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Ending 1990s Law and Development Ideas, Paradox of Path Dependence In Economic Planning Institutions Under Covid-19: SA's Response

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Abstract: This paper argues that the COVID-19 pandemic can and should be understood as a form of creative destruction (Schumpeter's gale), at a hyper level owing to its biological/medical dimension. Therefore, the critical response to such a hyper force is to rethink how institutions administer Public Policy in South Africa (Path Dependency), most importantly economic development planning institutions and Covid-19 responses, in the form of 'The Economic Reconstruction and Recovery Plan'. It's the contention of this paper that the reason why Covid-19 continues to impact the South African government's economic planning ethos is anchored in its developmental orientation, particularly how constitutional legalism has impaired economic development planning. This could impart be due to the unaddressed influences of the initial waves of Law and Development post-1994. The South African experience with the initial waves of Law and Development were muted owing to the problematic nature of the 1994 transition which sought peace at all costs without necessary addressing substantive economic development reform considerations. Therefore, using the policy experiences of Covid-19 and Lee's, General Theory of Law and Development, particularly the aspects of Development and State Capacity and Political Will, a revision of the South African Constitution will be called on, principally chapter's 2 and 6 (Bill of Rights) and (Province).

Keywords: creative destruction (Schumpeter's gale); path dependency; public policy; COVID-19; Law and development post-1994

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1 Introduction and Scene Setting

The Coronavirus disease 2019 (Covid-19) pandemic caused untold personal and economic crises on all four quarters of the globe, it changed how and in what way numerous private and public interactions take place.[1] Covid-19 in relation to the field of Law and Development can be said to have tested and even enhanced the debate about the role of government and the private sector when it comes to questions about the market and rules concerning the operation of market forces, key example is the rolling out of vaccines to poorer nations i.e., COVAX Alliance.[2] This article rather than revisiting debates and lessons like COVAX or the behavior of Western States in the pandemic times, explores how Covid-19 has redefined and created a Schumpeter's gale for economic development planning in Global South States like the Republic of South Africa. It's the contention of this article that the Schumpeter's gale Covid-19 has affected South Africa economic development plan, necessitates policy and constitutional change in critical areas to rescue the moribund state of economic development in South Africa over the last decades. To vindicate this stance, the article makes use of a dual theoretical framework approach, namely Path Dependence and selected elements of State Capacity from Y.S Lee's General Theory of Law and Development.

2 Making Sense of South Africa's Covid-19 Hangover

The Covid-19 pandemic was singular in its impact of not only known and regularly cited economies of the Global South (developing economies usually not North American or Western European), but also highlighted the fragilities of well-established developed economies like the Unites States of America, Federal Republic of Germany, and countless others.[3] For the first time post-the Cold War period, the globalized economies and citizens of Western and Developing States had no immediate answers for how to react to a hyper biological and medical

1 M. Wolff and V. Mykhnenko, *COVID-19 as a game-changer? The impact of the pandemic on urban trajectories*, 134 Cities (2023).

2 A. Pushkaran et al., *A critical analysis of COVAX alliance and corresponding global health governance and policy issues: A scoping review*, 8 BMJ Global Health, no. 10 (2023), 1–10.

3 *Developing countries and development co-operation: What is at stake?* (Organisation for Economic Co-operation and Development. Paris. 2020), p. 1.

pandemic, capable of impacting human-to-human relations.[4] It does require some pausing to remember just how brutal and shocking Covid-19 was on the human-to-human relations, and pandemics like it could become regular fixtures in the future.[5]

Yet, in the context of Law and Development, the economic or rather financial dimension of Covid-19 brought into stark focus how globalized and vaunted international market could be stretched, if not stopped, when looking at the data about stalled value chains in consumer goods and services during this period.[6] All the while, the cumulative wisdom of financiers, presidents, actuaries, medical professionals were silent and humbled to the fact that something untoward was occurring. As the pandemic was starting to be better understood and new forms of knowledge concerning how to curb it, already existing fault lines in the form of political tensions between Western States and States like the People's Republic of China (the PRC) and even the Russian Federation were becoming heightened globally.[7] It can be argued that the Covid-19 pandemic entrenched and allowed for the naturalization of Western Nationalist Populism in once exemplar States like the United States of America's two leading parties, the Republican and Democrats, and illustrated the existence and rise of populists globally in States, like the PRC, Republic of India, and Russia, with regards to how they seek to challenge and exercise their authority in the world.[8]

It is for this reason this article argues that the Covid-19 pandemic needs and can now be seen as a form of Creative Destruction (Schumpeter's gale), at a hyper level owing to its biological and medical dimension. Schumpeter's gale is explained in his 1943 masterpiece '*Capitalism, Socialism, and Democracy*' that in a capitalist system and order, there is bound to be periods of booms and busts for participants (firms, sectors, entrepreneurs, products) and that this cycle of booms and busts is a form of creative destruction. Creativeness is used in the sense that new products (ideas, technologies, services) are constructed to advance the frontiers of economic production, while consequently destruction in this period sees the former products

4 S. Altman, *Will Covid-19 Have a Lasting Impact on Globalization?*, available at: <https://hbr.org/2020/05/will-covid-19-have-a-lasting-impact-on-globalization>, accessed November 1, 2023.

5 A. Telenti*et al*., *After the pandemic: perspectives on the future trajectory of COVID-19*, Nature (2021), 495–504.

6 E. Quak. *The Covid-19 pandemic and the future of Global Value Chains (GVCs)*, UK: Institute of Development Studies, K4D Helpdesk Report No. 874 (Brighton, 2020).

7 Ka-ho Wongand Lawrence Ka-ki Ho, *China's Strategic Partnership with Russia amid the COVID-19 Pandemic*, 22, China Review, no. 2 (2022), 285–313.

8 A. Dynkin and A. Telegina, *Globalization and the World Order in the New Realities of the Post-COVID World*, Herald of the Russian Academy of Sciences (2021), 414–418.

(ideas, technologies, services) usurped by new ones. This is what defines the existence and continued evolution of a capitalist society and economy.[9]

Yet, in the case of South Africa, this article argues that Covid-19 and its creative destruction (Schumpeter's gale) has presented two critical and long overdue realities. Firstly, Covid-19, while devastating to South Africa's economy, simply highlighted and expediated the process of Creative Destruction by highlighting the absence of actual long overdue economic development planning approach. This assertion is not unfounded when the 2022 unemployment landscape is presented in a macro manner, *'40,3 million people of working age in South Africa (15 – 64-year-old), Labour force 23,5 million, employed 15,8 million and unemployed 7, 7 million, not Economically active 16, 8 million (in this grouping 3,5 million discouraged job seekers, other Not Economically Active 13, 3 million'*.[10] What probably is more disconcerting about these numbers is that black (African, Coloured and Indian) citizens bear the brunt of this problem.

Where in States like the USA, the PRC, the European Union and even States like the Republic of Singapore, Covid-19 challenges the historical or recent economic development planning success. South Africa's experience of Covid-19 is a start reminder that economic development policies have not yielded meaningful success. It needs to be noted that success in the South Africa's economic development planning context means one distinct outcome.

