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Human rights and the construction of identities in South African education

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2007-02-16T12:08:55Z
http://hdl.handle.net/10539/2032

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Chapter 4
Human Rights under Apartheid

This chapter looks at human rights under apartheid. Human rights in South Africa have been impacted seriously by notions of "white" supremacy, abject segregationism and fascist subjugation of "the other" under the racist system of apartheid. Dealing with the "legacies" of apartheid still remains a priority within the "new" South Africa (cf. Constitution of the Republic of South Africa, 1996, Preamble, for example). It is thus important to discuss human rights in South Africa by first analyzing the ways human rights were projected, and perverted, under apartheid. This chapter analyzes human rights under apartheid by deconstructing the ideological ways in which "bodies" were positioned under apartheid and the social relations of discriminations that were thereby constructed. I do so in relation to 'race', gender and sexual orientation. I discuss 'race', gender and sexual orientation under apartheid in relation to 1st, 2nd and 3rd generation rights, using the notions of "access", "invisibilisation" and "marginalisation". I then look at the cases of Nelson Mandela and Simon Nkoli so as to bring the discussion to a more personal level and to show the implications such individuals' differences have in the context of human rights.

The focus on 'race', gender and sexual orientation in an analysis of human rights under apartheid plays two important roles. First, it is tempting to project apartheid as a system of institutionalised and officialised racism only. This is undoubtedly one of the most dominant and defining features of apartheid. However, apartheid was also deeply capitalist (cf. Wolpe, 1989, for example); sexist (cf. Patel, 1989, for example) and heterosexist (cf. Gevisser & Cameron, 1994, for example). Apartheid was a political doctrine justified religiously in terms of Afrikaner Calvinism, which situated the "white", Afrikaner male in a position of dominance and control; in the image of a "white" male who subordinated women (including "white" women), who was staunchly anti-communist and homophobic. Thus, the focus on 'race', gender and sexual orientation in analyzing human rights under

apartheid, allows apartheid to be viewed as more than just a system that promoted racism. In other words, such an approach avoids lapsing into a 'race' reductionist analysis of apartheid.

Second, the focus on 'race', gender and sexual orientation allows for human rights and human identities not to be treated in universalising and homogenising ways. This is because the identification of social categories of 'race', gender and sexual orientation implies that human rights and human identities mean different things for people positioned differently, even within the same social categories. The focus on 'race', gender and sexual orientation provides a way of exploring the interconnection between social categories and the interpenetration of multiple forms of identity within the same individual. In these ways, one is able not to homogenize and generalize about people and human rights under apartheid and to note the complexities of their lives on individual levels.

I focus on three ideological "fields" (Bourdieu, 1990) wherein being "black", "female" and "gay" and/or "lesbian" were distinctly inferiorised. These "fields" are religion, science and political economy. I argue that whilst there are many differences in and between these "fields", they converge under apartheid, nonetheless, on the ways in which they positioned the "body".

This chapter discusses the social relations of discrimination in terms of 'race', gender and sexual orientation in relation to three notions which are tied to the concept of "space". These notions are "access", "marginalisation" and "invisibilisation". "Access" is a concept that is of central political and economic significance. It outlines who has access to what and who does not have access to what. It is an expression of political and economic power (Lukes, 1986). The notion of "marginalisation" used by antiracists (Brandt, 1986), feminists (Wolpe, *et al*, 1997) and "queer" theorists (Epstein, *et al*, 1996) points to the ways in which people are placed at the "borders" or the periphery (Foucault, 1979) of "spaces" which reinforce their subjugation and illegitimation. "Invisibilisation" captures the idea of people being "excluded" from "spaces" thereby rendered

"invisible" and "silenced" (cf. Foucault, 1979; Epstein *et al*, 1996, Gevisser and Cameron, 1994). Using the notions of "access", "marginalisation" and "invisibilisation", I show how apartheid constructed social relations of discrimination of "blacks", females, gays and lesbians. On these bases I also show what the implications are of human rights for the positioning of such bodies in "spaces" in terms of 1st, 2nd and 3rd generation rights.

The "Field" of Religion

Apartheid, from the outset, justified itself religiously using Afrikaner Calvinism as its religious basis.

> For each people and each nation is attached to its own native soil which has been allocated to it by the Creator … God wanted nations and peoples to be separate and he gave separately to each nation and to each people its own particular vocation, its tasks and its gifts … This guardianship imposes on the Afrikaner the duty of assuring that the coloured peoples are educated in accordance with Christian-National principles … We believe that the well-being and happiness of the coloured man resides in his recognition of the fact that he belongs to a separate racial group (Verwoerd, 1953, *cited in* Rose and Tunmer, 1975, 120-128).

In Afrikaner Calvinism, which is an Afrikaner adaptation and mutation of Calvinism, it was argued that "God" had appointed the "Afrikaner nation" as the "chosen people" of South Africa, which was projected as the "promised land". It was the Afrikaner nation that was the "senior trustee" in whose tutelage all people and all affairs of South Africa were placed. As Derrida also noted:

> (Apartheid) is also founded in a theology and these Acts (laws) in Scripture. Since political power originates in God, it remains indivisible. To accord individual rights to "immature social communities" and to those who "openly rebel against God, that is, the communists" would be to

> "revolt against God". This Calvinist reading of the Scripture condemns democracy … (Derrida, 1986: 335).

Afrikaner Calvinism and Colonialism

Afrikaner Calvinism developed from the colonial mentality of the Dutch settlers, from whom Afrikaners are descendent. In the colonial worldview, discussed in terms of pre-enlightenment forms of identities in Chapter 2, colonialists justified the colonizing of nations throughout the world, using the argument that they were "ordained by God" to do so and that their colonial "mission" had a religious, Godly, purpose. Thus, from the first moment of the arrival of the Dutch settlers on South African soil, the Dutch, and later the Afrikaners, considered themselves as superior to the indigenous populations of South Africa. As noted by many theorists (see for example Bowser, 1996; Hall, 1976; and, Nkomo, 1990), central to the colonial mentality was the construction of a colonizing "self" as superior to a deficient, inferior "other", who was also seen in the pre-enlightenment terms of "non-believers" (including other terms such as "pagans", "heathens" and the like).

However, South Africa was not only colonized by the Dutch. In their wake, followed the English and the French, inter alia. Common to all of them was the process of colonialism itself and a "Christianising mission". In this development, the Dutch, English and the French positioned themselves as superior to the indigenous "other" and collaborated with each other in the domination and subjugation of the "other", mainly through feudal modes of slavery (see Luthuli, 1962). What was also of significance in the ad hoc alliances between the Dutch, English and French was their European "whiteness" and the "non-whiteness" of the indigenous populations. Similar patterns occurred in experiences of colonialism throughout the world (see Mazrui, 1986). In these ways, the assumed superiority of the colonizers was justified both on the basis of them being "people of God", "Christians", and in terms of being "white". The coupling of meaning, then, between "whiteness" and being "Godly or Christian" was set into place, and, consequently, "blackness" was equated with the "ungodly", "evil other".

The development of Afrikaner Calvinism, however, occurred much later than the beginnings of colonialism in South Africa. Nonetheless, the basic tenets of Afrikaner Calvinism remained continuous with earlier colonial forms of thinking. Given the battles historically, particularly against the British in the Anglo-Boer wars of 17th century, the Afrikaners began to disassociate themselves from other colonizing groups and defined their own identities. No longer were they Dutch, but Afrikaner. In so doing they also distanced themselves from fellow European based Dutch people and rooted themselves in South Africa, developed their own language – Afrikaans – and positioned themselves as the "senior trustees" in and of South Africa. By the time apartheid was officialised in 1948, Afrikaners had established themselves as having "their own" identity, and events such as "the Great Trek", the Anglo-Boer wars and the establishment of the "Voortrekker Hoogte" all contributed symbolically to the definition of being Afrikaner – separate and sufficient unto themselves, with "God" as "their Saviour". They, "the chosen people of God" suffered through the "holy journey" (Great Trek) to the "promised land" where, on their arrival, they established a monument (The Voortrekker Hoogte) to "mark" "their" identity and claim "their" land.

Apartheid was a form of "internalized colonialism" (Wolpe, 1976). It placed both colonizers and the colonized within the same geographical space. No longer were the colonizers from distant lands, but occupants of the same land to which they saw themselves as belonging. With apartheid, Afrikanerdom articulated itself using racial terminology within a framework of internal colonialism, consistent with the more general features of colonialism in other parts of the world.

The centrality of Afrikaner Calvinist thinking in the definition of Afrikanerdom cannot be sufficiently emphasized. Through it Afrikaners were able to develop the Nederlandse Gereformeerde Kerk (the NGK church) and with it propagate and reinforce the religious basis of Afrikaner doctrines. Afrikaner Calvinism also provided the Afrikaner with a means to justify the internal colonizing of South Africa and ways of making meaning of themselves in relation to "others". All of

these features became stark and explicit with the establishment of apartheid (see Naude, 1987).

Afrikaner Calvinism and Blackness

Racial categorisations of people impact directly on the "body". Its major mark of signification is the "colour" or pigmentation that covers the "body" (see Rattansi & Donald, 1992; and, MacCarthy & Crichlow, 1993). The "colour" of the "body", which is visible to the eye, is used as representations of other qualities of a person. In the case of Afrikaner Calvinism, the "colour" of the "body" indicated either being "good" or "evil", where being "good" was appropriated to equate "whiteness" and being "non-white" equated with being "evil", or at least "ungodly". The superiority of "whiteness" and the inferiority of "non-whiteness" are thus constructed and justified religiously.

