)²⁹ and (Verhoef 1998:27)³⁰.

However, the key characteristics defining pre-1994 South Africa’s Industrialisation is described by Fine and Rustomjee (1997)³¹. Zalk using Fine and Rustomjee explains that,

“South Africa’s industrialization has been characterized as dominated by a “minerals energy complex” (MEC) in two senses, both as a set of core sectors and as the predominant system through which capital accumulation has taken place (Fine and Rustomjee, 1996). These MEC sectors comprise various mining activities and further processing into semi-manufactured commodities so closely linked that the latter—despite formal statistical classification otherwise—are better understood as more closely linked to mining than to manufacturing” (Zalk 2014:330)³².

This MEC according to Fine and Rustomjee clearly illustrates the fact that South Africa, unlike other Southern African States³³ has long had an active engagement with Industrialisation and industrial policy planning processes. Moreover, the MEC illustrates a particular form of Industrialisation which has its roots in South African mining prowess. This gave rise to mining conglomerates Anglo-American, DeBeers, Impala Platinum and the like. However, as Zalk points out it is important to note that this Industrialisation period was not as clearly crafted as some might contend, he further states;

²⁸ Edigheji, O., ed. (2010) Constructing a democratic developmental State in South Africa: Potentials and Challenges. Cape Town: Human Science Research Council Press. Chapter 11. S. Roberts.

²⁹ A. Black and R. Hasson. 2012. Capital intensive industrialisation and comparative advantage: Can South Africa do better in labour demanding manufacturing? Draft Paper July, accessed on the 29 June 2017, http://www.carnegie3.org.za/papers/29_Black_Capital%20intensive%20industrialisation%20and%20comparative%20advantage%20-%20can%20SA%20do%20better.pdf.

³⁰ G. Verhoef. 1998. Industrialization in South Africa: A Historiographical Debate? New Contree. Pp. 18-30.

³¹ Fine, B. and Z. Rustomjee. 1997. South Africa's Political Economy: From Minerals Energy Complex to Industrialisation, Johannesburg: Wits University Press.

³² N. Zalk. 2014. Industrial policy in a harsh climate: The case of South Africa. International Labour Organization (ILO). Geneva.

³³ Southern African States, Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, Swaziland, Tanzania, Zambia and Zimbabwe.

“Apartheid-era industrialization proceeded largely on the basis of “upstream” processing of mineral- and other natural resource-based commodities without sufficient impetus or policy coherence to develop the more labour-intensive and value adding “downstream” manufacturing sectors, which did not become internationally competitive. Using cheap coal as a feedstock, low-priced electricity was used as a policy instrument to create and expand a range of capital- and electricity-intensive industries that processed minerals and other primary resources into semi-processed commodities. Various industries including Electricity, Rail, Ports, Telecommunications, Steel, Petrochemicals and Aluminium were established by the apartheid State, generally through the introduction of SOEs” (Zalk 2014:330).

While this paper respects Zalk’s viewpoint, it contends that Industrialisation pre-1994 was a well organised affair in so far as it allowed the National Party government to utilise the benefits of Industrialisation to keep Apartheid operational and create employment.

The key issue this paper aims to argue is that industrialisation planning post-1994 is missing, and the ANC government has not leveraged South Africa’s industrial policy planning history. This contention is despite the fact that the ANC government would argue it has crafted new industrial policies like the Industrial Policy Action Plan (IPAP) and New Growth Path (NGP) post-1994. Consequently, the South African government has stunted the Southern African region’s possible Industrialisation trajectory and potential.

At the core of the ANC government’s failure with Industrialisation - besides poor policy planning- is its overestimation of the importance of a Law and Development (L&D) philosophy. This philosophy over emphasises the importance of concepts like Social Justice, Human Rights and related concepts in economic development and planning policies. Using the prism of Local Economic Development (LED) this paper will illustrate this controversial but sound contention.

Theoretical Expansion and Definitions (TEDs)

The following segment presents three theoretical concepts through which this paper will explore its stated positions, namely Law and Development (from a policy position), Local Economic Development, and Development Planning. The exploration of these three concepts is to be understood as a historical explanation of how they relate to Industrialisation, and a discussion of certain underlying precepts to be found in the Industrialisation period of South Africa.

➤ Law and Development (from a policy position)

The concept of Law and Development (L&D) is a multifaceted and ever-expanding field of study. This section of the paper explores the early history of L&D and discusses how it intersects with the concept of Industrialisation. To begin with, L&D needs to be understood as a particular form of legal system, according to Tamanaha “it is a mistake to conflate law and development with legal development. Law and development is better understood as a set of activities generated by funding entities from advanced capitalist countries” (2011:235)³⁴. Therefore when discussing L&D one needs to be clear that it is a description and exploration of a concept that was engineered to achieve a particular outcome with generic legal implications. Argued differently, or crudely, L&Ds original conception was crafted as a Western tools of analysis and development, and cannot be said to be a naturally indigenous (non-Western) legal practice or outcome.

In this context it is argued that L&Ds key traits have given rise to its existence and different iterations over the decades. The following section will now expand upon and discuss some of the different iterations L&D has taken, with particular emphasis to linking its history with this paper’s overall arguments.

To begin with L&D needs to be understood as emanating from a Western mode of thinking, in particular one heavily influenced by Modernization theory/thinking (Tamanaha 2017)³⁵. Modernization as espoused by (Lenin 1964)³⁶, (Parsons 1951)³⁷ (Weber 1949)³⁸ is a well-known and contentious concept, due to some of its underlying arguments about societies needing to move from a ‘traditional/primitive mode of existence to a modern one’. The problem associated with Modernization emanates from its central point concerning what is traditional, and why ‘modern’ or modernity is the desired outcome. This primary contention has a particular resonance with the African continent where Modernization has always been associated with the

³⁴ B, Tamanaha, The Primacy of Society and the Failures of Law and Development (18 June 2017) available at: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1406999 (link)>.

³⁵ B, Tamanaha, The Primacy of Society and the Failures of Law and Development (18 June 2016) available at: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1406999 (link)>.

³⁶ Lenin V. 1964. The Development of Capitalism in Russia. Moscow: Progress Publishers.

³⁷ T.Parsons. 1951. The Social System. New York: Free Press. Pp. 45-67.

³⁸ M. Weber. 1949. The Methodology of the Social Sciences. New York: The Free Press.

presence of Imperial and Colonial regimes, such as Britain, France, Afrikaners and the like. This contention is highlighted by (Matunhu)³⁹ within the arena of Agriculture, by arguing

“The modernization the movement of the 1950s and 1960s is an economic theory that is rooted in capitalism. The concept of modernization incorporates the full spectrum of the transition and drastic transformation that a traditional society has to undergo in order to become modern...Modernisation is about Africa following the developmental footsteps of Europe (largely the former colonizer of Africa). According to modernity, policies intended to raise the standard of living of the poor often consist of disseminating knowledge and information about more efficient techniques of production” (2011:65).

