

We never win where it counts: Sportswashing, law, and ‘freedom’ in post-1994 South Africa

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Introduction

‘Sport has the power to change the world. It has the power to inspire. It has the power to unite people in a way that little else does.’

- Nelson Mandela

Of the many lies South Africans have been told since the formal end of apartheid, the idea that sports can unite the nation is the most frustrating one. Realistically speaking, no one truly believes that kicking a ball will wipe away centuries of conquest, plunder, and systemic oppression followed by decades of dehumanisation, denial of human rights, and general neglect. Yet, as the South African rugby team came closer and closer to winning the 2023 Rugby World Cup (RWC), many began to proclaim that winning the RWC would unite the country, once and for all.

While not many would immediately take the law in consideration when thinking about the RWC, I couldn’t help but notice the parallels between two narrative tools—namely, transformative constitutionalism and sportswashing—undergirding these two projects. Both champion transformation whilst remaining rooted in a context of racial and class domination. Both call on South Africans to ignore their material reality and celebrate superficial, symbolic wins. Both ultimately seek to distract us from more pertinent issues in the country. All in all, both these narratives are little more than sweet nothings, whispered in the ears of a haggard population, that do nothing but bar us from acquiring freedom.

For purposes of this opinion piece, freedom means breaking free from South Africa's colonial and apartheid past. It means unravelling South Africa's history of injustice and replacing it with one in which all are treated justly and humanely, amongst other things.

While I acknowledge that freedom connotes multiple mutually constituting projects, the focus of this piece is what I believe has been presented as South Africa's primary freedom project—that is, uniting the nation.

This opinion piece will explore how sportswashing and the notion of transformative constitutionalism are used to convince South Africans that the country's primary freedom project—unity—has been actualised, while that is far from the truth. The article is divided into three main sections. The first section explores the very peculiar use of sportswashing in the South African context. While it is mainly used to distract people from social and economic issues, as is the case in other countries, in South Africa it has an added effect of brainwashing people into believing that unity has already been acquired. Section two illustrates that 'transformative constitutionalism' has had the same effects as those championed by sportswashing. By arguing that South Africa's continued preoccupation with symbolic freedoms has done nothing to help free us from the shackles of the past. The third and final section demonstrates that post-1994 South Africa will continue to dish out losses for South Africans until we turn our attention to material matters.

South Africa 0 – 1 Narrative tools: Sportswashing is more than a distraction.

Derived from the term 'whitewashing', sportswashing refers to the use of sports to improve a country, institution, or even individual's reputation (Towriss 2022; Fruh, Archer and Wojtowicz 2023: 102). The most popular examples of sportswashing countries are Qatar, apartheid South Africa, and Nazi Germany. Through sportswashing, people—both inside and outside the country—generally end up viewing the sportswasher in a more positive light, though no material actions were taken to rectify the country's moral violations (Fruh, Archer and Wojtowicz 2023: 103). Sportswashing usually occurs in one of three ways: distraction, minimisation, and/or normalisation (Fruh, Archer and Wojtowicz 2023: 102). These positive impressions replace the negativity associated with the relevant country's violations.

From the foregoing, it might seem a bit bizarre to implicate the South African government as a sportswasher in the case of the RWC. South Africa did not host the RWC, meaning

that it was not at the forefront of sculpting a narrative. The country is not currently under fire for substantial moral violations. The RWC was not used to improve South Africa's reputation and—after the initial high of winning the RWC wore off—many returned to their normal lives, with hopes of unity and shared strength quickly wearing off.

This is what makes sportswashing in the South African context so distinct. Rather than attempt to sanitise the South African government's reputation, sports are strategically used to convince South Africans of a notion that has never been proven to be true, namely that the people of this country are united. By pushing the narrative of sports bridging the gaps between people and uniting them in unparalleled strength, sports convince South Africans that we are not only closer to remedying the injustices permeating throughout the very fabric of this society, but that we have already done so. Sportswashing does not just tell South Africans that unity and equality will arise in some distant future, but that it is already here.

One does not need to look far to realise that this is not true. Having woken up from the haze of the RWC, South Africans were plunged back into rolling blackouts, continued to contend with the country's unflinching racialised capitalism, and accepted that freedom is limited to having a black RWC winning captain. But that is not all. While preoccupied with sports, the majority of South Africans were not privy to recent and important developments within the country, most notably those pertaining to the President's alleged theft scandal and illegal mining (Cotteril 2023; Reuters 2023).

In this way, then, South African sportswashing uses all three tactics to craft a freedom that only exists in people's imaginations. It distracts South Africans from important events in which they might have a direct stake. It then minimises material reality by making it seem as though the task of bringing forth true freedom is as easy as uniting through a sports event and then, having distracted people from and minimised reality, it normalises the country's socioeconomic issues. But the media, through sportswashing, is not alone in perpetuating symbolic freedoms.

South Africa 0 – 2 Narrative tools: Transformative constitutionalism is more than a failure.