Firstly, the definition of economic development needs expansion. Economic development is previously defined as *"Economic development is 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."*[11]

However, in the context of Covid-19, this article would argue now economic development includes planning capabilities to guard and enforce positive public health outcomes, like early warning systems against evolving diseases and viruses that could undo economic development. However, after numerous policy interventions dating back to the *ANC 1992 Ready To Govern*, *Reconstruction and Development Programme (1994), Growth, Employment, and Redistribution (1996), National Industrial Policy Framework (2014), National Development Plan (2013)* and countless others that speak and in certain instances attempt to achieve economic

9 J. Schumpeter, *Capitalism, Socialism, and Democracy* (Crows Nest: George Allen & Unwin, 1943), p. 90.

10 R. Maluleke, *Quarterly Labour Force Survey (QLFS): Q3:2022*, available at: <https://www.statssa.gov.za/publications/P0211/Presentation%20QLFS%20Q3%202022.pdf.>, accessed on November 1, 2023.

11 T. Pooe, *Developmental State No Birth Right: South Africa's Post-1994 Economic Development Story*, 10 Law and Development Review, no. 2 (2017), at 371.

development, the reality is Covid-19 has laid bare that the State was going in the wrong direction, even before Covid-19.[12] A report from the South African Reserve Bank titled '*The South African business cycle from 2013 to 2022*' clearly illustrates the fact that the South African economy heading into the Covid-19 crises was due to go into a recession, and the economy has not been performing for decades.[13]

The lack of economic development planning in isolation of poor policies and legislation would be an acceptable problem to have, except for the fact that there is a continued degradation and capacity by South African government institutions to assist with the current lack of economic development planning. It was the hallmark of the presidential stints of Presidents Nelson Mandela (1994–1999) and Thabo Mbeki (1999–2009). Despite problems around how to grow the economy and create employment, their institutional excellence exist in the form of the South African Revenue Service, Policy Coordination and Advisory Services, National Treasury, Department of International Relations and Cooperation and others.[14] Yet, as the 2024 elections draw closer, it's not wrong to argue that finding excellently run and operational government institutions is akin to playing a game of 'hide and go seek' or 'Where's Wally'.

It is now an accepted truth that the energy behemoth that is Eskom is a shadow of its former glory, where once it was winning international awards like '*Power Company of the Year award in the Financial Times' annual Global Energy Awards*' (Pillay 2001).[15] Now the simple prayer for most South African businesses and citizens is for it to give us a full day's uninterrupted supply of consistent electricity. Moreover, many of the brilliant hard-working engineers and staff have been subjected to all manners of impressionist Chief Executive Officers like the previous one, named Andre Marinus de Ruyter, when better world-class executives in and outside South Africa exist.

It is for this reason that this article, rather than simply focusing on the concept of economic development, uses the term economic development planning. If this article were to present a succinct definition of the concept of economic development planning, it would be how governments enforce the application of economic

12 J. Cotterill, *South Africa's recession worsened before pandemic hit* (London, 10 November, 2023), available at: <https://www.ft.com/content/683579dd-7e9b-4592-9a97-97794725b220>.

13 J. Venter and A. Wolhuter, *The South African business cycle from 2013 to 2022* (Pretoria, 30 November, 2023), available at: <https://www.resbank.co.za/content/dam/sarb/publications/quarterly-bulletins/articles-and-notes/2023/04The%20South%20African%20business%20cycle%20from%202013%20to%202022.pdf>.

14 B. Levy, A. Hirsch, V. Naidoo, and M. Nxele, *When Strong Institutions and Massive Inequalities Collide*, Carnegie Endowment for International Peace (Washington, DC 2021).

15 R. Pillay, *Eskom scoops top global award* (Johannesburg, 11 December, 2023), available at: <https://www.iol.co.za/news/south-africa/eskom-scoops-top-global-award-78601>.

development through a series of policy decisions using expert human capital and self-reflective institutions. This definition would be predicated on previous work looking into the concept of Development Planning by thinkers like Marcellus,[16] Fujimoto, Hara and Kimura,[17] and countless others. Yet, this definition draws more closely from the works of the 1960's which sought to understand how newly liberated colonial States in Africa, Asia and South America were going to address the confluence of political freedom and industrialization. One such thinker was Norwegian economist and father of Econometrics, Ragnar Frisch who in 1961, postulated, "In the materially underdeveloped countries that strive to achieve rapid economic progress one is nearly always confronted with the same pattern of economic difficulties and conflicting goals. To create employment and raise living standards as quickly as possible in a rapidly increasing population one starts more or less by force and active Government intervention all sorts of economic activities, improvements in agriculture, industrial developments in light industries as well as in heavy industries like steel, fertilizer, electricity production etc."[18]

Frisch's observations were also reinforced by the United Nations 1966 paper titled '*The Administration of Economic Development Planning: Principles and Fallacies*,'[19] which looks at the perils and tools available for governments to use in advancing economic development planning. It's important to note that economic development planning in the case of this article and its earliest sense was not about replicating what Soviet American Economist Alexander Erlich understood the term, namely a planned and controlled economy like what the Union of Soviet Socialist Republics had.[20] This point was well articulated by Bill Gibson, who explains, "Planning is a term that generally has fallen into disuse. It connotes, but does not logically imply, command and control mechanisms by which authorities issue directives for which compliance becomes a matter of administrative law."[21]

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16 I. Marcellus, *Development Planning in Nigeria: Reflections on the National Economic Empowerment and Development Strategy (NEEDS) 2003–2007*, 20, The Social Science Journal, no. 3, 197–210.

17 T. Fujimoto et al., *Comprehensive Asia Development Plan and Beyond-Growth Strategies for More Prosperous and Equitable East Asia*, ERIA Policy Brief, No. 2010-02 (2010).

18 R. Frisch, *Economic Planning and the Growth Problem in Developing Countries*, Economic Planning Studies [1961], 55.

19 United Nations, *The Administration of Economic Development Planning: Principles and Fallacies*, Department of Economic and Social Affairs (1966).

20 A. Erlich, *Development Strategy and Planning: The Soviet Experience,* NBER Chapters, in: National Economic Planning, National Bureau of Economic Research (Boston, 1967).

21 B. Gibson, *"Economic Planning in Developing Economies,"* in A.K. Dutt and J. Ros (eds.), International Handbook of Development Economics, vol 1 (Cheltenham: Edward Elgar Publishing, 2008), pp. 341–355.

Therefore, this article simply understands and works with the concept of economic development planning, so as to help the South African government in producing policies that can tackle and advance positive economic development using the right institutions, and to instrumentalize policies that are built from previous errors or lessons.

Hence, when the South African government during the period where Covid-19 required a response to address its economic effects on the State produced 2020 'Economic Reconstruction and Recovery Plan' (ERRP) and explained that it was "This document sets out a reconstruction and recovery plan for the South African economy that is aimed at stimulating equitable and inclusive growth. For the past decade, the South African economy has experienced stagnation which has put a strain in the effort to tackle the historical structural inequalities, unemployment and poverty",[22] is it doing so with actual workable intent and has studied previous policies, institutional failures and actually aiming to reverse the Path Dependent and State Capacity failings of the ANC government reign for the last three decades? So while the ERRP correctly focuses on four priorities, namely infrastructure, industrialization and local production, employment stimulus and energy security, how is this different from previously generated policies and enforcing institutions?

3 Methodology

This article's primary goal is to examine whether and how economic development planning has been achieved by the South African government during and after Covid-19 pandemic (2019–2023). To accomplish this goal, the 2020 'Economic Reconstruction and Recovery Plan' (ERRP), which is the government's response to the Covid-19, was considered but not solely used. Rather, this article was unique in that it employed a dual theoretical framework to further examine this goal. Firstly, Y.S Lee's General Theory of Law and Development, particularly his work on State Capacity and secondly, Path Dependency. These two theoretical frameworks' primary importance lies in the fact that it allowed for this article to retrospectively consider the history of economic development planning of the South African government, and secondly to consider if the ERRP would be a game changing approach by the government or not.