Therefore it is only logical that the first L&D initiatives centred or rather influenced by Modernization theory/thinking would emanate from Western institutions/thinkers, and would also be in the business of trying to ‘fix’ the developing world’s socioeconomic and political environment. This assertion is supported by Davis and Trebilcock (1999:14)⁴⁰, who critiqued Trubek and Galanter’s (1974)⁴¹-original and leading thinkers of L&D- assertions in their landmark ‘*Scholars in Self-Estrangement*’ publication.

Davis and Trebilcock argued the tendency to want to export L&D features - much like Modernization - was undermined by the fact that Western States were hypocritical in how they resolved certain internal socioeconomic-political and legal problems. However, L&D thinkers and practitioners did not learn the inherent biases and problems of Modernization thinking. Rather L&D took a different form, by dabbling in the realm of economic thinking.

L&D thinkers increasingly began to argue that Law led to Development. Burg’s quote captures this belief by stating that L&D

³⁹ J. Matunhu. 2011. A critique of modernization and dependency theories in Africa: Critical assessment. African Journal of History and Culture Vol. 3(5), pp. 65-72, June.

⁴⁰ K, Davis and M, Trebilcock, What Role Do Legal Institutions Play in Development?, Draft prepared for the International Monetary Fund’s Conference on Second Generation Reforms, (8-9 November, 1999), p.14.

⁴¹ D, Trubek and M, Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development*, Wisconsin Law Review [1974], 1062–1101.

“sees law as a force which can be molded and manipulated to alter human behaviour and achieve development... focuses above all on substantive rules of law, looking to the state for the promulgation of these rules and reserving for the legal profession a prominent role in formulating them” (Burg 1977:506)⁴².

In addition to the above there is a second feature or iteration of L&D and it is particularly important to understand its origins and continued practice today. There is a belief that Development, particularly Economic Development should be and is concerned with economic development practices and concerns. Poee defines economic development as,

“a government institution-led/guided policy process that is concerned with ensuring development is shaped to address various economic problems. These problems include unemployment, development of human capital, growth of individual and company wealth, and the development of physical structures to complement these endeavours” (Poee 2017:11)⁴³.

Yet, this paper argues that this mode of thinking falls into the trap of Modernization or early L&D thinking. Namely the belief that L&D aims, or tools like the Legal system, Law practitioners and precepts, are neutral and pure expression of every State or nation’s development practice. This is when L&D is a transposed set of transplanted Western ideals and ideas about Economic Development. Moreover, where Poee (2017) sees Economic Development as a process that can be led by the State, L&D thinkers would argue this needs to be led by legal processes and means.

Yet, this means of thinking is simply the same mistake made by L&D thinkers and scholars like Berg (1977). Davis and Trebilcock (2008)⁴⁴, nearly a decade removed from their critique of earlier thinkers and practices in the field, highlight previous and newly developing shortcomings of the field. They explain that nearly a decade on L&D has led to the belief that the solution to better development is the creation and promotion of lawyers as ‘social engineers’ and

“in line with the ‘perceived need for rapid, directed change’ underlying the modernization school’s notion of development. Armed with this instrumental model of the role of law in development, the movement adopted

⁴² E, Burg, Law and Development: A Review of the Literature and a Critique of ‘Scholar in Self-Estrangement, 25 AM. J. COMP. L. [1977], 492, 505-6, at 506.

⁴³ T.Poee.2017. Developmental State No Birth Right: South Africa’s Post-1994 Economic Development Story. Law and Development Review. DOI 10.1515/ldr-2017-0018.

⁴⁴ K, Davis and M, Trebilcock. 2008. The Relationship between Law and Development: Optimists Versus Skeptics. New York University School of Law. Public Law & Legal Theory Research Paper Series: Working Paper No. 08-14.
Law & Economics Research Paper Series: Working Paper No. 08-24.

a top-down approach. It emphasized the reform of legal education and the legal profession, and to a lesser extent the reform of formal legal rules. The assumption was that lawyers trained to use law as an instrument for change would promote the developmental goals of the state” (2008:10).

What ultimately can be gleaned from this experience is that the L&D movement in this iteration simply moved from wanting to transplant its Western-infused beliefs system about development using States wholesale, to using local actors - in the form of lawyers - and later on legal institutions or Non-Government Organisations (NGOs) to achieve this aim.

The third iteration L&D took relates to the navigation from simply getting the ‘legal’ profession to espouse development, to involving economists in this adventure of transplanting belief systems across western borders. In addition to finding new ways of exporting itself across borders the L&D concept in this segment will be shown to have changed into something very different due to the influence of economists, and this would have a serious impact on the developing world’s progression into adopting constitutions. Again, Davis and Trebilcock explain this dilemma by stating;

“In the American legal academy interest in the legal systems of developing countries declined significantly in the mid-1970’s...however, economists re-discovered the subject (Law and Development). Their interest coincided with the emergence of the so-called New Institutional Economics, which views the design and functioning of public sector institutions and private sector organizations that interact with these institutions as critical determinants” (2008:11).

One of the key examples Davis and Trebilcock cite, to illustrate what this amalgamation between the L&D (legal) and Economics fields meant, is that of Do Soto, a well-known development practitioner. De Soto became famous for his belief that,

“The legal system may be the main explanation in the difference in development that exists between industrialized countries and those that are not industrialized...Development is possible only if efficient legal institutions are available to all citizens...The law is the most useful and deliberate instrument of change available to people” (1989:186-187)⁴⁵.

This viewpoint blended perfectly with the L&D thinkers in both the legal and economics fields, as it brought together their key shared ideas of (a) good/sound legal systems giving rise to

⁴⁵ H. De Soto. 1989. *The Other Path: The Invisible Revolution in the Third World*. Harper & Row. Pp186-87.

development (b) the market rewarding good legal practices (c) a universal, almost human, golden need to have orthodox (liberal) economic beliefs and common legal practices. However, what was not stated was that for this to occur it needs to happen within paradigm of the Western notions of L&D and orthodox economic thinking.

Noted academic Y. S Lee discusses this mode of thinking in his ground-breaking publication, *‘General Theory of Law and Development’*, by empirically revisiting the fact that the L&D,

“was resuscitated in the 1980s and the 90s after the fall of the Soviet bloc, with the proliferation of neoliberal law reform projects that sought to reduce state intervention in the economy by promoting the privatization and deregulation of the economy. This second law and development movement was substantially larger in scale and impact than the first, with significant effects on development projects and policies around the world. The outcome of the second law and development movement was mixed at best, failing to result in successful development for most of the developing world. Some of the reforms in fact caused serious economic difficulties for large populations, as demonstrated by the devastating economic outcome of the market-shock therapy in Russia, the economic emergency experienced by many Latin American countries adopting neoliberal policy prescriptions in the 80s, and the serious economic recession in Asian countries resulted from the neoliberal measures imposed by international financial institutions to address their financial crisis in the 90s” (Lee 2017:8)⁴⁶.