Proponents of transformative constitutionalism believe that the law should be used to bring forth substantive equality and create an equal society (Klare 1998: 150; Langa 2006: 352). Finding its roots in the preamble of the constitution of the Republic of South Africa,

Act 200 of 1993, this egalitarian society is one in which people peacefully co-exist with each other, according to Langa (Langa 2006: 352). The constitution of the Republic of South Africa, 1996 (the constitution) is at the forefront of creating this envisaged society (Klare 1996: 152).

Many legal scholars have explicated transformative constitutionalism's failure to bring forth the society it envisages. According to Modiri (Modiri 2018: 304), the constitution prevents South Africa from bringing forth true liberation due its defective 'political, conceptual and ideological' foundations. Put differently, rather than create an egalitarian society, the constitution maintains the power relations emblematic of colonial-apartheid South Africa (Modiri 2018: 305). Transformative constitutionalism, despite purporting to promote transformationⁱ, has failed to engage with systemic issues endemic in the country, argues Sibanda (Sibanda 2020: 401). Rather, it serves the purpose of a 'middle ground or place of compromise' where discourse around an ideal South Africa abounds, but it is never actualised as those engaging in the debates remain staunchly in their own predilections (Sibanda 2020: 395).

Proponents of transformative constitutionalism believe that the courts and the constitution should be used in revolution's stead. However, as has been indicated above, the constitution is not changing the country. It is protecting existing hegemonies. Because the constitution is venerated over all else, the forms of domination and relations characteristic of colonial and apartheid eras persist (Modiri 2018: 305). One of these relations being disunity between the different groups within the country.

Yet, this reality remains unacknowledged. It is presumed from the writings of the transformative constitutionalism proponents. This, then, leads to my second argument. Transformative constitutionalism minimises reality by presenting discourses in the South African legal cultureⁱⁱ as the primary issues faced by the country. For instance, Klare problematises the failure of judges to acknowledge the '[classical] liberal political tradition' which informs the way they interpret transformative constitutionalism (Klare 1998: 178). He also speaks of South African legal conservatism, which in the context of South African legal culture, refers to the judges' tendency to utilise highly technical reasoning when reaching legal conclusions, as opposed to a political ideology (Klare 1998: 168).

These debates distract people from the need to bring forth true change by centring their debates around which judge showcased judicial activism, which court failed to facilitate

substantive justice, and which chief justice misapplied a constitutional principle as opposed to what is going on beyond these very narrow sects of society. It normalises the socio-economic issues plaguing the country by presenting these issues as mere tools of illustration, thereby questioning whether the constitution and transformative constitutionalism were effectively used by the courts.

Like sportswashing, transformative constitutionalism distracts from the moral violations in the country. Unlike sportswashing, it does not suggest that unity has been accomplished. Instead, transformative constitutionalism presupposes unity. Because unity already exists in their analyses, legal scholars' debates around what is happening in the legal sphere are thought of as the most pertinent matters in the country. These debates are, by and large, of little consequence for the rest of the populace. These, instead, distract from people's material needs.

South Africa loses: The problem with presenting unity as freedom.

The idea of uniting the country is one many South Africans seem incredibly preoccupied with, to the detriment of projects which I believe to be more important. A South Africa that is more 'united'—whatever that is supposed to mean—is of little worth to me if that unity exists alongside racial, class, and gendered domination. While these and many other forms of oppression persist, there cannot be unity.

Unity is not freedom—least of all unity that has an expiration date inextricably bound to a sports tournament. When one considers all the events that must occur before this country can actually be united, then claims of unity should not be at the forefront of our minds.

Unity in present-day South Africa represents a symbolic freedom. It is a freedom with no substance. It will not end the water crisis in Hammanskraal. It will not end the gang violence in Cape Town. Ultimately, it will not break us free from the shackles of the past.

What this means, then, is that South Africa is experiencing a two-pronged false freedom. In the first place, we are told that freedom is unity (which it is not). In the second place, we are told—by sportswashing and transformative constitutionalism, amongst many others—that we have already obtained unity (which we have not).

Sportswashing and transformative constitutionalism cannot be said to be one and the same.

And yet, their utilisation as narrative tools have one and the same result—curbing the actualisation of true, material freedom.

Conclusion

Although sports have the power to inspire and unite people for four months or so, they do not have the potential to change the world. The same can be said of transformative constitutionalism, the most loved in South Africa's legal buffet of pretty-sounding but meaningless words.

This opinion article has explicated sportswashing and transformative constitutionalism as two of the main driving forces of South Africa's freedom project which, while effective in crafting beautiful symbols, has failed in actualising many of its goals—the most notable of which being unity. It has illustrated how sports are used both to distract South Africans from reality and manipulate them into (falsely) believing that unity has been obtained. Thereafter, it explained that transformative constitutionalism presupposes unity in order to justify legal scholars' preoccupation with largely inconsequential debates. It then argued that, in post-1994 South Africa, symbolic freedoms have been prioritised to the detriment of actual freedom.

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ⁱHere transformation should be understood as the means of actualising freedom as defined in the opinion piece.

ⁱⁱLegal culture refers to the legal fraternities' "professional sensibilities, habits of mind, and intellectual reflexes" (Klare 1998:166).