At the same time, however, the superiority of "whiteness" also implied a deficiency in being "non-white", who was viewed as lacking and with an inherent deficit. "Non-white" people in these terms are "lesser than", "immature" and "undeveloped" throughout the "cosmos". The "non-white" presence, then, can only be subordinate to the "white" presence, of which it is a constituent.

The "mark" of 'race', then, positioned "white" and "non-white" bodies in relations of dominance and subordinance, respectively. However, apartheid also allowed for a gradation of 'races' within the hierarchy of apartheid (see Carrim, 1992). In this "ordering" of the 'races', apartheid separated "asians" and "coloureds" from "Africans". Although "asians" and "coloureds" and "Africans" were all "non-white", it was the "African" who was positioned as furthest from "whiteness", and consequently, as the most inferior. "Coloureds" who are a hybrid of "white" and "African" copulation, contained within and on their bodies shades of the "African" and were thus closer to the "African". The "whiteness" of "coloureds" was consistently ignored and denied (cf. Soudien, 1998). "Asians" who were viewed as not being linked to the "African" were then placed above the

"coloured" and furthest from the "African", although still within the "non-white" category. Thus, even in the hierarchy of 'races' under apartheid, 'race' provided the "mark" that positioned the "body".

On these bases the apartheid regime passed a plethora of legislations that separated the different 'races' from each other. Such legislations included the Population Registration Act of 1951, the Pass laws, the Group Areas Act of 1957, the Separate Social Amenities Act of 1958 and various educational legislations aimed at the separate (and unequal) education of each racial group of the 1960s, plus laws existing prior to apartheid, such as the Land Acts, which were promulgated to ensure that "blacks" did not have access to "white" spaces. The denial of access to "blacks" also meant that they were kept "invisible" in the "white world". In addition, the Job Reservation Acts and Colour Bar laws (Johnstone, 1976) ensured that if and when "blacks" and "whites" were allowed to relate to each other, such as in the work place, they would do so with "black" people being positioned in marginalised spaces of inferiority. "Blacks" in such economic spaces were prevented from positions of power, were kept at the lowest rungs of employment, paid the least and bereft of socio-economic privileges such as housing subsidies and leave benefits (see Johnstone, 1976, for example). As such, "black" South Africans' 1st and 2nd generation rights were violated blatantly under apartheid. This violation of human rights of "black" South Africans provided the reason for South Africa's expulsion from the United Nations in 1975 (Tierney, 1982) and moral legitimacy of the anti-apartheid struggle. Apartheid was in these senses a "crime against humanity".

Afrikaner Calvinism and Gender

The pre-enlightenment and colonial continuities with apartheid did not, however, only position "non-white" bodies in racist ways. They also positioned women in inferiorised ways. In this view the "man" is seen to be closer to God, following from beliefs about Adam being the first to be created, from whose "rib" woman was formed. In addition, given the Biblical descriptions of the Garden of Eden, it

was Eve, a woman, who “tempted” Adam and caused “the fall” from the Kingdom of God.

> Original sin in the Garden of Eden was woman’s. She tasted the forbidden fruit, tempted Adam and has been paying ever since (Haralambos, 1984: 369).

In these descriptions, also religious in kind, women are positioned as “second” to man, “weaker than”, “lesser than” the man, and as a “temptress” who is responsible for the “fall of man” (see Sahgal & Yuval Davis, 1992). Such theological positionings of women are not distinctive of apartheid but consistent with what Ortner and Whitehead (1982) called the “universal devaluation” of women.

Afrikaner Calvinism upheld such beliefs about women and relegated women to a subordinate status within Afrikanerdom. However, because the “white” woman was “white” and Christian, she assumed superiority over “other non-white women”, and men. Thus, like the gradations of ‘race’ under apartheid, gender was also graded, with “white” women being assumed to be superior to “non-white” women and men (see Cock, 1980, 1982; Bozzoli, 1991). There are a few implications of this that need to be pointed out.

One can notice the contradiction that is put into play in the intersection between ‘race’ and gender. The contradiction being that a woman is positioned at once as lesser than and better than women and men. Simultaneously, though, it also indicates the intersections between ‘race’ and gender, where the “African” women would be the most subjugated and inferiorised of all women, what Cock (1980, 1982) has described as the “super-exploitation” of the “black” woman. I revisit this intersection between ‘race’ and gender later when looking at the field of political economy, where such an intersection led to different economic and political positioning of women.

The inferiorised positioning of women in these religious terms also suggested that the "body" was a signifier of the status of such bodies. Women, by being "marked" bodily as women, were placed in subordinate positions in relation to men. Women, as women, were thus also lesser than men, had a deficiency, a lack. Their position in society, therefore, could not be above that of men, who were "ordained" to be the custodians of women and rulers of and in society, complicated further by intersections between 'race' and gender.

Apartheid, basing itself on Afrikaner Calvinism, perpetuated such representations of women. Under apartheid, women were not allowed access to positions of political, social or economic power. Women were not given access to the same jobs as men. Women were not allowed the right to own property, earn equal salaries as men or exist above the status legally as a "minor" (see Sebakwane, 1994, for example).

As such, both 'race' and gender placed bodies ideologically in inferiorised positions under apartheid and theological rationalisations were used in such constructions. In both instances, the "body" forms the point of signification and representation of the status in society of the person so defined. Apartheid, thus, was racist and sexist, and theologically justified in these terms.

I now turn attention to sexual orientation and show that in this regard the "body" is positioned in more or less the same ways. However, as I show below, the "homosexual" reinforces, as it defines, gender and allows for a greater degree of interconnection between religion and gender.

Afrikaner Calvinism and the Homosexual

Unlike 'race' and gender, sexual orientation, particularly that of "the homosexual" was "invisibilised". The "marking" of "the homosexual", whilst on and of the "body" was silenced, denied, displaced or repressed so that it could not show its "face", neither could it be mentioned.

> And who could deny that this was also the canker that afflicted the Biblical Sodom? No, Sir, history has given us a clear warning and we should not allow ourselves to be deceived into thinking that we may casually dispose of this viper in our midst by regarding it as innocent fun. It is a proven fact that sooner or later homosexual instincts make their effects felt on the community if they are permitted to run riot … Therefore we should be on the alert and do what there is to do lest we be saddled later with a problem which will be the utter ruin of our spiritual and moral fibre (Justice Minister P C Pelser, speaking in Parliament, 21 April, 1967, *cited in* Retief, 1994: 99).

Justice Pelser's "mentioning" of "the homosexual" was prompted by a need to respond to what he saw as a growing "canker" – an ulcerous disease of plants and animals – and his fear that it would be "casually dismissed". For Pelser, the "canker of the homosexual" was a threat to the very "spiritual and moral fibre" of society, and for him the rationale for its elimination was "Biblical" and was what was described in the stories of "Sodom". Pelser's references to "the homosexual" here was at a time when the sex laws were passed by the apartheid regime in the 1960s. Retief notes:

> Concerted attacks on the gay community in South Africa date from the Verwoerd premiership in the mid 1960s. Despite occasional incidents of victimisation, there do not appear to have been any organised campaigns against homosexuality during the early years of Nationalist (Afrikaner) rule … The Nationalist government 'discovered' the gay sub-culture in the latter half of the 1960s and, in a flurry of panic, proceeded to launch a vigorous legislative campaign against it (Retief, 1994: 101).

Retief (1994) points out that the "attack" on the gay and lesbian community in the 1960s was part of the overall development of apartheid. Whilst on the one hand, "white" women were being encouraged to reproduce in order to increase the

numbers of the “white” population – and hence the emphasis on women’s subordinate and domesticated roles – on the other hand, the “white” man was positioned to ensure the reproduction of the “white” race. Both lesbians and gays, thus, provided a serious “threat” to the procreation, and continued survival, of the Afrikaner “nation”. Upon the “discovery”, then, of a “homosexual sub-culture”, it became imperative that “it” be curbed so that “it” did not lead to the demise of the Afrikaner. As Gevisser and Cameron point out:

> The link between apartheid oppression and gay oppression … is that sexual policing was a central project of apartheid: it helped consolidate Afrikaner Calvinist control by upholding ‘Christian National’ values in the face of what was characterised as a ‘threat to white civilisation’. Anything deemed threatening – including gays – was ‘expelled from the laager’ (Gevisser and Cameron, 1994: 6).

The apartheid Sex Laws of 1960s were the most explicit in the illegitimation of homosexuals in South Africa. Whilst “Sodomy” laws and other laws related to “public indceency” and “immorality” existed prior to apartheid, the Sex Laws of the 1960s consolidated and refined these. In the Sex laws “the homosexual” was demonised and pathologised and, thus, projected gays and lesbians in terms of denial. Gays and lesbians were denied access, were viewed as that which needs to be destroyed and were misrecognised. As such, “the homosexual” under apartheid was invisibilised by illegitimation and marginalised by repressive forms of denial and misrecognition.

