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Socio-economic rights in South Africa: symbols or substance?

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BOOK REVIEW

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Socio-economic rights in South Africa: symbols or substance?, edited by Malcolm Langford, Ben Cousins, Jackie Dugard and Tshepo Madlingozi, Cambridge University Press, 2014

This comprehensive, edited volume of 15 chapters canvasses a wide range of contemporary perspectives on socio-economic rights mobilisation in South Africa, from various interdisciplinary angles. For those who have followed the topic in recent years, the volume is a veritable ‘who’s who’ of scholars and scholar-activists involved in socio-economic rights mobilisation in South Africa, and in particular constitutional litigation. Several of the numerous, and often contested views on this important sub-area of human rights have previously featured in the pages of this journal.

Following a review in the opening chapter by Malcolm Langford of the extensive literature on this topic, the book proceeds to critically explore the extent to which socio-economic rights mobilisation has had an impact. In respect of the latter, Langford seeks to differentiate between different kinds of impact by identifying ‘strategies,’ which are framed by the socio-economic rights mobilisers themselves and require a long-term perspective and short-term ‘tactics,’ which he further describes as interventions on others’ territory ‘in order to advance the strategy’.¹ Throughout the book’s subsequent chapters, this distinction is somewhat vague, although the concluding chapter revisits this aspect by emphasising the roles in which socio-economic rights have featured in both strategies and tactics, and the claimed impacts this has had, materially, politically and in relation to broader advocacy strategies.

While the editors acknowledge the difficulties of measuring causation, they boldly explore a range of different claims that socio-economic rights mobilisation has impact, both progressive (reflecting a core feature of socio-economic rights) as well as retrogressive. These claims are theoretically grounded in part one of the book across various disciplinary perspectives. Wilson and Dugard – both of whom have been directly involved in some of the key constitutional court decisions in recent years – analyse the role of constitutional litigation strategies from a largely public law perspective, while Liebenberg extends the discussion, examining socio-economic rights mobilisation also from a private law perspective, including both personal and family law. Madlingozi then brings in social-movement theory to evaluate the role in which legal mobilisation, and in particular litigation has reinforced the broader social dimensions of socio-economic rights claims. This useful characterisation of legal mobilisation – a highly contested area in which there are numerous, disputed views – emphasises one of the editors’ core implicit assertions that socio-economic rights mobilisation is much more than just doing the law. There is a further theoretical reflection on the central role of political power that has highly conditioned the possibilities of socio-economic rights mobilisation by Habib, whose influential work with Ballard and Valodia on the rise of civil society movements in the 1990s is duly noted (also by the editors of this volume).²

The claims that socio-economic rights mobilisation has had impact are empirically supported in part two of the book by reference to several themes that have been the subject of extensive litigation (land tenure, housing, health, social-security, the environment) and/or groups that have received particular attention (women, migrants and squatters). These

¹ M Langford et al (eds) *Socio-Economic Rights in South Africa: Symbols of Substance?* (2014) 20.

² R Ballard, A Habib and I Valodia, *Voices of Protest: Social Movements in Post-Apartheid South Africa* (2006).

thematic areas are not merely factual accounts of how socio-economic rights mobilisation has taken place, but are critical evaluations – again from several inter-disciplinary perspectives – of the roles in which rights-based approaches have played in advancing a range of different social claims. Particularly notable are Cousins and Hall's evaluation of the potential and limits of rights-based frameworks in advancing rural land tenure, where they conclude that:

Rights are a useful weapon in the politics of agrarian change and a necessary component of agrarian reform policies. But they should not divert attention from the need for deeper, structural change, which is needed to give substantive content to the rights defined by law....³

This statement strongly resonates with Richard Abel's earlier evaluation of human rights mobilisation in South Africa in the 1980s and 90s, where he characterised the use of law as both a 'sword' and 'shield'.⁴

Further critical reflections on other thematic areas continue the book's critical, empirical evaluation of socio-economic rights litigation in South Africa, revealing both much promise as well as a healthy dose of scepticism. The latter is especially revealed in Polzer Ngwato and Jinnah's critical evaluation of mobilising socio-economic rights for migrants, where mere access to institutions – let alone the social rights delivered by those institutions – remains highly elusive.

A remarkable feature of the book is the degree to which the authors – most of which, it has already been mentioned, have participated directly in the legal cases and/or campaigns that they later evaluated – display a high degree of critical self-reflection. Certainly there remains space for further critical reflection, as a recent article by Mdalose in relation to the work of Abahlali base Mjondolo made clear.⁵ However, the editors do set an impressively high standard for future authors on this hugely important topic and the editors furthermore make clear the futility of studying socio-economic rights through an exclusively legal lens.


Finally, this book reaffirms the importance of broader social groupings in helping to realise the potential of rights realisation, as well as the conceptualisation of 'structural change' as a crucial marker for progressive realisation, both issues that were also explored in a special issue of this journal in 2011.⁶

All in all, this book should be regarded as an essential inclusion to both long-time scholars and/or practitioners of (socio-economic) rights mobilisation in South Africa, as well as relative newcomers seeking – as many have done – to explore the potential of critical, and increasingly comparative reflections on the stunted, yet still progressive realisation of socio-economic rights in South Africa.

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<http://dx.doi.org/10.1080/02587203.2016.1211182>

³ M Langford et al (eds) *Socio-Economic Rights in South Africa: Symbols of Substance?* (2014) 182.

⁴ R Abel *Politics by Other Means: Law in the Struggle Against Apartheid, 1980–1994* (1995).

⁵ B Mdalose 'The Rise and Fall of Abahlali baseMjondolo, a South African Social Movement' (2014) 41 *Politikon* 345.

⁶ J Dugard, J Handmaker and J Klaaren (eds) Special issue on 'Public Interest Litigation in South Africa' (2011) 27 *SAJHR* 1.