

CHAPTER 8

THE FUNCTIONAL CONSTITUTIONALISM OF JUSTICE THEMBILE SKWEYIYA

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Source: <http://www.constitutionalcourt.org.za/site/judges/justicethembileskweyiya/index1.html>

1 Introduction

Justice Thembile Skweyiya was one of the ten legal practitioners shortlisted by the Judicial Services Commission (JSC) for the first Constitutional Court Bench in 1994. He had left the Bar with the intention of taking up an appointment on the Bench but later decided to pursue matters in the corporate field. As the Constitutional Court website explains, between October 1995 and January 2001 he acted as a High Court Judge in the Natal and Eastern Cape divisions ‘for various periods – two years in all.’⁷⁸⁸ As such, Skweyiya could be described as a ‘reluctant’ member of the Bench.

788 Constitutional Court of South Africa ‘JUDGES | Justice Thembile Skweyiya’ <http://www.constitutionalcourt.org.za/site/judges/justicethembileskweyiya/index1.html> (accessed 10 June 2017).

Justice Skweyiya obtained an LLB from the University of KwaZulu-Natal whereafter he served his articles of clerkship in an attorney's office from 1968 to 1970. In 1989 he attained silk as the first Black African and was admitted to the Bar in various jurisdictions. Given his experience as a legal practitioner in civil and commercial matters and his role as a human rights activist, Skweyiya accepted his appointment to the Constitutional Court in 2003. Despite his initial reluctance, it was nevertheless no surprise that the current Chief Justice Mogoeng Mogoeng and other notable figures lauded Justice Skweyiya on the occasion of his death as having had a passion for promoting human rights⁷⁸⁹ through a substantive and purposive interpretation of the Bill of Rights.

Skweyiya's background in public interest work before 1994 and especially in representing numerous activists in the political trials of the 1980s resonated with his later concern and passion for constitutionalised human rights and a functional constitutional democracy. For example, Justice Skweyiya acted as counsel in several trials involving political activists.⁷⁹⁰ Given this public interest work, his interpretation of the Constitution was heavily influenced by his dedication to social justice. In *Joseph and Others v City of Johannesburg and Others*,⁷⁹¹ for example, he upheld the right of flat-dwellers to be afforded a 14-day notice period before the termination of electricity supply where electricity bills had not been paid. His judgment here encapsulated his pragmatic interest in the manner in which the law affects people and communities at large beyond individual cases and interests.

Notably, Justice Skweyiya has made critical contributions to the interpretation of children's rights, as contained in section 28 of the Constitution, particularly regarding the substantive content of the notion of the best interests of the child.⁷⁹² His judicial approach is illustrated in several cases where both his pragmatic and empathetic nature is observed in the reasoning of his judgments, some of which will be explored later in this chapter. His approach was based on his belief that the Constitution was progressive and fundamental to the transformation that was required in South Africa at the time of its promulgation, as well as the protection of the most vulnerable members of society.

While Skweyiya is known for his public interest work, his dedication to social justice, and his concern for how the law affected communities,

789 'Tributes pour in for Judge Skweyiya' *SA News* <http://www.sanews.gov.za/south-africa/tributes-pour-judge-skweyiya> (accessed 10 June 2017).

790 'Skweyiya rests his case' *Mail & Guardian* 25 August 2014 <https://mg.co.za/article/2014-08-25-skweyiya-rests-his-case/> (accessed 10 June 2017).

791 2010 (4) SA 55 (CC).

792 Section 28(2) of the Constitution specifies that a child's best interests are of paramount importance in every matter concerning the child. See 'The Constitution of the Republic of South Africa, 1996' (as set out in sec 1(1) of the Citation of constitutional Laws Act 5 of 2005).

however, his attempt at locating the South African Constitution within a broader African framework of social jurisprudence epitomised by concepts such as *ubuntu* and the quest for an African voice in the interpretation of the Constitution is less well known. 'Ultimately my message,' he proclaimed in a 2014 HSRC seminar,

is that we ought to be not only more attentive and receptive to the African voice when we conduct our comparative constitutional interpretation but also more conscious of our responsibility to strengthen that voice in our judgments from which the rest of the continent and even the world may find assistance.⁷⁹³

This is one of the facets of Justice Skweyiya's jurisprudence which this chapter will explore.

Besides the respect he generated from fellow colleagues on the Bench, Skweyiya is also known for his courageous work leading two controversial enquiries, the first one prior to his time as a Constitutional Court judge, where he was appointed by the African National Congress (ANC) to lead a Commission of Inquiry into the circumstances faced by detainees in ANC camps during the struggle and in particular in Quatro.⁷⁹⁴ Shortly after his retirement from the Bench in 2014 he dealt with the circumstances of detainees – the treatment of inmates and conditions in correctional centres – in South African prisons.⁷⁹⁵ In these roles he acted without fear or favour, submitting reports that were damning of the ANC's treatment of detainees in the notorious 'correctional' camps and of the state in their failure to protect the rights of prisoners post 1994.

Beyond the Introduction, this chapter is divided into three sections. The first section distils the voice of the late Justice Skweyiya, particularly through a treatment of his personal and professional background. The second briefly examines his jurisprudence and its thematic considerations, focusing on his child-related judgments. And the third considers his vision for an African-inspired constitutional dispensation for South Africa.

2 Who was Justice Thembile Skweyiya?

Justice Thembile Lewis Skweyiya was born on 17 June 1939 in Worcester, near Cape Town.⁷⁹⁶ He attended primary school in Cape Town, and went on to matriculate at the Healdtown Institution near Fort Beaufort in the

793 TL Skweyiya 'Presentation at the HSRC colloquium for the Constitutional Justice Project' (26 November 2014) 9.

794 A copy of the Skweyiya report can be found at <http://www.anc.org.za/content/skweyiya-commission-report> (accessed on 12 December 2017).

795 His report can be found at <http://judicialinsp.dcs.gov.za/Annualreports/JUDICIAL%20INSPECTORATE%20FOR%20CORRECTIONAL%20SERVICES%20ANNUAL%20REPORT%20FINAL2014-2015.pdf> (accessed on 12 December 2017).