In the light of the above, “the homosexual” provided Afrikaner Calvinism with a way in which to imprint ‘race’, gender and sexuality with a common “mark” of ensuring the survival of the Afrikaner ‘race’. The Afrikaner “body” needed to be “white” and “heterosexual”. The Afrikaner male “body” being one that is virile, dominant and procreative; the Afrikaner female “body” subordinate, fertile and reproductive. Such positionings of bodies were critical for the survival of Afrikanerdom itself.

Two points, however, are of importance here. First, “the homosexual”, like ‘race’ and gender was rationalised under apartheid using religious arguments. Second, the positioning of “bodies” in terms of ‘race’, gender and sexuality was based on the need to construct the identity of “the Afrikaner” and ensure its “survival”. Afrikaner Calvinism provided the Afrikaner with a means to construct itself and position it as dominant in relation to a perceived “other”. “Whiteness”, “maleness”, “femaleness” and heterosexuality were thus constitutive of and constructed by Afrikanerdom.

As can be seen from the above, apartheid positioned South Africans in terms of ‘race’, gender and sexual orientation in ways that denied such bodies access, marginalised them and rendered them invisible. This meant that 1st and 2nd generation rights of “blacks”, females, gays and lesbians were violated consistently. Whilst there remain degrees of variations and differences in this scenario, the violation of human rights of “blacks”, females, gays and lesbians remains constant.

The religious positioning of “bodies” could not have been sufficient, on their own, to construct the entirety of apartheid. They only provided the critical bases upon which other ideological forms depended. These are the constructions on the “fields” of science and political economy to which I now turn attention.

The Scientific Field

Apartheid was declared officially in 1948. This was the time when WWII had ended, the United Nations was established and the Universal Declaration of Human Rights proclaimed. This was a world in which “vulgar” forms of “Nazism” were in retreat and in the face of which apartheid had the audacity to declare itself (Derrida, 1986; Carrim, Mkwanazi-Twala and Nkomo, 1996). The construction of apartheid had to take these developments into account in its articulation of itself. There was thus a “definitional shift” (Carrim, Mkwanazi-

Twala and Nkomo, 1996) necessitated by these developments. From only using religious arguments to justify itself, apartheid ideologues began to rationalise apartheid using biological, innatist arguments and culturalist arguments drawing on the sciences of anthropology, sociology and psychology. Given, then, the context of emergence of apartheid in the world of 1948, apartheid used science ideologically to further position and (re)present itself as enlightened and modern.

Science and Racism

The use of science in the construction of racism, and discrimination more generally, was already prevalent before 1948. The most renowned of which was the use of Darwinism in the justification of unequal social relations. “Social Darwinism” which propagated the ideas of “natural selection” and “natural superiority” of some ‘races’ over “others” are known to have led to the racist hierarchy of the ‘races’, where the “Caucasoid” (white), “Mongoloids” (brown, yellow) and “Negroid” (black) were ranked in order of superiority respectively. ‘Races’ were, thus, argued to exist and their characteristics and capabilities “marked” by their ‘race’, which were argued to be “given” to them “naturally” and which could be “proven” scientifically. “Whites”, following this line of argument, were allegedly superior because they were so “naturally”. “Blacks” were “naturally” inferior. The use of experiments which measured nose sizes, hair type, skull and brain sizes, eye colour, shape and size as well as measures of intelligence – I Qs – were conducted in order to “prove” the “natural” superiority of the “white race” (see Bowser, 1996; Miles, 1989; Du Bois, 1969). Indeed such arguments were used by Nazis in order to justify the “Herrenvolk’s” alleged superiority (see Hitler, 1937).

However, such crude and, by 1948, debunked theories of biological and/ or psychological superiority of one ‘race’ over an “other”, were unpalatable internationally and apartheid was then justified more by using culturalist arguments. Biological arguments did not enjoy much credence at the time when internationally in the form of the Universal Declaration of Human Rights of 1948

all people were viewed as being part of one and the same ‘race’ – the “human race” (Klein, 1993; Osler and Starkey, 1996). “Pure races” were nowhere to be found. People of “mixed” descent were increasing and ample counter scientific evidence disproving the existence of ‘race’ was mounting. Biological and/or psychological innatist arguments about the superiority of ‘races’ and of ‘race’ itself were, therefore, empirically invalid and theoretically unjustifiable (Hall, 1976). This being the reason why I consistently choose to refer to ‘race’ and racial description of people by using inverted commas, to signal that the concept is seriously questionable and highly problematic.

Apartheid was then articulated as being based on “cultural difference”. In this view, “whites”, “asians”, “coloureds” and “Africans” were seen as being “culturally different” and needed to be kept “apart”. They were “culturally” too incompatible to live together and for the sake of social stability they needed to be separated. On this basis, the “homeland”, “Bantustan” system, which separated the “African” category in terms of supposed tribal affiliations such as Zulu, Venda, Tswana and Xhosa, was also justified. Similarly, the group areas architecture of apartheid was also justified, ensuring that “asians”, “coloureds’, “whites” and “Africans” lived “apart”. These were rationalised through a motley of linguistic constructions ranging from “separate development”, “cultural pluralism”, “plural democracy” to “own affairs” (Carrim, Mkwanazi-Twala and Nkomo, 1996; McClintock and Nixon, 1986). Indeed, as Cross and Mkwanazi-Twala (1992) noted, apartheid may be seen as an expression of “an extreme form of multiculturalism”. Thus, as Derrida has also noted:

> In spite of all the verbal degenerations and lexical stratagems of the South African racists … whether or not the term apartheid is pronounced by South African officials, apartheid remains the effective watchword of power in South Africa. Still today (Derrida, 1986: 361).

It is important to note that in all of these definitions of “different cultures” they are the imagined, imposed constructions of the apartheid regime. They (are and)

were not the self-definitions of the people of South Africa. As apartheid constructions, such groups, now constituted in cultural terms and categorised as such in terms of the Population Registration Act, were also separated on unequal bases. The inequality in the separation was premised on the assumed "cultural" superiority of the "white race" as being of the "civilized nation" and the "culturally immature nature" of the "non-white races", which lacked in both "civilisation" and "development".

Also important for noting here, is the assumed cultural homogeneity of those defined "white". Whether the "white" person is Italian, Greek, German, English or Afrikaner, notions of cultural difference do not enter into definitions and positioning of "white" people. In addition, cultural homogeneity, though imposed, is also assumed to be the case for those defined as "non-white". "Asians", for example, are assumed to be "the same", despite the existence of many types of people making up the "asian" category, such as Tamils, Hindus, Muslims, Christians. The use of culturalist arguments and definitions of South Africans point significantly to the constructed and "imagined" (see Anderson, 1984, and Hall, 1992) character of racial and cultural identities under apartheid.

The "definitional shift", then, in the justifications of apartheid, from the religious to the scientific "field", enabled it to be reconfigured in a form that was continuous with modernity. Using now the "enlightenment" language of "science", rather than the religious based language of "pre-enlightenment", apartheid was given a face that could be used to situate itself within, as it was constituted by, modernity. It is for this reason that Derrida points out that "apartheid" is the "last word of racism" of modernity, and "Mandela the last of the modern prophets" (Derrida, 1986).

However, apartheid did not undergo such a culturalist "definitional shift" in the ways bodies were positioned in terms of gender or sexual orientation. Instead, apartheid used innatist biological and psychological arguments in the positioning of bodies in terms of gender and sexual orientation. Here one notes four

techniques that were utilised in the inferiorisation of women and "the homosexual". These are: biological inferiority, physical abnormality, psychological deficiency and dysfunctional personal histories. The latter being more the case with "the homosexual" than women.

In the positioning of bodies in terms of gender and sexual orientation, South Africa, and consequently apartheid, was consistent with what existed globally. Part of the reason for this was the concentration internationally (and nationally) with South Africa being a racist state. Apartheid, thus, was the "watchword" and gender and sexual orientation were subsumed within it. Patel (1989), for example, notes the subsumption of "women's issues" into the "national struggle for liberation" against apartheid. Nkoli (1994) notes (as will be seen later) that the South African police were more interested in his anti-apartheid activism than his gayness. As such, the use of biological, medical and psychological ideologies in the positioning of bodies as woman and "the homosexual" bear resonance with what is to be found globally. They are not distinctive of apartheid, although they fulfilled a crucial function in reinforcing and constructing apartheid as sexist and homophobic, as it was racist.

Science and Sexism

Tiger and Fox (1974) argued for the biological inferiority of women by suggesting that human beings had what they called a "biogrammar". For Tiger and Fox, the "biogrammar" of men enabled them to be strong and "naturally" inclined him to be a "hunter". The "biogrammar" of women predisposed her to be weaker and more suited for child-rearing and caring. Women were, thus, biologically weaker than men and "naturally" suited for domesticity. In a similar vein, Parsons (1978) argued that biologically women were more "emotional" and "expressive" than men, who were seen to be biologically more "rational" and "aggressive". What Parsons did with the biological argument was to attach psychological characteristics to men and women on the basis of their biological make-up, their "genes". The estrogen in women was viewed by Parsons as a bearer of not only

physical qualities of the woman but also her personality attributes. Likewise, due to testosterone, men, for Parsons, were also predisposed to qualities of aggression and rationality. On the bases of such biological and psychological arguments women were positioned as being "naturally" suited to be mothers, child-rearers and child-bearers, domesticated, emotional, irrational, weaker and lesser than men. Men, consequently, were viewed as "naturally" aggressive, rational, hunters, gatherers, stronger and better than women.