22 The Presidency of South Africa, *Building a new economy: Highlights of The Reconstruction and Recovery Plan*, available at: <https://www.gov.za/sites/default/files/gcis_document/202010/building-new-economy-highlights-reconstruction-and-recovery-plan.pdf>, accessed on December 10, 2023.

4 Theory Building: State Capacity (General Theory of Law and Development) and Path Dependency

4.1 State Capacity and Political Will (General Theory of Law and Development)

It is perhaps prudent before delving into the State Capacity and Political Will element of Y.S Lee's[23] work, to firstly gain a macro-overview of the General Theory of Law and Development developed by him. The General Theory of Law and Development, as explained by Lee, was an attempt to bring together four decades of scholarship into the field of Law and Development, which had been enriched by various scholars like Tamanaha (2017),[24] Davis and Trebilcock (1999),[25] Trubek and Galanter (1974),[26] Burg (1977) [27] and others from a diverse fields of studies like legal scholars, lawyers, and policy makers. All these scholars and practitioners focusing on the relationships between law, social existence and economic advancement had brought together various ideas in the form of first, second and third waves of understanding the field. Lee, using the practical case of Republic of Korea 1962–1996 (South Korea for duration of paper), enriched and tried to put together thematized parameters for understanding Law and Development.

In relation to this article, his most important contribution as it relates to this paper is the exposition on State Capacity and Political will for understanding development of States in the field of Law and Development, with a purposeful focus on lessons from South Korea as per the General Theory of Law and Development. In this exposition he explains the importance of Human capital expertise, purposefully designed institutions, and Political will with vision as key drivers for the success of South Korea's economic and more recently political success.

23 Yong-Shik Lee, *General Theory of Law and Development*, 50, Cornell International Law Journal, no. 3, 415–471.

24 B. Tamanaha, *The Primacy of Society and the Failures of Law and Development*, available at: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1406999>, accessed on November 12, 2023.

25 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 (1999), 14.

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

27 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.

4.2 Human Capital

The idea of human capital can be argued to have its roots in the works of Adam Smith (1776), where he identified and spoke to the importance of human beings' professional value being heightened by their educational and traineeship improvements, not just for their ability to gain financial gain, but also to enrich the State's overall capacities.[28] This early work by Smith continues to shape how many private sector companies and even government address the question of human capital training or retention.[29] However, in the context of this article, human capital is going to be detailed using Lee's works in two ways. It is important to understand what his theory explained. Lee explains, "Confucian tradition that values service to the government and the state, coupled with the lack of employment opportunities in the private sector, motivated educated and talented individuals to apply for positions in the government. Highly-educated and motivated officials, including top-ranked ones with academic training in North America and Europe, possessed strong analytical abilities to develop economic development strategies and the supporting *Legal Frameworks, and Institutions* (LFIs), such as the numerous development-facilitating statutes and institutions including the *Economic Planning Board* (EPB)" (2017:466).

General Theory of Law and Development espoused by Lee, the value and actual practice of human capital is important for two key reasons. Firstly, it highlights how it is possible to use the complex idea of national culture to positively influence citizens' approach to seeing themselves as valuable additions to the practice of human capital in the public sector. This idea is sometimes taken for granted and now become more acknowledged by scholars McLaughlin and Ferlie (2002) [30] and Sanz-Sanz (2022),[31] who interpret human capital in the public sector in an overly Western European and North American framework, and therefore find it hard to attribute positive notions to the link between national cultural value and human capital in the public sector. This article would argue this is mostly due to government leaders like British Prime Minister Margaret Thatcher's and United States of

28 A. Smith, *An inquiry into the nature and causes of the wealth of nations* (New York: Bantam Classic, 1776).

29 The World Bank, *Human Capital: A Project for the World*, available at: <https://documents1.worldbank.org/curated/en/793421540087227031/pdf/Human-Capital-A-Project-for-the-World.pdf>, accessed on December, 2023.

30 K. McLaughlin et al., *New Public Management: Current Trends and Future prospects* (London: Routledge, 2002), p. 349.

31 J. Sanz-Sanz, *A full-fledged analytical model for the Laffer curve in personal income taxation*, 73 Economic Analysis and Policy [2022], 795–811.

America's President Ronald Reagan's concepts of Thatcherism and Reaganomics,[32] which sought to improve the effectiveness and efficiency of government, but did so at the expense of valuing the importance of the concept of public sector in society through trying to make it run like the private sector. This came to be known as New Public Management, characterized by the privatization of key public sector resources like water, state owned entities and the like.

Secondly, Lee's exploration of the history of South Korean human capital in government gives some insight into the importance of training for human capital in reforming the public sector through non-local means (overseas training), then leveraging it for advancing the struggling government into newer more technical fields of the economy. This practice by not only the South Korean government, but other Asian States like the People's Republic of China, Republic of Singapore and others has also come to be used by the private sector in training their top executives as the Black and Gregersen of the Harvard Business Review[33] started to notice in the late 1990s and has been confirmed overtime by recent studies like Mello et al.'s 2023 work.[34] Yet, the genesis of human capital advancement like the one discussed here by Lee in the context of South Korea needed what this article refers to as purposefully designed institutions.

4.3 Purposefully Designed Institutions

The second element of Lee's focus in relation to this article is concerned with the importance of human capital operating and achieving development plans with impactful robust institutions. Lee furthers this point by stating, "Korea lacked some of the key resources constituting state capacity, such as financial resources, as reflected in the small government budget and the virtual disappearance of foreign reserves as of 1963 … Despite insufficient financial resources, Korea had considerable strength in the other constituent elements of state capacity, such as manpower, government organization, and administrative implementation" (2017:465).

South Korea's experience with building and operating impactful institutions is a rather critical feature of this article, owing to the three-tier system of government of South Africa and its many planning type institutions. For instance, the national government has 30 ministries (excluding ministers without portfolios in the

32 S. Manfred and R. Roy, "*First-wave neoliberalism in the 1980s: Reaganomics and Thatcherism*," in Neoliberalism: A Very Short Introduction (Oxford, 2010), 138–144.

33 S. Black and H. Gregersen, *The Right Way to Manage Expats*, available at: < https://hbr.org/1999/03/the-right-way-to-manage-expats>, accessed on December 19, 2023.

34 R. Mello et al., *Taking stock of expatriates' career success after international assignments: A review and future research agenda*, 1 Human Resource Management Review [2023], 1–26.

Presidency)[35] owing to the nature and form of the South African constitution particularly Chapter's 5 '*The President and National Executive*', Chapter 6 '*Provinces*' and Chapter 7 '*Local Government*'[36] which have the effect of creating various or mini-cabinets positions across three spheres of government.

Yet, it is interesting to note that an argument explaining the lack of economic progress by the South African government over the last two decades can be pointed towards the fact that, despite the existence of National Planning Commission (national planning institution),[37] there are no overarching institutions (or singular institutions) that takes the critical responsibility of economic development planning and coordinating government resources in a singular fashion and practice.[38] This experience is quite different from the experience Lee presents regarding South Korea and would be a good starting point to consider the South African perspective, which even if it had the correct types of human capital, might suffer from not being able to coordinate their skills in the planning institutions that Lee highlights with the experiences of South Korea. It can be argued that the two aforementioned points, Human capital and Purposefully designed institutions all point to the overarching point Lee made in his General Theory of Law and Development relating to the idea of Political will with vision.