796 Much of this biography comes from the Constitutional Court website (n 788 above).

Eastern Cape in 1959.⁷⁹⁷ Skweyiya earned a BSocSc degree from the University of Natal in 1963 and subsequently his law degree from the same institution in 1967. This combination of disciplines appeared to play a role in the way in which he understood and interpreted the law, with a strong emphasis on social justice. He was a family man, having been married to Sayo Nomakhosi Skweyiya, with whom he had four children. Skweyiya was appointed to the Constitutional Court in 2003 and retired in 2014. Soon after his retirement from the Bench, he served as Inspecting Judge of Prisons, a position he held until his untimely demise on 1 September 2015. As his successor, Justice Johann van der Westhuizen, said of him:

The Inspectorate was privileged to have Justice Skweyiya, a former Judge of the Constitutional Court of South Africa, assume duty from 1 May 2015 as the new Inspecting Judge. Under his leadership, the Inspectorate made tremendous progress towards achieving administrative independence for the Inspectorate Although he served for a few months as the Inspecting Judge, the team at the Inspectorate appreciate his passion for the protection of inmates' human rights; and remember his robust and enthusiastic approach to elevate the Inspectorate to a government component and attain full independence

Healthcare for inmates and health conditions in correctional centres was a focus area for the late Inspecting Judge Skweyiya.⁷⁹⁸

Skweyiya has been recognised as one of the great advocates for human rights and judicial independence,⁷⁹⁹ as the following account bears out.

Justice Skweyiya's legal career spanned half a century, beginning with his admission to the Bar in Durban in 1967 and his attaining Senior Counsel status in 1989. Despite the personal achievement of being the first black South African silk, Skweyiya's humility was recognised by his peers in the General Bar Council (GBC).⁸⁰⁰

At the beginning of his career Skweyiya specialised in private law. In the 1980s, however, his work mainly involved human rights and civil liberties cases. He acted as counsel in trials involving political activists such as Oscar Mphetha, Griffiths Mxeke, and Sibusiso Zondo.⁸⁰¹ A consistent

797 According to General Council of the Bar of South Africa (GCB) chair Jeremy Muller SC, Healdtown is the same school attended by other famous South Africans, including Robert Sobukwe, Rivonia trialists Govan Mbeki and Raymond Mhlaba, and the late President Nelson Mandela. See 'Obituary: GCB marks the passing of Justice Thembile Skweyiya' <http://www.sabar.co.za/law-journals/2015/december/2015-december-vol028-no3-pp17.pdf> (accessed 25 July 2017).

798 The Judicial Inspectorate for Correctional Services 'Annual report for the period 01 April 2015 to 31 March 2016' 15, 115 http://pmg-assets.s3-website-eu-west-1.amazonaws.com/JICS_Annual_Report_2015-2016_as_at_30_September_2016_V5.pdf (accessed 1 August 2017).

799 'Former Concourt judge Skweyiya dies' *eNCA* 1 September 2015 <http://www.enca.com/south-africa/former-concourt-judge-skweyiya-dies> (accessed 19 June 2017).

800 *SA News* (n 789 above).

801 *Mail & Guardian* (n 790 above).

feature of his professional career, especially in the 1980s (well before the enactment of the Constitution),⁸⁰² was that he was not motivated by glamour or financial prosperity but by a passion and respect for human rights. In fact, it was Skweyiya's view that, while there are different career paths within the legal profession, every lawyer in South Africa has to be committed to the ideals underlying the Constitution. In a University of Fort Hare address Skweyiya suggested that:

... regardless of your chosen career path (be it in the corporate legal field or public interest law) each of us has an obligation to further the ideals of establishing a just, equitable society based on democratic values, social justice, and respect for fundamental human rights.⁸⁰³

As opposed to expanding his commercial and civil law practice after attaining silk, Skweyiya instead immersed himself in human rights, public interest work and later, on the Bench, in an endeavour to ensure that the Constitution practically transformed the lives of everyone, especially those worst off and most vulnerable in society.⁸⁰⁴ As mentioned above, Advocate Thembile Skweyiya was appointed to lead an ANC Commission of Inquiry. The Skweyiya Commission Report was released in October 1992.⁸⁰⁵ The Commission under his leadership found that the ANC was responsible for several human rights abuses in its camps – particularly in Quatro – and recommended that:

- The torturers and perpetrators be identified and held accountable for their actions; and
- The victims receive some sort of monetary compensation for the physical and psychological damage as well as the losses of property that they had suffered at the hands of their torturers in the camps.

The ANC at that time under President Nelson Mandela welcomed the Skweyiya Commission's report and announced that the organisation took full responsibility for the human rights abuses detailed in the Commission's report.⁸⁰⁶ A separate report by Amnesty International was published at the same time as the Skweyiya Commission Report and confirmed the Commission's findings.⁸⁰⁷ Subsequently the Douglas

802 Constitutional Court (n 788 above).

803 T Skweyiya 'University of Fort Hare Law Students Dinner: What it means to be a lawyer in South Africa today' [http://www.constitutionalcourt.org.za/site/judges/justicethembile skweyiya/index1.html](http://www.constitutionalcourt.org.za/site/judges/justicethembile%20skweyiya/index1.html) (accessed 10 June 2017). Skweyiya believed that exceptional legal giants such as the late Former President Nelson R. Mandela, ZK Matthews, Braam Fischer, George Bizos and the late CJ P Langa were inspired by the quest to establish a just and equitable society based on human dignity, equality and social justice.

804 As above.

805 *Beeld*, 24 October 1992; *The Star*, 20 October 1992; *Sunday Times*, 18 October 1992.

806 *Business Day*, 20 October 1992; *The Star*, 20 October 1992; *Sunday Times*, 11 October 1992.

807 Amnesty International 'South Africa: State of fear: Appeals on behalf of victims of torture and political killings' <https://www.amnesty.org/en/documents/AFR53/011/1992/en/> (accessed 11 July 2017).