It does not take much arguing or imagination to note how such biological and psychological arguments reinforced earlier religious arguments about the innate inferiority of women. Such perceptions of women centrally informed the social relations of discrimination against women, relegating women consistently to the sphere of the "private", in the home. Under apartheid, the positioning of women was no different, except for complications of intersections between 'race' and gender.

Science and Heterosexism

Biological innatist arguments about "the homosexual" also contend that "homosexuals" are a result of a lack of testosterone in the case of the male and the lack of estrogen in the case of the female, or with excess of estrogen in the male or excess of testosterone in females. In this argument, then, "the homosexual" is a result of a biological imbalance, of a biological inferiority, a "freak of nature" (cf. Nayak and Kehily, 1996). Sexual orientation was seen as being in the "genes". Following such accounts, medical theories attempted to show that homosexuality was an abnormality which could be "cured" by administering the "right" dosage of the "right" gene in order to establish "appropriate" genetic balances in "the homosexual". Thus, from being biologically inferior, "the homosexual" becomes medicalised as in need of a "cure". Accompanying such medicalisation of views of "the homosexual" is the attachment of notions of "disease" to "the homosexual" (see Mac an Ghaill, 1994; Epstein *et al*, 1996). Also linked to notions of "the homosexual" as "disease" is the idea of "contagion", a "disease"

that can "spread" and "infect others". An image that was recalled in the early days of the HIV/AIDS pandemic of the 1980s (see Epstein *et al*, 1996; Crewe, 2002). As such, unlike the biological inferiorisation of women, the positioning of "the homosexual" biologically led to a medicalisation of "the homosexual" as a documentable "case" for and of "cure", in need of medical examination and treatment (cf. Foucault, 1979a). It is useful at this point to quote at length the *Mail and Guardian's* and the Medical Research Council's investigations into a particular Dr Aubrey Levine who was a colonel in the South African military under apartheid:

> Sex change operations, medical torture and chemical castration were perpetrated on national servicemen in a bizarre programme to cure "deviants" during the apartheid era … Surgeons told the *Mail and Guardian* that about 50 sex-change operations were performed a year between 1971 and 1989… In what was a top-secret project during the apartheid years, psychiatrists assisted by chaplains scoured each intake of national servicemen, hunting for suspected homosexuals. Those identified as homosexuals were quietly separated from their comrades and sent to ward 22 of Voortrekker Hoogte military hospital for screening and a programme of "rehabilitation". Some of those who could not be "cured" with drugs or psychiatry were given sex-change operations or were chemically castrated … the chief psychiatrist at Voortrekker Hoogte hospital was Aubrey Levine, one-time head of psychiatry at the University of the Orange Free State. Levine was reportedly interested in "aversion therapy" and applied it to the "deviants" he collected (*Mail and Guardian*, 2000, July 28 – August 3, 4).

Barring the sensationalism that always accompany media reports, this somewhat graphic description of alleged handling of "homosexuals" in the apartheid army, captures quite poignantly the medicalisation and thereby pathologisation of "the homosexual". What is also of note is that one of the responses to "the homosexual" was that of "castration" – the ultimate feminisation of the masculine.

The feminine male, is better off as female, albeit of a "lesser" kind, than a "deviant" male, of which Afrikanerdom had no place. The *Mail & Guardian* allegations of violations of gay men in the apartheid army was followed up by the South African Broadcasting Corporation TV 3 channel, and a full documentary including interviews with victims of such treatment was aired on national television in 2003. The claims made, therefore, may be assumed to be valid.

One of the psychological arguments also used in relation to "the homosexual" was the belief that homosexuality arose out of dysfunctional patterns of childhood and socialisation. Here the argument traceable to Freud (cf. Foucault, 1979a) suggests that the male homosexual arises when a male child is subjected to dominant female figures in childhood, with an absent male figure – known more commonly as the "absent father syndrome". Female homosexuals arise, following this argument, with a dominance of male figures – an "absent mother syndrome". Due to socialisation in these "dysfunctional" (where functional equals an assumed heterosexual, nuclear, Western, middle class, family norm) environments, "the homosexual" is constructed. "Treating" such "maladies" can be done through psychiatry and psychotherapy where "the homosexual" is re-socialised and subjected to more "appropriately" gender-balanced environments. This argument, like the other psychological, biological and medical arguments, positions "the homosexual" as a "deviant", an "abnormality" in need of a "cure" and "treatment".

On the "field" of science, then, the "black", female, gay and lesbian body is inferiorised in relation to a "white", heterosexist, homophobic male. In these constructions one notices an interplay between biological, psychological and medical theories. The result of such interconnections is the creation of a web of signifiers of meaning which simultaneously position the "black", female, gay and lesbian body as "naturally inferior", "biologically deficient", "psychologically pathological" and "medically abnormal". All of which being the constituent "other" of the Afrikaner male upon whose body rested the edifice of apartheid.

The “Field” of Political Economy

The ideological positioning of bodies in the “fields” of religion and science has almost direct implications for what one could expect to be their political and economic ramifications. It follows that if a body is positioned as subordinate, inferiorised and rendered pathological, then it is that body that will be the object of political oppression and economic exploitation. For Marxists such ideological positionings of bodies are in “the first and final instances” constructed superstructurally to ensure processes of capitalism. “Blacks” were oppressed under apartheid, argue South African communists, because apartheid, at the time of its inception, needed “abundant, cheap, unskilled labour” in order to develop the “capital and labour intensive” mining and agriculture based economy of the 1940s to 1960s. (cf. Simon and Simons 1969; Slovo, 1978). Racism, thus, was but an ideological mechanism by which apartheid capitalism was developed (see also Legassick, 1968; Wolpe, 1976; 1989).

Apartheid was also articulated from its inception as firmly “anti-communist” pointing significantly to its explicit capitalist form. Any form of “black” resistance was construed as “communist inspired” and a threat to capitalist development in South Africa. To such an extent that all major anti-apartheid personalities such as Albert Luthuli and Nelson Mandela had to argue in their defence against being called “communists” and to be considered for what they saw as their basic human rights (cf. Luthuli, 1962, Mandela, 1996). The Suppression of Communism Act served three critical functions under apartheid. It allowed apartheid to equate resistances to racism to communism. Given that communism was also considered to be atheistic, such resistances to apartheid were also considered to be the “ungodly” actions of “blacks” who were at the same time seen as “heathens”. Finally, the Suppression of Communism Act placed apartheid firmly within the economic framework of capitalism. And, in the bipolarised world of the 1950s and 1960s with two world superpowers being defined in terms of economies of capitalism (USA) and communism (USSR),

South Africa signalled its alignment economically with the then rapidly developing capitalist world of the West.

"Black" people were not viewed as "citizens" of South Africa, were not accorded with individual rights, denied of equal rights in social, economic and political spheres and were positioned in marginalised ways that reinforced their inferiorisation

Marxist feminists have also noted that the subjugation of women and her confinement in the domestic sphere is central to the "reproduction" of capitalism, following on Marx's and Engels' celebrated work on "the family" under capitalism. South African feminists have also used the same type of arguments in their understanding of women under apartheid and were represented in anti-apartheid feminist groups throughout the existence of apartheid (see Patel, 1989). Such arguments, however, were augmented by the intersections between 'race' and gender and the differences between "white" women and "black" women under apartheid (see Cock, 1980; 1982).

Economically and politically, women were disenfranchised, oppressed and exploited. However, there were variations or gradations in terms of gender in so far as it intersected with 'race'. "White" women, because of apartheid, were considered as "citizens" of South Africa and were thus accorded with political rights. Whilst, "white" women were given access economically, more than "black" women and men, they were, nonetheless, positioned within such economic spaces in marginalised ways that reinforced the sexist stereotypes of women. "White" women did not have access to all jobs that men had access to, were not paid the same salaries as men, could not own property without the consent of men and were treated legally as "minors", dependent on the income, authority and consent of a "white" male presence. In these ways, "white" women under apartheid were at once given access, invisibilised at points, and marginalised most of the time when they were included.

"Black" women, on the other hand, were denied access, invisibilised and marginalised. As "black" people, "black" women were not regarded as "citizens", did not have political rights, were invisibilised through the body politic and marginalised in their exploitation within the economy, including as "maids" to "white madams" within domestic based labour relations.

As such, "white" women's human rights under apartheid were violated more in terms of their 2nd generation rights, and in the case of "black" women their rights were violated in terms of 1st and 2nd generation rights. However, as discussed in Chapter 2, in relation to the feminist arguments put forward by MacKinnon, it is also the case that whilst apartheid may have "recognised" "white" women's 1st generation rights, it did so in formal, abstract and masculinist ways. This means that one cannot assume that "white" women's 1st generation rights were not violated simply because they existed legally and formally. "White" women continued to be treated in unequal ways and abused as women, even by "white" men (see Joseph, 1986).

In those instances when gays and lesbians were "recognised" politically and economically, it was not on the basis of them being "gay" or "lesbian". Simon Nkoli, for example, was tried for his anti-apartheid activism and not his gayness (to be discussed in more detail later). In this regard, gays and lesbians were able to be economically and politically included, despite their homosexuality, not because of it. Invisibilisation remains the most characteristic form of placing of "the homosexual" in political and economic spaces under apartheid. "They" did not exist, and if they did they needed to be denied or destroyed or viewed in an "other" light. In these ways, "the homosexual's" 1st and 2nd generation rights were denied under apartheid, through "misrecognition" and "non recognition".

