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NOTES

THE USE AND EFFECTIVENESS OF ECONOMIC SANCTIONS AGAINST NATIONS THAT VIOLATE HUMAN RIGHTS: CAN THE UNITED STATES FORCE REFORM ON SOUTH AFRICA?

"There comes a time in the life of a country when it must live up to the principles that made that country special and different in the world and in history."¹ Inspired by the notion that Americans are the vanguards of equality and justice in the free world, human rights considerations have become a major tenet of United States foreign policy.² Increasingly, decision makers recognize an obligation to seek redress for human rights violations in areas where United States influence can be asserted.³ Enthusiasm, however, for a human rights based approach to the

1. 131 CONG. REC. S11053 (daily ed. Sept. 9, 1985) (statement of Sen. Kennedy).

2. Vogelgesang, *What Price Principle? U.S. Policy On Human Rights*, 56 FOREIGN AFF. 819 (1978). For a discussion of the role of human rights in U.S. foreign policy see generally, P. BROWN & D. MACLEAN, HUMAN RIGHTS AND U.S. FOREIGN POLICY (1979); D. FORSYTHE, HUMAN RIGHTS AND AMERICAN FOREIGN POLICY (1982).

3. Vogelgesang discusses using "leverage" on U.S. aid recipients in order to develop a foreign policy that would "make Americans feel proud again." Vogelgesang, *supra* note 2, at 821-826. See also, KIRKPATRICK, HUMAN RIGHTS AND FOREIGN POLICY, in HUMAN RIGHTS AND AMERICAN FOREIGN POLICY 1 (1982). Kirkpatrick asserts:

An adequate human rights policy will also have a realistic conception of the relationships among force, freedom, morality, and power because history teaches us too that in the real world force may be necessary to reinforce freedom; and American power is necessary to protect and expand the frontiers of freedom in our time.

Id. at 11. *But cf.*, GREENBERG, IN ORDER TO SAVE IT, WE HAD TO DESTROY IT: REFLECTIONS ON THE UNITED STATES AND INTERNATIONAL HUMAN RIGHTS, in HUMAN RIGHTS AND AMERICAN FOREIGN POLICY 39 (1982). Greenberg contends:

It is my view that the active involvement of the United States in the support, promotion, and protection of regimes which are consistent violators of human rights is neither accidental nor random but is derived from the inherent requirements of the American political economy. The enjoyment of rights at home has historically depended upon the destruction of the rights of others abroad and that relationship holds to the present day. American freedoms are built upon an elaborate structure of overseas repression with which we are both directly and indirectly involved.

Id. at 41.

conduct of foreign policy must be tempered by three realizations. First, most nations consider foreign criticism of their performance on human rights an unacceptable assault on their sovereignty.⁴ Second, stress on human rights must at all times be weighed against other significant, and often paramount, policy considerations.⁵ And third, one must answer the perennial questions of: "Whose morality and at what cost to whom?"⁶ Consequently, a formulation of foreign policy which recognizes human rights considerations ultimately revolves around the determination of "What Price Principle?"⁷

Perhaps nowhere is this human rights approach and its countervailing policy considerations more evident than in U.S. relations with the Republic of South Africa. South Africa is governed under a principle of apartheid which is a comprehensive and systematic pattern of racial discrimination, containing identifiable components of both slavery and caste, which is prescribed and enforced by national law.⁸ In the United States

4. Vogelgesang, *supra* note 2, at 827. See generally, R. FALK, HUMAN RIGHTS AND STATE SOVERIGNTY (1982).

5. Vogelgesang, *supra* note 2, at 828. See also, FAIRBANKS, HUMAN RIGHTS IN HISTORICAL PERSPECTIVE, in HUMAN RIGHTS AND AMERICAN FOREIGN POLICY 87 (1982). Fairbanks maintains:

Moreover, since human rights is a goal additional to the national interest, pursuing such a policy would seem inevitably to involve sacrificing the national interest in one way or another. A human rights policy can put the national interest at risk by creating unnecessary enmities with states that have different conceptions of human rights.

Id.

6. Vogelgesang, *supra* note 2, at 819.

7. *Id.* at 841. In short, there is no set answer to the question of "What Price Principle?" Human rights goals must be weighed along with a myriad of other foreign policy considerations, in a case-by-case approach, to establish a realistic foreign policy. Ultimately, this weighing of interests dictates that the cost of pursuing a policy based on "principle" must not outweigh its potential benefits. Nevertheless, even with the vulnerability of human rights goals to this analysis, Vogelgesang asserts that "Promotion of human rights may therefore be more significant for the questions it raises than the answers it gives." *Id.*

8. McDUGAL, LASSWELL & CHEN, HUMAN RIGHTS AND WORLD PUBLIC ORDER 521 (1980). See also, South African Institute of Race Relations, What Is Apartheid? (Aug. 31, 1985) (obtainable from the South African Institute of Race Relations' Publications Department, P.O. Box 97, Johannesburg, 2000 South Africa).

The term "apartheid" literally means apartness. This refers not only to racial segregation in the social sphere, but also with regard to land ownership, freedom of movement, citizenship rights, and the constitutional structure of South Africa. Apartheid has two major aims: to separate the races, and to maintain white po-

there is an overwhelming "breadth of American revulsion" at the practice of apartheid.⁹ Virtually everyone believes that apartheid is evil;¹⁰ it requires no special study or complex analysis.¹¹ Apartheid challenges one of the most fundamental principles of American society: that all people are created equal and that they are endowed with certain inalienable rights.¹² Thus, the crux of the debate over U.S. policy towards South Africa is not one of ends, but of means.¹³ How best can the U.S. promote reforms that recognize the fundamental rights of the black majority? The U.S. must formulate policy in such a manner that South Africa's sovereignty is not threatened and vital U.S. interests are not undermined. In other words, the end must be achieved through means that do not require too great a price.¹⁴

litical control.

Id. at 1. See also, V. CRAPANZANO, WAITING: THE WHITES OF SOUTH AFRICA (1986). "Apartheid precludes any contact with the people of different races that might undermine the assumption of essential difference." *Id.* at 39. See also, J. LELYVELD, MOVE YOUR SHADOW (1985). "The theoretical justification for Apartheid is essentially Jungian: that each of South Africa's racial, ethnic, and linguistic groups has its own collective unconscious that must not be disturbed." *Id.* at 45.

9. Lewis, *The Uncertain Right*, N.Y. Times, Jan.6, 1986, at A17, col. 5.

10. 131 CONG. REC. E3867 (daily ed. Sept.4, 1985) (statement of Hon. Walter E. Fauntroy).

11. *Id.*

12. 131 CONG. REC., *supra* note 1. See also, The Declaration of Independence (U.S. 1776).

13. See, MORRIS, HUMAN RIGHTS IN VIETNAM UNDER TWO REGIMES: A CASE STUDY WITH IMPLICATIONS FOR AMERICAN FOREIGN POLICY, IN HUMAN RIGHTS AND AMERICAN FOREIGN POLICY (1982).

In making important policy choices, the statesman often has to deal with two distinct problems: the problem of choosing morally appropriate or just ends and the problem of choosing the right means to realize those ends. Neither choice is necessarily simple, though it is often the choice of means which poses the greatest moral complexity.

Id. at 137.

14. "There can and should be consistent determination to take human rights into serious account for U.S. foreign policy. Yet, stress on human rights must at all times be weighed against other factors." Vogelgesang, *supra* note 2, at 828. See also, Text of Remarks By The President To Members Of The World Affairs Council And The Foreign Policy Association (July 22, 1986). President Reagan recognized the importance of the means/end analysis when he stated: "But if we Americans are agreed upon the goal, a free and multiracial South Africa associated with free nations and the West, there is deep disagreement about how to reach it." *Id.* at 1.

SOUTH AFRICA'S LAWS, POLICIES AND PEOPLE

A. Laws and Policies of Apartheid

A cost/benefit analysis through the means/end approach requires an understanding of the internal laws and policies of South Africa. In South Africa, a person's political, civil, economic, and social rights hinge on membership in a racial group.¹⁵ The central racial classification law, the Population Registration Act of 1950, which is sometimes described as the cornerstone of apartheid, orders the assignment of every person to one of three groups: White, Coloured, or African.¹⁶

Such classifications, at least the racial and the ethnic ones, describe one's essential being. They permit exquisitely mechanical stereotyping and promiscuous generalization; they prescribe an often terrifying social distance; they provide the basis for apartheid understood in its narrower legal sense.¹⁷

In other words, "the single most important determinant of status and rights in South Africa remains the accident of birth."¹⁸ Currently, approximately 72% of South Africans are classified as black, 16% white, 9% coloured, and 3% Indian.¹⁹ Armed with this neat racial classification the government is free to legislate rights as it pleases.

One of the more onerous legislative enactments is the Group Areas Act of 1950. This Act provides for the creation of separate group areas in towns and cities for each racial group.²⁰ To further isolate and immobilize the African majority, the government has established Bantustans, or "homelands," which, under the guise of producing regional representation, limit 80% of the

15. *Study Commission on U.S. Policy Toward Southern Africa*, SOUTH AFRICA: TIME RUNNING OUT 48 (1981) [hereinafter *Policy Comm. Report*].

16. *Id.*

17. CRAPANZANO, *supra* note 8, at 19.

18. LELYVELD, *supra* note 8, at 86.

19. L. LOUW & F. KENDALL, SOUTH AFRICA: THE SOLUTION 167 (1986). These groupings can be further broken down as follows: 21% Zulus, 19% Xhosa, 13% Sotho, 9% Tswana, 3% Tsonga, 2% Ndebele, 2% Swazi, 2% Venda, and 1% other, within the black grouping; and then 10% Afrikaan-speaking and 6% English-speaking within the white grouping. *Id.* at 168.

20. *Policy Comm. Report*, *supra* note 15 at 59.

population to 13% of the country's territory.²¹ Currently, the homelands accommodate 36% of the total South African population, or 52% of the black population.²² This attempt at ensuring separate development for the races has generally led to wholesale poverty and corruption.²³ To many South African blacks, "The Bantustans are not intended to voice the aspirations of the African people; they are instruments for their subjugation."²⁴ Consequently:

These black states or parodies of black states are bound to fail, bound to turn to the white government that created them. In their failure, they nicely confirm the white man's fixed idea of "Africa" and teach blacks a lesson about their fundamental irresponsibility and dependence; the turning back confirms the white's fixed idea of himself.²⁵

Perhaps the most degrading aspect of apartheid is advanced through the Reservation of Separate Amenities Act of 1953.²⁶ This Act, which legalized the concept that "separate and unequal" treatment is acceptable, has given rise to the petty apartheid rules which delineate segregation in the routine of daily life.²⁷ In rationalizing the application of this apparatus,

21. Woods, *South Africa's Face To The World*, 56 FOREIGN AFF. 521, 522 (1978). The author also notes that the 87% happens to include the gold and diamond mines and all the developed industrial and metropolitan areas and harbours. *Id.*

22. CRAPANZANO, *supra* note 8, at xviii.

23. *Id. But cf.* Homeland administrations insist that they are not puppets of South Africa and are in fact independent. Interview with Minister Molatlhwa, Minister of Foreign Affairs of Bophuthatswana, in Mbatho, Bophuthatswana (Sept. 11, 1986).