While Professor Lee’s description of the L&D concept and its inclusion of Economics captures perfectly the dangerous evolution of the concept, this paper argues that one of the other legacies of the L&D field of study, was the adoption by developing States of Constitutions. It is the contention of this section and paper that while there is nothing intrinsically wrong with constitutions, States adopting them wholesale without properly contextualising them and understanding the underlying ethos of some L&D thinker’s positions is flawed. It is argued that these conjoining practices (L&D and Economics) eventually gave rise to the need to codify or cement certain aforementioned beliefs.

This paper contends the final form this took was in the promotion and promulgation of Constitutions or Constitutionalism. Davis and Trebilcock state of this process,

“As an empirical matter, a great deal of the resurgence of interest in the law of developing countries involves interest in the constitutional law of those countries. Over 56 per cent of the 188 member states of the United Nations made major amendments to their constitutions in the decade between 1989 and 1999 and of these states at least 70 per cent adopted completely new constitutions. At least one quarter of all the member states

⁴⁶ Y.S. Lee.2017. *General Theory of Law and Development*. Cornell International Law Journal, Vol. 50, No. 3, December.

of the UN introduced bills of rights and some form of constitutional review into their constitutional regimes during this period. As a result at least 92 countries, or approximately 50 per cent of member states, have incorporated bills of rights, fundamental rights or some form of individual and/or collective rights into their constitutional orders. Prior to 1989, approximately ten countries had effective systems of constitutional review...”.

This point is certainly important when analysing the Development Plans of developing States and aids in better illustrating whether L&D was enacted with due consideration to contextualisation, or simply to appease certain elites within the local and international society.

➤ **Development Planning (DP)**

This section reviews Development Planning theory based on available literature and previous research undertaken by the author. It is argued that DP, when properly understood, gives scholars and government insight into the pressing issues, especially socioeconomic and developmental, that States face.

A classic example of this proposed assertion is found in the experience of Asian Developmental States, and their early planning documents China (Berch)⁴⁷, South Korea (Kim 1991)⁴⁸ and others. These States ‘National Development Plans’ clearly illustrate the fact that DP is concerned with Economic Development Planning and the economic empowerment of citizens. Moreover DP, when studied against the development of Asian Development States, illustrates the fact that economic development was supported by well-resourced institutions. This then would mean that the intent to administer DP institutions and policies can be used to judge a State’s or government’s socioeconomic and development intentions. This paper argues DP in South Africa

⁴⁷ Berberoglu, Berch (1987). "The Soviet Union and China: A Comparative Analysis of Their Stages of Economic Development". *International Review of Modern Sociology*. 17 (2): 285–6.

⁴⁸ Kim, K. 1991. *The Korean Miracle (1962-1980) Revisited: Myths and Realities In Strategy and Development*. Kellogg Institute. Working Paper #166. November.

is an over-estimation of non-economic development issues when measured against Asian Development States.

However, it is important to firstly give a brief overview of the core concept of Development Planning. According to Marcellus (2009:198)⁴⁹ Development Planning can be understood as a “deliberate control and direction of the economy by a central authority for the purpose of achieving definite targets and objectives within a specified period of time”. Using this basis, it can be argued that DP as a field of study is concerned with three key areas of operation with regard to the practice of development. The first area being an exploration of the manner in which governments/nations methodologically observe moveable and constant socioeconomic indicators of development either negative or positive. This leads to the second area of Development Planning, namely the formulation of empirically based Public Policies, Laws and Strategies to assist, combat or eliminate identified areas of development. The final area in DP is what the (MoD 2011)⁵⁰ understands to be the implementation of agreed-to Public Policies, Laws and Strategies, and most importantly agreeing on which stakeholders are going to assist in the implementation phase i.e. Private sector/State owned Entities/International Entities etc.

As useful as these aforementioned descriptions are concerning DP, this study suggests that DP is rarely a straightforward and simple process. The example of South Africa and the case study in question will produce different variables. The result of this is that the given descriptions could take many years to play themselves out. Over previous decades the DP concept has sought to be practically implemented by States configuring their governmental institutions around this vision. This is with the intention of ensuring they work within a framework where a common socioeconomic vision and policy outputs exist, especially in developing nations like Botswana (Taylor, 2002)⁵¹. However, DP literature was not noticeable, with the exception of to the success of developing or Developmental States like the Republic of Singapore, Republic of Korea or

⁴⁹ I. Marcellus. 2009. Development Planning in Nigeria: Reflections on the National Economic Empowerment and Development Strategy (NEEDS) 2003-2007. *Kamla-Raj, J, Soc Sci*, 20(3): 197-210.

⁵⁰ British Ministry of Defence (MOD). (2011). Joint Doctrine Publication 0-01 British Defence Doctrine. November. The Development, Concepts and Doctrine Centre (DCDC).

⁵¹ Taylor, I. (2002). Botswana’s “Developmental State” and the Politics of Legitimacy. *Towards a New Political Economy of Development: Globalisation and Governance* (pp. 1-29). Sheffield: Political Economy Research Centre at the University of Sheffield and the Centre for the Study of Globalisation and Regionalisation University of Warwick.

Republic of Botswana. Mayer-Larsen (2000)⁵² explains that the Federal Republic of Germany’s 1990’s economic success is another example of an early form of Development Planning. He cites German conglomerates like Mercedes-Benz, BMW, Deutsche Bank, and Allianz as beneficiaries of the German State’s DP structure. As such, academics like Musi argue that it was only natural for other developing nations post-1980’s to dabble in the business of economic and State planning through DP (Musi 2012)⁵³.

The following section aims to highlight differences between certain aforementioned DP States. For instance, the Federal Republic of Germany, unlike the Republic of Botswana or the Republic of Korea, was neither a colonial state and nor situated outside the stable Western economic trading area of Europe (Acemoglu et al 2003)⁵⁴,(Tudor 2012)⁵⁵. Therefore, when analysing how these States socioeconomically developed, each State exhibits a unique narrative in relation to matters of policy planning or policy choice. This paper contends the South African experience with DP can be said to be lacking in proper planning, especially before the 2009 period. However, to get a better understanding of DP in South Africa, it is crucial to understand what the pre-1994 DP period involved and produced, by way of policies and thinking.

