The concept of social justice is hardly free of contestation. In the massive literature which the concept of social justice has spawned, there is scarcely any agreement about whether liberty, equality, solidarity or the common good is the central feature on which the concept of social justice must be predicated. Some argue that social justice is promoted to the extent that society can enhance the collective good without infringing upon basic individual freedoms. Others stress that social justice reflects a concept of fairness in the assignment of fundamental rights and duties, economic opportunities and social conditions. In turn, the debate then shifts to three different ideas: legal justice, which is concerned with what people owe society, commutative justice, which concerns the extent of obligations that the citizenry owe to each other, and distributive justice, that is what society may owe to each citizen.

The topic for tonight has been made somewhat easier for me in that the issue of social justice is coupled to that of economic exclusion. I need to deal with the distributive component if I am to show fidelity to the advertised topic of this lecture. In this connection the South African reality at present stands in sharp contrast to our constitutional ambition as is evidenced in the text. The preamble refers to a Constitution designed to ‘heal the divisions of the past and, establish a society based on democratic values, social justice and fundamental human rights’. Section 9, the equality clause, provides that equality includes a full and equal enjoyment of all rights and freedoms. To this end a series of social and economic rights are included in the Constitution, including the right to housing, health-care, food, water, social security and education. In addition, powerful rights are given to employees including the right to form and join a trade union, to
participate in the activities and programs of trade unions and to strike.

The current reality is depressingly different. While there is evidence that money metric poverty declined in South Africa during the democratic period of our history, a 2017 report by Statistics South Africa shows that, despite a decline in poverty between 2006 and 2011, poverty levels have again risen; from a low 53.2% in 2011 to 55.5% in 2015. At that time 30.4 million people were living in poverty.

Inequality in South Africa, measured in terms of the Gini coefficient of income, has consistently been above 0.6 from 1993 to 2015 which easily places South Africa in the ‘top 5’ most unequal countries on the global scale. Regrettably, there has been no significant reduction in overall inequality or poverty in post-apartheid South Africa. Even my short but stark description reveals the imperative of embracing social justice, without which economic inclusion, by which I mean the ability of all South Africans to live a dignified life through a fair and reasonable participation in the economic intercourse of the country, cannot be achieved. The Constitution insists that basic social provisioning for those most in need must be progressively realised. True that many budgets have devolved much money on social grants and education. However the country waits in vain for a coherent economic policy that gives priority to the vindication of these promises. We search for an economic policy that radically reduces unemployment and increases the chance of the dignified life for all. However, social justice dictates that we raise our gaze beyond distribution, its importance notwithstanding.

What then is social justice within the South African context?

In attempting to engage with this complex topic, I borrow from the work of Nancy Fraser, an American critical theorist. Fraser contends that there are two paradigms of justice based on redistribution and recognition. According to the former, social justice focuses on socio economic issues, for the absence of access to a fair distribution of resources reflects an unjust political economy. The remedy requires redistributive economic measures. By contrast, the recognition paradigm is primarily a matter of cultural evaluation of a status group’s culture and the arbitrary prioritisation of a hegemonic culture. The remedy here focuses on cultural or symbolic change.

Fraser argues that an antithesis between the two is a false one in that no society which is saturated by social injustice is but “two dimensional”. Subordinated groups suffer ‘both maldistribution and misrecognition in forms where neither of these injustices was an indirect effect of the other, but where both primary and co-ordinals’. She argues that ‘one should roundly reject the construction of redistribution and recognition as mutually exclusive alternatives. The goal should rather be, to develop “an integrated approach that can encompass and harmonise both dimensions of social justice.”

I have already dealt at some length with South Africa and the challenge of redistribution. I turn now to recognition. Recognition is a matter of social justice for the status of full partners and social interaction simply is a consequence of institutionalized patterns of cultural value in whose construction they have not equally participated. It is a denial of justice to those affected thereby. We can embrace all within our society as social peers with reciprocal relations of equality or we can continue to ensure that some will suffer from a state of subordination by way of misrecognition. In this connection Fraser refers to racial profiling in which policing practices treat young black males as dangerous because of racialised conceptions of criminality. In these cases, the institutional perception of blackness considered as a danger inhibits the targeted group from achieving the status of being a full partner social life.