24. M. BENSON, NELSON MANDELA: THE MAN AND THE MOVEMENT 78 (1986).

25. LELVELD, *supra* note 8, at 154.

26. The Reservation of Separate Amenities Act remains the principle foundation of segregation in public facilities. This act "allows any person in control of public premises to reserve separate and unequal facilities for different races and abolishes the powers of the courts to nullify such actions." *Policy Comm. Report, supra* note 15, at 62.

27. *Id.* at 61-62. It is also interesting to note that the United States adhered to a policy of "seperate but equal," *Plessy v. Ferguson*, 163 U.S. 537 (1896), until it was struck down as being unconstitutional, *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954). Some black Americans living in South Africa distinguish the current South Africa crisis with the civil rights movement in the United States. "South Africa's plight is not comparable to the civil rights movement in the U.S. beyond the issue of race. The one similarity is black and white. . . [b]ut the complexities here, we had nothing like that in the U.S." N.Y. Times, May 16, 1986, at A2, col. 3 (quoting John Burroughs, U.S. Consul General in Cape Town). See generally, G. FREDRICKSON,

State President P. W. Botha asserted that what some consider discrimination they may deem legitimate "differentiation."²⁸ A manifestation of this "differentiation" policy can be seen by analyzing the government expenditures on education. In terms of per capita expenditures, in 1981-82 the government of South Africa spent roughly 1,221 rand on each White child, 798 rand on each Coloured child, and 165 rand on each African child.²⁹ This inequity is one of the overriding sources of deep frustration and discontent for South Africa's black youth.³⁰ "The nation's segregated black high schools have proved a crucible of unrest over the last two years, with students boycotting classes and leading the protest against white domination."³¹

Any African who violates one of the apartheid laws finds himself subject to the Internal Security Act³² and the Terrorism Act.³³ These Acts enable the Government to silence almost anyone who poses a challenge to the regime.³⁴ The Internal Security Act empowers the minister of law and order to "ban anyone who in his opinion engages in activities which endanger or are calculated to endanger the security of the state or the maintenance of the public order."³⁵ The Terrorism Act prohibits activity "likely to endanger the maintenance of law and order [including] any act causing embarrassment to the administration of the affairs of state."³⁶ Both acts provide for detention without trial and expressly deny jurisdiction for review by the courts.³⁷

Irrespective of the vast array of statutes which permit the government to maintain "law and order," it has become increasingly necessary for the government to enact new measures under

WHITE SUPREMACY: A COMPARATIVE STUDY IN AMERICAN AND SOUTH AFRICAN HISTORY (1981).

28. *Policy Comm. Report, supra* note 15, at 61.

29. CRAPANZANO, *supra* note 8, at 115. "Teacher-pupil ratios were 1:18 for Whites, 1:24 for Indians, 1:27 for Coloureds, and 1:43 for Blacks. Per capita expenditure is considerably lower and teacher-pupil ratios considerably higher in the homelands." *Id.*, see also, *Policy Comm. Report, supra* note 15, at 113.

30. *Policy Comm. Report, supra* note 15, at 112.

31. N.Y. Times, March 4, 1986, at A1, col. 3.

32. See, J. JACKSON, JUSTICE IN SOUTH AFRICA 42 (1980).

33. *Id.* at 37-38.

34. *Policy Comm. Report, supra* note 15, at 68.

35. JACKSON, *supra* note 32, at 42.

36. *Id.* at 37-38.

37. *Id.*

a declaration of a state of emergency.³⁸ In June of 1986, State President Botha reinstated the state of emergency which he had ended only three months earlier.³⁹ "The new measures ban all unauthorized political gatherings, give police sweeping powers to make arrests and warrantless searches and detain people indefinitely without charge"⁴⁰ Government authorities state that they have detained 8,500 people 30 days or more since June 12, 1986, but civil rights monitoring groups estimate the number to be more than 15,000.⁴¹ Nonetheless, it seems apparent that "[h]eedless of overkill, the draftsmen have sought to arm the multiple white bureaucracies with powers of control in just about any circumstance in which blacks might seek to act of their own volition in a white area."⁴² In effect, civil rights have become privileges exercisable at the discretion of the government.⁴³

B. People

1) Black South Africans

The denial of basic civil rights which accompany the myriad of security regulations only serves to exacerbate tensions and reduce the likelihood that peaceful solutions can be found. As tensions mount, moderate black leaders are either discredited and replaced by those with more extreme views or the moderates themselves become more extreme.⁴⁴ For example, Archbishop, and Nobel Peace Prize winner, Desmond Tutu has long been an advocate of nonviolent protest.⁴⁵ In the face of increasing criticism from the black community for the slow pace of nonviolent

38. See generally Southern Africa Project, Lawyers' Committee for Civil Rights Under Law, 1985 Annual Report, South Africa 1985: Martial Law in the Townships (1986) (Available from the Lawyers' Committee for Civil Rights Under Law, 1400 Eye Street, N.W., Washington, D.C. 20005).

39. Wash. Post, Sept. 28, 1986, at A1, col. 2.

40. *Id.* "While they are held under the emergency regulations, detainees are not allowed to see their lawyers or relatives and their names may not be disclosed by the media." Wash. Post, July 3, 1986, at A1, col. 1.

41. N.Y. Times, Sept. 28, 1986, at A1, col. 2.

42. LELYVELD, *supra* note 8, at 88.

43. *Policy Comm. Report*, *supra* note 15, at 78.

44. *Id.* at 79.

45. The Argus, Sept. 8, 1986, at A1, col. 5.

reform,⁴⁶ Archbishop Tutu has harshened his criticism of Western leaders⁴⁷ and recognized the efficacy of alternative means of civil disobedience.⁴⁸ Tutu's tenuous position has led some commentators to assert that "[h]e has very little support or credibility among the black communities of this country," and that in effect "Tutu's constituency is abroad."⁴⁹

Another prominent moderate black leader is Mangosuthu Buthelezi,⁵⁰ the Chief of the Zulu tribe which is the largest single tribe in South Africa.⁵¹ Chief Buthelezi, a zealous advocate of democracy and the free market system,⁵² steadfastly believes in nonviolent reform and is committed to negotiating a power sharing agreement with the white government.⁵³ For his efforts, many of the more radical blacks in South Africa regard Chief Buthelezi as a collaborator with the white government.⁵⁴

Buthelezi is regarded by centrist whites and blacks as a potential future president in a post-apartheid system. But many other blacks resent the chief's willingness to do business with the Botha government, viewing him as a sellout and a puppet of apartheid who is holding back their revolutionary struggle.⁵⁵

Perhaps the best known black in South Africa is the jailed

46. In Johannesburg "[a] crowd of 40,000 thousand blacks shouted angrily and booed Desmond Tutu. . . after he told them that a meeting with the Government had produced no concessions on their grievances." N.Y. Times, Feb. 22, 1986, at A1, col. 3.

47. In response to a recent speech by President Reagan, Desmond Tutu called the speech "nauseating" and added that "the West, for my part, can go to hell." Richard Stengel, *Falling Short*, TIME, Aug. 4, 1986, at 12.

48. In a speech in Atlanta Desmond Tutu stated that if no significant changes in politics occurred soon "we start a campaign in our country of civil disobedience." N.Y. Times, Jan. 20, 1986, at A16, col. 2.

49. *The faces of Desmond Tutu*, Financial Mail, Sept. 5, 1986, at 36. The author contends that "By leading many to the belief that this country is on the brink of revolution, needing only the spark of sanctions to ignite it, he has done his cause, his flock and his country great disservice." *Id.*

50. See generally M.G. BUTHELEZI, POWER IS OURS, SELECTED SPEECHES OF SOUTH AFRICAN STATESMAN M. GATSHA BUTHELEZI (1979).

51. See *supra* note 19.

52. Wash. Post, June 30, 1986, at A17, col. 1. See also David Brock & Peter Younghusband, *Zulu Chief's Apartheid Cure: Compromise and Capitalism*, Insight, Sept. 1, 1986, at 30. [hereinafter Brock].

53. Brock, *supra* note 52, at 31. See also, Bergen Record, Aug. 12, 1986, at A1, col. 1.

54. N.Y. Times, March 31, 1986, at A1, col. 5.

55. Brock, *supra* note 52, at 30.

former African National Congress (ANC) leader Nelson Mandela.⁵⁶ In the 1940s and 50s Nelson Mandela was an advocate of nonviolent protest,⁵⁷ but in the wake of continued government intransigence he hardened his attitudes.⁵⁸ Arrested in 1962 for sabotage and plotting revolution, Nelson Mandela has remained in prison since.⁵⁹ For most black South Africans, Nelson Mandela is seen as the embodiment of the Black Nationalist Movement.⁶⁰ Recognizing the need to negotiate with Nelson Mandela, the government has offered to release him on the condition he renounce violence.⁶¹ This is a condition he is unwilling to accept.⁶²

For some in South Africa, a peaceful resolution is no longer feasible. Following the Soweto uprising in 1976,⁶³ a new generation of African and Coloured youth emerged with a new level of defiance and fearlessness.⁶⁴ For them, lurking beneath the surface of a relatively peaceful South Africa is a volcano of anger

56. See generally, Benson, *supra* note 24.

57. Benson quotes Mandela as saying in 1961:

The question being asked up and down the country is this: is it politically correct to continue preaching peace and nonviolence when dealing with a government whose barbaric practices have brought so much suffering and misery to Africans?

Id. at 105.

58. Benson quotes Mandela: "If the government reaction is to crush by naked force our non-violent struggle, we will have to reconsider our tactics. In my mind we are closing a chapter on this question of a non-violent policy." *Id.* at 104.

59. N.Y. Times, April 3, 1986, at A5, col. 1.

60. LELYVELD, *supra* note 8, at 329. See also, BENSON, *supra* note 24, at 13.

61. BENSON, *supra* note 24, at 234.

62. *Id.* at 235-239. Nelson Mandela has also denied a condition for his release that required he live in exile. N.Y. Times, Feb. 13, 1986, at A11, col.1.