In relation to sexual orientation, though, no such "visible" link between being gay or lesbian and political economy was made. Two tangential links, however, may be extrapolated from existing arguments about homosexuals in South Africa. The first is that homosexuals were economically productive and politically active.

“The homosexual”, whilst considered to be “deviant” and of “Sodom”, was functional in all spheres of the economy. Hence the “fear” as expressed by Pelser earlier that “the homosexual canker” can lead to the demise of the “spiritual and moral fibre” of society. This could only be the case if “the homosexual” was perceived to be active in society. It has also been pointed out that homosexuals were active politically too. Gevisser and Cameron (1994) point to the active opposition that many gays and lesbians in South Africa took against apartheid, notably examples being Simon Nkoli, who with 21 others was part of the Delmas trial and “Cecil”, a known homosexual, who acted as Nelson Mandela’s chauffeur while Mandela was in hiding under apartheid.

The second tangential link that can be made is with the claim that “the homosexual threat” was a “threat” to the reproduction of capitalism. In keeping with the feminist argument that women are positioned in capitalism in subordinate positions in order to reproduce the conditions of capitalism, it follows that “the homosexual” which “threatens” the “heterosexist family” would be considered inimical to the reproduction and perpetuation of conditions of capitalism. The pathologising and demonising of “the homosexual” then provides a political economic ideological basis for the continuation of capitalism. “The homosexual” threatens the continuation and reproduction of the conditions of capitalism. This type of “class” based analysis of “the homosexual” is developed by some theorists including Foucault (1979a) and Sleeter and Grant (1996), for example.

In this chapter I have deconstructed apartheid ideologically in terms of ‘race’, gender and sexual orientation. I have shown that in the “fields” of religion, science and political economy, the “black”, female, gay and lesbian forms of human identities were positioned ideologically as subordinate, lesser than and deficient. Given such positionings of bodies under apartheid, human rights were denied to such bodies because of the ways in which they were constructed. I have argued that such constructions of human identities were constitutive of the system of apartheid. As bodies positioned in such inferiorised ways, their human rights were violated. “Blacks”, females, gays and lesbians, in varying degrees, were

disenfranchised, dispossessed, demonised, pathologised, dominated, marginalised, exploited and oppressed. The social relations of discrimination implicit in these ideological positioning of bodies was also discussed within apartheid society. What follows are two accounts of two "black" men under apartheid: Nelson Mandela and Simon Nkoli.

The purpose of discussing Mandela and Nkoli individually is to apply Lawrence-Lightfoot's and Davis' (1997) notion of portraiture, and to particularise human rights under apartheid. It also serves the purpose of not homogenising and generalising people's actual identities and experiences, as much as it attempts to capture the active human agency of people under apartheid.

I do not claim that what I provide below in relation to Mandela and Nkoli presents the totality of "portraiture" as argued by Lawrence-Lightfoot and Davis. What I provide are more sketches, rather than "portraits". This is because it does not contain the amount of detail that "portraiture" actually entails, neither does it necessarily aim at being artistically aesthetic. My sketch draws on Mandela's and Nkoli's own accounts of their life experiences and I place these in the context of the ideological positionings and social relations of discrimination under apartheid. These "sketches" are illustrative. They serve to highlight what apartheid meant in terms of men positioned at once as the "same" in terms of the social categories of "black" and male, and "different" due to their varying experiences within such categories and as men who are of differing sexual orientations.

Nelson Mandela

Nelson Mandela is noted internationally as the symbol of resistance to racism. He was the number one accused in the Rivonia Treason Trial of 1960 – 1964, and sentenced to life imprisonment on counts of sabotage and treason, with seven others – Walter Sisulu, Govan Mbeki, Raymond Mhlaba, Elias Motsoaledi, Andrew Mlangeni, Ahmed Kathrada and Denis Goldberg. Mandela has been the icon of opposition to apartheid since its inception. As Secretary General of the

African National Congress, Mandela was convicted for his role in organizing the Defiance Campaign between 1950 and 1960. During this campaign, people peacefully defied all apartheid laws and Mandela was house arrested, banned and detained. In 1956, along with 156 others, Mandela was arrested on charges of high treason and charges under the Suppression of Communism Act, but was later acquitted. Between 1961 and 1964 Mandela was charged again for treason and sabotage which led to his life imprisonment. However, Mandela was released from the apartheid prisons in 1990 after serving 27 years, most of which were on Robben Island. In 1993 Mandela shared the Nobel Peace Prize with F W de Klerk, then president of South Africa. Mandela was also the first "black" president of the newly constituted democracy in South Africa and served as president between 1994 and 1999. He remains active in the global political arena, particularly in Africa, and an inspiration to people the world over.

Mandela's most powerful contribution to the world has been his retorts in the apartheid courts. As he stood "before the law" he brought the world's attention to the "misrecognition" and "non-recognition" of "blacks" "in the law". His calls for human rights, democracy and equality before the law have reverberated throughout the world and galvanised the anti-racist movement internationally. The violation of human rights on the basis of 'race', thus, stands out most starkly in Mandela's experiences.

Of his earlier days, Mandela says:

> In my youth in the Transkei I listened to the elders of my tribe telling stories of the old days. Amongst the tales they related to me were those of wars fought by our ancestors in defence of the fatherland. The names Dingane and Bambata, Hintsa and Makana, Squngthi and Dalasile, Moshoeshoe and Sekhukhuni, were praised as a glory of the entire African nation. I hoped then that life might offer me the opportunity to serve my people and make my own humble contribution to their freedom struggle (Mandela, 1964, Pretoria Supreme Court Trial Records).

In the above quotation taken from Mandela's statement from the dock during the Rivonia Trial in 1964, one notes both the "habitat" and "habitus" that influenced Mandela's views and motivations. Mandela comes from a traditional African habitat. Later in this same statement from the dock Mandela pointed out:

> I have always regarded myself, in the first place, as an African patriot. After all, I was born in Umtata, forty-six years ago. My guardian was my cousin, who was the acting paramount chief of Tembuland, and I am related to the present paramount chief of Tembuland, Sabata Dalindyebo, and to Kaizer Matanzima, the Chief Minister of Transkei (Mandela, 1964, Pretoria Supreme Court Trial Records).

As such, Mandela's "habitat" and "habitus" are not just generically African, but specifically tied to forms of African royalty and chieftainship. Mandela notes that his habitat has equipped him with a history of struggles against colonialism, him being related to some of those who led such struggles and being raised by, with and among them. Central in this background is Mandela's acquisition of ideas of "serving the people", and a sense of African patriotism and loyalty. Like other African leaders and chiefs, Mandela, from an early age, saw himself as leading and "serving" fellow Africans in their "struggle for their freedom". Attitudes that were constructed and reproduced within his "habitat". Mandela, thus, comes from a social class that demarcates him from the majority of poverty stricken, jobless and working class Africans. Mandela had access to "cultural capital" that other Africans did not. Mandela, however, used such "culture capital" to secure the human rights and lives of all people, Africans, "black" and "white".

However, what is also of significance in Mandela's early life influences is the fact that all the references to "ancestors" are male references. Typical of African traditional beliefs and customs is the invisibilisation of women. Mandela, thus comes and speaks from a heterosexist and male perspective, albeit a "black" perspective as well.

Mandela soon qualified as an attorney, again a privilege denied to the majority of Africans and available to, if at all, mainly men. As will be seen below, Mandela's moving into the "city" and establishing his legal practice there constructed another "habitat" for him. In this "habitat", that of a lawyer, Mandela acquired the "habitus" of a lawyer, which began to be formed in his training. But, as an attorney Mandela was soon to realise that despite being a lawyer he did not have any rights, like other "black" people in South Africa under apartheid. It is worth quoting Mandela at length here:

> Right at the beginning of my career as an attorney I encountered difficulties imposed on me because of the colour of my skin, and further difficulty surrounding me because of my membership and support of the African National Congress. I discovered, for example, that, unlike a white attorney, I could not occupy business premises in the city unless I first obtained ministerial consent in terms of the Urban Areas Act. I applied for consent, but it was never granted. Although I subsequently obtained a permit, for a limited period, in terms of the Group Areas Act, that soon expired, and the authorities refused to renew it. They insisted that my partner, Oliver Tambo, and I should leave the city and practice in an African location at the back of beyond, miles away from where clients could reach us during working hours. This was tantamount to asking us to abandon our legal practice, to give up the legal service of our people, for which we had spent many years training. No attorney worth his salt will agree easily to do so. For some years, therefore, we continued to occupy premises in the city, illegally. The threat of prosecution and ejection hung menacingly over us throughout that period. It was an act of defiance of the law. We were aware that it was, but, nevertheless, that act had been forced on us against our wishes, and we could do no other than to choose between compliance with the law and compliance with our consciences.

> In the courts where we practiced we were treated courteously by many officials but we were very often discriminated against by some and treated with resentment and hostility by others. We were constantly aware that no matter how well, how correctly, how adequately we pursued our career of law, we could not become a prosecutor, or a magistrate, or a judge. We became aware of the fact that, as attorneys, we often dealt with officials whose competence and attainments were no higher than ours, but whose superior position was maintained and protected by a white skin.
>
> I regarded it as my duty which I owed – not just to my people, but also to my profession, to the practice of law, and to justice of all mankind – to cry out against this discrimination, which is essentially unjust and opposed to the whole basis of the attitude towards justice, which is part of the tradition of legal training in this country. I believed that in taking up a stand against this injustice I was upholding the dignity of what should be an honourable profession (Mandela, 1962, Old Synagogue Court of Pretoria Trial Records).