Commission revealed that Nelson Mandela had been handed a list of the names of ANC members whom the Skweyiya Commission had found to be responsible for torture in the camps, but that this list had not been made public.⁸⁰⁸

It is this background that culminated in former President Thabo Mbeki's appointing Skweyiya to the Constitutional Court in 2003. Indeed, in Justice Skweyiya's view, a 'background as an attorney [was] a useful starting tool' for any legal practitioner who wanted to join the Bench.⁸⁰⁹

Arguably, it is for this reason and because of Skweyiya's trail-blazing human rights work in general and children's rights jurisprudence in particular that Chief Justice Mogoeng Mogoeng referred to him as a 'peaceable' jurist with a 'passion for human rights, judicial independence, and a functional constitutional democracy.'⁸¹⁰ In the same vein, the analysis of Skweyiya by the General Council of the Bar was that his 'tenure on the Constitutional Court was characterised by wisdom, humility and an obvious passion for human rights, with a particular emphasis on the rights of children, and an unwavering commitment to judicial independence.'⁸¹¹ Minister of Justice and Constitutional Development Advocate Michael Masutha dubbed Skweyiya 'a brilliant jurist, whose legal expertise helped in shaping the jurisprudential elements in the justice system.'⁸¹² And in his eulogy on the occasion of Skweyiya's state funeral, Deputy President Cyril Ramaphosa was effusive in his praise for the gentle Justice, drawing attention to his 'legal acumen and prowess ... unflinching courage as he served our country with integrity and dignity ... strong sense of ... professional and moral responsibilities ... [defence of] the oppressed regardless of party affiliation [and] true embodiment of fairness, humility, integrity, dedication and professionalism.'⁸¹³ President Jacob Zuma emphasised the deep passion that Justice Skweyiya had for the protection and promotion of human rights even before the enactment of the Constitution. In his official eulogy the President said:

Justice Skweyiya was one of the distinguished members of our judiciary who served the nation at many levels of our justice system including as

808 Amnesty International, 'South Africa: Torture, Ill-Treatment and Executions in African National Congress Camps', AFR 53127/92, London, 2 December 1992; 'The Report of the Douglas Commission 1993', January 1993; and International Freedom Foundation, Johannesburg. 13. International Society for Human Rights, 'Human Rights and the African National Congress', Frankfurt, 1993.

809 Constitutional Court of South Africa (n 843 above).

810 'Former ConCourt judge Skweyiya dies' *IOL* 1 September 2015.

811 'Obituary: GCB marks the passing of Justice Thembile Skweyiya' <http://www.sabbar.co.za/law-journals/2015/december/2015-december-vol028-no3-pp17.pdf> (accessed 25 June 2017).

812 'Judge Skweyiya's death sad – justice minister' *News24* 1 September 2015.

813 C Ramaphosa 'Eulogy by Deputy President Cyril Ramaphosa on the occasion of the funeral of Justice Thembisile Lewis Skweyiya, Ethekwini City Hall, 5 September 2015' <http://www.thepresidency.gov.za/speeches/eulogy-deputy-president-cyril-ramaphosa-occasion-funeral-justice-thembisile-lewis-skweyiya%2C> (accessed 11 July 2017).

Constitutional Court Judge and Inspector of Correctional Services. The nation has lost a dedicated leader in the development of the country's jurisprudence and a renowned human rights lawyer and activist during the height of *apartheid* repression in the 1980s.⁸¹⁴

3 Skweyiya's jurisprudence and its thematic considerations

The passion for the protection and promotion of human rights in the jurisprudence and activism of Justice Skweyiya to which President Zuma referred is evident in Skweyiya's writing or co-writing of judgments in cases before the Constitutional Court and in his extra-curial commentary on other cases.

Skweyiya recognised that the Constitutional Court was pivotal to the development of law in South Africa. Following from this, South Africa as a constitutional state which abides by a supreme Constitution and the Constitutional Court as the guardian of the Constitution⁸¹⁵ had, together with the executive and legislature, to ensure that the values and fundamental rights enunciated in the supreme law were respected and realised. His comments on the landmark judgment in the *Treatment Action Campaign* case⁸¹⁶ and his stance on the realisation of socio-economic rights and the role of the Constitutional Court were that, while administrative decisions regarding resource allocation belonged to the executive, the Constitutional Court was constitutionally mandated to compel the executive to comply with its socio-economic rights obligations as interpreted by the courts.⁸¹⁷ This was further evident from the *locus classicus* of *Joseph and Others v City of Johannesburg and Others*, where Skweyiya J held that:

taken together, these provisions impose constitutional and statutory obligations on local government to provide basic municipal services, which include electricity. The applicants are entitled to receive these services. These rights and obligations have their basis in public law. Although, in contrast to water, there is no specific provision in respect of electricity in the Constitution, electricity is an important basic municipal service which local government is ordinarily obliged to provide. The respondents are certainly subject to the duty to provide it.⁸¹⁸

814 The Presidency 'President Zuma conveys condolences on the passing of Justice Skweyiya' 1 September 2015 <http://www.thepresidency.gov.za/content/president-zuma-conveys-condolences-passing-justice-skweyiya> (accessed 18 June 2017).

815 'The Constitution' (n 792 above) sec 167.

816 O Mireku 'HSRC Constitutional Justice Project: Interview with Justice Thembile Skweyiya' (2014).

817 Constitutional Court (n 788 above).

818 2010 (4) SA 55 (CC) sec 40.

The *Joseph* case was an exciting development in South African jurisprudence because it broadened the scope of application of administrative law – in particular, the application of procedural fairness in decisions related to the public law duty of the state to provide basic services effectively, efficiently and fairly.⁸¹⁹ Skweyiya identified '[t]he real issue' as being 'whether the broader constitutional relationship that exists between a public service provider and the members of the local community gives rise to rights that require the application of section 3 of [the Promotion of Administrative Justice Act 2000 (PAJA)]'.⁸²⁰ He explained that section 3(1) of PAJA requires procedural fairness not only in the event of a 'breach' of a right, but whenever administrative action 'materially and adversely affects' a right or legitimate expectation of any person.⁸²¹

The *Joseph* case can therefore be held up as a prime example of the value of human dignity in judicial decision making, especially in the interpretation of the rights in the Bill of Rights. Through the Constitutional Court's substantive interpretation of constitutional provisions, employing the context of relevant legislation, the case also highlighted the concomitant public law right of people to receive public services. Accordingly, the dignity of citizens is ultimately respected only when there is access to amenities and services envisioned by the Constitution in section 27. In effect, as many South Africans were denied many basic amenities before the enactment of the Constitution, the *TAC* decision and subsequent comments by Justice Skweyiya during his Constitutional Court interview by the JSC – reproduced below – illustrate the transformative nature of the Constitution. Moreover, the *Joseph* case demonstrates the promotion of the practical realisation of rights by the Bench, while at the same time promoting functional constitutional democracy, where the Constitution is interpreted and applied for the benefit of the most vulnerable, who live in deplorable conditions.⁸²² In his own words during the JSC interview Skweyiya said:

I presume that we have in our Constitution, you know, socio-economic rights and I think there are difficulties also with the type of right which we had to consider in that case (*TAC* case) in a sense that we need resources for many things in the country and it is a question of where to employ resources and of course as a court we are obliged, you know, to compel the executive to comply with its obligations in terms of the Constitution and on the facts of that case there was no other conclusion to which the court could have come and I think we are alive to the difficulties surrounding the issues in that case.⁸²³

819 AN Munyai 'The contribution of the *Joseph* case to the development of procedural fairness in the Republic of South Africa' unpublished Master's dissertation, University of Pretoria, 2015.