63. See generally, J. KANE-BERMAN, SOWETO: BLACK REVOLT, WHITE REACTION (1978). The Soweto uprising occurred in June, 1976, when an estimated 30,000 schoolchildren gathered to demonstrate against the government. A police contingent confronted the crowd and when tear-gas failed to disperse them the police opened fire. According to government figures, 176 people, many of them children, died in the riots. J. JOYCE, THE NEW POLITICS OF HUMAN RIGHTS 116 (1978). This June black South Africans recognized the tenth anniversary of the Soweto uprising. Quoting the Rev. David Nkwee, "it is a sad occasion, but people also look up to it with pride. Because of June 16, 1976, South Africa can never be the same." Wash. Post, June 16, 1986, at A1, col. 4.

64. *Policy Comm. Report, supra* note 15, at 169. "Radical high school students have been at the forefront of the nation's violence and protest since 1984." N.Y. Times, Aug. 28, 1986, at A1, col. 1. These black youth see "themselves as the standard-bearers of a revolution whose prospects are still ill-defined." N.Y. Times, Dec. 26, 1985, at A5, col. 1. These youths, known as comrades, harshly enforce compliance with protest actions by other township blacks. N.Y. Times, Aug. 25, 1986, at A4, col. 1.

and discontent, and it is only a matter of time until the volcano will erupt.⁶⁵ The leaders of this faction, which have strong representation in the ANC, have an avowed goal of making South Africa "ungovernable."⁶⁶ Part of this effort, as stated by Oliver Tambo, the head of the ANC, is to increase the killings of black "collaborators" or those who try to work out peaceful solutions with the government.⁶⁷ Another aspect of ANC tactics has included increased attacks on civilian or "soft targets."⁶⁸ For the radical elements of South African society, like the ANC, the only way to bring about change is through revolution and the only acceptable change is black rule.⁶⁹

65. *Policy Comm. Report, supra* note 15, at 188.

66. 131 Cong. Rec. S10718 (daily ed. Aug. 1, 1985) (statement of Sen. Symms). For a detailed analysis of the African National Congress see RSA Bureau of Information, Talking with the ANC. . . (June 1986) (Published by the Bureau of Information, Private Bag X745, Pretoria 0001. Printed by Perskor Doornfontein, Johannesburg, on behalf of the Government Printer, Pretoria).

According to Dr. DuPlessy of the South African Foreign Ministry: "There are no nationalists in the ANC Executive Council, and the rank and file are generally misguided and being used." Furthermore, "We do not know how the West can buy the ANC propaganda that they are a moderate nationalist movement. Every concept of their policy objectives and strategy come directly from the Communist Party of the Soviet Union." Interview with Dr. DuPlessy, Assistant Foreign Minister of the Republic of South Africa, in the Department of Foreign Affairs, Pretoria, RSA (Sept. 2, 1986).

White, anti-government activist, Dr. Tom Lodge, states that "the ANC gets all its weaponry from the Eastern bloc" and that "the ANC will eventually control South Africa." Interview with Dr. Tom Lodge, Senior Lecturer: Department of Political Studies, University of Witwaterstrand, in Johannesburg, RSA (Sept. 12, 1986).

67. 131 Cong. Rec. *supra* note 66, at S10717. Black policemen have frequently been the targets of attack by other blacks who accuse them of collaborating with white minority rule. N.Y. Times, Jan. 22, 1986, at A10, col. 1. Also, black leaders within the provincial or homeland councils have lost credibility among blacks because of their support for the policy of homeland independence. *Policy Comm. Report, supra* note 15, at 191. "Incineration has become a favored form of execution among radical young blacks for those they deem to be the stooges of white authority." N.Y. Times, March 4, 1986, at A1, col. 3.

68. The ANC has shown "a new readiness to step up its war against white minority rule by attacking white civilians." N.Y. Times, Dec 24, 1986, at A1, col. 6. It seems the ANC has adopted a policy of using "terrorist-style bomb attacks on civilian targets." Wash. Post, July 8, 1986, at A1, col. 2.

69. *Policy Comm. Report, supra* note 15, at XX. The leader of the outlawed and exiled ANC has called for a "rapid, extensive escalation" of his organization's war against white rule and said civilians would die in the process. N.Y. Times, Jan. 10, 1986, at A7, col.2.

2) White South Africans

To understand the political and social climate in South Africa it is necessary to understand the expectations and fears of the white minority. "To be dominant in a system is not to dominate the system. Both the dominant and the dominated are equally caught in it."⁷⁰ The white minority which implements the system is by no means a homogeneous group.⁷¹ Many recognize that old answers will no longer do,⁷² but they disagree as to the pace and extent that reform should be undertaken.⁷³ For many moderate whites fear of the future is pervasive⁷⁴ and they look to God for the courage to change.⁷⁵ Unfortunately, the moderate whites, which are primarily English-speaking, do not have the impetus to evoke a lasting solution.⁷⁶ "They criticize the government, but they don't have any real solutions to our problems. They're caught up in their own opposition."⁷⁷

In contrast to the moderates that recognize the need for reform, there exists a faction which advocates a return to the old canons of apartheid.⁷⁸ Primarily Afrikaan-speaking, these whites advocate separate development with no integration between groups of different races, culture, language and religion.⁷⁹ Underlying this inflexibility is their deep-seated belief in the racial superiority of whites and a fear of the consequences of black rule.⁸⁰ For hard-line Afrikaners, the Dutch Reformed Church is

70. CRAPANZANO, *supra* note 8, at 21. See also, Wash. Post, June 4, 1986, at A1, col. 2. See also, N.Y. Times, March 9, 1986, (Magazine), at 19.

71. For a discussion of political parties and pressure groups in South Africa see LOUW & KENDALL, *supra* note 19, at 77-91. For a statistical analysis of Afrikaan versus English speaking whites' attitudes toward seven fundamental apartheid laws see SOUTH AFRICA: A PLURAL SOCIETY IN TRANSITION 314 (D. van Vuuren, N. Wiehahn, J. Lombard & N. Rhooie ed. 1985). [hereinafter A PLURAL SOCIETY].

72. *Policy Comm. Report*, *supra* note 15, at 206.

73. "We would like to speed up evolution a bit. We are trying to do that. But we can't rush things too much. If you rush things, you'll have chaos." CRAPANZANO, *supra* note 8, at 188.

74. *Id.* at 21.

75. *Id.* at 74.

76. See generally, Brock, *supra* note 52, at 32. N.Y. Times, Aug. 3, 1986, (Magazine), at 14.

77. CRAPANZANO, *supra* note 8, at 303.

78. N.Y. Times, Oct. 31, 1985, at A7, col. 4.

79. LOUW & KENDALL, *supra* note 19, at 80. See also, discussion of the Afrikaner Broederbond in, CRAPANZANO, *supra* note 8, at 33.

80. *Policy Comm. Report*, *supra* note 15, at 227.

the spiritual center of their community,⁸¹ and they look to the church to provide a biblical justification for apartheid.⁸² These Afrikaners are by no means weak,⁸³ and they view any alternative which excludes their control of power as suicide.⁸⁴

C. Reform or Rhetoric?

Juxtaposed between the rival factions within the white community is the current government headed by State President Botha. President Botha has openly committed himself to constitutional, social and economic reform which will involve blacks in political decision-making.⁸⁵ Even his critics admit that "he has shown himself to be the first Afrikaner nationalist leader with any aptitude for taking other viewpoints into account . . . and had the courage to make demands on his own people."⁸⁶ Despite his willingness for reform, President Botha has been checked by fear of a hard-liner backlash.⁸⁷ Nevertheless, some significant reform has occurred under his administration.⁸⁸

An analysis of reforms to the apartheid system must begin

81. CRAPANZANO, *supra* note 8, at 93.

82. *Id.* at 100. "The principle of separate development so as to be able to serve one's own people is in complete agreement with the Bible teaching of unity in diversity, whereas integration and assimilation weaken this diversity and reduce it to a uniformity and monotony." *Id.* However, the Dutch Reformed Church has recently questioned its own justification of apartheid. N.Y. Times, Oct. 26, 1986, at A14, col. 1.

83. See LOUW & KENDALL, *supra* note 19, at 19. See also, Wash. Times, June 2, 1986, at A1, col. 3.

84. Brock, *supra* note 52, at 30.

85. LOUW & KENDALL, *supra* note 19, at 84. See also, N.Y. Times, Feb. 3, 1986, at A2, col. 3. N.Y. Times, Oct. 1, 1985, at A6, col. 3.

86. LELYVELD, *supra* note 8, at 258. "He set out to reform and has made a tragic mess of it." N.Y. Times, Sept. 24, 1986, at A8, col. 4.

87. See Wash. Post, June 26, 1986, at A1, col. 1. N.Y. Times, Feb. 18, 1986, at A1, col. 6. N.Y. Times, March 7, 1986, at A4, col. 3. N.Y. Times, May 7, 1986, at A8, col. 3.

88. N.Y. Times, Feb. 3, 1986, at A2, col. 1. See generally, LOUW & KENDALL, *supra* note 19, at 69-70.

A process of reform was set in motion in the 1970's, with the introduction of 99-year leasehold, the relaxation of restrictions on black trading rights, relaxation of influx control, the scrapping of job reservation, the legislation of black unions and the decision to privatise all government houses in the black townships. More recently, the Mixed Marriages Act and the Political Interference Act and the Immorality Act (Section 16) were repealed, the policy of progressively opening central business districts to all races was introduced, and segregation regarding amenities such as cinemas was relaxed. Influx control is to go this year.

Id. at 70.

with the abolition of the pass laws.⁸⁹ The pass laws represented a conglomeration of statutes which prohibited blacks from traveling into or working in the so-called whites-only cities.⁹⁰ Pass laws had been one of the cornerstones of apartheid for over 70 years,⁹¹ and the cruelty of these laws is not in dispute.⁹² While their repeal does not represent an end to apartheid, it is nonetheless a significant step.⁹³ Under the new system implemented by the government, "there is no difference in the law between black and white people."⁹⁴

Other reforms initiated by the Botha government include: the legalization of black trade unions,⁹⁵ the unenforcement of the Group Areas Act,⁹⁶ the recognition of freehold property rights for blacks in black areas,⁹⁷ and the inculcation of Coloureds and Indians into a tricameral legislature.⁹⁸ Enthusi-

89. *Policy Comm. Report*, *supra* note 15, at 59-61 (describing the pass laws); Wash. Post, June 6, 1986, at A1, col. 1.