In the above lies the distinction that is Mandela's – his confrontation of the law with the law about the law. Indeed, it is because of Mandela's occupation of a lawyer's "habitat", that Mandela was able to develop such legal perspicacity and "habitus". In addition, given the formal, legal political struggle of the then African National Congress, a struggle which Mandela co-ordinated during the "decade of defiance", Mandela's politico-legal "habitus" was also further reinforced and refined.

Mandela points out that his experiences as an attorney were marked by "discrimination" based on the "colour of the skin". Due to apartheid's segregationism, Mandela, even as an attorney, needed to be rendered invisible to "white" society and be marginalised in "an African location at the back of beyond". He, with Oliver Tambo, had to endure the "discrimination, resentment and hostility" of "others" who were protected from such due to "their" "white

skin(s)", even if they were on par with Mandela and/or Tambo. This was done to Mandela as an attorney and which used the law. The irony and paradox in this is, nonetheless, not unnoticed by Mandela. Indeed his call is for "recognition" by the law of himself, of lawyers, of "black" people, and of "justice". Mandela took this further when he challenged the court in 1962 on two grounds:

> I want to apply for Your Worship's recusal from this case. I challenge the right of this court to hear my case on two grounds.
>
> Firstly, I challenge it because I fear that I will not be given a fair and proper trial. Secondly, I consider myself neither legally nor morally bound to obey laws made by a parliament in which I have no representation.
>
> In a political trial such as this one, which involves a clash of the aspirations of the African people, and those of whites, the country's courts, as presently constituted, cannot be impartial and fair.
>
> In such cases, whites are interested parties. To have a white judicial officer presiding, however high his esteem, and however strong his sense of fairness and justice, is to make whites judges in their own case. It is improper and against the elementary principles of justice to entrust whites with cases involving the denial by them of basic human rights to the African people. (Mandela, 1962, Old Synagogue Court of Pretoria Trial Records).

There are three critical elements that emerge from the above quotation of Mandela. First, is the issue of equality before the law. Second, is the question of representation, and, third, is the nature of the framing of the law itself.

Mandela is emphatic about the fact that as a "black" person he could not expect to be "given a fair and proper trial". The reason for this is that the law itself, as it was under apartheid, blatantly "denied" "human rights to African people". Such

laws were concocted and promulgated by “whites”, for “whites” and without any “representation” of African people. As such, for Mandela there was no “social contract”, based on consensus and fair representation, to provide legitimacy for the law as it existed and for those who enforced them, including the courts and their officers. Given this, it follows that the framing of laws in this instance was decidedly racist. As much as MacKinnon (1993) pointed to the masculinism of the framing of human rights, Mandela points to their equally racist frame. As Mandela puts it, “whites” are “interested parties” and the law was constructed in order to serve “their interests”. Herein, then, one notices the simultaneous “recognition” of “whites” by and in the law, and the “non-recognition” and “misrecognition” of “black” people by and in the law. Mandela’s presence in the courts, and his statements, demonstrated this powerfully. He forced recognition of his absence in the law by his presence before the law. As Mandela said:

> The government has used the process of law to handicap me, in my personal life, in my career, and in my political work, in a way which is calculated, in my opinion, to bring about contempt for the law … I was made, by the law, a criminal, not because of what I had done, but because of what I stood for, because of my conscience (Mandela, 1962. Old Synagogue of Pretoria Trial Records; See also Derrida, 1986 for more on this).

Mandela’s legal rationale for demanding recognition of the “human rights of African people” was based on the idea of “equality before the law” and its centrality in the Universal Declaration of Human Rights.

> In its proper meaning equality before the law means the right to participate in the making of the laws by which one is governed, a constitution which guarantees democratic rights to all sections of the population, the right to approach the court for protection or relief in the case of the violation of rights guaranteed in the constitution, and the right to take part in the administration of justice as judges, magistrates, attorneys-general, law

> advisers and similar positions. In the absence of these safeguards the phrase ‘equality before the law’, in so far as it is intended to apply to us, is meaningless and misleading. All the rights and privileges to which I have referred are monopolised by whites, and we enjoy none of them. The white man makes all the laws, he drags us before his courts and accuses us, and he sits in judgement over us. It is fit and proper to raise the question sharply, what is this rigid colour-bar in the administration of justice? Why is it that in this courtroom I face a white magistrate, am confronted by a white prosecutor, and escorted into the dock by a white orderly? Can anyone seriously suggest that in this type of atmosphere the scales of justice are evenly balanced? … I feel oppressed by the atmosphere of white domination that lurks in this courtroom. Somehow this atmosphere calls to mind the inhuman injustices caused to my people outside this courtroom by this same white domination. It reminds me that I am voteless because there is a parliament in this country that is white controlled. I am without land because the white minority has taken a lion’s share of my country and forced me to occupy poverty-stricken reserves, over-populated and over-stocked. We are ravaged by starvation and disease (Mandela, 1962, Old Synagogue of Pretoria Trial Records).

Mandela here questions whether one could claim “equality before the law” for “black” people under apartheid. He shows that there is no “moral or legal” basis for the apartheid parliament, society, or its judicial system. In fact, they contradicted the very basis upon which they were to be justified. Apartheid laws denied people their rights, rather than protected them. Apartheid courts reproduced racism rather than ruling against it. Apartheid society was unjust and undemocratic and its parliament was set up to promote and sanction such inequalities in South Africa, in the “interests of a white monopoly”. But, Mandela was more damning of apartheid and its judiciary by locating South Africa within international law and legal practice. Here Mandela pointed out that apartheid law was not only contradictory to international conventions but that it rescinded on basic legal principles.

> South Africa must and will fail. South Africa is out of step with the rest of the civilised world, as is shown by the resolution adopted by the General Assembly of the United Nations Organisation which decided to impose diplomatic and economic sanctions (Mandela, 1962, Old Synagogue of Pretoria Trial Records).

Mandela was convinced that “South Africa must and will fail” because it was “out of step with the rest of the civilised world”. But, why was South Africa so “out of step” and doomed to “fail”? For Mandela, there were two major reasons for this, both of which are linked to each other. The first was Mandela’s experience in travelling in other parts of the world to enlist support for the anti-apartheid struggle, and, the second reason is apartheid being a pariah among democracies of the world due to its disregard of basic human rights and international legal provisions. Of his travels abroad Mandela said:

> In the African states, I saw black and white mingling peacefully and happily in hotels, cinemas, trading in the same areas, using the same public transport, and living in the same residential areas ... For the first time in my life I was a free man; free from white oppression, from the idiocy of apartheid and racial arrogance, from police molestation, from humiliation and indignity. Wherever I went I was treated like a human being (Mandela, 1962, Old Synagogue of Pretoria Trial Records).

South Africa, then, was bound to “fail” because of “its efforts to keep the African people in a position of perpetual subordination” (Mandela, 1962). Such efforts, as Mandela experienced abroad, were disappearing increasingly, and instead “black” and “white” people were “mingling peacefully and happily”. As such, apartheid could not sustain itself because of the increase in multiracial interactions between people throughout the world, particularly in Africa in this case.

Mandela also pointed out that “South Africa must and will fail” because, due to apartheid, it was increasingly being isolated internationally with the “General Assembly of the United Nations Organisation deciding to impose diplomatic and economic sanctions” against South Africa. The reasons for such international isolation were due to the violation of the “human rights of African people” and the lack of moral basis for claims to white supremacy within apartheid. As such, Mandela pointed out that on moral and politico-legal grounds apartheid had no justification or chances for continued survival.

It is important to note that Mandela was empowered to make such statements in the apartheid courts because of the “habitus” he acquired in the “habitats” he occupied “in the city”, as an “attorney” and as Secretary General of the African National Congress. As “attorney” he was au fait with questions of the law and internalised a legal rationality. As Secretary-General, he acquired insight into political systems and was given the opportunity to experience life in other parts of the world. Being “in the city”, Mandela was confronted by the “discrimination” of people on the basis of the colour of their “skin”. It was “in the city” that Mandela confronted difficulties in establishing legal offices and dealing with applications for “ministerial consent”. It is, thus, not coincidental that Mandela was able to articulate what he did about the law, for the law, in order to reconstitute the rationale that informs the framing of the apartheid law and who it actually serves.

Simon Nkoli

Simon Nkoli died in 1999 of AIDS. He is noted as the prime actor in the establishment of gay and lesbian rights movement in South Africa and lobbying for the inclusion of sexual orientation rights in the Constitution of the new South Africa. Simon was also one of the accused in the Delmas trial of 1986 for anti-apartheid activity. Simon has been the representative of the gay and lesbian

movement of South Africa in many international gay and lesbian gatherings and platforms, most notably the "pride" parades and marches in Amsterdam and New York, as well as in the international network for HIV/AIDS. Gevisser says:

> Simon Nkoli is perhaps South Africa's most well known gay activist. From a background of radical student politics, he moved into gay activism in the early 1980s. His work, however, was interrupted in September 1984 when he was jailed for his involvement in a rent boycott demonstration in his home township, Sebokeng. He spent four years in prison and was charged with murder and treason, alongside 21 others, in the Delmas trial of 1986, in which prominent members of the United Democratic Front (UDF) were charged for high treason. After his acquittal, Simon founded the Gay and Lesbian Organisation of the Witwatersrand (GLOW) (Gevisser and Cameron, 1994: 249).