820 *Joseph* (n 818 above) para 33.

821 As above, para 31.

822 It is noted, however, in the *Joseph* case that administrative efficiency is an important goal in a democracy and that the courts must remain vigilant not to impose unduly onerous administrative burdens on the state bureaucracy.

823 Constitutional Court of South Africa (n 843 above).

In similar vein, while addressing a law dinner at the Nelson R Mandela School of Law at the University of Fort Hare,⁸²⁴ Skweyiya observed that the duty of transformation was not only for the Bench but for everyone in the legal profession, especially the duty to uphold the underlying values of the Constitution, namely, human dignity, equality, non-sexism, freedom, and the supremacy of the Constitution. In his speech he explained:

The possibilities are endless; just know that choosing a career away from public interest law does not mean that you have left your obligations behind. The work of transformation cannot be left only to the judiciary because well-considered and groundbreaking judgments are not enough. If judgments are not accompanied by a concomitant change in the living conditions of the poorest among us then we have failed in our respective duties as lawyers, as activists, as South African citizens.⁸²⁵

In his interview with Professor Obeng Mireku, the former Dean of the Nelson R Mandela School of Law, for the Constitutional Justice Project,⁸²⁶ Skweyiya in his quest for a functional constitutional democracy asserts that, while matters of policy belong to the executive, where there is a need to align legislation and policies that impact on socio-economic rights of people under the Constitution, the courts influence such decisions in an endeavour to protect people's rights. Policies and courts therefore influence one another to ensure proper realisation and protection of the fundamental rights entrenched in the Constitution. Skweyiya was adamant that the courts in general and the Constitutional Court in particular could not remain aloof from the socio-economic needs of the people, especially the indigent.⁸²⁷ This is so because, although the realisation of socio-economic rights in the Constitution is a complex task, cases of this kind present courts not only with legal issues but with the opportunity to help us understand the relevance of the Constitution for the practical realities of life. Consequently, courts must ensure that these rights are not mere abstract rights on paper, but are substantive rights that are enjoyed in practice. In his JSC interview for appointment as a Constitutional Court judge, Justice Skweyiya stated:

Well, you can have the nicest of Constitutions on paper. If it doesn't relate to reality, then there are difficulties. The Constitution requires of all of us to do certain things, to respect the dignity of South Africans and one can't speak of

824 Skweyiya (n 803 above).

825 As above, n.p.

826 Mireku (n 816 above). The Constitutional Justice Project (CJP) was undertaken for the Department of Justice and Constitutional Development. The CJP consisted of an assessment of the transformative impact on society of the socio-economic rights decisions by the apex courts (that is, Constitutional Court and Supreme Court of Appeal).

827 Skweyiya (n 803 above).

a person's dignity when that person is living in squalor and that person can't have access to facilities, medical facilities⁸²⁸

It is for this reason that Skweyiya consciously and deliberately interpreted and applied constitutional rights provisions to ensure the protection of the impoverished and vulnerable – as observed in the *Joseph* case, which judgment he penned. As we saw earlier, he has remarked that every legal practitioner, including judges, attorneys and advocates in South Africa, should be committed to the promises found in the Preamble and the Constitution itself.⁸²⁹ This constitutional commitment is 'to heal the divisions of the past and to establish a just society founded on a democratic ethos, namely social justice, the rule of law, and respect for fundamental rights.'⁸³⁰

To this end, while respecting the realms of other branches of government as key to the doctrine of separation of powers, the underlying philosophy in Skweyiya's rights jurisprudence was that the courts should shy away from a highly structured legal-centric interpretation of rights. Instead, courts should understand their constitutional duty and ensure that constitutionally protected rights, especially socio-economic rights, become a reality through a generous and contextual interpretation that gives content and meaning to those rights. It can also be inferred from his judgments that courts should not resort to the shelter of legal formalism, instead actively developing the legal system to be more attuned to the urgent necessity of responding to poverty and social marginalisation, and to identify the substantive content of what it means to have respect for human dignity and fundamental rights. Thus, Skweyiya's jurisprudence in the enforcement of socio-economic rights is a powerful indication that the Constitution's vision goes beyond merely guaranteeing abstract equality; rather, courts must ensure that these rights become a reality.⁸³¹ In this regard, it is the vision of the Constitution to ensure democracy, transparency, accountability, good governance, and the rule of law.⁸³² Although the Constitution neither provides a comprehensive blueprint for a transformed society nor stipulates the precise processes for achieving such transformation, it provides for a set of institutions such as the Constitutional Court and Chapter 9 institutions⁸³³ and outlines

828 Constitutional Court (n 788 above).

829 Skweyiya (n 803 above).

830 'The Constitution' (n 792 above) Preamble.

831 See, for example, Skweyiya's concurring judgments in *Governing Body of the Juma Musjid Primary School & Others v Essay N.O. and Others* (2011 8 BCLR 761 (CC)) and *Minister of Health and Others v Treatment Action Campaign and Others* (2002 (5) SA 703 (CC)).

832 'The Constitution' (n 792 above) sec 1.

833 The Chapter 9 institutions are: the Public Protector; the South African Human Rights Commission; the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities; the Commission for Gender Equality; the Auditor-General; and the Electoral Commission. See 'The Constitution' (n 792 above), sec 181(1).

fundamental values to guide processes of social change and transformation.

It becomes clear from the above analysis that Skweyiya's judicial stance with regard to the interpretation of socio-economic rights was heavily influenced by his personal background. Although he acknowledged that he was more privileged than most, he highlighted his disadvantaged background and the impact that it had on his judicial thinking, which though tempered by training placed him in an advantaged position in deciding on the practical, substantive meaning of those rights.⁸³⁴ Consequently, Skweyiya's body of work may be described as having inspired a functional constitutional democracy by way of ensuring the practical and realistic interpretation of fundamental rights.