90. Wash. Post, June 6, 1986, at A1, col. 1.

91. N.Y. Times, April 24, 1986, at A1, col. 6.

92. "All South African blacks over age 16—and only blacks—have been required to carry identity books showing where they may live and work. More than 200,000 were arrested in 1984 for violating what the regime calls 'influx controls.'" N.Y. Times, April 22, 1986, at A30, col. 1. For a detailed discussion of the pass laws see AMNESTY INTERNATIONAL USA, SOUTH AFRICA: IMPRISONMENT UNDER THE PASS LAWS (Jan. 1986).

93. N.Y. Times, April 24, 1986, at A1, col. 6. Bergen Record, May 1, 1986, at A23, col. 3.

94. The Black Sash, Johannesburg Advice Office 1 (1986) (unpublished manuscript). The Black Sash is a women's anti-apartheid protest group in South Africa. See N.Y. Times, April 24, 1986, at A1, col. 6.

95. For a detailed discussion of the growth of trade unions see A PLURAL SOCIETY, *supra* note 71, at 120-171. See also, LOUW & KENDALL, *supra* note 19, at 87-88. N.Y. Times Feb. 3, 1986, at A2, col. 1.

96. Business Day, Sept. 3, 1986, at A1, col. 3. For a discussion of the Group Areas Act see LOUW & KENDALL, *supra* note 19, at 41. For example, it is reported that "In the urban neighborhoods of Hillbrow, Berea and Mayfair, an estimated 20,000 nonwhites live in open defiance of the Group Areas Act, which reserves such places for whites only. A government minister conceded this month that officials have been 'turning a blind eye' to violations of the law." Phila. Enquirer, Sept. 29, 1986, at A1, col. 4.

97. For a discussion of the Native Land Act see LOUW & KENDALL, *supra* note 19, at 35. Black people can now buy a house with a 99-year leasehold or with freehold title, but only in areas designated black urban townships. Black Sash, *supra* note 94, at 3.

98. An amendment to the South African Constitution was adopted in 1983 which established a tricameral legislature with separate representation in each house by the Whites, Coloureds and Indians. LOUW & KENDALL, *supra* note 19, at 77. For a discussion of the South African Constitution see A PLURAL SOCIETY, *supra* note 71, at 1-27. It is generally recognized that the spark which ignited the recent violence was the imposition of the tricameral legislature, which inculcated 3.5 million Coloureds and Indians into the

asm for these reforms must be tempered by the realization that "young blacks are not interested in gradual change."⁹⁹ Member of Parliament Roelf Meyer contends that as whites have moved toward the middle ground of power sharing, blacks have moved toward the unacceptable alternative of complete control of the country.¹⁰⁰ Thus, as blacks increase the use of violence, Afrikaners respond with increased internal repression.¹⁰¹ As attitudes polarize, the crucial question becomes whether change can take place fast enough to prevent a confrontation that would almost certainly produce appalling bloodshed.¹⁰²

One faction which generally seeks to avert this confrontation is the South African Judiciary. "South Africa's judiciary has a reputation, even amongst the current government's most bitter enemies, for a reasonable degree of courage and independence."¹⁰³ For example, the Supreme Court of the Natal Province ruled in a case involving the indefinite detention of blacks without trial, that certain portions of the emergency decree granting this authority were invalid.¹⁰⁴ Unfortunately, this decision was reversed by the country's highest court.¹⁰⁵ Nevertheless, at times the courts have been able to ease tensions.¹⁰⁶

U.S. POLICY

Returning now to the means/end analysis and what the U.S. can do to avert a confrontation, one mean that has received significant attention in contemporary political debate has been the use of economic sanctions as a tool for bringing about a desired

system but noticeably absented 21 million Africans. BENSON, *supra* note 24, at 224-225.

99. Brock, *supra* note 52, at 31.

100. Interview with Roelf Meyer, Nationalist Party Member of Parliament, in Cape Town, RSA (Sept. 8, 1986).

101. Wash. Post, July 16, 1986, at A23, col. 1. Wash. Times, June 23, 1986, at A1, col. 1.

102. *Policy Comm. Report*, *supra* note 15, at XX.

103. LOUW & KENDALL, *supra* note 19, at 196. See also, BENSON, *supra* note 24, at 121.

104. N.Y. Times, Aug. 12, 1986, at A3, col. 4.

105. N.Y. Times, Oct. 1, 1986, at A6, col. 2.

106. In a recent case, the judge threw out the key element of the state's case and acquitted four black trade union officials of treason. Wash. Post, June 24, 1986, at A1, col. 1. Courts have also been influential in easing press restrictions imposed under the emergency decree. N.Y. Times, Aug. 29, 1986, at A3, col. 1. *But cf.* Dugard, *Using the Law to Pervert Justice*, II HUMAN RIGHTS 22 (1983), A.B.A. Sec. Indiv. Rts. & Resp.

foreign policy end.¹⁰⁷ For much of the last decade, U.S. policy has centered around the notion of constructive engagement.¹⁰⁸ Constructive engagement represents a policy of open dialogue and interaction which sympathetically encourages change.¹⁰⁹ As a result of a perception of South African intransigence to U.S. demands and internal pressure for more stringent actions, the Reagan Administration has begun to tighten the screws on South Africa. On September 9, 1985, President Reagan signed Executive Order 12532, which outlined limited economic sanctions to be imposed on South Africa.¹¹⁰

While not entirely retreating from the concept of constructive engagement, President Reagan has initiated a new approach he terms "active constructive engagement."¹¹¹ The "active" ingredient of this new policy was the implementation of limited economic sanctions. Mr. Reagan banned the sale of computers to South African security agencies; barred most loans to the Pretoria Government; proposed a ban on the importation of the Kruggerand, the South African gold coin, subject to consultations with trading partners; and prohibited most exports of nuclear technology.¹¹² These measures were aimed "against the machinery of apartheid, without indiscriminately punishing the people who are the victims of that system, measures that will disassociate the United States from apartheid, but associate us positively with peaceful change."¹¹³

107. *Policy Comm. Report*, *supra* note 15, at 420.

108. For a discussion of the history of United States policy towards South Africa see *Policy Comm. Report*, *supra* note 15, at 341-62.

109. N.Y. Times, Sept. 10, 1985, at A1, col. 4.

110. Exec. Order No. 12532, 50 Fed. Reg. 175 (1985). The introductory comment to Executive Order 12532 states:

By the authority vested in me as President . . . considering that the policy and practice of apartheid are repugnant to the moral and political values of democratic and free societies and run counter to United States policies to promote democratic governments throughout the world and respect for human rights, and the policy of the United States to influence peaceful change in South Africa . . .

I, Ronald Reagan, President of the United States of America, find that the policies and actions of the Government of South Africa constitute an unusual and extraordinary threat to the foreign policy and economy of the United States and hereby declare a national emergency to deal with that threat.

111. N.Y. Times, Sept. 10, 1985, at A1, col. 4.

112. N.Y. Times, Sept. 10, 1985, at A1, col. 6.

113. *Id.* President Reagan reimposed the limited sanctions outlined in his Executive Order for a second year and asserted that additional measures were under consideration.

Not all factions agreed that the President's limited economic sanctions were strong enough to bring about the desired changes. Randall Robinson, co-chairman of the Free South Africa Movement, accused the President of reconciling his sympathy for the white minority government in South Africa with growing domestic opposition to his program of constructive engagement.¹¹⁴ Members of Congress accused the President of circumventing support for House Resolution 1460, the Anti-Apartheid Act of 1985.¹¹⁵ This bill, unlike the Executive Order, required stiffer sanctions in one year if no progress had been made.¹¹⁶

In response to growing domestic pressure,¹¹⁷ Congress reintroduced sanctions legislation in 1986, and in defiance of an Executive veto,¹¹⁸ enacted House Resolution 4868, the Comprehensive Anti-Apartheid Act of 1986.¹¹⁹ The Anti-Apartheid Act calls for the banning of new U.S. loans to South African businesses and the South African government, forbids new U.S. investments in South Africa (this provision does not apply to reinvestment of profits earned in South Africa), halts the importation of South African iron, steel, coal, uranium, textiles and agricultural products, severs the U.S. landing rights for South African Airways, and authorizes \$40 million in aid to disadvantaged South

N.Y. Times, Sept. 5, 1986, at A5, col. 1.

114. N.Y. Times, Sept. 10, 1985, at A13, col. 1. Mr. Robinson stated that "the South African Government will be pleased no doubt that President Reagan remains a de facto ally of that vicious regime." *Id.* At the same time, conservative critic, Burton Yale Pines, vice-president of the Heritage Foundation, asserted that "[i]t makes the whole problem in South Africa worse unless what you want in South Africa is revolution. You will see white hard-liners dig in their heels and say, 'Look what we got from Botha playing ball with the United States on constructive engagement — nothing.'" *Id.*

115. 131 Cong. Rec. H7291 (daily ed. Sept. 9, 1985) (statement of Rep. Gray).

116. 131 Cong. Rec. S11053, *supra* note 1.

117. "Apartheid has become a domestic issue during an election year in which control of the Senate is at risk." Baker, *The Sanctions Vote: A G.O.P. Milestone*, N.Y. Times, Aug. 26, 1986, at A17, col. 1.

118. President Reagan vetoed H.R. 4868 stating that the United States cannot "turn its back and walk away" from South Africa. Mr. Reagan contended that "[t]he sweeping and punitive sanctions adopted by the Congress are targeted directly at the labor-intensive industries upon which the victimized peoples of South Africa depend for their very survival." Wash. Post, Sept. 27, 1986, at A1, col. 5.

119. The House of Representatives overrode the veto by a vote of 313 to 83. N.Y. Times, Sept. 30, 1986, at A1, col. 1. The Senate override vote was 78 to 21. Wash. Post, Oct. 3, 1986, at A1, col. 4.

Africans regardless of race.¹²⁰ The law states as U.S. policy that additional sanctions will be imposed if substantial progress toward dismantling apartheid is not made within a year.¹²¹ The Act further provides that these sanctions would be lifted if certain conditions were met, including freeing Nelson Mandela, releasing political prisoners, allowing the formation of political parties, and lifting the state of emergency.¹²²

Advocates of sanctions applauded Congress' action, maintaining that "sometimes we need to feel good about who we are and what we stand for."¹²³ President Reagan, on the other hand, asked:

Are we truly helping the black people of South Africa — the lifelong victims of apartheid — when we throw them out of work and leave them and their families jobless and hungry in those segregated townships? Or are we simply assuming a moral posture at the expense of the people in whose name we presume to act?¹²⁴

Another conservative critic contended that:

Passing sanctions against South Africa is a perfect example of the Pontius Pilate school of foreign policy at work — we are washing our hands of the situation. Our actions are a perverted statement of morality. We should take our moral guidance from Christ who came into the world and deliberately associated with sinners so that he could have a positive influence on the development of their spiritual lives.¹²⁵

120. Comprehensive Anti-Apartheid Act of 1986, Pub. L. No. 99-440, 100 Stat. 1086 (1986). See also Wash. Post, Oct. 3, 1986, at A16, col. 4.