Simon Nkoli was a "black" man, who was also gay. His life experiences highlight 'race', gender and sexual orientation as dominant in his encounters with himself and others. As a "black" person, Simon was disenfranchised and illegitimised. In response, though, Simon positioned himself in resistance to such inferiorisation. He was an anti-apartheid activist, participated in "radical student politics" and active within the UDF, organized civic action against the apartheid regime, all of which led to him being tried in the Delmas trial of 1986 and jailed for "treason". About his anti-apartheid activism, Simon said:

> I spoke often at meetings, and of course when the stayaway of the 3rd of September was announced, I went along. Many people died in the clash between the police and the community, and, at the funeral on the 23rd of September I was arrested. I was kept in detention for 16 months until, in January 1986, I was brought to trial along with 21 others in the famous Delmas Treason Trial.

> This was my second detention: in the 1976 uprising, aged 15, I had been a student leader and detained for three months after the high school I attended was burned and looted. Since then, I had been very active in the Congress of South African Students (COSAS), and by 1981 I was the organisation's regional secretary for the Transvaal (Nkoli, 1994: 253).

There is nothing exceptional about Simon's anti-apartheid activism or his encounters with the apartheid police, courts or prison. In these respects, Simon is like Mandela. They share experiences of being accused and jailed for treason, detained many times and active in anti-apartheid resistances. As "black" people who were opposed to apartheid, Simon and Mandela are similar. However, unlike Mandela, Simon experienced discrimination as a gay man even within the anti-apartheid struggle. Him being secretary of COSAS was questioned due to his gayness and the other accused in the Delmas trial refused to be on the same trial as Simon, because Simon was gay. This being the case even when Simon was being tried for the same anti-apartheid activities as the other co-accused. Simon notes:

> My homosexuality became an issue within COSAS. Because of the continual pressure to bring girlfriends to parties, I had come out in 1981, and the regional executive felt so strongly about it that they called a general meeting. The entire region met to discuss my sexuality and whether the fact that I was gay meant I should stand down as secretary. The arguments against me were that homosexuality was not African; that we cannot be led by a gay person; and that I had been dishonest by hiding this vital information. Luckily, however, the arguments for me won out, and I managed to get the 80% I needed to remain as secretary (Nkoli, 1994: 253).

Mandela never experienced anything like this. His membership of the executive committees of the ANC and the ANC Youth League was never placed under question. Nobody questioned whether he had the right to be in leadership

positions. Nobody questioned his integrity or honesty. Mandela is not gay. Simon was! The reasons given for questioning Simon's position within COSAS point to the ideological inferiorisation of homosexuality. They suggest that Simon, as a gay person, is "deficient", "lesser than" and not worthy of respect or access to things heterosexual "normal" people are. As such, the social relations towards Simon in COSAS are marked by discrimination and attempt to deny him access and render him invisible by forcing him to "step down". However, this type of discrimination on the basis of sexual orientation by fellow "comrades" reared its head again with the other 21 co-accused of the Delmas trail. In this regard, Simon says:

> In Pretoria Central Prison while we were awaiting trial, something happened, entirely beyond my control that brought the whole thing to a head. One of the accused was found to be having a relationship with a convicted prisoner.
>
> Suspicions began when this guy started asking for cigarettes and tobacco even though he did not smoke. And then the prison warder in charge of us, a black man, found a love-letter written in this guy's handwriting to the convict. A white prison warder also seemed to be involved with the two men. And so the leaders of the accused, Terror Lekota and Moss Chikane, were called in and given the letter. 'Look at your people', they were told.
>
> We were all called into Cell 47, the biggest one, for an urgent meeting, told only that something terrible had just happened. Since I like meetings I was the first one there – I wanted the best seat. I could see Terror was furious. I couldn't hear him very well; all I heard was '… that's why I don't want to be arrested with homosexuals'. I started looking around and thinking, 'God what have I done?'
>
> Everyone was in. Only those who knew looked at me, but I was puzzled. Terror said, 'Comrades, I've got this love-letter. It's disgusting, and he

named the guy who wrote it. People started hammering the writer, who replied that it was a mistake and would never happen again. He said he had been harassed by the convict, and that all he needed was forgiveness.

I was taken over by rage, and the next thing I knew I heard my own voice, interrupting, ‘what about me?’. Terror was dumbstruck: he had only had political discussions with me. The older men didn’t understand. Popo Molefe was aware there was going to be tension, and so he tried to prevent me from bringing in another issue.

But then others started interjecting. One guy said, ‘we should have our own trial. I’m not going to stand accused with a homosexual man. All of us here have girlfriends, wives, supporters from overseas. What will they think when we have a homosexual man with us?’

I stood up and said, ‘I think I should leave this meeting now. This is including me as well. Here you’re not talking about the person who committed this act. You’re actually talking about homosexual men and I am one’.

Everybody’s jaws dropped. The old priest, Father Moselane, was particularly shocked. ‘I cannot believe it’, he said. ‘You and I addressed the meeting together. And when you spoke you spoke like a man, even though you’ve got a small voice. You look like a man. Don’t tell me you do these things’.

I said, “I’m telling you who you don’t want to go to trial with and that’s me. It’ll be fine. My trial will be much shorter if I’m alone. That person has apologised, so accept him and forgive him and forget it. What I do I will continue to do’. I was very angry. Everybody was quiet.

My friend Gcina Malindi intervened: ‘Simon is angry and emotional. We have to take his case as well’.

Terror was at a loss. I don’t know if he knew I was gay, but he said, ‘there it goes’.

For weeks, this homosexuality thing dominated. Daily meetings were held on the issue. First they did not want to be tried with homosexuals. Then they did not want me on the witness stand. All because of the possible public disclosure of my homosexuality might cause. I felt I had to testify because of my indictment. The primary charge against me was murder: I was alleged to have thrown a big rock. I was adamant that I had to take the witness stand to defend myself, as I was innocent’.

Even the lawyers were consulted on the issue and the two senior queer lawyers of the progressive legal fraternity were brought in to talk to us! All the lawyers supported me, and said that they would pull out if there were two trials. Their attitude was that people were not being charged because of their sexuality. Most supportive, in fact, was George Bizos, the advocate who was to lead my defence. When I was depressed and everyone was confused about my being homosexual, George would call me outside and tell me to be brave. He said that if the state brought the issue up he would object.

… Over time attitudes did change. Some people didn’t come to my cell anymore. Others came to ask questions. Some were really concerned. The old priest finally came to speak to me about whether he could help me. The person who was most affected was my friend Jake… He was really shocked. But after the revelation, he would come to visit me even more often, and became very supportive, saying that I have been treated very unfairly … Popo Molefe was always supportive. And, as time went by, Moss Chikane too became very supportive. Once I remember, there was a

press-clipping of Elton John having been arrested with little boys. A prison warder came in and said, ‘I like Elton John’. And Father Moselane said, ‘Why do you like him?’.

Warder: ‘He’s got good music’.

Moselane: ‘But he sleeps with boys. That’s an abomination. God has made man and woman, not man and man!’.

I screamed from my bed, ‘Father, you’re saying these things because you know I’m here. I don’t sleep with boys. I sleep with a person like you if I want’. He was so insulted.

At this point Moss Chikane intervened: ‘Father you started this. Since last year Simon has told us he is gay. Why are you preaching about God now?’ Tom Manthatha also silenced him. Tom liked me so much, he used to say that I was like a son to him.

At the end of the whole thing, when we were all about to go to the witness box, there was no one against me. When I was in the witness box, everyone, including Terror, made a point of telling me how well I was doing! Terror had been the most shocked in the beginning, but now things are much better. We're good friends, and his attitude has changed.

The irony was that the prosecutor didn’t bring the issue up. I did. I needed to prove that I wasn’t at a meeting, and so I told the truth, which was that at the time I had been at a GASA (Gay Association of South Africa) event. Only then did the prosecutor start up on my homosexuality, but the judge angrily intervened, saying that he was not interested about who was gay and who was not, and that the prosecutor’s line of questioning did not prove whether I had conspired. I was finally acquitted, in no small part, due to my gay alibi (Nkoli, 1994, 254-256).

Simon’s encounters with the other co-accused of the Delmas trial show that he staged a struggle within the anti-apartheid struggle. This struggle was against what were otherwise his “comrades”. Yet, he had to struggle against them due to

the discriminatory ways in which they did, and intended to, relate to him. Simon had to contend with their homophobia and prejudiced views about homosexuality. Simon's "manhood" was under question – "when you spoke you spoke like a man … You look like a man. Don't tell me you do these things". Others through homophobic responses felt that their "manhood" was being threatened – "all of us here have girlfriends, wives, and supporters from overseas". While others found homosexuality to be pathological, "disgusting" and an "abomination"; and that this was not the way "God" meant things to be – "God made man and woman and not man and man". These responses were attempts to render Simon invisible – "they did not want to be tried with homosexuals… They did not want me to take the witness stand". "Some didn't come to my cell anymore". As such, Simon stands quite distinct in his experiences from Mandela, despite being "black", a man and an anti-apartheid activist. Because Simon was gay!