4.4 Political Will with Vision

The discussion of Lee's interpretation of State capacity has focused on what can be termed the ideal and practical experiences of two known functions of State capacity. Argued differently it is possible for States to get anyone of the previously discussed functions operational, yet Lee's work on the practice of State capacity makes a stronger point using South Korea's experience. Namely, that if these two functions are to operate for economic development planning purposes, it is crucial to house them or operationalize them with actual Political will with vision.

35 J. Wehner and L. Mills, *Cabinet size and governance in Sub-Saharan Africa*. 1 Governance 35 [2020], 123–141.

36 The Constitution of South Africa (1996).

37 National Planning Commission of South Africa (NPC), *10 Year Review of National Development Plan 2021–2022*, available at: <https://www.nationalplanningcommission.org.za/assets/Documents/Ten%20Year%20Review%20of%20the%20National%20Development%20Plan_26%20September%202023.pdf.>, accessed on December 10, 2023.

38 K. Pooe and W. Ngcaweni, *When Theory and Policy Miss Transformational Opportunity: South Africa's Untapped Informal Sector Potential for Addressing Youth Unemployment*, 57 Journal of Public Administration, no. 3 (2022), 421–439.

Lee succinctly uses and with specific reference illustrates the practice of Political will with vision using the South Korean experience in the 1980s, by explaining, "The political will of the leadership to achieve economic development also augmented the weaker elements of Korea's state capacity, e.g., insufficient financial and natural resources. The Extended Meetings for Export Promotion, presided over by the President himself and attended by a number of government officials and private sector players, demonstrated the strength and consistency of the political will. These meetings were held on a monthly basis and continued for 14 years from 1965 to 1979 (until President Park's death). They discussed a range of issues associated with export promotion, sought solutions, and reminded the nation consistently that the top national priority was the achievement of economic development through the implementation of export-led growth strategies. The focus on the development agenda, sustained for the entire period of Korea's development, would not have been possible without this extraordinary political will" (2017:466).

Lee's detailed description of how Political will with vision was applied to the reform and ultimately created '*The Korean Miracle (1962–1980)*,'[39] which saw South Korea's economy joining the ranks of developed States and give rise to modern global conglomerates in the form of Samsung, Hyundai Motor Company, LG, Lotte Corporation, and countless others. Yet, as was argued in the preceding sections leading up to this one, Political will with vision once enacted within a government requires purposefully designed institutions and Human capital and once this occurs, this paper contends you have what Lee framed in his work, State Capacity. Yet, in the context of this article, the work of Lee on State Capacity, is used further to highlight the concept and practice of Path Dependence in government institutions that give rise to economic development planning.

4.5 Path Dependency

The concept of Path Dependency is usually approached in a manner that seeks to define its core characteristics and then discuss what this means in the given context. However, before doing this, perhaps it's important to briefly locate its historical significance in academic fields of study. It's this article's contention that Path Dependency can be understood to emanate from three fields of study, firstly the Natural sciences, as scholars like (Tekwa et al. 2019)[40] and (Gigante

39 K. Kim, *The Korean Miracle (1962–1980) Revisited: Myths and Realities In Strategy and Development*, Kellogg Institute, Working Paper, no. 166 (1991).

40 E. Tekwa et al., *Path-dependent institutions drive alternative stable states in conservation*, 116 Proceedings of the National Academy of Sciences, no. 2 (2018), 689–694.

2016)[41] owing to certain pathologies observed in the natural environment and science domain, which then could be translated into Social Sciences and broad Economics. Secondly, Organisation Change and Institutional Theory through the works of scholars like North (1990),[42] Whitley et al. (1996),[43] Lewin and Volberda (1999)[44] and Rodrigues and Child (2003).[45] Thirdly, more specialized fields of Economics in more recent times, like environmental economics (Goldstein 2023),[46] State and sector economics specialization (Coniglio et al. 2021)[47] and decision-making sciences (Hans-Joachim Spanger 2020).[48]

This background aims to give a richer and broader understanding of the context of the concept. However, the primary importance of this concept is how it is defined. Path Dependency, using firstly the work by Pierson (2000), "*Path dependence has to mean, if it is to mean anything, that once a country or region has started down a track, the costs of reversal are very high. There will be other choice points, but the entrenchments of certain institutional arrangements obstruct an easy reversal of the initial choice*" (252).[49] This interpretation of the concept by Pierson highlights the two core ideas of Path Dependency, namely current choices have historical bases and guidance (positive or negative), and secondly once certain paths are chosen, it becomes challenging to simply pick new course of actions as institutions/policy (Margaret Levi 1997:28)[50] processes are hard to correct owing to initial choices and imbedded historical decisions.

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41 A. Gigante, *Reviewing Path Dependence Theory in Economics: Micro–Foundations of Endogenous Change Processes*. MPRA Paper No. 75310 (2016).

42 D. North, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990), p. 1.

43 R. Whitley et al., *Trust and contractual relations in an emerging capitalist economy: The changing trading relationships of ten large Hungarian enterprises*, 17 Organization Studies, no. 3 (1996), 397–421.

44 H. Volberda and A. Lewin, *Co-evolutionary dynamics within and between firms: From evolution to co-evolution*, 40, Journal of Management Studies, no. 8 (2003), 2111–2136.

45 S. Rodrigues and J. Child, *Co-evolution in an institutionalized environment*, 40 Journal of Management, no. 8 (2003), 2131–2156.

46 E. Goldstein et al., *Unlocking "lock-in" and path dependency: A review across disciplines and socio-environmental contexts*, 161 World Development [2023], 1–15.

47 N. Coniglio et al., *On the evolution of comparative advantage: Path-dependent versus path-defying changes*, 133 Journal of International Economics [2021], 1–23.

48 H. Spanger, *The Perils of Path Dependency: Germany's Russia Policy*, Europe-Asia Studies, 72 Europe-Asia Studies, no. 6 (2020), 1053–1072.

49 P. Pierson, *Increasing Returns, Path Dependence, and the Study of Politics*, 94 The American Political Science Review, no. 2 (2000), 251–267.

50 M. Levi, "A Model, a Method, and a Map: Rational Choice in Comparative and Historical Analysis," in M. Lichbach and A. Zuckerman (eds.), *In Comparative Politics: Rationality, Culture, and Structure* (Cambridge: Cambridge University Press), 28.

The duality of Path Dependency is most fascinating for development planners to consider because it seeks to understand what and why certain institutions/entities have not performed as they were originally designed. And when challenging planners of development to look for not singular answers for faults, but rather try looking at the problems factoring in the holistic environment for future rectifications. This interpretation of the duality of Path Dependency, this article will argue, is linked to the natural science history of the concept, where nature and the environment operate at a dual level and not in a one-dimensional manner natural sciences as scholars like Tekwa et al. (2019)[51] and Gigante (2016).[52]

The multi-disciplinary nature of Path Dependency makes it an interesting tool of analysis of development, particularly of institutions/entities involved in complex policy undertakings. In this regard and for the purposes of detailing its importance in the realm of development planning, Path Dependency is attractive in a developing State like South Africa where one of the most complex actors in development is politics. Complexities of Path Dependency in politics are well described by Margaret Levi's work, in which she explains, "Politics is a far, far murkier environment (Moe 1990; North 1990). It lacks anything like the measuring rod of price. Political actors pursue a range of goals. Furthermore, it is often very hard to observe or measure important aspects of political performance. And, if we believe that a system is not performing well, it is still more difficult to determine which elements in these highly complex systems are responsible and what adjustments would lead to better results" (Levi 1997:28).[53]

The importance of Path Dependency can be argued to lie in the fact that it acknowledges the existence of complexity and the factoring in of Politics as Levi has done. It is for this reason Lee's General Theory of Law and Development and its emphasis on State Capacity and Political Will was brought into this article as a complementary lens of analysis for understanding South Africa's economic development planning, where development planning cannot occur without institutions factoring in politics and political development, negative or positive on institutions and entities.