121. *Id.*

122. *Id.*

123. Rep. William H. Gray III (D.,Pa.), quoted in N.Y. Times, Sept. 30, 1986, at A1, col. 1.

124. Address by President Reagan, on his veto of H.R. 4868, Sept. 27, 1986, excerpted in N.Y. Times, Sept. 27, 1986, at A4, col. 1.

125. Conversation with William W. Pascoe, policy analyst of the Heritage Foundation (Oct. 3, 1986). See also, Gladwell, *Fact, Fancy and the Mystique of Africa*, 2 INSIGHT 8 (1986). "On a political level, there is a deepening awareness in the West about the geopolitical realities facing Africa, but the commitment is not deep, as seen in the superficial approaches many in the West have adopted: disinvest in South Africa; throw food at the starving masses. Once the specific problem is dealt with, Western interest declines rapidly." *Id.* at 7 (introduction).

Consequently, an analysis of the effectiveness of economic sanctions and the prudence of their use in the conduct of foreign policy is particularly useful in light of the enactment of the Anti-Apartheid Act of 1986.

EXERTING INFLUENCE THROUGH ECONOMIC MEANS

A. *Private Sector*

Before beginning a sanctions analysis it is necessary to provide an examination of actions which have been taken or are proposed in the private sector. The primary action taken to date is the adoption by many U.S. companies of the Sullivan Principles.¹²⁶ The Sullivan Principles were proposed by the Reverend Leon Sullivan, a black West Virginian Baptist, while serving as a member of the Board of Directors of General Motors Corporation in 1977.¹²⁷ These principles represent an employment code for American businesses active in South Africa, and they have become widely accepted today.¹²⁸ The major tenets of the code call for non-segregation in the workplace, equal employment practices, training programs for blacks, placement of blacks in supervisory positions, support for the freedom of mobility of black workers and support for the ending of all apartheid laws.¹²⁹ While these principles are voluntary and are not of themselves a solution, they do represent a part of a process to bring about fundamental change.¹³⁰

One other private sector response to the problem of apartheid which warrants mentioning is the notion of divest-

126. Sullivan, *Agents For Change: The Mobilization Of Multinational Companies in South Africa*, 15 *LAW & POL'Y INT'L BUS.* 427 (1983). Reverend Sullivan defines the principles as a "strategy of mobilizing the influence of U.S. multinational companies to contribute to peaceful change in South Africa." *Id.*

127. *Id.* at 428.

128. *Id.* at 429. Sullivan reports that presently, as a result of continuing efforts and pressures of many sorts, some 146 U.S. companies are signatories to the Principles. These signatories employ approximately 80% of those working for U.S. companies in South Africa. *Id.* Reverend Sullivan advocates education and training because, "I learned that integration without preparation is frustration." *N.Y. Times*, Sept. 9, 1985, at A12, col. 2.

129. *N.Y. Times*, Sept. 9, 1985, at A12, col. 5.

130. *N.Y. Times*, Sept. 9, 1985, at A12, col. 2. Reverend Sullivan believes that next year represents a fork in the road for South Africa and that if substantial reforms are not undertaken by May 31, 1987, he will call for the total withdrawal of U.S. corporations from South Africa. *N.Y. Times*, Oct. 22, 1986, at D22, col. 1.

ment.¹³¹ Many cities, states, universities and corporations are coming under increasing pressure to divest of all assets in companies doing business in South Africa or withdraw all corporate operations from there.¹³² For example, California recently enacted legislation which will require that state pension and university funds sell more than \$11 billion worth of securities in companies doing business in South Africa.¹³³ Similar divestment action has been taken by 19 states, 68 cities and 119 universities.¹³⁴ At least 30 cities have gone so far as to enact legislation that curtails the awarding of contracts to corporations operating in South Africa.¹³⁵ Among corporations, 39 firms pulled out of South Africa in 1985 and 22 have done so already in 1986.¹³⁶ Foremost among these firms is IBM, Coca-Cola and General Motors.¹³⁷

Proponents of divestment maintain that it will foster the economic isolation that will force Pretoria to change,¹³⁸ while

131. For a comprehensive definition of divestment. See, Chettle, *The Law and Policy of Divestment of South African Stock*, 15 LAW & POLY INT'L BUS. 445-446 (1983).

132. See generally, *The South Africa Investment Debate: Divestiture of Stockholder Pressure?*, 4 BUS. & SOC'Y REV. 16 (1984). See also, Brom, *Holding Court on South Africa*, 5 CAL. LAW 22 (1985).

133. N.Y. Times, Aug. 26, 1986, at A1, col. 3.

134. *Id.* New Jersey enacted divestiture legislation over a year ago involving \$2 billion in pension funds. New Jersey anticipates losing over \$100 million in lost interest and transaction costs from this legislation. N.Y. Times, Aug. 26, 1986, at A6, col. 5.

135. N.Y. Times, Sept. 9, 1986, at A1, col. 5. For example, a Chicago ordinance gives an 8 percent bidding preference to companies not operating in South Africa. *Id.*

136. N.Y. Times, Oct. 22, 1986, at D1, col. 4.

137. *Id.* IBM plans to continue selling its products and services in South Africa, but the business will be carried on through a new company being formed by its current employees in South Africa. The President of IBM has stated: "We are not in business to conduct moral activity, we are not in business to conduct socially responsible action. We are in business to conduct business." N.Y. Times, Oct. 22, 1986, at A1, col. 4. Coca-Cola meanwhile stated that their move was in reaction to apartheid and that they hoped to structure a deal whereby black South Africans would be able to purchase their facility. N.Y. Times, Sept. 18, 1986, at D1, col. 3. General Motors cited financial losses and apartheid as their rationale for withdrawing and asserted that it would continue to sell automotive components to its former subsidiary. N.Y. Times, Oct. 21, 1986, at A1, col. 3. *But cf.* Mobil Oil, the largest U.S. investor in South Africa, refuses to disinvest stating that "Mobil will not walk away from the problems." Wash. Times, July 25, 1986, at A1, col. 5.

138. See generally, Davis, Cason, Hovey, *Economic Disengagement And South Africa: The Effectiveness And Feasibility of Implementing Sanctions And Divestment*, 15 LAW & POL'Y INT'L BUS. 529 (1983). The authors conclude that the extensive involvement in the South African economy by U.S. corporations has no reforming effect on apartheid and, indeed, only serves to support the status quo. *Id.* at 553. Consequently, they con-

others, like noted South African author Alan Paton, believe that "those who will pay most grievously for disinvestment will be the black workers of South Africa."¹³⁹ Regardless of the effects on South Africa, divestment raises numerous legal questions for United States courts and lawmakers. These issues include: potential breach of fiduciary duty by pension trustees,¹⁴⁰ and constitutional challenges under the commerce clause, the federal foreign affairs powers, and the preemption doctrine.¹⁴¹ Nonetheless, for the purposes of this study, the effects of disinvestment can be viewed in conjunction with a sanctions analysis.

tend that "economic disengagement will weaken the South African economic system which supports the entire enforcement apparatus of apartheid and maintains the minority's total control of political power." *Id.* at 554-555.

139. Paton, *An Act of Immorality*, DISINVESTMENT, June, 1985, at 2. Those opposed to disinvestment maintain that ". . . business has been in the forefront of promoting reforms in apartheid." Wash. Post, Oct. 4, 1986, at A9, col. 1. Also, U.S. firms that are committed to fighting apartheid often stop contributing to social programs when they withdraw from South Africa. N.Y. Times, Aug. 17, 1986, at F4, col. 2. For example, one of IBM's numerous social programs called for a \$15 million grant to black education over the next five years. "In South Africa, we dedicate a far greater proportion of gross earnings to corporate responsibility programs than in any other foreign country in which we do business." IBM Operations in South Africa. (April, 1986) (unpublished manuscript).

140. See generally, Langbein, *Social Investing of Pension Funds and University Endowments: Unprincipled, Futile, and Illegal*. NATIONAL LEGAL CENTER FOR THE PUBLIC INTEREST 1-28 (1985). Professor Langbein maintains that "[a] trustee who sacrifices the beneficiary's financial well-being for any social cause violates both his duty of loyalty to the beneficiary and his duty of prudence in investment." *Id.* at 16. See also, N.Y. Times, May 16, 1986, at A35, col. 2. Economist Milton Friedman contends that "[u]niversity endowments were given for a specific purpose: to promote the educational activities of the university. The people administering these endowments are operating in a fiduciary capacity." Administrators of these endowments thus must "seek the highest return, consistent with safety, that they can." *Id.* See also, N.Y. Times, Oct. 1, 1985, at A31, col. 2. The President of the University of Miami argues that divestiture could have a proportionally greater economic impact on the universities than on South Africa. *Id.* See also, N.Y. Times, Sept. 19, 1986, at A34, col. 6 (letter to Editor). "One could reasonably conclude that those who will be effectively punished are those who stand to benefit one day from the Archdiocese pension plan." *Id.*

141. See generally Blaustein, *Disinvestment — The Constitutional Question*, NATIONAL LEGAL CENTER FOR THE PUBLIC INTEREST 75-94 (1985). Professor Blaustein concludes that "[d]isinvestment laws are of such doubtful constitutionality that legal counsel should presently advise against their passage and, where enacted, caution against their enforcement." *Id.* at 76. See also, 72 VA. L. REV. 813-850 (1986). *But cf.*, on the constitutionality of the preemption doctrine claim, 132 Cong. Rec. S12533 (daily ed. Sept. 15, 1986) (statement of Prof. Lawrence Tribe).