3.1 Child-related judgments illustrating Skweyiya's constitutional commitment

The area of human rights in which Justice Skweyiya made a particularly strong contribution to constitutional jurisprudence was children's rights. This sub-section briefly reviews the cases that exemplify that contribution.

The *locus classicus*⁸³⁵ of *Le Roux and Others v Dey*⁸³⁶ dealt with a civil matter of substantial relevance for children. The case concerned an action against school children who were involved in the creation and distribution of an allegedly offensive image – a 'manipulated photo of two naked gay bodybuilders sitting next to each other in a compromising position. The photo of the respondent (the vice principal of the school) was pasted on the face of the one bodybuilder and the face of the principal of the school onto the other.'⁸³⁷ The principal and his deputy instituted claims for defamation and injury to their feelings.

The Supreme Court of Appeal (SCA) dismissed an appeal against an order of the North Gauteng High Court (Pretoria) finding in favour of the respondent in an action for defamation. In a dissenting judgment Skweyiya illustrated his empathetic and pragmatic nature in that, in his view, in any case (either civil or criminal) involving children, their best interests should come first.⁸³⁸ In other words, any conduct by children, whether such conduct was believed to be right or wrong, had to be measured against the 'best interests' principle in section 28(2) of the

834 Constitutional Court (n 788 above).

835 That is, 'famous case'.

836 2011 (3) SA 274 (CC).

837 Supreme Court of Appeal 'Media summary – Judgment delivered in the Supreme Court of Appeal: *Le Roux and v Dey*' 1 <http://www.saflii.org/za/cases/ZASCA/2010/41media.pdf> (accessed 26 July 2017).

838 While conceding that the best interests of the child are not absolute, section 28(2) of the Constitution requires that 'A child's best interests are of paramount importance in every matter concerning the child.' 'The Constitution' (n 792 above).

Constitution. While conceding that the conduct of the school boys in pranking the school principal and his deputy was wrong in all respects and was injurious to their dignity, there were certain considerations that the best interests of the child required. First, greater emphasis had to be placed on the fact that the conduct was committed by children and in a school environment, where children should be permitted to make mistakes and learn from them. Second, the Constitutional order in its entirety, but more particularly the children's rights clause, mandated special protection to be afforded to children. Third, the demands of the best interests principle in the Children's Act (38 of 2005) read with section 28(2) of the Constitution formed the foundation upon which any matter involving children was to be considered.

In the same *Le Roux* judgement Skweyiya held that, although the conduct of the children was wrong and as such they should face punishment for their actions, such a measure had to be commensurate with the alleged offence. While measuring the best interests of the child against the alleged conduct of the school boys, Skweyiya held that the claim for defamation should fail in that the children in question had already faced formal disciplinary measures at school, had served community service as part of the criminal charges laid against them, and above all had showed willingness to apologise to the school authorities.

Again we see his empathy, pragmatism and promotion of child rights in the case of *C and Others v Department of Health and Social Development, Gauteng and Others (C v DPP)*.⁸³⁹ The case involved the confirmation of a declaration of constitutional invalidity of sections 151 and 152 of the Children's Act (38 of 2005) to the extent that these sections provide for a child to be removed from family care by state officials and placed in temporary safe care without judicial oversight.⁸⁴⁰ In essence, the case concerned the constitutionality of the normative framework for the removal of children by the state from their family environment and their placement in temporary safe care without the intervention of a court of law.⁸⁴¹

Section 151(1) of the Children's Act empowers the Children's Court, after testimony has been placed before it, to order that a social worker investigate whether a child is in need of care and protection. Section 152(1) of the same Act empowers relevant authorities to remove a child and place the child in temporary safe care, without a court order, if it is reasonably believed that a child is in need of care and a delay in obtaining a court order may jeopardise the child's safety and wellbeing. Although it was apparent,

839 2012 (2) SA 208 (CC).

840 The High Court (HC) declared sections 151 and 152 to be unconstitutional in so far as the above reasons are concerned. Section 172(2) requires that an order for constitutional invalidity by a HC must be referred to the Constitutional Court for confirmation.

841 *C and Others* (n 839 above) paras 1, 9 and 10.

prima facie-speaking from the provisions of the Children's Act, that such removal of children was legitimate in order to secure their well-being and protect them from discrimination, exploitation and any other form of physical, emotional or moral abuse, Skweyiya J was of the view that, in any matter concerning a child, his / her best interests had to be the starting point. As such, due consideration had to be given to alternatives to any removal of a child from his / her family environment, since any coercive removal of children from their family environment was undoubtedly an extreme limitation of their right to family or parental care.⁸⁴² While holding that section 151 of the Children's Act was unconstitutional, Skweyiya maintained that, as a minimum, section 28(2) of the Constitution (the best interests of the child) would require the family concerned, and most importantly the child in question, to be given an opportunity to make representations in a court of law on whether removal was in the best interests of the child⁸⁴³ and whether such action should be subject to automatic review by the court.⁸⁴⁴ To ensure that the Constitution, particularly the Bill of Rights, was a living reality to many, Skweyiya held that the interests of children and their parents, particularly those who were indigent, should bear no risk of undue infringement.⁸⁴⁵

Another example illustrating Skweyiya's quest for the promotion and protection of rights, in particular those of vulnerable groups, is the case of *J v National Director of Public Prosecutions and Another*.⁸⁴⁶ As in the *C and Others* case, the *J v National Director* matter concerned confirmation proceedings after a decision by the Western Cape High Court that declared section 50(2) of the Criminal Law Amendment Act 32 of 2007 unconstitutional. The Criminal Law Amendment Act stipulated that a court had to make an order to include in the National Register for Sexual Offenders the particulars of a person convicted of a sexual offence against a child or mentally disabled person. In *J v National Director*, the applicant was 14 years old at the time and was charged with the rape of a seven-year-old boy and two six-year-old boys in contravention of section 3 of the Sexual Offences Act.⁸⁴⁷ The question before the Constitutional Court was whether the constitutional invalidity of section 50(2) of Act 32 of 2007

842 As above, para 24. He further stated that while section 28(1) of the Constitution referred to the right to alternative care when children were removed from family care, such alternative care was a secondary right.

843 As above, para 27. The impugned provisions in sections 151 and 152 do not provide for adequate consideration of the best interest of the child. Furthermore, the limitation of the right to family care or parental care and removal without automatic judicial review also infringes the right of access to courts under the Constitution.