Ultimately one of the benefits of using Path Dependence lies in the work carried out by Acemoglu et al. (2020). They advance the idea that from Path Dependence generates two types of changes, namely intrinsic and extrinsic. In their work they

51 E. Tekwa et al., *Path-dependent institutions drive alternative stable states in conservation*, 116 Proceedings of the National Academy of Sciences, no. 2, 689–694.

52 A. Gigante,. *Reviewing Path Dependence Theory in Economics: Micro–Foundations of Endogenous Change Processes*. MPRA Paper No. 75310 (2016).

53 M. Levi, "A Model, a Method, and a Map: Rational Choice in Comparative and Historical Analysis," in M. Lichbach and A. Zuckerman (eds.), *In Comparative Politics: Rationality, Culture, and Structure* (Cambridge: Cambridge University Press), p. 28.

explain these two types of changes, by stating that, "We distinguish two types of path-dependent change: intrinsic and extrinsic. Intrinsic path-dependent change results from internal dynamics. Small differences can put a society in the basin of attraction of very different institutional equilibria. Yet even more interesting may be extrinsic path-dependent change, whereby small differences are amplified by shocks" (Acemoglu et al. 2020:7).[54]

The generation of two types of changes induced by Path Dependency, intrinsic and extrinsic, is rather useful for understanding how and what types of changes occur over history, geographical and political environments through the prism of institutions/entities. For this article, the idea of path-dependent change (intrinsic and extrinsic) is important for trying to assess where and why governance institutions in the economic development planning cluster have been unable to effect the necessary changes for South Africa, and consider what lessons can be learned from regions like South Korea as Lee's work has shown.

5 Results and Analysis: Mapping Economic Development Planning, Through Path Dependency and State Capacity

Firstly, critique of how South African Constitution 1996 has created a Path Dependence direction for economic development planning. Critical towards this critique will be how Chapters 2 (Bill of Rights) and 6 (Provinces) continue to undermine economic development planning in an unintended manner through selected case examples. Secondly, illustrate how constitutional and political considerations have highlighted the existence and practice of lack of Purposefully designed institutions borrowed from Lee's work now entrenches poor application of economic development planning in South Africa. The Economic Reconstruction and Recovery Plan will also form part of the results and analysis of this section to illustrate some of the stances this article has taken.

5.1 Creation of Path Dependence: Constitution 1996's Chapters 2 Bill of Rights

This article approached and defined its interpretation of the concept Path Dependence in the same manner as Pierson (2000) did, namely that it, "*has to mean, if*

54 D, Acemoglu et al., *Institutional Change and Institutional Persistence, Institutional Change and Institutional Persistence,* Working Paper. No. 2020-127. Becker Friedman Institute (2020), p. 7.

it is to mean anything, that once a country or region has started down a track, the costs of reversal are very high. There will be other choice points, but the entrenchments of certain institutional arrangements obstruct an easy reversal of the initial choice."[55] It has come to be accepted that Path Dependence is useful in ascertaining the influence of historical choices on decisions of government planners and policies, in this regard, scholars like Fadiran and Sarr highlight its usage in understanding post-colonial States like the Federal Republic of Nigeria.[56] This work builds on the critical ideas brought to the fore by Nobel Prize economist Douglas North who argued, "*Institutions exist, he argues, due to the uncertainties involved in human interaction; they are the constraints devised to structure that interaction. Yet, institutions vary widely in their consequences for economic performance; some economies develop institutions that produce growth and development, while others develop institutions that produce stagnation.*"[57] North's focus on institutions is important cause it gave and explained the critical role institutions play in the practice of economic development planning. Moreover, later scholars like Fadiran and Sarr in this field would be able to better explain the continued struggle of States like Nigeria and others with the practice of economic development planning.

Yet, Path Dependence can be argued to have some resemblance to the early history of Law and Development. That is to say, the early history of Law and Development in retrospect using the works of Trubek and Galanter,[58] Merryman,[59] Gardner[60] in their explanation of the various waves of Law and Development, starting from the transmission of idealized Western European and North American transmission of legal development values, mores and practices owing to Modernization of the 1950 and 1960s. This first wave was followed by observations by scholars like Burg[61] that saw that the second wave will open to the idea that law

55 P. Pierson, *Increasing Returns, Path Dependence, and the Study of Politics*, 94 The American Political Science Review, no. 2 (2000), at 252.

56 D. Fadiran and M. Sarr. *"Path dependence and interdependence in institutions: The Nigerian case,"* in M. Garcia-Molina, H. Trautwein (eds.), *Peripheral Visions of Economic Development New frontiers in development economics and the history of economic thought* (Oxfordshire: Routledge, 2016), p. 1.

57 D. North, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990), p. 1.

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

59 J. Merryman, *Comparative Law and Social Change: On the Origins, Style, Decline & Revival of the Law and Development Movement* 25 (1977), The American Journal of Comparative Law, 457–483.

60 J. Gardner, *Legal Imperialism: American Lawyers and Foreign Aid in Latin America* (Madison: University of Wisconsin Press, 1980).

61 E. Burg, *Law and Development: A Review of the Literature and a Critique of 'Scholar in Self-Estrangement'*, 25 American Journal of Comparative Law [1977], at 506.

is important, which make us more open to understanding the importance of economic development.

This article argues that the adoption of the South African constitution in 1996, owing to a set of unique circumstances, was influenced by the first wave described here and thus economic development planning is always conceptualized in what was already what Gardner termed 'legal transfer' owing to the European population in South Africa having colonized British and then applying Afrikaner Apartheid hence the Roman-Dutch Law approach of South Africa.[62] Therefore, the period of negotiations in South Africa was greatly influenced by the first wave, and Law in Development took precedence and has come to be seen in an idealized manner, as seen in the non-questioning of the 1996 Constitution of South Africa by rated legal practitioners like former United States of America Supreme Court Justice Ruth Ginsburg.[63]

The circumstances that have led to the sanctification of the South African Constitution 1996 notwithstanding are now going to need to be revisited owing to the failure of the South Africa government to address massive failures in economic development planning. It's this article's contention that numerous reasons valid in most cases have been put forward for these failures, yet the failure to revisit the debates that characterizing the field of Law and Development in first and second waves now looms for the South African State. In this regards, this article argues one of the areas that needs revisit is Chapter 2: Bill of Rights, and how it might require fixing or altering to advance economic development planning. However, it is perhaps important to discuss what that section of the article is not calling for in revising the Chapter 2: Bill of Rights, as I fully understand mentioning or flagging the Bill of Rights will cause some great discomfort by legal scholars and liberal-leaning South African politicians.