Recognition and distribution are thus two dimensions of justice, for the normative core of my conception is a notion of parity of participation. According to this norm justice requires social arrangements that permit all (adult) members of society to interact with one another’s peers. For participatory parity to be possible, I claim at least two conditions to be satisfied [an] objective condition [which] precludes forms and levels of economic dependence and inequality that impede parity of participation … [and] an intersubjective condition [which] precludes institutional norms that systematically deprecate some categories of people and the qualities associated with them. The principle of “parity of participation” requires the construction of social arrangements that permit all members of society to interact with one another’s peers. For this to happen at least three conditions have to be met: the distribution of material resources must be such as to ensure that participants enjoy equal capacity for social interaction. Thus, economic structures may reproduce deprivation, exploitation and promote gross disparities in wealth, income, labour and leisure time. In turn, this prevents people from participating on an equal basis with others in social life. These structures must be eradicated.
if social justice is to be attained. The legal and social system must express equal respect for all participants and ensure equal opportunity for achieving social esteem. Here institutionalised patterns of cultural values systematically undermine various categories of people and the qualities associated with them, thereby denying them the status of full partners and a fair opportunity for social interaction. The third consideration concerns the political constitution of society which must be designed to accord roughly an equal political voice to all social actors. This rules out electoral systems and media structures that systematically deprive categories of persons of a fair chance to influence decisions that affect them in the public domain. Fraser insists that all these conditions are necessary for participatory parity. None alone is sufficient.

To quote Fraser again, ‘encompassing economic, cultural and political considerations, (parity of participation) treats redistribution, recognition and representation as three analytically distinct facets of justice none of which can be reduced to the other although they all practically intertwined.’

In Fraser’s work the norm of parity of participation extends to family and personal life, employment and market relations, formal and informal politics and voluntary associations in civil society. The mechanism of exclusion takes on a plurality of different forms: many women have lacked the standing and resources to participate in official politics while enjoying the cultural and material prerequisites for meaningful (if not equal) participation in family life. Lesbian and gay people, until recently, have lacked the standing to participate openly in sexual relations and in family life, even if they had access to decently remunerated work. For Fraser, this shows that exclusion may well not spill from one sphere into another. In South Africa, however, apartheid raised the possibility of a total radical exclusion. The vast majority of South Africans were systematically stripped of participation rights in all spheres of society and were treated as no more than a vast reservoir of labour at the service of white capital.

Exclusion goes further, for it reproduces itself in more subtle ways. It is often rooted in the institutionalisation of hierarchical patterns of cultural value which deny some the chance, even modest, of participation in vast areas of society, particularly where their own lives are affected thereby. A white male norm permeates society and is then used to assess competence and merit. At a cruder level, undocumented immigrants are denied any chance of participation in the political space of the country in which they reside.

The application of the parity of participation principle
The Constitution boldly sets out a vision of what can only be described as a form of social democratic governance for South Africa. The pursuit of substantive equality, the critical role of the state in providing social goods and services, particularly to the poor and those most in need, as well as strong labour rights for workers to organise, are core components of the system of governance set out in the Constitution. These provisions form component parts of the governance model which the drafters of the Constitution considered to be most appropriate if South Africa was to transcend the very high levels of inequality which were deeply embedded in South African history.

There can be little doubt that the burden of history weighed heavily on those who were charged with constructing a democratic society. Colonial dispossession refashioned by the mining and industrial revolutions and, after 1910 the advent of Union, brought more stringent forms of exclusion and marginalisation which were incorporated into law. This lasted until 1948 when the legislation and social control took on an even more pernicious form which characterised South African society until 1994. In this way the history of capitalist development and inequality in South Africa were inextricably linked.10

Twenty-six years later, it is fair to say that not only are poverty, unemployment and inequality with us today but the key indicators outlined above may well have worsened during this period. This reflects an abysmal failure to chart a new growth path, one which was in keeping with the social democratic commitments of the Constitution. While it would be churlish not to acknowledge the introduction of the social grant system and the determined efforts by successive governments to address poverty levels, almost three decades of economic policy has not transformed the economic landscape. There has been a significant failure to provide high quality education and healthcare to the poor, no real expansion of incentives for peasant farmers, an omission to focus upon labour intensive

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industrialisation, to take but a few of the key elements of policy implementation which required urgent attention. In addition, little has been done to alter the spatial geography of apartheid. Let us acknowledge the mass housing construction programme after 1994. But it mainly took place on the peripheries of existing townships, far from the workplace and, often, on land bought for zoned township development under apartheid. Twenty six years into democracy South African urban areas look very similar to those inherited from the apartheid regime.

In summary, the kind of structural challenge to deal with inequality and reboot South Africa from its deeply imbedded patterns inherited from some 300 years of colonial and apartheid rule have simply not taken place despite much political rhetoric. It is not surprising that the constitutional arrangements, born of the 1994 settlement, have been seen by some as nothing more than a messy compromise which primarily advantaged Afrikaner and black capital at the expense of more than 50 million South Africans. The underlying assumptions upon which the Constitution are based have thus come under sustained attack. Take for example the following comment from Tshepo Madlingozi:

Language and praxis of human rights collapse when they come up against the demands of those who are considered non-humans. The discourse of human rights has nothing to say to those who suffer dehumanisation and social death because it is predicted on the humanity of those already inside the wall of political society.

These criticisms target the absence of the concrete steps needed to conduct the principle of recognition. The white male norm remains dominant within our society. We continue to assess excellence through this particular prism. As an anecdotal illustration, many of my black students have informed me that if they speak with a “model C accent” they find less of a barrier at university than if they come from the townships. This example can be multiplied through various experiences throughout society.