844 His reasoning was that the statutory framework for the removal of children must expressly provide for an appropriate degree of judicial oversight because in this way a court of law would be able to consider whether it was in the best interests of the child to remove him / her. Hence if the provisions, despite their legitimate purpose, were too restrictive of the rights of the child and the family, they would be unconstitutional.

845 *C and Others* (n 839 above) para 49.

846 2014 (2) SACR 1 (CC).

847 The applicant was further charged with assault with the intent to do grievous bodily harm for stabbing a 12-year-old girl.

should be confirmed and whether section 50 of the Sexual Offences Act limited the rights of children and if so whether the limitation could be justified in terms of section 36 of the Constitution (the limitations clause). If the limitation could not be justified, the provision had to be declared unconstitutional and the Court had to determine a just and equitable remedy.

As in the *C and Others* case, the impugned provisions in the statutory provisions had a legitimate purpose: that of protecting children and persons with disabilities from coming into contact with sex offenders through relevant employers, licensing authorities and child care authorities being informed that a particular person was listed on the sex offenders register. Skweyiya sought a balance between the legitimate purpose of the provisions and the best interests of the child, on the one hand, and the adverse ramifications that flow from having one's particulars registered in the sex register, on the other.⁸⁴⁸ The media summary of the judgment read:

In a unanimous judgment, Skweyiya ADCJ held that section 50(2)(a) of the Sexual Offences Act infringes on the right of child offenders to have their best interests considered of paramount importance in terms of section 28(2) of the Constitution. The Register fulfils a vital function in protecting children and persons with mental disabilities from sexual abuse. However, the limitation of the child offender's right is unjustifiable because a court has no discretion whether to make the order and because there is no related opportunity for child offenders to make representations. The Court limited its declaration of constitutional invalidity to child offenders. It held that the constitutionality of the provision in relation to adult offenders was not properly before the Court.... The Court suspended the declaration of invalidity for 15 months to give the Legislature an opportunity to correct the constitutional defect. The respondents were further directed to provide a report to the Court setting out the details of child offenders currently listed on the Register.⁸⁴⁹

Skweyiya's stance in ensuring that the Constitution fulfilled its transformative mandate is evident also in *Du Toit and Another v Minister for Welfare and Population Development and Others*.⁸⁵⁰ This case concerned a challenge as to the constitutionality of certain provisions of the Child Care Act and the Guardianship Act⁸⁵¹ in that they violated the rights of same-sex couples in matters concerning joint adoption. The applicants (a same-sex couple) in the *Du Toit* case claimed that these two statutes discriminated against them on the basis of their sexual orientation and marital status, infringed the dignity of the first applicant, and undermined

848 See section 41(1) of the Sexual Offences Act. No employer is permitted to employ a person who is listed in the sex register.

849 Constitutional Court of South Africa '*J v National Director of Public Prosecutions and Another*. Media summary' <http://www.saflii.org/za/cases/ZACC/2014/13media.pdf> (accessed 31 July 2017).

850 2003 (2) SA 198 (CC).

851 Act 192 of 1993.

the constitutional principle that the best interests of the child were paramount in matters concerning children.

Declaring the two pieces of legislation unconstitutional, Skweyiya J held that the Constitution protected the right to equality, which had to be enjoyed by everyone, including same-sex couples, in such matters as the adoption of children. In this way, Skweyiya maintained, the constitutional rights to equality⁸⁵² and human dignity⁸⁵³ of the same-sex couple and most importantly the best interests of the child (section 28(2) of the Constitution) would be upheld. This judgment is particularly illustrative of Justice Skweyiya's deep understanding of the meanings, objectives and implications of the Constitution and the need to consider context and circumstances when deciding on the fate of people.

4 The influence of African law on Skweyiya's legal sensibilities

What has been discussed hitherto is arguably the aspect of Skweyiya's jurisprudence that is relatively well known. Less well known is his desire to locate South African constitutional law within the framework of a larger African jurisprudence.

In his address at the 2015 HSRC colloquium alluded to in the Introduction, Skweyiya drew the attention of the audience to the pivotal role of key individuals in heralding and in actioning a constitutional dispensation not only for South Africa, but for the continent as a whole – what Skweyiya called 'the invigoration of the African voice in comparative constitutional interpretation.'⁸⁵⁴ In his address to the HSRC Colloquium, Skweyiya avowed:

Ultimately my message is that we ought to be not only more attentive and receptive to the African voice when we conduct our comparative constitutional interpretation but also more conscious of our responsibility to strengthen that voice in our judgements from which the rest of the continent and even the world may find assistance.⁸⁵⁵

The herald of the African voice was Pixley Seme, founder of the African National Congress (ANC). After obtaining a Bachelor of Arts degree from Columbia in 1906 and a Bachelor of Civil Law degree from Oxford in 1909, in 1910 Seme became the first black South African to open a legal practice in South Africa.⁸⁵⁶ Skweyiya cites an excerpt⁸⁵⁷ from Seme's

852 'The Constitution' (n 792 above) sec 9.

853 As above, sec 10.

854 Skweyiya (n 793 above) 2.

855 As above, 9.

856 As above, 3.

857 As above, 4.

speech delivered at Columbia University in 1906 on 'The Regeneration of Africa' (which won him the university's highest oratorical honour, the George William Curtis medal)⁸⁵⁸ in support of his (Skweyiya's) location of the South African Constitution within an African legal tradition:

The brighter day is rising upon Africa. Already I seem to see her chains dissolved, her desert plains red with harvest, her Abyssinia and her Zululand the seats of science and religion, reflecting *the glory of the rising sun* from the spires of their churches and universities. Her Congo and her Gambia whitened with commerce, her crowded cities sending forth the hum of business, and all her sons employed in advancing the victories of peace – greater and more abiding than the spoils of war.... The African people, although not a strictly homogeneous race, possess a common fundamental sentiment which is everywhere manifest, crystallizing itself into one common controlling idea. Conflicts and strife are rapidly disappearing before the fusing force of this enlightened perception of the true intertribal relation, which relation should subsist among a people with a common destiny. Agencies of a social, economic and religious advance tell of a new spirit which, acting as a leavening ferment, *shall raise the anxious and aspiring mass to the level of their ancient glory.* *The ancestral greatness*, the unimpaired genius, and the recuperative power of the race, its irrepressibility, which assures its permanence, constitute the African's greatest source of inspiration.⁸⁵⁹