To begin with, this article does believe the Chapter 2: Bill of Rights = needs revision, if anything one would argue it needs to lessen the legal constraints it places on the State to provide to tackle with guardrails in the form of Parliament and other political processes. An altered Chapter 2: Bill of Rights in this article mind, should guarantee the continuation and practice of existing rights in a revised Constitution or other type of approach not a codified constitution such as (non-abuse of): States of emergency, Cultural, religious and linguistic communities, Language and culture, Political rights, Freedom of association, Freedom of religion, belief and opinion,

62 E. Fagan, "Roman-Dutch Law in its South African Historical Context," in R. Zimmermann and D. Visser (eds.), *Southern Cross: Civil Law and Common Law in South Africa* (Oxford, 1996), pp. 32–64.
63 A. Liptak, *We the People' Loses Appeal with People Around the World*, available at: <www.nytimes.com/2012/02/07/us/we-the-people-loses-appeal-with-people-around-the-world.html>, accessed on November 8, 2023.

Privacy, Slavery, servitude and forced labour, Freedom and security of the person, Human dignity, Privacy, Freedom of trade, occupation and profession choices and the like.[64] These existing Rights and the like do not and are not part of what this article is debating or concerned with, everything else in the current Bill of Rights including some non-derogable human rights. Non-derogable human rights are, "rights that are absolute and may not be subject to any derogation, even in time of war or emergency."[65] It's crucial to remember the points of this section is not to be bogged down with Constitutional debates, no matter how interesting.

Rather it explores whether and how constitutional rights as espoused in Chapter 2: Bill of Rights is detracting from the ideals of economic development planning as defined earlier in this article. In this regard four rights from the Bill of Rights will be analyzed and contested here, the fifth 'Just administrative action' one, though important, will be argued to be an outflow of reform of Chapter 6: Provinces and other ancillary upgrades in a functioning economic development planning State. This section now moves towards using the developed theory of State Capacity understood in the context of Path Dependency and Lee's exposition to reform totally and in some instances altering selected Rights from Chapter 2, to achieve better economic development planning in South Africa.

In this regard there is need for policy to prioritize and more thoroughly consider how and in what ways vulnerable (less skilled) economic citizens can be protected in an uneven and developing State like South Africa. This article contends that the overly liberal nature of the Constitution and Bill of Rights, particularly Citizenship (Section 20) and Freedom of movement and residence section (21), require drastic reform.

The liberal framing of this Right needs to be understood as a response to British colonial and Afrikaner Apartheid regimes, that denied South Africa (African) indigenous populations rights to their land firstly and Black (Colored and Indians) citizens' rights in both regimes States. Yet, in the year 2023 key questions are being asked about whether it makes sense to have a liberally interpreted understanding of citizenship as more non-South Africa and indigenous Africans come seek economic refuge in South Africa in industries that are primarily low skilled, and (Section 21) Freedom of movement and residence.

The evidence of these two Rights finding expression according to this article is the following cases: *Helen Suzman Foundation and Another v Minister of Home*

64 RSA Constitution, *Chapter 2: Bill of Rights* (1996), p. 18.

65 European Union Agency for Asylum (EUAA), *2. Is the act a violation of a non-derogable human right or a sufficiently severe violation of another basic human right?*, available at: <https://euaa.europa.eu/easo-practical-guide-qualification-international-protection/2-act-violation-non-derogable-human-right-or-sufficiently-severe-violation-another-basic-human-right>, accessed on December 10, 2023.

Affairs and Others (32323/2022) [2023] ZAGPPHC 490 (28 June 2023),[66] concerning the rights of over 178,000 holders of Zimbabwean Exemption Permits (ZEPs), meant to expire on 30 June 2023 but Minister decided to terminate the ZEP program and refused further exemptions, and Constitutional case termed '*Ashebo v Minister of Home Affairs and Others (CCT 250/22) [2023] ZACC 16; 2023 (5) SA 382 (CC) (12 June 2023)*',[67] while it does deal with asylum seeker, it still highlights the broader point of this argument.

The contention of this article is not whether the law is right or wrong, that is immaterial, rather it is to highlight the fact that the Bill of Rights in South Africa, in its original meaning was commendable, but owing to the concept of Path Dependency, it argued that Freedom of movement and residence now sees the State having to contend with political decision through a legal system that does not understand or respect how the idea of Path Dependency can negatively impact economic development planning processes. It's the contention of this article that the two cases and other looming ones ultimately speak to the fact that South Africa's unemployment character, which sees unemployment amongst those with the lowest skills, will require economic development planners to not only contend with a misunderstanding legal system, but overtime a populace which will ask why their citizenship is so easily usurped by those not South Africans. If economic development planning is to occur in a manner that firstly addresses the majority of unskilled labor, there is need to have concrete and understood order of priority concerning unskilled labor, therefore the current Rights adopted in 1996 illustrate how Path Dependence can occur in critical areas like the two Rights highlighted, therefore it's important to reform these two Rights if not change them completely to reflect the needs of economic development as determined here.

The third Right this section argues needs reforming Is Housing Right (section 26, subsections 1sub-sub3), which the South African constitution explains as, "*… Everyone has the right to have access to adequate housing … The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right … No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.*"[68]

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66 The Southern African Legal Information Institute (SAFLII), *Helen Suzman Foundation and Another v Minister of Home Affairs and Others (32323/2022) [2023] ZAGPPHC 490*, available at: <www.saflii.org/za/cases/ZAGPPHC/2023/490.pdf>, accessed on December 10, 2023.

67 The Southern African Legal Information Institute (SAFLII), *Ashebo v Minister of Home Affairs and Others (CCT 250/22) [2023] ZACC 16*, available at: <https://www.saflii.org/za/cases/ZACC/2023/16.html>, accessed on December 10, 2023.

68 RSA Constitution, *Chapter 2: Bill of Rights* (1996), p.11.

It is important to put forward the fact that owing to the history of the pre-1994 South African State, this ideal was a commendable and one might argue future worthy Right. However, much like the previous Rights, it never foresaw a scenario where a path once chosen might end up hampering the economic development ideals of the State. Argued differently, the question of costs and financial stability was a missing anchor in the inclusion of this Right. It is important to note that this Right in the South African context, was interpreted and implemented in a way that saw the government engage in construction of actual houses/homes for South Africans (colloquially termed 'RDP houses'). The term RDP stems from the policy called Reconstruction and Development Programme, which envisioned building homes in new sustainable communities for all South Africans.[69]

This again was and is a commendable Right to endeavor on, and one this article is sympathetic towards, but through making it a Right an unintended or maybe intended action was set in motion, namely the Law's ability to hold government to ransom for this Right without consideration of what this article would argue of fundamental economic development planning considerations, financial sustainability and affordability. Evidence of this is the much mooted or celebrated constitutional case, '*Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000)[70] is seen in the following commentary, which argues that, "For South Africa, *Grootboom* delimited the obligations of the South African government to fulfill the right to adequate housing as guaranteed in the South African constitution, and it also set an international precedent for other governments to deliver socio-economic rights enshrined in their own constitutions."[71] This article is not disregarding the spirit of the judgement and subsequent actions that flowed from it, rather it is querying whether the weight of this judgement and in fact its inclusion in the Bill of Rights understood the constraints it placed on economic development planners with regards to how to finance and prioritize State finances for such an endeavor. It's important to note that two principles outcomes can be said to flow from this Path Dependent decision, according to this article.