The Constitution envisaged the construction of a new South African identity which would embrace the dignity of difference and ensure the construction of a new appropriate norm for a democratic non-racial, non-sexist society. That, sadly, has not happened and, accordingly, levels of alienation, deeply embedded in South African history, have not been addressed. Unsurprisingly, this has given rise to various forms of populist rhetoric which, in turn, promotes new forms of exclusion, all of which are also at war with the constitutional commitment to the construction of a new non-racial and non-sexist society. None of this is surprising because if ‘what you have’ depends upon ‘how you look’, then apartheid has remained relatively intact.

The constitutional project will continue to play little by way of a meaningful role in the lives of millions of South Africans. That a Nobel prize winner and another senior member of a foundation that claims to promote the Constitution can claim publicly that apartheid was not a crime against humanity is a truly disturbing illustration of how far the country needs to travel to embrace a new identity. At the same time the disadvantage still encountered by millions has promoted a populism that resembles fascism far more than it does democracy. With it emerges a discourse which is utterly incongruent with a non-racial, non-sexist democracy.

The lack of participation to which Fraser refers is equally true with regard to our electoral system. The 10 years of rule under President Zuma showed that Parliament did not regard itself as accountable to the citizenry and thus failed regrettably to execute
its responsibilities of oversight over the executive. From this failure, the constitutional design of separation of powers was placed in jeopardy. This failure ensured that rent seeking rather than employment creation and an inclusive economy became the order of the economic day as did the hollowing out of key constitutional institutions and the concomitant rise in corruption. The country still awaits decisions by the NPA to enforce the principle of legal accountability, no matter the political position of an alleged offender.

Fraser’s concerns about how electoral systems can shape political participation and erode the parity of participation principle are manifestly applicable to present day South Africa. This should dictate that a serious debate be conducted about an electoral system which can enhance rather than impede a fundamental principle which promotes social justice, political and economic inclusion.

Conclusion
It is the argument of this paper that the three-dimensional framework advocated by Fraser, namely redistribution recognition and representation, adequately captures the normative framework which makes the best sense of the Constitution. The Constitution was drafted within the context of a unique pattern of inequality for a country which had been subjected to settler colonialism, a dual economy of enrichment and impoverishment, spatial geography which promoted human development for a few and human confinement for the majority. It exalted the principle of stable nuclear families for a few and the disruption of family life for the many in the name of a cheap labour reserve. There can be little doubt that existing patterns of poverty and inequality threaten the possibility of continued democracy and the stability of the South African state. It is simply not sufficient to limp along at a growth rate of less than 1% of GDP annually with little vision as to how economic policy can be rendered congruent with the fundamental constitutional promises. The poverty of policy to redress 300 years of history is of course compounded by the challenges posed by the global economy in the fourth industrial revolution. Simply put, labour can no longer be considered as playing social mediator in the conflict for the distribution of the fruits of the economy. For this reason, some nostalgic attempt to return to the social democratic model of the 1950s and early 1960s is now futile. A fresh set of ideas has to be implemented to ensure the vindication of the promise of redistribution. This in turn raises the challenge of a constitution with politics that embrace new forms of countervailing power to resist the excesses of capital.

At the same time we need to conduct a national debate about what it means to be South African and what standard we employ to evaluate successful participation within society. Simply put, the white male norm which continues to dominate and exclude millions from fair participation has to be eschewed and replaced with transformative content. This second challenge leads to a further consequence: What does the principle of non-racial and non-sexist accountability look like? Can we fashion some agreement that, to borrow from Martin Luther King Jr, is based on the character of the human being rather than her colour? Can this become the decisive yardstick?

The third challenge is to ensure that our politics are rendered accountable to the citizenry. To this end we need to acknowledge the failure of our present electoral system. There is an inability of the present electoral system to promote a coherent and viable system of separation of powers, particularly between the executive and the legislature.

These are our challenges which cannot be postponed any longer or passed on to elaborate think tanks or satisfied with empty promises. If all three of these principles are not addressed urgently, there will be no social justice for millions and, in turn, there will be little left of the great ambition that we had in 1994 of developing a democratic society based on human dignity, equality and freedom for all who live in this land.

Notes
1 The ideas expressed in this lecture stem from research for a book which I am presently writing with Michelle Le Roux of the Johannesburg Bar
3 See in particular Nancy Fraser and Axel Honneth Redistribution or Recognition? [2003]
4 Fraser and Honneth, at 19
5 Fraser and Honneth at 26
6 Fraser and Honneth, at
7 Fraser and Honneth, at 36
8 See Nancy Fraser ‘Social Exclusion, Global Poverty and Scales of (In) Justice: rethinking law and poverty in a globalising world’ 2011 (22) Stellenbosch Law Review 452
9 At 455
11 See Goran Therborn ‘South African Inequalities in a Global Perspective’ in Soudien et al chapter 2