Rogerson (2006)⁵⁶ makes a successful argument that DP was very a successful and prominent feature of National Party (NP) thinking and governing. This can be seen in how the NP planned and implemented Apartheid type policies/laws. These laws include the Population Registration Act 1950, Group Areas Act 1950, Native Labour Act 1953, Industrial Conciliation 1956, Bantu Education Act 1953 and other likeminded policies. Despite the success of the National Party government and party with DP, it is important to understand the factors leading to this success. Key among the variety of reasons was the policy representing a (1) a heavy handed, top-down, operationalising approach (2) socioeconomic planning and development orientated towards assisting the minority white race (3) the dictatorial use of police and State force, and rule that

⁵² Meyer-Larsen, W. (2000). *Germany, Inc.* John Wiley & Sons, Inc.

⁵³ Musi, M. (2012). Botswana Public Sector Strike: there is more at play. *South African Labour Bulletin*, 36 (2), 43.

⁵⁴ Acemoglu, D. Johnson, S and Robinson, J. 2003. *An African Success: Botswana.* In *In Search of Prosperity: Analytical Narratives on Economic Growth*, ed. D. Rodrik Princeton, NJ: Princeton University Press

⁵⁵ Tudor, D. 2012. *Korea: The Impossible Country.* Tuttle Publishing.

⁵⁶ Rogerson, C. 2006. Local economic development in post-apartheid South Africa: a ten-year research review. In: Padayachee, V (ed.). *The development decade? Economic and social change in South Africa, 1994 – 2004.* Cape Town: Human Sciences Research Council Press: 227-253.

excluded the majority of African and black citizens (Thomson 2001)⁵⁷. Despite these variations and nuances, Apartheid can be said to be a good example of DP, and also assists this study in better understanding some of the actions of the post-1994, African National Congress led, government. Moreover, this early history of DP explains-as shall later be argue -why certain non-governmental entities – such as the Congress of South African Trade Unions - are against top-down approaches to the planning and implementation of socioeconomic polices and plans.

As noted, DP is a broad and dynamic concept. Jhingan (2005:930)⁵⁸ argues that 12 features should be present within a State advancing DP. Some of the features Jhingan refers to, can be argued to exist in the South African State’s supposed DP process. These include “having a Planning Commission with adequate organizational structure and qualified experts in various relevant fields” (Jhingan 2005:930). This is evident in development type policies like Growth, Employment and Redistribution (GEAR), Accelerated and Shared Growth Initiative for South Africa (AsgiSA) and the Joint Initiative on Priority Skills Acquisition (Jipsa).

Government critics like the Congress of South African Trade Unions (COSATU) argue that the DP processes involved in the implementation of GEAR were extremely exclusionary of some of the most vulnerable in the South African economic framework (Orr, Heintz and Tregenne 1998)⁵⁹. Economic and law expert Richard Knight argues that by privatising formerly State Owned Entities (SOE) like Iscor, GEAR destroyed many poor African and black people’s livelihoods, (Knight 2001)⁶⁰.

This segment illustrated the length and breadth of DP internationally and locally, however it also showed that post-1994, the South African State approach to planning and Development planning has not been very effective or strategic. Even the Development Bank of Southern Africa (DBSA) Development Report supports this argument (DBSA 2011)⁶¹. However, any discussion on DP within the State of South Africa and the Sedibeng region will ultimately fall short of the rich

⁵⁷ L. Thompson. 2001. *A History of South Africa*. Yale Nota Bene. Yale University Press. New Haven and London.

⁵⁸ M. Jhingan. 2005. *The Economics of Development Planning*. New Delhi. Vrinda Publications Ltd.

⁵⁹ Orr, L, Heintz, J and Tregenne, F. (1998). *A Gendered Critique of GEAR*. National Labour and Economic Development Institute, (Naledi).

⁶⁰ Knight, R. *South Africa: Economic Policy and Development*. Retrieved December 28, 2016, from South Africa: Economic Policy and Development on richardknight.com: <http://richardknight.homestead.com/files/sisaconomy.htm>

⁶¹ Development Bank of Southern Africa, (DBSA). (2011). *Development Report: Prospects for South Africa’s future*. Development Planning Division. Midrand.

literature that has come to characterise the analysis of the Asian DP or even the German experience.

However, when it comes to the particular area or facet of Industrialisation, this paper contends that South Africa has a long history with this form of Development Planning. One would even contend that the South African Industrialisation experience followed the same path as the Asian Developmental States’ successful model (Ha-Joon Chang 2009:5)⁶². The Apartheid government unfortunately based its Industrial policy on three key points. These were (1) excessive and slave like treatment of indigenous South African (Africans) (2) unequal labour rights and promotion based on racial grounds (3) non-development with regards to spatial, infrastructural, educational of African and black areas (Mondi and Bardien 2013:7)⁶³. Yet, this paper notes that the ANC government has tried to formulate and implement certain policy actions to reverse some of the effects of Apartheid. These include the growth of a quasi-black middle class (Ndletyana 2014:7)⁶⁴, stabilising the macroeconomic framework post-1994 (Khamfula 2004:7)⁶⁵ and other such considerations.

However, a critical reading of the praise this paper gives the ANC clearly illustrates the fact that the ANC achievements need to be contextualised against the poor results it has given numerous Africans, in the areas of poor mass industrialisation and employment (Netshitenzhe 2013:3)⁶⁶. While the ANC government can be lauded for trying to move South Africa forward socioeconomically, numerous actors like the Pan Africanist Congress of Azania (PAC), argued in 1949 that the economic development of Africans rested with the governments of the day

⁶² Ha-Joon Chang. 2009. Industrial Policy: Can We Go Beyond an Unproductive Confrontation? A Plenary Paper For ABCDE (Annual World Bank Conference on Development Economics), Seoul, South Korea. 22-24 June 2.

⁶³ L. Mondli and G. Bardien. 2013. Industrialisation under Apartheid: the case of the Industrial Development Corporation. Johannesburg.

⁶⁴ M. Ndletyana. 2014. Middle-Class in South Africa: Significance, Role and Impact. BRICS Academic Forum, Rio – Brazil, March.

⁶⁵ Y. Khamfula. 2004. Macroeconomic Policies, Shocks and Economic Growth in South Africa. Final Draft (Revised) Global Development Network. December. Accessed on the 19 July 2017, <https://www.imf.org/external/np/res/seminars/2005/macro/pdf/khamfu.pdf>.

⁶⁶ J. Netshitenzhe. 2013. Why Inequality Matters: South African Trends and Interventions. Mapungubwe Institute for Strategic Reflection, Executive Director. November.

(African) being able to leverage the economic benefits of industrialisation, and ensuring Africans could own, run and internationalise their industrially based firms (PAC 1959:8)⁶⁷.

Yet, two decades on the only industrially minded policies and activities occurring outside those inherited by Apartheid are two policies; the Industrial Policy Action Plan (IPAP) and New Growth Path (NGP). And it remains to be explored whether these two policies have in fact yielded any success for the post-1994 State. One of the means of exploring whether industrialisation as seen in Asian States exist in South Africa, is to explore it using the prism of LED.