B. *Public Sector: Economic Sanctions*

The goal of economic sanctions is to force the target state, by the imposition of economic pain, to act in a manner that conforms more closely to the initiator's preferences and interests.¹⁴² This goal can be attained by forcing reform, or failing that, by inciting revolution as a result of the economic dislocation produced by the sanctions.¹⁴³ Either way, a non-conforming target government is replaced. This foreign policy instrument is often advocated because it occupies a middle ground between diplomatic bargaining and military force.¹⁴⁴ At a minimum, the effective application of sanctions has two requirements. First, the initiator must maintain an uneven level of economic vulnerability over the target,¹⁴⁵ and second, there must be a high degree of compliance by other actors in the international arena.¹⁴⁶ Because of the difficulties in fulfilling these requirements the primary goal of making the target state reform is often supplemented by a more realistic domestic goal. Changing the behavior of other nations may be less important to the initiator's government than addressing the desires of domestic political groups.¹⁴⁷

The realization that sanctions are often invoked to promote domestic concerns must also be tempered by the realization that sanctions can have effects which are contrary to their purpose. Often, the spectacle of a superpower wielding its economic might against a weaker nation will rouse the patriotic indignation of its population and generate a "rally-round-the-flag" effect to the target government's benefit.¹⁴⁸ Other contrary effects include: the vulnerability of the initiator to retaliatory countermeasures taken by the target;¹⁴⁹ the increased influence of conservatives,

142. Nincic & Wallensteen, *Economic Coercion and Foreign Policy*, in DILEMMAS OF ECONOMIC COERCION: SANCTIONS IN WORLD POLITICS 4 (1983). [hereinafter DILEMMAS OF ECONOMIC COERCION].

143. *Id.*

144. *Id.*

145. *Id.* at 3.

146. Wallensteen, *Economic Sanctions: Ten Modern Cases and Three Important Lessons*, in DILEMMAS OF ECONOMIC COERCION, *supra* note 142, at 120-25.

147. DILEMMAS OF ECONOMIC COERCION, *supra* note 142, at 7-8.

148. *Id.* at 6.

149. Gordon, *The Politics of International Sanctions: A Case Study of South Africa*, in DILEMMAS OF ECONOMIC COERCION, *supra* note 142, at 202.

or promoters of the status-quo in the target state;¹⁵⁰ and also an opportunity for rival powers to exploit the souring of relations between the target and the initiator.¹⁵¹

Taking these factors into consideration, it is generally recognized that economic coercion is often ineffective as a means of inducing compliance.¹⁵² The history of sanctions is one of noble purpose and flawed results.¹⁵³ Consequently, a decision maker should recognize that current economic sanctions may jeopardize the initiator's subsequent ability to pursue foreign policy goals via economic pressure. The more total is the present punishment, the more one's future capacity to apply such measures may be undermined.¹⁵⁴ Therefore, economic sanctions may serve the purpose of expressing moral disapproval best when they are of a symbolic nature and value-deprivation is kept low.¹⁵⁵

In the context of South Africa, economic sanctions seem particularly inappropriate. First, there has not been united action by the countries that comprise the sender nations. While

150. *Id.* at 198.

151. Wallenstein, *supra* note 146, at 123.

152. Green, *Strategies for Evading Economic Sanctions*, in DILEMMAS OF ECONOMIC COERCION, *supra* note 142, at 81. See generally, Wallenstein, *supra* note 146, at 91. Wallenstein outlines ten modern cases where economic sanctions have been applied and contrasts their effectiveness. On the whole, Wallenstein concludes that 8 of the 10 were unsuccessful. *Id.* at 96. The ten cases studied include: United Kingdom sanctions against the Soviet Union in 1933 for the release of British citizens; League of Nations Sanctions against Italy in 1935-36 for an end to the war on Ethiopia; Arab League sanctions against Israel in 1945 to stop Jewish settlements and prevent the consolidation of Israel; Soviet sanctions against Yugoslavia in 1948-55 to install a pro-Soviet regime; African states sanctions against South Africa in 1960 to abolish apartheid; United States sanctions against Cuba in 1960 to undermine the Castro regime; United States sanctions against the Dominican Republic in 1960-62 to create a democratic regime; Soviet sanctions against Albania in 1961 to prevent a pro-China policy; Organization of African Unity sanctions against Portugal in 1963-75 to achieve decolonization; and, United Kingdom sanctions against Rhodesia in 1965-80 to return to legal rule. *Id.* at 91. The two successes were the Soviet sanctions against Yugoslavia and United States sanctions against the Dominican Republic. *Id.* at 95.

See also, Wasserman, *Apartheid and Economic Sanctions*, 15 J. WORLD TRADE L. 366 (1981). The author contends that "economic sanctions are not going to force Pretoria to its knees. While punitive economic measures may well hurt small countries, especially developing countries with unstable economic foundations . . . they are unlikely to effect highly industrialized countries with a diversified economy." *Id.* at 367-68.

153. 131 Cong. Rec. S10715 (daily ed. Aug. 1, 1985) (statement of Sen. Eagleton).

154. DILEMMAS OF ECONOMIC COERCION, *supra* note 142, at 10.

155. Galtung, *On the Effects of International Economic Sanctions: With Examples from the Case of Rhodesia*, in DILEMMAS OF ECONOMIC COERCION, *supra* note 142, at 49.

the European community and Japan have imposed some limited sanctions, each has separate interests and has targeted separate facets of the South African economy for isolation.¹⁵⁶ Second, the sender nations seem unwilling to accept the concomitant economic repercussions on their own economies that would result from the imposition of stringent sanctions.¹⁵⁷ Third, the threat of sanctions has been looming ominously over South Africa for many years and the government has had ample opportunity to establish alternative trade routes to facilitate "sanctions busting."¹⁵⁸ Fourth, those South Africans currently living on the margin of human existence will be particularly hard hit as need rapidly increases against a stagnant supply.¹⁵⁹ Fifth, black unemployment will increase¹⁶⁰ and working conditions will deterioro-

156. The European Community recently imposed new limited sanctions against South Africa including the banning of imports of iron, steel and of gold coins and a prohibition on new investment there. Noticeably absent from the sanctions package was coal, of which the Common Market countries bought about \$1.2 billion last year, and the minerals that are vital to the steel industry. For example, South Africa supplies West Germany with roughly 70 percent of its ferrochrome, 40 percent of its manganese and 25 percent of its vanadium. N.Y. Times, Sept. 17, 1986, at A1, col. 4. Japan meanwhile, South Africa's second largest trading partner behind the U.S., has banned the importation of South African iron and steel. N.Y. Times, Sept. 20, 1986, at A4, col. 1. Nevertheless, Japan continues to import minerals and rare metals necessary for its microchip industry and has exported over \$1.8 billion in cars, machinery, and electronics. N.Y. Times, Sept. 5, 1986, at A4, col. 3.

157. British Prime Minister Margaret Thatcher noted that as many as 120,000 jobs in Britain depend on their economic relationship with South Africa. Wash. Post, June 14, 1986, at A20, col. 1. South African Foreign Minister Roelof Botha has threatened to cut-off South African imports of U.S. agricultural products in response to the imposition of sanctions. N.Y. Times, Sept. 30, 1986, at A1, col. 5.

158. Wash. Post, July 9, 1986, at A15, col. 2.

159. In response to questions concerning the impact of sanctions on emergency feeding programs for starving South African children, Ida Pearlman of Operation Hunger stated:

By that action, [further U.S. economic sanctions] we will probably immediately double our normal death rate of 50,000 children under the age of 5, a year, and that they [those who would impose sanctions] could be placing at least another 400,000 under the age of 15 at risk . . . They [those who would impose sanctions] have an absolute moral obligation to make sure that they know what the price will be and to decide whether they are prepared to live with that price.

White House Talking Points, The President's Stand Against Apartheid 3 (unpublished document) (For more information call White House Office of Public Affairs: (202) 456-7170) (also reported on NBC July 20, 1986).

160. See e.g. The imposition of limited sanctions has had a serious impact on South Africa's coal exports and jeopardizes the jobs of as many as 40,000 miners. Wash. Post, July 25, 1986, at A27, col. 1. "It is quite clear that sanctions are going to increase black unemployment. It is therefore quite clear that sanctions are going to increase black un-

rate as Western corporations withdraw and sell assets to buyers with no concern for human rights.¹⁶¹ And finally, economic sanctions seem inappropriate because the majority of the people of the receiving state — those whom the initiator is trying to help — do not favor the use of economic sanctions.¹⁶²

A survey of vital U.S. interests in South Africa also serves to moderate against any rational basis for imposing sanctions. South Africa is essential to the strategic survival of the United States and Western Europe.¹⁶³ In the Free World, only South Africa produces chromium, platinum and vanadium, which are strategic minerals essential in defense and modern industry.¹⁶⁴

rest. This is exactly what the purveyors of violence want them to do. Hunger is their ally." Buthelezi, Remarks at the Natal Agricultural Union, 96th Annual Congress (Sept. 10, 1986) (unpublished transcript of speech).

161. The new owners often try to make the business more profitable by cutting wages and dropping social spending programs. N.Y. Times, Oct. 22, 1986, at D1, col. 4.

162. For a detailed analysis see Black opinion on Disinvestment, Weighing the Survey Evidence, Lawrence Schlemmer, August, 1986.

Where the questions are posed in simple terms as a choice between continued investment or disinvestment, with no embellishments or suggestive references to political effects, groups who support sanctions or the effect on job-creation, seventy-five percent or more of rank-and-file black respondents oppose disinvestment (Schlemmer: June 1984; November 1984; HSRC July 1984; May 1985). Where the respondents are better-educated (HSRC February 1985) or are selected in a snap survey which tends to bias sampling away from industrial workers towards easily interviewed unemployed youth or service workers (Star, February 1985) the opposition to disinvestment drops but a majority nevertheless opposes disinvestment. In all these instances of neutral forced choice the respondents split in favour of continued investment, putting economic welfare above vaguely understood political considerations.

Id. at 7.

It is certainly true that a majority of black spokespeople, members of the middle class intelligentsia, students and clergymen support sanctions. This is not surprising since their interests are political rather than economic. They would undoubtedly benefit from an economic collapse if it meant a consequent collapse of the South African government — an unlikely outcome.

Id. at 10. See also, ORKIN, THE STRUGGLE AND THE FUTURE, WHAT BLACK SOUTH AFRICANS REALLY THINK (1986). A survey of the Sunday Times of London found that "[t]hirty-nine percent had never heard of sanctions or had no opinion, while 32 percent opposed them and 29 percent favored them." Wash. Post, Aug. 3, 1986, at A21, col. 1.

163. See generally, Robert Hanks, *Southern Africa and Western Security*, FOREIGN POLICY REPORT 52 (1983). See also, Rhoda Plotfein, *The United States and South Africa: The Strategic Connection*, CURRENT HISTORY 201 (1986). See also, South Africa in World Strategy. The Strategic Importance of South Africa in the East-West Struggle. Special Brief No. 38 (1966). See also, Wash. Times, July 29, 1985, at A1, col. 2.