While for Skweyiya the sentiment of which Seme spoke is explained 'by the African ethical concept of *Ubuntu*, [which is] unique and untranslatable ... speaks of human interdependence and its legal, social and moral implications',⁸⁶⁰ there are other collocations in Seme's speech: the *brighter day ... rising upon Africa*, the *glory of the rising sun*, the *rais[ing] ... to the level of ancient glory*, the *ancestral greatness* – all images prefiguring the 'Africa rising' narrative that came to characterise Africa's economic ascendance during the global financial crisis of 2008.⁸⁶¹ But as Skweyiya is at pains to point out, Seme's 'vision of regeneration was not of material progress, but moral progress.'⁸⁶²

If the herald was Seme, the actioner was Mandela, whose statement at the Organisation of African Unity (OAU) meeting of Heads of State and government⁸⁶³ in June 1994, shortly after his inauguration as President of South Africa, 'capture[s] the very essence', claimed Skweyiya, 'of what I aim to convey in this address':

858 South African History Online 'Pixley ka Isaka Seme' <http://www.sahistory.org.za/people/pixley-ka-isaka-seme> (accessed 6 July 2017).

859 As above (emphasis added); cited in Skweyiya (n 793 above) 4.

860 Skweyiya (n 793 above) 4-5.

861 See, for example, 'The sun shines bright' *The Economist* 3 December 2011; 'Africa rising' *Time* 3 December 2012; V Mahajan *Africa rising: How 900 million African consumers offer more than you think* (2009).

862 Skweyiya (n 793 above) 5.

863 SA History Online 'Statement of the President of the Republic of South Africa, Nelson Mandela, at the OAU meeting of Heads of State and government' <http://www.sahistory.org.za/article/statement-president-republic-south-africa-nelson-mandela-oau-meeting-heads-state-and-governm> (accessed 5 July 2017).

In the distant days of antiquity, a Roman sentenced this African city to death: 'Carthage must be destroyed (*Carthago delenda est*)'.

And Carthage was destroyed. Today we wander among its ruins, only our imagination and historical records enable us to experience its magnificence. Only our African being makes it possible for us to hear the piteous cries of the victims of the vengeance of the Roman Empire.

But the ancient pride of the peoples of our continent asserted itself and gave us hope ... [Mandela goes on to list a string of great African leaders ancient and modern].⁸⁶⁴

What Skweyiya does not articulate fully in his 2015 address, but which will have undergirded his construction of an African regeneration narrative, is the legacy of greatness bequeathed by the continent to the world as spelled out by Mandela in his speech to the African heads of state – delivered poignantly in Tunis, just south of the ancient city of Carthage:

The titanic effort that has brought liberation to South Africa, and ensured the total liberation of Africa, constitutes *an act of redemption for the black people of the world*. It is a gift of emancipation also to those who, because they were white, *imposed on themselves the heavy burden of assuming the mantle of rulers of all humanity*. It says to all who will listen and understand that, by ending the *apartheid* barbarity that was the offspring of European colonisation, Africa has, once more, contributed to the advance of human civilisation and further expanded the frontiers of liberty everywhere.⁸⁶⁵

Few orators could, as Mandela has done, in a masterful stroke simultaneously dub the effort that liberated South Africa *an act of redemption for the black people of the world* and extend this redemption to white people, who were freed from the *heavy burden of assuming the mantle of rulers of all humanity* by the efforts of South Africa's liberators. Few, that is, except that other great South African orator, Thabo Mbeki, who, though Skweyiya mentions him only tangentially in his HSRC colloquium address, continued this tradition through the delivery of his 'I am an African' speech on the occasion of the adoption by the Constitutional Assembly of The Republic of South Africa Constitution Bill 1996, on 8 May 1996.⁸⁶⁶ Like Mandela and Seme before him, Mbeki alludes to Africa's affirmation that 'she is continuing her rise from the ashes' and that her people 'respond to the call to create for [them]selves a glorious future [mindful of] ... the Latin saying: *Gloria est consequenda* – Glory must be sought after!'⁸⁶⁷

864 As above. Cited in Skweyiya (n 793 above) 10.

865 SA History Online (n 861 above) n.p (emphasis added).

866 T Mbeki 'I am an African – Thabo Mbeki's speech at the adoption of The Republic of South Africa Constitution Bill' <http://www.anc.org.za/content/i-am-african-thabo-mbekis-speech-adoption-republic-south-africa-constitution-bill> (accessed 6 July 2017).

867 As above, n.p.

More pertinently, in the context of the South African Constitution, however, Mbeki spoke in his 'I am an African' speech of '[o]ur sense of elevation at this moment also deriv[ing] from the fact that this magnificent product [the Constitution] is the unique creation of African hands and African minds' – followed by the *coup de grace*: 'But it also constitutes a tribute to our loss of vanity that we could, *despite the temptation to treat ourselves as an exceptional fragment of humanity, draw on the accumulated experience and wisdom of all humankind*, to define for ourselves what we want to be.'⁸⁶⁸

African hands and minds might have created the Constitution; but on reflection, Mbeki seems to say, South Africa is not *an exceptional fragment of humanity*, the Constitution being a product ultimately of the *accumulated experience and wisdom of all mankind*. With this master stroke in the tradition of Seme and Mandela, Mbeki suggests that the universal giants upon whose shoulders the drafters of the South African Constitution have stood are responsible in the final analysis for the making of the South African Constitution.

Whether Skweyiya consciously had Mbeki's speech in mind or not, his summoning up of great African legal minds, emancipators, and orators reflects his attempt at positioning South African constitutional jurisprudence within a two-thousand-year-old-plus tradition dating back to an empire – the Carthaginian empire – that was the envy of the Roman republic in the third century BCE and a worthy adversary in three Punic wars.⁸⁶⁹ While the direct origins of the South African Constitution may lie most demonstrably in the Canadian Charter of Rights and Freedoms,⁸⁷⁰ then, African customary law⁸⁷¹ and the jurisprudence of many other African states (Skweyiya mentions resonances with Tanzanian, Ugandan, Lesotho and Nigerian law, as well as with the African Charter of Human Rights) have, he suggests, influenced not only the shaping of the text of the Constitution but the judgments that have been made on the basis of this text.

