

Charting change in justice

PROMINENTLY featured in *The New York Times* on 12 March this year were two separate but related stories about events in Bophuthatswana.

One reported the capitulation of Lucas Mangope to the reality of his constituents' desire to be included in the 27 April election.

The other described the white rightists' bloody attempt to defend the apartheid homeland. In what reporter Bill Keller called "the defining moment" of the day, a member of the Bophuthatswana police suddenly trained his automatic rifle on two wounded vigilantes lying in the road.

On the eve of democracy, unrest spurred by people's desire for political and economic participation in the future of their country had been capped by a grisly act of official violence.

The event manifests a common dilemma in many countries with more experience of democracy than South Africa. (Think of the recent example of the African-American Rodney King, whose beating by Los Angeles police officers – and their subsequent acquittal – led to the worst riots in United States history.)

Popular participation in political choice does not necessarily ensure the accountable and fair exercising of state power. Unless this problem is contained, particularly in the criminal justice system, the legitimacy of the new regime may be undercut.

To study this process of regime change I visited South Africa in January to see where things stood in the period prior to the election. These observations will be the foundation for a future study of changes in criminal justice over the transition period.

I observed South African Police (SAP) management, interviewed scholars, lawyers and judges, visited projects where people were working with police at all levels, and loaded up with essays, posters and manuals documenting the commitment to change.

I was struck by how the politics of liberation, for many people, had already evolved into a politics of construction. And the project of building a non-racial democracy was forging some strange alliances, especially those working on police reform.

Particularly moving for me was the moment when Zelda Holtzman of the Community Peace Foundation told me she was now working closely on police-commu-

The transition to democracy in South Africa presents an important case of regime change affecting institutions of justice. DIANA GORDON, who has written about criminal justice policy in the United States, was recently in South Africa to study the democratisation of criminal justice here.

nity relations in a Cape Flats township with an officer who had supervised her detention several years earlier.

Traditional definitions of democracy focus on its procedural aspects: popular and competitive voting, universal adult suffrage, fairly-drawn electoral districts, broad access to candidacy for office and free communication of political ideas.

I am, of course, interested in looking at how police and courts reflect those procedural elements. Will the racial composition of the judiciary change decisively as a reflection



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of voters' choices about who should lead them? Will the SAP develop rules and practices by which it demonstrates accountability to a popularly elected regime?

But I also want to examine whether and how police and courts can further the democratic process with more substantial accomplishments – the embrace of what US political scientist Robert Dahl calls "primary political rights", those rights necessary to exercise the right to self-government.

The adoption of a constitution that honours free speech, freedom of association, fair trial and equal protection under the law is of course significant. But that alone does not ensure that police will neither repress dissent nor enforce the law disproportionately against the poor, nor that courts will require

adequate and equal representation for criminal defendants.

With both the process of change and my research still in an embryonic stage, I can report only on vision, not on performance.

The representatives of the SAP and South African judiciary with whom I met expressed more commitment to institutional reform than I expected. This could of course reflect self-selection: the judges who did not return my calls requesting interviews may have been more resistant to change than those I spoke with, and several of the police managers I saw were attending a voluntary training session on issues of transition.

In addition, anything but the most general discussion of the future was necessarily speculative. None of the six judges I interviewed opposed taking aggressive action to expand the pool of black candidates for judgeships – abandoning the requirement that candidates have taken silk and thereby making some attorneys eligible – but their permissiveness on this issue has yet to be tested.

Heartfelt expressions of goodwill by police managers towards a very different future in the SAP did not preclude significant contradictions when it came down to considering the implications of that change.

"Community policing" as advocated – and only sometimes practiced – in Britain and the US is the buzzword of the profession in South Africa too, but the library at the policing training college in Paarl contained none of the recent literature on that subject.

Furthermore, a core assumption of community policing – that a trusting citizenry will provide information and assistance to the police – seemed largely unexamined by my interviewees, a particularly revealing blind spot in a country where a repressed majority has often seen the police as part of the problem, not part of the solution.

And finally it remains to be seen whether the professional sensitivity of the best police managers will spread to their colleagues and filter down to the ordinary constable.

Nonetheless, I returned from my trip greatly encouraged by a strong sense that at least some of the operatives of criminal justice in South Africa see themselves as agents of political equality in a pluralist democracy.

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