Discrimination on the basis of his homosexuality was known to Simon at home and in his community. Living in Sebokeng in the south of Johannesburg, Simon lived with his mother. At first, Simon's mother believed that Simon was "cursed" and his gayness was due to some "evil" influence. With this understanding she took Simon to a sangoma (African traditional healer) to be "cured". In this regard, Simon said:

> When I told my mother about Andre, a white man, who was my first love, she hit the roof… Once my mother cooled off, she decided that I needed to be cured. And so began my year long tour of the sangomas. My mother is a Christian, but, like many African families, we took out the double insurance of using sangomas along with our Christianity … Now, my mother took me to a woman. She put her bones down and said: 'Hmmm. Dangerous'. I laughed. I remember how I laughed. She said, 'Your child is bewitched'. I said, 'No, I don't think so'. The sangoma asked my mother to keep me quiet 'because he is disturbing my bones'. She said, 'the woman who bewitched him …' 'Woman!', my mother screamed. 'Mammie, no!', I tried to interrupt. 'Now you're going to suspect all the

women in the township'. When my mother asked for more details, the sangoma demanded more money to name names. An extra R10 bought my mother the name of her neighbour – who also happened to be a sangoma, a rival sangoma. I said, 'don't you say that, because maybe you want my mother to put the blame on another sangoma'. The sangoma became very angry. 'See how he speaks', she said, 'it's the tokolosh (evil spirit). It's not him. He's bewitched'.

When we arrived home, both my mother and I were shocked to discover that the neighbour already knew where we had been. She said that she heard about our visit to her rival in her dreams and told us, 'that woman and I are fighting. I didn't bewitch your child. Your child is a gay person. He is. And there's nothing you can do about it'. She was a very good sangoma. 'Even psychologists and doctors can't change it', she said. 'I've dealt with these cases. The person is not sick'. The neighbour suggested my mother take me to another sangoma for a second opinion.

So off we went, to a man this time. He jumped around and did frightening things. I thought he was going to kick me. He threw his bones. 'I don't see a problem', he said. 'You've got a very intelligent son. He is not sick. Nothing. I can't take money from you. Try another one'. And so off to a third one, who repeated, like the first one, that I was bewitched. But this time it was my aunt who had done it. I said, 'now you believe that your own sister who is not even a sangoma, who is a church member, would do this! Now will you start hating your own sister because of this sangoma?'

My mother was clearly in crisis … We did go to a fourth one, who said, 'the child has got a big problem. The person who bewitched him is dead'. She counselled my mother 'to slaughter a sheep and four chickens and to feed me the blood of the chickens. I said, 'That'll be the day! I'll be gay whether I drink the blood or not, so I'm not going to do it'. So my mother asked the sangoma for an alternative. They told me to go out, and my

> mother came out very angry. ‘She (the sangoma) told me to boil eggs with aloe vera and bluegum and your sister’s urine and give it to you!’. My mother said, “I give up on this!’. So that was it with the sangomas.
>
> But there was still the church to deal with. The minister just cut me out completely. At first he tried to counsel me. He showed me Leviticus 18:22. He told me about abomination. He blamed Andre, white and older than me, for leading me into temptation. I believed him even less than the sangomas (Nkoli, 1994: 250-252).

Simon was in a relationship with a “white” man, Andre. What was significant about this relationship was that it was across the racial divide under apartheid. According to Simon, Andre and he began their relationship as pen pals (Nkoli, 1994). This progressed to a deeply committed relationship between the two of them. It is significant that their relationship began through writing, since apartheid’s positionings of people racially made the first, intimate contact between a “white” and “black” man – a face-to-face meeting – close to impossible. But, in the above account, one notes the ways in which ‘race’ and sexuality are brought to intersect with each other. Andre is “blamed” for Simon’s gayness, “for leading him into temptation”. Homosexuality, as was noted earlier on with the Delmas trialists, was viewed as being “not African”. “Whiteness” in this context of “black” people’s meanings is a corruptive and destructive influence. It denotes negativity, far from the assumed superiority of “whiteness” within “white”, racist views.

Simon’s encounters with sangomas are also a distinctly African experience, since sangomas are part of the “habitat” and “habitus” of the people of Sebokeng, of which Simon was a part. The sangomas, however, point to the pathologisation, medicalisation and demonisation of homosexuality. To many of the sangomas Simon was “bewitched”. His homosexuality was “evil”, an “abomination”. He was in need of a “cure”. Again Simon confronted all of these, as he struggled against them, because he was gay, unlike Mandela.

Simon Nkoli is regarded as one of the "heroes" (*Rush*, 2001) among the gay and lesbian community of South Africa and they accord Simon with the status of being the person who ensured gay and lesbian rights are protected constitutionally in South Africa.

The above brief account of Simon Nkoli shows the intersections between 'race', gender and sexual orientation. It also notes the complexity of the influences at work on the level of an individual person's life. Like Mandela, Simon was subjected to the lore of African traditional beliefs and customs. Simon's being viewed as "cursed", Mandela as an heir to chieftainship. Simon in need of both psychological and Sangoma treatment points to the pathologisation, medicalisation and demonisation of gayness. The religious and scientific ideological positioning of Simon in terms of his sexual orientation is noticeable here. At the same time, though, Simon was tried for his anti-apartheid activism. Like Mandela, Simon stood "before the law" in opposition to the law. He was positioned as such in the political economic field which denied Simon equal treatment and denied his human rights as a "black" person. But, unlike Mandela, Simon had to also experience discrimination by other "black" men. Simon had to struggle for recognition by, what in all other senses were, his "comrades". Simon, thus, struggled within the anti-apartheid struggle. In all of these instances, Simon was positioned as illegitimate, inferior and pathologised. In response, Simon located himself publicly in oppositional terms. Simon did not accept "other's" misrecognised definition of himself. He acted against the ways in which he was being positioned ideologically and resisted the social relations of discrimination that attempted to keep him controlled. In this picture of Simon Nkoli, then, one can note levels of struggle: against apartheid, against homophobia. Human rights in the case of Simon have to speak to all of these levels of struggles and forms of discrimination.

Simon needed protection as a "black" man and as a "gay", "black" man. Simon also needed protection to hold the political beliefs and opinions that he did.

Generalising Simon in terms of the social category of “black” simply would not capture his gayness which was a significant aspect of his own life’s experiences.

The differences between Mandela and Simon are stark. They point to the importance of making human rights more specific and particular for them to be meaningful in various people’s differing lives. The above “sketches” of Mandela and Simon are meant to illustrate the importance of making human rights more specific in order to capture the actual ways in which people live their lives even if there are degrees of similarity between them.

In this chapter I have attempted to develop a theoretical framework that may be used in a sociology of human rights in ways that make human rights specific, particular and personal; but, not without a macro location and understanding of the forces impacting on such individual levels. This has been because the universalism, generalization, formalism, rationalism and depersonalization of human rights, as indicated in Chapters 1 and 2, allow for many instances of human rights violations to continue, and do not make human rights substantively meaningful in people’s actual lives. In Chapter 3, I have suggested that a theory of articulation and portraiture are useful theoretical tools in order to generate a theoretical approach that would balance the macro and micro, structure and agency, and the individual and social. In order to demonstrate this, in Chapter 4, I have shown how this may look when applied to a particular context and in relation to particular individuals: apartheid South Africa, in relation to ‘race’, gender and sexual orientation, and, in the lives of Mandela and Nkoli.

I applied the theory of articulation by applying it to experiences under apartheid. In looking at the fields of religion, science and the political economy, I have attempted to provide a non-reductionist account of apartheid and noted the intersections among these fields in the constructions of discriminations on the basis of ‘race’, gender and sexual orientation. Throughout, I have shown how apartheid was inscribed on the bodies of South Africans, constructing a “white”, male, heterosexist Afrikaner who is anti-communist as the basis of its definition

of itself, and, in the process, othering and inferiorising “black” people, women, and gays and lesbians. However, rather than assuming a kind of determinism and absence of human agency, I have also shown how these constructions were resisted as well. At the same time, instead of only providing macro, “master narratives” that are generalized and that do not adequately account for the complexities of human lives, I applied portraiture in order to sketch the individual experiences of Mandela and Nkoli. Although I do not claim to have provided portraits of Mandela and Nkoli with the level of detail that Lightfoot-Lawrence’s accounts of portraiture would require, the sketches of Mandela and Nkoli that I provide are sufficient to illustrate the intersections between ‘race’, gender and sexual orientation, and the importance of not homogenizing and reducing people into the social categories to which they are perceived to belong. Mandela and Nkoli are both “black” men. Both were anti-apartheid, but due to their different sexual orientations their experiences as “black” men are both similar in some respects and different in many others. The significance of highlighting the complexities of experiences of Mandela and Nkoli as individuals is to emphasise that human rights provisions in relation to them need to take account of the particularities of their lives and need to be addressed substantively. Universalised, generalized, depersonal and formal equality provisions would not adequately capture the ways in which their lives were actually lived.

Mandela and Nkoli struggled against apartheid. They fought to establish a democracy in South Africa that accorded people with human rights and dignity. How much has changed in regard to human rights in the post-apartheid South African dispensation? In the following chapter, I look at the “new” South Africa and the ways in which human rights are framed within it.