Firstly, the amount of State finances that has to go into this endeavor in the context of a failing economy. While the original conceptualization of RDP houses was

69 The Presidency, *The White Paper on Reconstruction and Development* Notice No. 1954 of 1994 (1994).

70 The Southern African Legal Information Institute (SAFLII), *Government of the Republic of South Africa and Others v Grootboom and Others (CCT11/00) [2000] ZACC 19*, available at: <https://www.saflii.org/za/cases/ZACC/2000/19.html>, accessed on December 10, 2023.

71 Tadamun, *The Landmark Case of Grootboom versus the Republic of South Africa*, available at: <http://www.tadamun.co/the-landmark-case-of-grootboom-versus-the-republic-of-south-africa/?lang=en>, accessed on December 10, 2023.

that citizens would overtime have to put payment (hybrid bond) down towards them, this has not happened as envisioned owing to the nature and form of the South African economy.

Secondly, the legal or constitutional obligation to have to attend to this Right has meant government often builds or ill plans where these RDP homes are built. It's been argued that they are built away from and not integrated into existing economic centers, and the fortune few employed individuals living in RDP areas spend the majority of their income on (private) transport services as South Africa's public transport service is ill-planned and poorly conceptualized for demands of where RDP homes are built. This is what is termed a continuation of Apartheid Spatial planning, "The South African land use allocation during the colonial and apartheid era was predominantly discriminatory as it placed white people near the city. Spatial planning was used as an instrument to allocate different land uses, which consequently placed black, Indian, and colored people in townships"[72]

This article further argues, and concludes this first argument by stating economic development planner in this described context never have time to address the finely tuned and despicably crafted legislation and policies from the previous regimes like The Pact's Civilized Labour Policy 1926, Hut Tax13 in 1849 (Apartheid policies) Mines and Works Act No 12 of 1911, Black Land Act No 27 of 19 June 1913, The Natives (Urban Areas) Act No 21 of 1923, The Industrial Conciliation Act No 11 of 1924, The Minimum Wages Act of 1925, The Mines and Works Act (Colour Bar Act) No 25 of 1926, The Group Areas Act of 1950 and countless legislation and policies that entrenched African and Black socio-economic political and institutional exclusion. The Bill of Rights and the changing or removal of certain elements of it will rightly receive some push back, but this needs to be tempered and conceptualized not as a debate about Human Rights or other legal tenants, but as this section argues look at the unintended Path Dependency actions that flowed from this action and where necessary be corrected. In the case of the second element, namely removal of Provinces/States in the South Africa under Chapter 6, this is probably something more doable in the short term, as shall be argued.

5.2 Un-purposefully Designed Institutions: Chapter 6 Provinces and Looming Manifestations

Lee in the above article section titled 'Political will with vision' intricately details how South Korean leadership in the early era (General Park) sought to reshape and where

72 S. Monama et al., *South African spatial planning fragmentation: repealing the apartheid planning imprint*, 26 International Journal of Entrepreneurship, no. 1 (2022), 1–11.

necessary mold State institutions to better serve the idealized economic development plans the regime envisioned. Put more articulately using Lee's words and purposefully omitting the subject of export promotion to highlight the broader idea of 'Political will with vision', explained *"The political will of the leadership to achieve economic development also augmented the weaker elements of Korea's state capacity, e.g., insufficient financial and natural resources … The focus on the development agenda, sustained for the entire period of Korea's development, would not have been possible without this extraordinary political will"* (2017:466). In this regard, and in a more succinct and to the point manner, this article argues that such an approach is desperately lacking when it comes to analyzing the unproductive role of Chapter 6: Provinces/States in the South African Constitution. The unproductive nature cited here refers to two key arguments by this section: incongruency of economic development responsibilities (Chapter 6) and Human capital and financial delimitation for economic development planning capabilities.

5.3 Incongruency of Economic Development Planning Responsibilities

The central idea this article has advanced regarding the critical concept of economic development planning is that government planners and actors should in their work advancing economic development planning is not undone by imbedded problems owing to manifestations of Path dependence of South Africa's 1996 Constitution. In this regard, knowingly or unknowingly, previously held ideas like having a Chapter 6 Provinces/States need to be revised. In the context of this section, this is to allow for a graduation away from what can be termed incongruent institutional design realities, that is to argue that while the formal (legal or constitutional) framework exists, the actual realities of how it functions within the lived experience of economic development planners is quite different and requires some level of formal change.[73] In the case of this article, the change refers to the removal of provincial government and constitutional change.

An example of Incongruent institutional design can be seen in Chapter 6 Province's discussion regarding advancement of economic development planning. *Section 146: Conflicts between national and provincial legislation* (2 C) and (3 A/B) clearly illustrates that on matters of primacy in economic development planning National government takes center stage primarily and firstly. This section explains that, *"(c) The national legislation is necessary for (i) the maintenance of national*

73 E. Igudia et al., *Institutional incongruence, the everyday, and the persistence of street vending in Lagos: a demand-side perspective*, 54, EPA: Economy and Space, no. 6 (2022), 1256–1276.

security; (ii) the maintenance of economic unity; (iii) the protection of the common market in respect of the mobility of goods, services, capital and labour; (iv) the promotion of economic activities across provincial boundaries; (v) the promotion of equal opportunity or equal access to government services; or (vi) the protection of the environment. (3) National legislation prevails over provincial legislation if the national legislation is aimed at preventing unreasonable action by a province that (a) is prejudicial to the economic, health or security interests of another province or the country as a whole; or (b) impedes the implementation of national economic policy."[74]

The reality discussed here details the primacy of National sphere/tier of government as it relates to economic development planning. If the economic development planning squarely lies in the sphere of influence of National government, the primary question that needs addressing is, what is the exact role and nature of Provinces and if economic development as clearly illustrates here is a national government competency. This article contends that the reason this incongruent institutional design problem exists regarding economic development planning competency between both spheres of government is due to accepted and known political compromises that did not factor economic development planning into the core thinking of Chapter 6. It is a historically accepted fact that the current provincial edifice has its origins in the three differing political compromises. Firstly, the formalized white European settler communities (British and Afrikaner 1910) Union of South Africa formation created four provinces.[75] Secondly, expansion of these territories by establishing six 'ethnically based homelands' in the 1980s and 1990s[76] and continued to the non-debate about provinces as economic development entities, but rather simply political edifices like in the previous arrangement. Thirdly, the 1996 Constitution that gave rise to Chapter 6 and the formalization of nine currently existing provinces was again a political and not economically minded decision, as key actors like the Inkatha Freedom Party and predecessor of the former governing National Party, today Democratic Alliance argued for the existence of provinces using the concept of federation which the current ANC government despised by ultimately accepted in the advancement of political compromise.[77]

Moreover, when Chapter 7 Local Government is considered and examined more closely, its powers and functions encourage and lay the basis for local government/

74 RSA Constitution, *Chapter 6: Provinces* (1996), p. 72.

75 H. Klug, *Co-operative Government in South Africa's Post- Apartheid Constitutions: Embracing the German Model?* Law and Politics in Africa, Asia and Latin America, Legal Studies Research Paper Series Paper No. 1538 (University of Wisconsin, 2000), p. 433.

76 J. Dugard, *South Africa's Independent Homelands: An Exercise in Denationalization*, 10 Denver Journal of International Law & Policy, no. 11 (1980), 11–36.