Noble as this attempt at locating South African constitutional law within an African legal tradition was, however, South African case law does not reflect in any major way such a tradition. As Skweyiya himself has said of his and his Justice colleagues' judgments, 'we were influenced by where we came from and [where we were] going, in our decisions. It was relevant to current situations and to the continent. *It's a pity that we*

868 As above (emphasis added).

869 See C Scarre, *The Penguin historical atlas of ancient Rome* (1995) 24-25.

870 D Davis 'Constitutional borrowing: The influence of legal culture and local history in the reconstitution of comparative influence: The South African experience' (2003) 1(2) *International Journal of Constitutional Law* 186-187.

871 For an account of the influence of customary law on the Constitution, see J Dugard 'International law and the South African Constitution' (1997) 1 *European Journal of International Law* 79.

couldn't get as much, you know, precedents from Africa.'⁸⁷² How Skweyiya believed such precedents might have influenced interpretations of the Constitution is not spelled out in his address.

Indeed, the intimations of African greatness to which Skweyiya alluded in his HSRC address were not the main topic of that address, but rather the backdrop to his central point. His speech focused on *ubuntu* – that 'unique and untranslatable' value system that is very much a part of African jurisprudence. Skweyiya shows how *State v Makwanyane*⁸⁷³ 'borrowed from the jurisprudence of another African nation in giving legal content to the concept of *Ubuntu*'.⁸⁷⁴ The Attorney General had argued in the case of the Tanzanian Court of Appeal in *Mbushuu and Another v The Republic*⁸⁷⁵ that, while the death sentence amounted to cruel and degrading punishment, which was prohibited under the Tanzanian Constitution, the death sentence was not unconstitutional since it was up to the people, not the courts, to decide whether the death sentence was an appropriate form of punishment.⁸⁷⁶ The South African Constitutional Court argued, however, that 'It is for the Court, and not society or Parliament, to decide whether the death sentence is justifiable under the provisions of section 33 of our Constitution.'⁸⁷⁷

Skweyiya went on to show how '*State v Makwanyane* and its legal expression of *ubuntu* was also invoked by the Ugandan constitutional court ... [which found the death sentence] to be cruel and inhuman punishment and therefore unconstitutional',⁸⁷⁸ how the concept of *ubuntu* was cited by the High Court of Lesotho in the context of the law of succession,⁸⁷⁹ and how the Nigerian Court of Appeal had applied the concept of *ubuntu* in a judgment involving discrimination against women.

While other Justices profiled in this book – notably Mokgoro and Sachs – have made extensive use of the concept of *ubuntu* in cases in which they have adjudicated, then, Skweyiya deliberately locates *ubuntu* within a broad continental context. Sentiments such as 'It is fitting therefore that *ubuntu* should occupy a prominent place in Africa's regeneration', 'jurisprudence of another African nation ... giving legal content to the concept of *ubuntu*', 'a growing continental jurisprudence' and 'African courts ... engaged in a continental dialogue to develop a jurisprudence' reflect this yearning for a pan-African jurisprudence characterised by, and uniting all in, its embracing of *ubuntu*.

872 Mireku (n 816 above) 7 (emphasis added).

873 *S v Makwanyane* 1995 (3) SA 391 (CC).

874 Skweyiya (n 793 above) 6.

875 Criminal Appeal No. 142 of 1994; 30 January 1995. Cited in *S v Makwanyane* (n 873 above) para 114.

876 *S v Makwanyane* (n 873 above) para 114.

877 As above, para 115.

878 Skweyiya (n 793 above) 6.

879 *Mokoena v Mokoena and Others* (CIV/APN/216/2005) <https://www.lesotholii.org/ls/judgment/high-court/2007/14> (accessed 1 August 2017).

Skweyiya's idea for a more African jurisprudence, when combined with his independent-mindedness, made an interesting combination. The second enquiry after his retirement from the Court in which he was involved was to investigate the state of correctional centres in South Africa. Once again Skweyiya showed independence, courage and respect for the rights of arguably the most vulnerable persons in our society besides children: prison detainees left to the mercy of the state in terms of their health and well-being, when the Constitution explicitly protects the rights of prisoners in section 35 of the Bill of Rights and foresees rehabilitation as the end goal of imprisonment. Overcrowding, disease and malnutrition as exposed by Skweyiya in correctional centres were clearly not serving that goal. His *ubuntu* philosophy did not stop at the doors of one of the most notorious prisons in South Africa, Pollsmoor. It had no bounds.

5 Conclusion

The examples of Skweyiya's ground-breaking jurisprudence cited in this chapter, together with his community engagement and his continued public service in the Judicial Inspectorate, his speeches, his JSC interview for Constitutional Court appointment, the views of his peers, and his commitment to a pan-African *ubuntu* illustrate how he 'walked the talk' in translating the human rights inscribed in the Constitution into practice in order to protect everyone in the country, especially the vulnerable, the needy, the weak, and the worst-off in society. It was Skweyiya's view that everyone in the legal profession should be committed to the underlying ethos of and values espoused by the Constitution. Without such a widely shared commitment to the democratic values and respect for fundamental rights, the transformative promises of the Constitution would not be achieved.

Skweyiya embodied the characteristics of judicial independence, a functional constitutional democracy, and humility. It is not surprising therefore that in his address at the University of Fort Hare, where he was Chancellor, he maintained that South Africans should be proud of the strength and independence of the judicial system, especially the utilisation of the underlying values to which every lawyer should be committed. He emphasised that the realisation of the transformative agenda introduced by the Constitution required not only the financial, technical and political muscle of the state but, most importantly, a strong judiciary committed to the ideals of democratic values, social justice and respect for fundamental rights. His parting words to the group of students were:

[To] be a lawyer in South Africa, you must act with integrity, and in doing so you will ensure that the judiciary remains independent and that the rule of law remains ... to be a lawyer in South Africa today means that you are committed to this ideal that you will play your part in creating a democratic

society where every person can realise and enjoy their rights protected in the Bill of Rights.⁸⁸⁰

With these forward-looking sentiments – ‘you will ensure that the judiciary *remains* independent’ – and characteristic embracing of human rights for all – ‘where *every person* can realise and enjoy their rights’ (emphases added) – Skweyiya sought to pass on to the next generation of legal practitioners a legacy of human rights-based, socially aware, and socially oriented jurisprudence, in the hope that they would become the custodians and promoters of the functional constitutional democracy to which he had dedicated his life’s work. In handing on the baton to his successors, he was urging, in the great African legal tradition of Seme and Mandela, that cultivation and practice of *ubuntu* of which he himself had been a beneficiary.

880 University of Fort Hare Law Students Dinner (n 844 above) n.p.

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