It is for this reason this study examines Local Economic Development (LED) in the Sedibeng region, to ascertain two key points. Firstly, is LED in the Sedibeng region a by-product of Development Planning, or simply an act that has been carried out to appease legal requirements of the South African constitution and other legislation? Secondly, it is critical to understand whether Development Planning, with regards to LED in the Sedibeng region, is anchored in a political and government administrative class that has the requisite human capital (education and business) to advance Industrialisation. The following section is an analysis and brief explanation detailing LED.

➤ **Local Economic Development (LED)**

It is the argument of this paper that Development Planning within the context of Economic Development, as defined by Pooe (2017), can foster and positively assist Industrialisation to occur. However, Economic Development can occur in different ways such as in a growing financial sector (Djankov 2017:2)⁶⁸, a developing agricultural sector (Diao 2010:9)⁶⁹ and other sectors like manufacturing (DTTL 2016:3)⁷⁰.

⁶⁷ Pan Africanist Congress (PAC). 1959. The Africanist. Official Organ of the Pan Africanist Congress, Published and issued through, The Editor. Johannesburg.

⁶⁸ S. Djankov. 2017. The City of London after Brexit. Discussion Paper No 762. London School of Economics (LSE).

⁶⁹ X. Diao. 2010. Economic Importance of Agriculture for Sustainable Development and Poverty Reduction: Findings from a Case Study of Ghana. Global Forum on Agriculture 29-30 November. Policies for Agricultural Development, Poverty Reduction and Food Security OECD Headquarters. Paris.

⁷⁰ Deloitte Touche Tohmatsu Limited (DTTL). 2016. 2016 Global Manufacturing Competitiveness Index.

Yet, regardless of which sector is used to foster and lead Economic Development, what is important to consider is whether, and to what extent, the local jurisdiction or municipal entities play a role in assisting Economic Development. It is argued that Economic Development which occurs within a particular geographical location is known as LED. Hsieh and Moretti (2015) explain that in international terms the concept of local refers to geographical areas like cities, towns, regions and other municipal defined boundaries/areas (2015:1)⁷¹. In the context of the Republic of South Africa (RSA), local according to the Demarcation Board refers to local municipal areas in South Africa (Local Government: Municipal Demarcation Act 27 of 1998)⁷². In South Africa, local areas are populated with cities, towns and rural areas. In the context of the Sedibeng region there are numerous cities, or what this paper refers to as small cities.

The reason for including the concept of ‘Local’ firstly and ‘LED’ secondly in this paper, is informed by the fact that the local economy now greatly influences, and accounts for the majority of the world’s GDP. The McKinsey Global Institute’s 2011 publication clearly highlighted this, when it stated

“Today, major urban areas in developed regions are, without doubt, economic giants. The 380 developed region cities in the top 600 by GDP accounted for 50 percent of global GDP in 2007, with more than 20 percent of global GDP coming from 190 North American cities alone. The 220 largest cities in developing regions contributed another 10 percent—China’s cities generated 4 percent and Latin America’s largest cities another 4 percent. Across all regions, 23 megacities—metropolitan areas with ten million or more inhabitants—generated 14 percent of global GDP in 2007”(Institute 2011:1).

Therefore studies such as the McKinsey Global Institute point to the fact that any new study aiming to explore Economic Development, needs to focus on the local region and jurisdiction. Moreover, any State and government wanting to capitalise on the importance of the local economy, needs a proper Development Plan to guide how it will create, implement and calculate the type of LED that will be operationalised.

⁷¹ Hsieh, C. T and Moretti, E. 2015. *Why Do Cities Matter? Local Growth and Aggregate Growth*. National Bureau of Economic Research. Working Paper Series. Working Paper 21154.

⁷² *Local Government: Municipal Demarcation ACT 27 of 1998*. 1998. June.

Yet, before this section of the paper does this for the Sedibeng region it is important to understand the theoretical underpinnings characterising LED. The International Labour Organization (ILO) explains that four core ideas shape the definition of LED, namely,

“the need for participation and social dialogue, the territorial focus, mobilisation of local resources and building of competitive advantage, and local ownership and management. These four characteristics are brought together in the ILO’s own definition, which states that LED represents a: participatory development process that encourages partnership arrangements between the main private and public stakeholders of a defined territory, enabling the joint design and implementation of a common development strategy, by making use of the local resources and competitive advantage in a global context, with the final objective of creating decent jobs and stimulating economic activity” (ILO 2006:2)⁷³.

While this definition by the ILO is broad and all-encompassing it is important to note that certain key points resonate with all known LED publications. Firstly, LED is based on the need for commercial activity (Clarke and Gaile 1998)⁷⁴. Secondly, the commercial activity proposed in LED is either envisioned as being directed by the State (pro-poor)⁷⁵, or strictly operationalised by the private sector (Pro-market)⁷⁶. Thirdly, LED strives to use the local region to stimulate economic activity like job creation, entrepreneurship development and other such economic development considerations⁷⁷. Finally, LED brings into stark focus the need to have a highly skilled local government apparatus that is able to lead or guide the LED initiative⁷⁸.

It is against this narrative that this paper explores South Africa’s LED planning and thinking, post 1994. This is especially true when one considers that Industrialisation in Asian States and most other States occurred in a local geographical location, according to stated plans. Alternatively, Industrialisation made use of local considerations like proximity to water, the

⁷³ International Labour Organization (ILO). 2006. A Local Economic Development Manual for China. ILO, Geneva.

⁷⁴ Clarke, S and Gaile, G. 1998. The Work of Cities. Volume 1 of Globalization and community. University of Minnesota Press.

⁷⁵ Zaaijer, M. and Sara L. 1993. Local economic development as an instrument for urban poverty alleviation: a case from Lima, Peru, Third World Planning Review, 15, 2, pp.127-142.

⁷⁶ World Bank. (2000). Local Economic Development: Quick Reference. Urban Development Division. Washington DC, Report: The World Bank.

⁷⁷ Cooney, T. 2012. Entrepreneurship Skills for Growth-Orientated Businesses. Report for the Workshop on ‘Skills Development for SMEs and Entrepreneurship’, Copenhagen, 28 November. The Organisation for Economic Co-operation and Development (OECD).

⁷⁸ Blond, P and Morrin, M. 2015. Restoring Britain’s City States: Devolution, Public Service Reform and Local Economic Growth. February. ResPublica Research Associate.

ability to export goods quicker to larger economic markets, and the like (Yoo Dae Kim Ji-tae 2016: 775)⁷⁹.

The South African LED experience, as detailed by Nel and Rogerson (2015:3)⁸⁰, is argued to be good, and South Africa is cited as being a pioneer in LED policy, and institutional planning and thinking. Yet, two decades removed from the introduction of multi-party democracy and the creation of various policies and legislation to enable LED have not borne fruit. South Africa’s success with LED at the level of achieving high employment levels, creation of sustainable small to medium enterprises, funding of entrepreneurs is deeply lacking (PMG 2011)⁸¹. This lack of development in the field of LED primarily, and Economic Development more generally, requires an informed answer beyond the current debate about local government lacking the requisite skills, a poor international business climate and other given reasons (SALGA 2010:4)⁸².