77 B. de Villiers, *Review of provinces and local governments in South Africa: Constitutional foundations and practice*, Konrad-Adenauer-Stiftung (2008), p. 1.

municipalities to participate actively in the practice of economic development planning. Chapter 7 titled, Objects of local government 152, section states *"1/(c) to promote social and economic development … and Developmental duties of municipalities 153. A municipality must (a) structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community …. "*[78] If the primary goal of studying and learning the concept of Path dependence is to advance in an area like economic development planning, it does behoove the South African State (government and other functionaries) to do away with the Chapter 6 Provinces and reposition local government in Chapter 7, to advance the practice of economic development. This will have the added advantage of reallocating human and financial capital to municipalities/local government in South Africa which is in a permanent state of crises owing to several problems like human capital and planning capabilities failures, which are creeping towards legal/constitutional arrangements.

In the period between 2020 and 2022, the Makhanda High Court case[79] made a landmark judgment highlighting the idea proposed here of creeping legal/constitutional arrangements occurring owing to the weakness of local government, which explained, "*Unemployed People's Movement had made two applications to the Court for the dissolution of the Makana Municipality on the grounds that the municipality was failing to provide services in a sustainable manner. After evaluating the Movement's application, the Grahamstown High Court judgement approved the application for the dissolution of the municipality, despite the appeal submitted by the Provincial Executive Council …. "*[80] This is monumental and might now create new unforeseen Path dependency problems like the case of housing for economic development planners.

It's this section's conclusion that enough evidence has been presented here to argue for the revision and eventual removal of Chapter 6/Provinces in South Africa's institutional architecture. In addition, the continued financial and human capital investment or spending in provincial edifices is a ticking time bomb as the Makhanda High Court case[81] illustrates because local government has never had the

78 RSA Constitution, 1996, p. 74.

79 The Southern African Legal Information Institute (SAFLII). *The Unemployed People's Movement vs. Makana Municipality: Case no. 553/2019*, available at: <https://www.saflii.org/za/cases/ZAECGHC/2020/47.pdf.> , accessed on December 10, 2023.

80 Parliamentary Monitoring Group, *Section 139 intervention Makana Municipality: Eastern Cape progress report*, available at: <https://pmg.org.za/committee-meeting/30930/>, accessed on December 19, 2023.

81 The Southern African Legal Information Institute (SAFLII). *The Unemployed People's Movement vs. Makana Municipality: Case no. 553/2019*, available at: <https://www.saflii.org/za/cases/ZAECGHC/2020/47.pdf.>, accessed on December 19, 2023.

proper investment and consideration to affect its economic development goals and objectives, owing to the existence of non-necessary provincial edifices. This argument ties into the discussion and theoretical framework brought forward by Lee, concerning the need to have purposefully or strategically designed institutions in the conceptualization and operationalization of economic development planning, as was the case for South Korea (2017:465).

6 Human Capital and Financial Delimitation for Economic Development Planning Capabilities

The natural result of not having purposefully or strategically designed institutions in the conceptualization and operationalization of economic development planning is that for a State like South Africa human and financial capital becomes a delimitation in engaging actively with economic development planning activities. This article, having established that the existence of provinces can and has always been a function of political comprises, harkens back to the earlier discussion in the theoretical framework by Margaret Levi.

Levi rightfully concluded that, politics or political actions from such comprises as the ones discussed previously is "Politics is a far, far murkier environment … It lacks anything like the measuring rod of price. Political actors pursue a range of goals" (Levi 1997:28).[82] It then behooves this article to try arriving at a different measuring rod that can try ascertaining some level of price. In the case of this section, the critical idea of price will center on two key critical ideas, namely price in the form of escalating costs of keeping inefficiencies to the struggling financial fiscus of South Africa and question about misplaced human capital.

Firstly, "South Africa's budget expenditure for 2022 was R2.2 trillion, with the main budget revenue of R1.88 trillion. R1.9 trillion was allocated to social services such as education and training, public health, and community and social development" (Investec 2023).[83] Therefore, a reprioritization or rethinking of funding is needed, even around social services. But this article argues this is not the first port of call, rather governmental architecture, primarily the elimination of provincial government, must be the first action.

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82 M. Levi, "*A Model, a Method, and a Map: Rational Choice in Comparative and Historical Analysis*" in M. Lichbach and A. Zuckerman (eds.), *In Comparative Politics: Rationality, Culture, and Structure* (Cambridge: Cambridge University Press), p. 28.

83 Investec, *National Budget Speech 2023*, available at: <https://www.investec.com/en_za/focus/sona-and-budget-speech-south-africa.html>, accessed on December 19, 2023.

A cursory reading of the Division of Nationally Raised Revenue's 2023 Budget Report, especially provincial government expenditure, details that from 2019/20 to 2025/26 the following costs for provinces will occur: 613.4, 628.8, 660.8, 694.6, 695.1, 720.5, 754.7 billion Rands (NT 2023).[84] It's my submission that a reallocation of certain constitutional Schedules and responsibilities to local government might kickstart a recovery process of the Republic's public finances, but for this to occur, provincial government over the coming decade needs to be trimmed and eventually eliminated. This will leave us with a two-tier system of government, and not the current one with which we are battling with. Levi's broader point about the challenges associated with costing political actions this article argues can be seen in the case of South Africa's provincial spending, which could have gone into strengthening an actual economic development planning edifice in the form of local government.

Moreover, but debatable, is this article argues an additional cost have been the mismanagement of human capital by this political arrangement of Chapter 6. Lee in the theoretical framework discussion detailed how critical human capital in South Korea was harnessed and made to play a critical role in the reforms of the State and most crucially economic development planning (2017:466). Yet, in the case of South Africa's public sector, specifically provincial government/structures apart from critical skills like teachers, medical professionals and emergency services men and women like firefighters and the like, this article is making a case for the need to make better use of provincial personnel through strategically redeploying and imbedding them into local government. A 2021 study by GTAC found that, "There are 1.3 million employees in national and provincial government who received R567 billion in compensation in 2019/20. Over the last 15 years, public-service compensation spending has grown at an unsustainable rate that is nearly 1.5 percentage points faster than the rate of growth of GDP, largely because of increases in average remuneration. The result is that public-service compensation now accounts for the equivalent of 11 per cent of GDP, up from 9 per cent in 2004/05."[85]

While the inclusion of this data might seem like an argument for addressing the query about price Levi made, this article contends it's an illustration of the fact that human capital development has not been harnessed to address the clear shortcomings in economic development planning and finances exist for a strategic redeployment and imbedding into local government.

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85 Government Technical Advisory Centre (GTAC), *Compensation data*, available at: <https://www.gtac.gov.za/pepa/wp-content/uploads/2021/11/MTBPS-Annexure-B_2020.pdf>, accessed on December 19, 2023.

7 Conclusion and Recommendations

The article can confidently state that the 'Economic Reconstruction and Recovery Plan' of 2020, while correct in attempting to tease out the importance of economic development planning, is like previous attempts by South African government – a continuation of underperforming acts of economic development planning. This statement is based on having used the dual theoretical frameworks of Path Dependency and State Capacity to illustrate how key economic development planning considerations are to be addressed. The most pressing being the augmentation of Chapter 2 Bill of Rights and total removal of Chapter 6 Provinces, which would have the effect of addressing actual Path dependent behaviors and errors by the post-1994 government.

If the South African government post-2024 General Elections is to effect "intrinsic and extrinsic"[86] Path dependent changes, the present time and amid the need for a post-Covid-19 development path must be used. Ultimately the suggested recommendations would have the effect of allowing for a 'Just administrative action 33 (c) promote an efficient administration'[87] as envisioned in the current Chapter 2 Bill of Rights.

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