164. Wash. Times, July 31, 1985, at A1, col. 2. Together, South Africa and the Soviet Union hold some 95 percent of the world's vanadium reserves, 94 percent of its manga-

South Africa also has control of the shipping lanes around the Cape which provide the West with much of its oil.¹⁶⁵ In this regard, South Africa represents the jugular vein of the West.¹⁶⁶ These geological and geographical realities make it crucial for the West to prevent Soviet hegemony over the region.¹⁶⁷ All semblances of human rights considerations and reform would succumb to a primary U.S. strategic concern in an East/West balance of power struggle over South Africa.¹⁶⁸

These vital U.S. interests can be fostered through the advancement of secondary interests which inculcate Western values into South African society and promote reform. These secondary interests include: the recognition of a need for human rights developments,¹⁶⁹ the maintenance of satisfactory diplo-

nese, 90 percent of its platinum group metals, 84 percent of its chrome, and an important proportion of other strategic minerals." Plotkin, *supra* note 163, at 202. "Without strategic minerals like chromium, manganese and the platinum group metals, we really couldn't make a jet engine." *Id.* at 201.

165. *Policy Comm. Report, supra* note 15, at XXIII. "The United States and many countries in Western Europe remain heavily — some critically — dependent on the Cape Route flow of petroleum." Hanks, *supra* note 163, at 10.

166. *Wash. Times*, July 29, 1985, at A1, col. 2.

167. *Id.* The author asserts that "in sum, the blunt fact remains that South Africa represents the jugular vein of the West, and that even if South Africa had no controversial and unpopular racial and ethnic regulations, that country would be a target of Soviet imperialism Therefore, they use what is called in Soviet jargon active measures that entail propaganda, subversion, agents of influence, disinformation and other techniques implemented primarily by the KGB in cooperation with all Soviet agencies and assets to bring about the gradual collapse of our will to resist." *Id.*

Hanks contends that the Soviets are seeking to establish hegemony by isolating South Africa with a cordon of Marxist states, running from coast to coast across the lower portion of the continent. When completed, this cordon would consist of Angola, South West Africa (Namibia), Zambia, Botswana, Zimbabwe and Mozambique. Hanks, *supra* note 163, at 49.

168. "The earlier African view that the U.S. regarded African countries basically as pawns in the cold war, and that it tilted naturally toward white-ruled South Africa out of an underlying racial bias, still lies fairly close to the surface." Ottaway, *Africa: U.S. Policy Eclipse*, 58 *FOREIGN AFF.* 646 (1980). "One of the most important areas in the east-west conflict is South Africa and that is why the propaganda of the Communist countries has skillfully exploited western guilt, ignorance and a genuine desire to do good, and so succeeded in achieving a degree of isolation of South Africa and certainly a preoccupation with the 'colour problem.'" South Africa in *World Strategy, supra* note 163, at 1.

169. *See generally, supra* note 2. *See, e.g., JACKSON, supra* note 32. "South Africa, with its vast network of statutory laws, is a land where the black man, against whom the majority of the laws are directed, at some time during his lifetime almost invariably finds himself in prison. This has become generally accepted even by the courts Black prisoners are treated as though they were members of a lower species." *Id.* at 222.

See, e.g., The United States government recently donated \$96,000 for legal aid to

matic and commercial relations,¹⁷⁰ and the resolution of regional conflicts which threaten stability.¹⁷¹ A fundamental element of all these interests, both primary and secondary, is U.S. involvement. Any foreign policy approach which serves to isolate South Africa, like sanctions, may provide moral exoneration for its promoters, but does not protect U.S. interests.

A final consideration in the sanctions equation involves the South African response. Louis Nel, Deputy Foreign Minister of South Africa, asserted that sanctions, however mild, impede peaceful reform because the resulting economic deprivation brings an increase in tension and frustration and a consequent radicalization of communities.¹⁷² Recent events lend credence to the claim that external influences that strike at the economic base of society only serve to polarize conflicting factions and destabilize the situation. Since the imposition of sanctions the government has stepped-up internal repression. Foreign television has been banned from reporting incidents of internal strife and street violence,¹⁷³ plans have been made to expel the nearly

blacks in human rights cases. Wash. Post, Sept. 27, 1986, at A19, col. 1. For a breakdown of United States aid to South Africa, see Wash. Post, Aug. 5, 1986, at A17, col. 1.

170. One major international commercial concern is South Africa's repayment of its foreign debt. South Africa's debt troubles have been more political than economic. Pretoria froze its debt repayments after major creditors . . . refused last August to renew short-term loans that were maturing. Of the \$14 billion debt, British banks hold about \$5.5 billion, American banks \$4.5 billion and West German, Swiss and French banks \$4 billion. All of these institutions became worried about the risks of lending to South Africa following months of clashes between blacks and security forces in the country's segregated townships. The American banks, in particular, were the targets of an outspoken anti-apartheid movement. N.Y. Times, Feb. 18, 1986, at D1, col. 3.

171. In January, South Africa imposed a blockade on the country of Lesotho, a small independent nation surrounded by South Africa. The Prime Minister of Lesotho, Leabua Jonathan, accused Pretoria of trying to overthrow him by having the army turn against him. N.Y. Times, Jan. 21, 1986, at A3, col. 1. After 20 days of economic blockade the government of Lesotho was overthrown in a bloodless coup. South Africa's black ruled neighbors saw this as a bad omen because for the first time, with its blockade, Pretoria seemed to have used economic muscle to contribute to the downfall of a black leader whose policies it disliked. N.Y. Times, Jan. 21, 1986, at A3, col. 1. For a discussion of the current war in Angola see, Jonas Savimbi, *The War Against Soviet Colonialism*, POLICY REVIEW 18-24 (Winter 1985). South Africa has proposed a linkage theory whereby they would withdraw their troops from South West Africa (Namibia) if Cuba would withdraw their troops from Angola. This condition has not been accepted. N.Y. Times, March, 5, 1986, at A7, col. 1.

172. N.Y. Times, Sept. 10, 1985, at A12, col. 1.

173. N.Y. Times, Nov. 3, 1985, at A1, col. 6. The Government contended that the foreign press was inciting violence for its own aims and presenting an unfair picture of

1.5 million foreign black workers,¹⁷⁴ stringent restrictions have been placed on a number of former detainees,¹⁷⁵ economic pressure has been increased against vulnerable neighboring countries,¹⁷⁶ further restrictions have been placed on the United Democratic Front, the country's largest anti-apartheid movement,¹⁷⁷ and the government has reinstated its policy of forced removal of blacks from reclassified areas.¹⁷⁸

Further isolation can be seen both internally and externally. Internally, the far-right, which advocates a return to the traditional canons of apartheid, scored significant successes in five recent by-elections against the more moderate Nationalist Party of State President Botha.¹⁷⁹ Externally, Botha has threatened to withhold exports of chromium, a strategically important mineral, to the U.S. and Western Europe. Botha warned that by digging a hole for South Africa, the West could be digging a hole

events, thus stirring protests and economic sanctions from abroad. *Id. See also*, N.Y. Times, Nov. 12, 1985, at A15, col. 1.

174. Pretoria has repeatedly warned that this nation is the major stabilizing force in southern Africa and that the imposition of punitive economic measures would hurt neighboring countries that are closely linked to its well developed economy. N.Y. Times, Nov. 12, 1985, at A15, col. 1.

South Africa has singled out Mozambican workers for expulsion in retaliation for purported assistance to the ANC in violation of the Nkomati Accord. N.Y. Times, Oct. 9, 1986, at A14, col. 1. The 55,000 expelled Mozambican workers represent about \$75 million in estimated earnings or one-third of Mozambique's dollar earnings. N.Y. Times, Oct. 22, 1986, at A1, col. 3.

175. N.Y. Times, Nov. 14, 1985, at A3, col. 1.

176. South Africa has begun to take retaliatory action against black-ruled neighboring states that favor sanctions. Wash. Post, Aug. 7, 1986, at A28, col. 1. Currently, frontline states depend on South Africa's transportation network for 68 percent of their import-export trade. Wash. Post, Sept. 28, 1986, at A27, col. 1. "Zimbabwe is 90 percent economically dependent on South Africa and its collapse would be swift, dramatic and highly visible — giving the rest of the world pause to ponder." Wash. Times, June 23, 1986, at A1, col. 4. Furthermore, South African Foreign Minister Roelof (Pik) Botha, has warned that "neighboring black countries would be the first to suffer if the West imposed sanctions against South Africa." N.Y. Times, Aug. 24, 1986, at A1, col. 6.

177. The government banned foreign financing for the United Democratic Front. The UDF was formed in 1983 to challenge the new constitution. N.Y. Times, Oct. 10, 1986, at A11, col. 1.

178. For the first time in over two years the government has ordered the removal of 10,000 Blacks from an area to further segregate them from white residential areas. N.Y. Times, Oct. 18, 1986, at A3, col. 1. *See also*, N.Y. Times, Oct. 20, 1986, at A15, col. 4.

179. The results were expected to indicate how much white resistance existed to the Government's proposed limited changes in South Africa's policies of apartheid. N.Y. Times, Oct. 31, 1985, at A6, col. 4.

for itself.¹⁸⁰ This confrontational response to external pressure is a by-product of a "laager mentality."¹⁸¹ Afrikaners pride themselves on being strong and "will not allow themselves to be humiliated in order to prevent sanctions."¹⁸² Consequently, the resulting isolation and repudiation only serves to exacerbate tensions, polarize positions, and lead down the path of revolution.

CHANGE IN SOUTH AFRICA

An analysis of U.S. foreign policy in relation to South Africa that asserts that stringent economic sanctions are not the solution is incomplete. A constructive study must include a hypothesis as to what will work. How best can the U.S. foster reform in South Africa that will recognize the blacks' rights in the democratic process, yet not subject the minority to domination by the majority? Unfortunately, most Afrikaners cannot envisage an acceptable alternative to apartheid that could ensure their survival as a nation.¹⁸³ Perhaps the only acceptable avenue will be one which recognizes a slow, but steady, change that transforms the black work force into a skilled labor market.¹⁸⁴ Consequently, economic growth will become the chief subverter of apartheid, requiring, as it does, the enlistment and elevation of blacks in the labor and managerial forces.¹⁸⁵ Changes in the economic sector will dictate corresponding changes in social rights, such as improved housing and increased education, that will effectively and peacefully serve to dismantle apartheid.