Therefore this paper contends that LED in South Africa has been compromised due to three key reasons. Firstly there is a poor understanding of the role Industrialisation should be allowed to play within LED that has meant that neither Industrialisation nor LED is a successful public policy direction in South Africa. Secondly, there is an understandable fear associated with re-examining possible unintended consequences the design and structure of the L&D approach - in the form of the RSA Constitution - might have on DP in the realm Economic Development. Thirdly, political structures informed by the RSA Constitution greatly undermine the role of lead institutions and strategic authority in linking and advancing both concepts. The following section using the region of the Sedibeng will illustrate these three advanced propositions and others noted in the paper above.

Meshing LED with Industrialisation: Clarifications terms and the Sedibeng region

⁷⁹ Yoo Dae Kim Ji-tae. 2016. Economic development models of East Asian developmental states. International Journal of Educational Research and Reviews.

⁸⁰ Nel, E and Rogerson, M. 2015. The contested trajectory of applied local economic development in South Africa. Local Economy. Sage Publishers. London. Pp. 1–15.

⁸¹ Parliamentary Monitoring Group (PMG). 2011. Local Economic Development (LED) in municipalities: briefing by SALGA. NCOP Economic and Business Development. October. Chairperson: Mr F Adams (ANC Western Cape). Accessed on the 6 October 2016, <https://pmg.org.za/committee-meeting/13616/>.

⁸² South African Local Government Association (SALGA). 2010. Key Issues In Local Economic Development In South Africa and a Potential Role for SALGA. Pretoria.

This paper’s primary contention was that the South African State unlike fellow Southern African States, has a long history with industrialisation. The contention was demonstrated to be correct, especially when Apartheid Industrialisation was shown to have existed and thrived through the use of what Fine and Rustomjee (1997) called the “*minerals energy complex*”. Moreover, through the work of Natrass and Seekings (2010) it can be positively argued that Industrialisation in pre-1994 was successful due to the use of cheap African and black labour in ensuring white minority owned and government supported industrial firms thrived and came to prominence like Eskom, Sasol and ISCOR. However, this primary contention was not the hardest contention to defend as ample historical literature (Mondi and Barden 2013)⁸³, (Clark 1994)⁸⁴, (Cartwright 1971)⁸⁵ and (Freund 2011)⁸⁶ supports this papers contention.

The harder contention this paper has not yet dealt with in a conclusive manner, is that Industrialisation post-1994 has been compromised due to the adoption of the Law and Development philosophy which now characterises the South African government’s policy actions. In order to prove this contention true this section of the paper is going to use the prism of LED, to illustrate the fact that the post-1994 L&D philosophy adopted by the South African government has compromised Industrialisation in South Africa principally and Southern Africa more generally. However, as previously stated on page twelve (12) of this paper citing the works of Davis and Trebilcock (2008:15) constitutions are a manifestation of L&D thinking in the late 1980’s and early 1990’s. This then raises the question, did the South African government in adopting the Constitution of 1996 take care to ensure that the negative influences of Modernization were mitigated and planned for? This paper argues that this was not the case and using Industrialisation or the lack thereof in the Sedibeng region local economy. Yet, it is important to put forward three caveats concerning this papers contention with South Africa’s L&D trajectory.

⁸³ L. Mondt and G. Barden. 2013. Industrialisation under Apartheid: the case of the Industrial Development Corporation. Accessed on the 20 July 2017, https://econrsa.org/system/files/workshops/papers/2013/mondi_and_barden.pdf.

⁸⁴ N. Clark. 1994. Manufacturing apartheid: State corporations in South Africa. New Haven and London: Yale University Press.

⁸⁵ A. Cartwright. 1971. 1940-1970, 30 years on: The story of the founding and growth of the Industrial Development Corporation of South Africa Limited. Johannesburg: Hortors Printers.

⁸⁶ B. Freund. 2011. A Ghost from the Past: The South African Developmental State of the 1940s. Accessed on the 20 July 2017, <http://www.kznhas-history.net/files/seminars/Freund2011.pdf>.

Firstly, L&D historical inclination towards wanting to frame what type and form of economic development discourse is needed by non-western States needs to always be analysed against the current status quo of economic development thinking in South Africa. Secondly, this paper is not against legal institutions and norms existing and they do not necessarily need to emanate from the African continent. Rather it is concerned with ensuring that the economic development trajectory of South Africa is critically reflected upon and the role of L&D is also understood in this context. Thirdly, L&D and the expression thereof primarily speaks to the South African constitution of 1996.

This paper though appreciative of the constitution contends that if after two decades of South Africa’s existence fundamental economic development questions have yet to be answered, perhaps the constitution itself needs to be re-examined and questioned about whether it is the correct vehicle to advancing economic development. Moreover, this paper contends economic development and not L&D (expressed in the person of the constitution) is and should be the ultimate goal of South Africa’s existence post-1994, as Asian Developmental States have clearly illustrated.

To begin with when this paper discusses L&D using the Constitution of South Africa, one is referring to the liberal nature of the constitution and its operationalisation of economic development. It is the contention of this section that the adoption of certain core principles such as (a) separation of powers (b) prioritisation of social justice issues as prescribed in the Bill of Rights and configuration of State Owned Entities was ill considered against the primary duty of economic development.

This paper contends that the unstated intention to prioritise these, and other, considerations has resulted in a situation where the South African government favours the funding of, and investment in, social justice programmes/policies. This is instead of considering the type and form of Industrialisation that needs to take place in South Africa. Evidence of this assertion can be found in the policy thinking and implementation of IPAP and NGP, which were touted as the first post-1994 Industrialisation policies of the ANC.

The South African government in the form of the DTI explained that,

“The National Industrial Policy Framework (NIPF) adopted by Government in 2007 provides the more general industrial policy framework for IPAP and the blueprint for Government’s collaborative engagement with its social partners from business, labour and civil society. The overriding goal of the IPAP in this policy context is to prevent industrial decline and support the growth and diversification of South Africa’s manufacturing sector. The balance of international evidence is that manufacturing is the engine of growth and employment of all economies that have achieved high gross domestic product (GDP) and employment growth. Manufacturing can generate significant job creation directly...” (DTI 2013:6)⁸⁷.

Therefore it can be stated that IPAP was concerned with making South Africa post-1994 an industrially-minded State. However, it needs to be noted that Industrialisation in the post-1994 IPAP is different to the Asian and Apartheid models. When the above statement is read, this is seen in the fact that IPAP was constructed with the assistance of labour and civil society (informed by liberally democratic means), which speaks to how Public Policy is made in South Africa.

Yet, even after 2007 when IPAP was formulated and implemented certain problems still exist - key among them being that

“While encouraging in principle, government’s very large projected infrastructure spend—R850 billion over the next three years, R4 trillion over 15 years—has not yet significantly picked up momentum. Existing structural blockages and the slow roll-out of public sector infrastructure spending plans remain matters of deep concern for our general growth and employment prospects – and, in particular, for growth and employment in the construction sector. But their impact is also strongly felt in the manufacturing sector, owing to lower demand for inputs” (DTI 2013:18).

IPAP as the ANC government’s new Industrialisation plan, was intended to be augmented by the NGP. In explaining the introduction of the NGP it was noted that,

“Active industrial policies under apartheid relied largely on subsidies and tariffs for existing industries in the context of low-wage policies like migrant labour and suppression of trade unions. Responding to new global and domestic conditions in a democracy demands sharper focus on:

- New sources of competitiveness that lie in innovation and productivity, with an adequate base in skills, infrastructure and efficient state action; and

⁸⁷ The Department of Trade and Industry (DTI). 2013. Industrial Policy Action Plan: Economic Sectors and Employment Cluster IPAP 2013/14–2015/16. Pretoria.

- Measures to enhance domestic and regional demand as well as extending export promotion strategically to the rapidly growing economies of the global South” (EDD 2011:43)⁸⁸.

This contrast between the ANC’s inspired, and the National Party’s Apartheid, visions of Industrialisation can be laid bare here when looking at the technical policy decisions both governments made.

Namely that the Apartheid government - due to economic sanctions and other considerations - tried to ensure Industrialisation occurred in a sheltered or protected environment, while the ANC government took the decision to open the South African market open post-1994.

At a social level the EDD explains that,

“The New Growth Path responds to emerging opportunities and risks while building on policies advanced since the achievement of democracy 16 years ago. The Reconstruction and Development Programme advocated greater equity as the basis for longterm development and growth. In the mid-’00s, AsgiSA renewed government’s commitment to addressing joblessness and poverty and identified infrastructure needs, skills shortages and unnecessary regulatory burdens as core constraints on growth” (EDD 2011:16).

What both these policies illustrate, is that Industrialisation in the post-1994 South African context has two key features. Firstly, it is based on the belief that the liberal free market should guide how Industrialisation occurs. The ANC government, unlike the NP post-1994, failed to strategically protect key manufacturing sectors and entities, rather it endorsed the privatisation of strategic SOEs (Edwards et al 2014:31)⁸⁹. Secondly, Industrialisation in South Africa is seen as a solution to mass unemployment, but neither the IPAP nor NGP have been able to yield the necessary infrastructure to allow for Industrialisation (COSATU 2013:5)⁹⁰. These two key points bring this paper to its second main contention, namely that through the use of LED in the Sedibeng region these points can be further validated. This will be followed by an exploration of how South Africa’s L&D through the inspiration and overestimation of social justice activity like Human Rights promotion -has negatively affected economic development in South Africa.

LED and lack of Industrialisation in Sedibeng

⁸⁸ Economic Development Department (EDD). 2011. The New Growth Path: Framework. Pretoria.

⁸⁹ L, Edwards. W, Flowerday. N, Rankin. G, Roberts and V, Schöer. 2014. Restructuring of the South African economy: 1994–2014. December.

⁹⁰ Congress of South African Trade Unions (COSATU). 2013. Summary of Critique of the National Development Plan. March.

As previously stated LED refers to the localisation of economic development in a fixed geographical area. The Sedibeng region was once the epicentre of South Africa’s Industrialisation prowess, due to the region housing ISCOR and other manufacturing entities in the region (Oldewage-Theron and Slabbert 2010:5)⁹¹. After 1994 the region was left with three local municipalities (Emfuleni, Midvaal and Lesedi) and Emfuleni has been known as the industrial hub of the region and province of Gauteng.

However, after 1994 the region has undergone de-industrialisation, firstly through the privatisation of ISCOR into Mittal Steel, which cost the region numerous jobs. In addition to this, despite the region using an industrially focused plan - like the Sedibeng Growth and Development Strategy (SGDS) – it has not been able to revive the former prowess of the Sedibeng region (GT 2016:23)⁹². It is important to note that the Sedibeng District Municipality, the lead planning municipality envisioned the SGDS as reviving Industrialisation, in line with the formulation and implementation of the IPAP and NGP (SDM 2007:21)⁹³. Yet, what has happened, is that despite all policies and strategies, is that the region’s LED impact with regards to Industrialisation has not been positive.

This is seen in the fact that Industrialisation post-1994 in the region has not yielded any major employment creation in the Sedibeng region and the area is one of the most underdeveloped regions in Gauteng and South Africa (Bews 2008:14)⁹⁴. Moreover, the region’s political leadership -despite producing numerous policies and plans - has been unable to formulate coherent strategies to operationalise Industrialisation as envisioned in both IPAP and NGP.

This assertion is supported by the IDC which details how this problem in the Sedibeng region is a national snapshot of South Africa, when it states that

“The manufacturing sector claimed the dominant position in 1994, when it represented close to 21 per cent of GDP at current prices, as illustrated in Figure 1. By 2012, however, the sector was only the fourth largest in the economy, with a 12.4 per cent share of overall GDP. The broad financial services sector, largely driven

⁹¹ W. Oldewage-Theron and T. Slabbert. 2010. Depth of poverty in an informal settlement in the Vaal region, South Africa. *Health SA Gesondheid* 15(1), Art. #456, 6 pages.

⁹² Gauteng Treasury (GT). 2016. *Socio-Economic Review and Outlook 2016*. Gauteng Provincial Government. Johannesburg.

⁹³ Sedibeng District Municipality (SDM). 2007. *Sedibeng Growth and Development Strategy*. Final draft February. Vereeniging.

⁹⁴ N. Bews. 2008. *Social Study For The Environmental Management Framework (EMF) For The Sedibeng District Municipality*. Submitted to Felehetsa Environmental (Pty) Ltd. Alberton.

by a strong banking services industry, had by then taken over the leading position. The mining sector’s contribution to GDP, in turn, rose from 7.3 per cent to 9.3 per cent over this period” (IDC 2013:1)⁹⁵.

It is then against this background that this paper takes the firm position that LED and consequent economic development has not occurred in South Africa, generally, and Sedibeng principally to the levels needed to illustrate that Industrialisation is operational in South Africa post-1994. Pooe (2015:6)⁹⁶ argues that two of the reasons for Industrialisation not occurring in Sedibeng are (1) poor human capacity levels in local government structures, and (2) a poor interpretation of what constitutes economic development from a Southern hemisphere perspective. This is accompanied by poor institutions in terms of the ability to operationalise economic development with regards to Industrialisation Pooe (2015:6)⁹⁷. Yet, this paper contends that an additional factor might explain the poor Industrialisation in South Africa and regions like Sedibeng, and that is an over-prioritisation of social justice matters over fundamental economic development considerations.