The country's economy is the most effective engine of social transformation, compelling whites to grant blacks precisely the training and education, the livelihood and personal rewards, the choices of where to live and work, the associations and organizations, the sense of their own

180. N.Y. Times, Oct. 24, 1985, at A1, col. 3.

181. N.Y. Times, June 15, 1986, section 4, at 1., col. 1.

182. *Id.*

183. de St. Jorre, *South Africa: Is Change Coming?*, 60 FOREIGN AFF. 106, 115 (1981).

184. *Policy Comm. Report*, *supra* note 15, at 96-100.

185. Hutchinson, *Reagan and South Africa: The Case for Urgent Understanding*, National Review Nov. 1, 1985, at 32. See also, N.Y. Times, March 6, 1986, at A26, col. 1. Some contend that capitalism is apartheid's most lethal opponent. West, *Dancing to the Antiapartheid Beat*, INSIGHT, Aug. 18, 1986, at 72.

power and community, that apartheid would deny them.¹⁸⁶

Furthermore:

Economies have a more powerful effect on the course of events than any other factor. Almost everything else — politics, law, education, unemployment, poverty, unrest and so on — tends to be a consequence of economic processes. The real issues behind virtually every piece of legislation are economic: the motives are economic, the means are economic and the consequences are economic.¹⁸⁷

Armed with the economic might, blacks can promulgate peaceful reform in South Africa.¹⁸⁸ For reform to be meaningful the black majority must control its destiny.¹⁸⁹ The U.S. should not try to superimpose American morality on South Africa.¹⁹⁰ For example, while Americans cling dearly to the notion of majority rule, or one-man-one-vote, in Africa that is not the norm.¹⁹¹

Fundamental differences must be recognized in any examination and application of international politics in contemporary Africa. To ignore them would lead to mis-

186. 131 Cong. Rec. S11043 (daily ed. Sept. 9, 1985) (statement of Sen. Hatch).

187. LOUW & KENDALL, *supra* note 19, at 48.

188. With the growth of trade unions blacks have begun to exert more influence over living and working conditions. Unions have used strikes to protest intolerable working conditions. N.Y. Times, Oct. 2, 1986, at A3, col. 1. Furthermore, in recent months unions have moved away from apolitical positions and are now addressing political concerns. Wash. Post, June 27, 1986, at A28, col. 4.

189. *Policy Comm. Report*, *supra* note 15, at XXI.

190. "[Americans] are agreed on certain fundamental propositions: that human rights, if not exactly an American invention, are best defined as we understand and practice them in the United States; that the United States is the symbol of freedom in an illiberal world; and that the United States has acted in a reasonably consistent manner over the years to protect and extend the practice of human rights in the community of nations." GREENBERG, *supra* note 3, at 40.

191. South Africa is not alone in denying blacks the opportunity to choose their government at the ballot box. Over 85% of black Africa is disenfranchised. Wolfson, *Heart Of Darkness*, 34 POLICY REVIEW 42 (1985). Oppressive black governments claiming to be victims of South African "destabilization" should not automatically earn external acceptance as the legitimate bearers of the standard of majority rule. Weisfelder, *Human Rights under Majority Rule in Southern Africa: The Mote in Thy Brother's Eye*, in HUMAN RIGHTS AND DEVELOPMENT IN AFRICA 91 (1984).

understanding and misconceptions. Although the European colonial interlude in Africa introduced Western concepts and ideas in its bid to westernize Africa, it did not succeed in obliterating the basic cultures of the African peoples. The danger is not so much in Africa accepting Western cultures and ideas; the danger is in the threat to the destruction of the African culture.¹⁹²

With this limitation in mind, what reforms can placate all aspects of the South African equation? First, the majority must in some way be brought into the political process.¹⁹³ While outright majority rule seems unlikely, other alternatives are available. State President Botha stated in his recent speech to the opening session of Parliament that he would negotiate the establishment of a "national statutory council" consisting of government officials and black leaders to advise the government on matters of common concern.¹⁹⁴ By itself, this is a minor concession in that the council would have no real power of its own. But, the introduction of blacks into the political process could pave the way for more meaningful structural reforms.

It is difficult to envisage a formula for structural reform that will appease all facets of South African society. In recognition of their multi-ethnic character, one commentator suggests: "Power must be devolved from central to local government. Social, racial, ethnic and economic decisions must be returned to the people they concern, and central government must be limited to aspects of administration which are not conflict-provoking."¹⁹⁵ This decentralization of power would then lead to the adoption of a canton system of government based on the Swiss model.¹⁹⁶ This system would ensure "that there is neither majority nor minority group domination, and that one political party cannot impose its will on the whole country."¹⁹⁷ Under a canton system the central government would have strictly limited power

192. Mojekwu, *International Human Rights: The African Perspective*, in INTERNATIONAL HUMAN RIGHTS: CONTEMPORARY ISSUES 93 (1980).

193. *Policy Comm. Report*, *supra* note 15, at XXIV.

194. Smith, *Apartheid With a Smiling Face*, TIME, Feb. 10, 1986, at 60.

195. LOUW & KENDALL, *supra* note 19, at 71.

196. For a detailed outline of the proposed canton system, see LOUW & KENDALL, *supra* note 19, at 121-156.

197. *Id.* p. 126.

and it would serve as an agent for the protection of cantons and the basic rights of the citizenry.¹⁹⁸

A second proposal for structural reform, as advocated by Chief Buthelezi, is that of regional power sharing.¹⁹⁹ Chief Buthelezi contends that, "[r]eal change will not ultimately be successfully imposed from on high. Real change will work upwards as the Government works downwards. Both the upward movement and the downward movement factors of change are vital."²⁰⁰ Consequently, in the Kwazulu-Natal province, negotiation is underway to establish a regional multi-racial legislature elected on a proportional one-man-one-vote basis.²⁰¹ Proponents of power sharing contend that if multi-racial regional government can be successfully established in the Kwazulu-Natal region it will act as a powerful incentive for a deracialization of the rest of the country.²⁰²

A final structural reform which warrants mentioning is that of cooperative decision making between groups in a complex democracy.²⁰³ This model rejects the notion of western democracy on the theory that it results in "winner takes all" and thus, would lead to domination by one group over others.²⁰⁴ To protect minority rights, this model would ensure guaranteed representation in the legislative structure of the country for each group and each group would participate on an equal footing with every other group regardless of size.²⁰⁵ Proponents of this system contend that any degree of simplification, such as the western concept of democracy, would be a step away from democracy towards authoritarian rule.²⁰⁶

To facilitate the process of structural reform, whatever form

198. *Id.* p. 147.

199. See generally, Buthelezi, *The Reconciliation of Black and White Interests in South Africa — A Proposed Agenda* 166-177, in *SOUTH AFRICA — THE ROAD AHEAD* (G. Jacobs ed. 1986).

200. Buthelezi, *supra* note 160, at 4.

201. Buthelezi, *supra* note 199, at 175. This effort is known as the Kwazulu-Natal Indaba. See Bill of Rights of KwaZulu-Natal (adopted July 10, 1986) (Available at P.O. Box 2925, Durban 4000, Republic of South Africa).

202. Buthelezi, *supra* note 199, at 176.

203. See Von Der Merwe, *Reflections On A Political Future*, in *SOUTH AFRICA-THE ROAD AHEAD*, *supra* note 199, at 140-158.

204. *Id.* at 154.

205. *Id.*

206. *Id.* at 158.

it may take, the government can ease tensions by undertaking social reform. One meaningful reform would be to release black political prisoners.²⁰⁷ Another might be the release of former ANC leader Nelson Mandela.²⁰⁸ By releasing Mandela, Botha would appease many foreign critics and avert the martyrdom that would result were the aging Mandela to die in prison.²⁰⁹ In conjunction with this, Botha should charge or release the thousands of detainees that have been confined since the imposition of the state of emergency.²¹⁰ Ultimately, for reform to be effective, blacks in South Africa must be able to look to the legal system as a forum to protect their rights, not abuse them.²¹¹

And finally, the South African Government must provide support for the black leaders that advocate peaceful change.²¹² While radicals tend to portray these individuals as "collaborators," the government should try to establish them as effective black leaders. By repealing many of the "petty" apartheid laws that are so demeaning the government could restore respect for the system of law and the people who are willing to work within it.

CONCLUSION

If the desired foreign policy end is to force reform without jeopardizing other vital interests,²¹³ the means should not be made subservient to domestic moral fervor. The U.S. needs to support factions in South Africa favoring peaceful reform,²¹⁴ and not adopt a policy which will polarize opposition. Ultimately, the solution to the South African crisis must emerge from within.²¹⁵ This is not to say that the U.S. cannot play a leading role in

207. "All the most influential leaders of the African people are today in jail — the leaders who might be expected, by education and experience, to form a parliamentary partnership with the whites in a democratic transition. JOYCE, *THE NEW POLITICS OF HUMAN RIGHTS* 119 (1978).

208. *Playing the Mandela Card*, NEWSWEEK, Feb. 24, 1986, at 36.

209. *Id.*

210. *Id.* at 38.

211. *See generally*, JACKSON, *supra* note 32; International Commission Of Jurists, *South Africa and the Rule of Law* (1960).

212. *Policy Comm. Report, supra* note 15, at 439.

213. Crocker, *South Africa: Strategy For Change*, 58 FOREIGN AFF. 324 (1980). Crocker, *South Africa: Strategy For Change*, 58 FOREIGN AFF. 324 (1980).

214. *Policy Comm. Report, supra* note 15, at XXI.

215. *Id.*

easing tensions and providing support, but in the process, South Africa's sovereignty cannot be compromised. Toward this end, strictly limited sanctions, such as those employed under Executive Order 12532, while generally ineffective as a coercive measure,²¹⁶ do send an affirmative statement of condemnation without imposing the negative side-effect of indiscriminate economic deprivation. Accordingly, while brandishing the threat of a stick, the U.S. should not be adverse to offering the benefits of a carrot when constructive steps are taken.²¹⁷ Such a policy, within realistic means limits, will promote legitimate human rights ends and foster the economic growth that will dismantle apartheid.

R. Blair Thomas

216. Green, *supra* note 152, at 81.

217. Cotter, *South Africa: What Is To Be Done*, 58 FOREIGN AFF. 274 (1980). See also, Hanks, *supra* note 163, at 67.

While it may seem a difference of semantics rather than substance, it is nonetheless true that the carrot generally works better than the stick. That is to say, if those Western nations, which have been exerting intense pressure on the Republic of South Africa to change domestic laws and regulations, would let it be known in Pretoria that the current efforts toward reform are understood and applauded and that further advances will generate commensurate changes in Western attitudes toward the Republic, the interests of all concerned would be better served.

Id. at 67.