Social justice versus economic development

When this paper speaks about over-estimation and a lack of focus, it is referring to the ethos and thinking behind the operationalisation of the South Africa constitution. This document hinges on the promotion and protection of a liberal interpretation of development and society. This assertion is supported by the praise heaped on the constitution by international and local legal and social justice actors (Christiansen 2008:29)⁹⁸, (Beall et al 2005:693)⁹⁹, (Moseneke 2012)¹⁰⁰. These and other actors will always praise the constitution for promulgating a liberalist

⁹⁵ Industrial Development Corporation (IDC). 2013. The interface between the mining and manufacturing sectors in South Africa. Department of Research and Information. December. Sandton.

⁹⁶ T. Pooe. 2015. The National Planning exercise of South Africa, that never was. Regional Conference on Building Developmental States For Economic Transformation in Southern Africa. 20–22 July. Pretoria.

⁹⁷ T. Pooe. 2015. The National Planning exercise of South Africa, that never was. Regional Conference on Building Developmental States For Economic Transformation in Southern Africa. 20–22 July. Pretoria.

⁹⁸ E. Christiansen. 2008. Exporting South Africa’s Social Rights Jurisprudence. Loyola University Chicago International Law Review. Volume 5, Issue 1. Pp.29-43.

⁹⁹ J. Beall, S. Gelb and S. Hassim. 2005. Fragile Stability: State and Society in Democratic South Africa. Journal of Southern African Studies, Volume 31, Number 4, December.

¹⁰⁰ D. Moseneke, A Journey from the Heart of Apartheid Darkness Towards a Just Society: Salient Features of the Budding Constitutionalism and Jurisprudence of South Africa, This publication is the written version of the thirty-second annual Philip A. Hart Memorial Lecture, delivered at Georgetown University Law Center (April 4 2012).

interpretation of how law is supposed to be understood and operationalised. Christiansen highlights this mode of thinking by stating

“While the advancement of social welfare as a whole has clearly proceeded at a far slower pace than political equality, the Constitutional protection of social rights and its enforcement by the Court continues to inspire social justice advocates in their work within South Africa and abroad. Indeed, despite the as-yet inadequate advancement of substantive socio-economic equality, much can be praised about the South African Constitutional project — and much can be learned from it” (Christiansen 2008:29).

The views advanced by Christiansen (2008) and others praising the constitution for social justice matters are important and need to be respected. However, this paper’s primary contention has been around the question, with regards to Industrialisation, of if liberalism and social justice considerations improve the economic development standing of South Africa’s poorest? It is the contention of this paper that having explored the inner workings of the Law and Development movements, the constitution of South Africa is a by-product of criticism advanced by Davis and Trebilcock 2008. This mode of thinking argues that development is based on the advancement and formulation of legal, and liberal legalism, principles in the form of liberal constitutions and constitutional courts that oversee the functioning of States. It can easily be argued that this interpretation of development emanates directly from Modernization as outlined by Davis and Trebilcock, which seeks to mould societies’ thinking into a non-indigenous manner, in favour of an imposed Western mode of thinking.

In the context of South Africa, this mode of thinking has resulted in two critical mistakes occurring with regards to thinking, planning and implementing economic development strategies. Firstly, the ANC in government - whether local or national - confuses priorities and in the process, over-estimates the importance of the social justice narrative and under-invests in processes like Industrialisation. The primary evidence for this contention has been formed through analysing how Industrialisation in local areas of South Africa has been ignored, or simply poorly planned for. It is the contention of this section that while Industrialisation and LED have been allowed to be neglected, the South Africa government and most civil society groups have focused significant resources on operationalising social justice matters in South Africa. It needs to be noted that this paper is not against social justice being a focus of government and civil society attention. Rather, the paper questions how a State that was based on

the neglect of economic development right of Africans and blacks can now believe social justice matters alone will address economic development ills.

Secondly, the ANC ignored the historical precedent of development, whereby developing States use economic development policies and do not necessarily focus on the creation of institutions that do not assist in the actions of economic development. One of the hard truths of Developmental States in Asia has been the fact that they develop in the absence of constitutions, liberal modes of thinking and constitutional courts. Therefore this paper contends that economic development agencies with adequately staffed human capital and strategic institutions needs to be the primary investment the South African government makes. This contention is supported in a more orthodox argument provided by Professor Lee’s analysis of South Korea, which initially prioritised economic development, and then embarked on the route of trying to achieve social reform and development (Lee 2016:46).

Conclusion and Recommendations: Economic development, not social justice

This paper must not be understood as a clarion call for dictators and dictatorship to reign over the African continent. Rather it simply seeks to question the priorities of the South African government in advancing the social justice and liberalist interpretations of the South African constitution. This is instead of using known modes of development, like Industrialisation, in a strategic and directed manner. In this way, economic development precedes a focus on social justice, which follows at a later stage. As originally stated the failure of Institutionalisation to take root in Southern Africa clearly lies at the feet of the South African government - which has not played a strategic role in advancing it, but rather is overly concerned with social justice considerations.

Therefore in proving a new mode of thinking to stimulate and resuscitate Industrialisation in South Africa, this paper proposes three recommendations. Firstly, there needs to be a thorough review of the constitution of South Africa, particularly how it prescribes the advancement of economic development. This should lead to the second recommendation, namely the scrapping of the three spheres of government. It is the contention of this paper that local and provincial structures need to be reconfigured and only three national departments, namely *National Planning Commission* (sole economic development policy formulating and decision making

entity), *Department of Finance* (department that costs policies, risks, human capital to lead policies and decides on whether SOE’s or private sector should be used) and *Department of Provincial and Local Affairs* (which ensures that implementation occurs by chosen entity and is staffed with technocrats based in local areas and with specified skills), should be responsible for leading economic development endeavours at local government level.

Thirdly, legal and philosophical underpinnings of the constitution that s social justice considerations need to be re-evaluated. The key area of focus needs to be the advancement of economic development and Industrialisation. This could take the form of selling some of hundred and thirty seven (137) SOE’s and leaving only those that advance Industrialisation primarily, and principally LED within this area.

Yet, the primary mode of thinking that needs to take hold, and the accompanying plans, need to move away from prioritising social justice matters. This move includes a move away from the constitution, in order to begin to use the limited resources South Africa has towards advancing economic development, and thus also promoting economic development in Southern Africa. This mode of thinking should not need to be seen as a threat to individual citizen’s rights, but rather a strategic rethink after two decades of poor leadership, enabled by an overly social justice friendly constitution and legal framework. This envisioned re-planning and focusing on economic development as the primary guide for development will lead to an improvement in livelihoods and that this will boost the individual’s rights, access and quality of life in the long run.