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South Africa is a judicial dictatorship!

[Thread]

Many of us are under the impression that The Law is made by the legislature (i.e "parliament"), we believe that the people we vote for are the ones making The Law of the Republic and thus have the final say as long as it's all "constitutional"

"The Law" in this instance refers to jurisprudence, the entire law of the republic, not just individuals laws. However, in as much as the cabinet, provincial legislatures and ministries may promulgate and bring individual laws into effect, "The Law" is made differently...

This is because South Africa follows the British common law system, a system in which The Law is derived from judicial decisions as opposed to being made by the legislative branch of the state. This is called Case Law, which is in contrast to Statutory (Civil) Law...

(Of course, South African law has aspects of Civil Law, but this is chiefly concerned with private, non-criminal disputes between persons, mainly to do with property matters)

This brings in the role of the judiciary. Firstly the judiciary has the final say in any legal issue in the Republic, it deliberates on all issues concerning the Constitution and has the final say on the constitutionality of any law. ConCourt decisions cannot be challenged

The judiciary can, and frequently overrules any decision made by the Executive (the cabinet) or Legislature (parliament). This is essentially why it is safe to say the judiciary makes The Law. You may be thinking so what, judges are experts in the field of law, they know best...

OK, let's take an example: a majority of voters elect a party or parties which promise to change a section of the Constitution to better reflect the needs and desires of the majority in the country. Say, they want to amend the property clause in Section 25 of the Constitution

The elected political parties manage to make up 2/3 of the members in the Legislature and agree to make amendments to the Constitution. This is accepted by the majority of members and all processes are followed to ensure the will of the people is done.

However, another section of the public that stands to lose from said amendment decides to take this matter to court arguing that the amendments to the Constitution are unconstitutional.

According to the powers conferred upon the judiciary, it can and may decide to agree with this. Yes, the Constitutional Court, "the apex court" of the land may conceivably decide that the amendments are not happening, and that would be the end of it. What a funny democracy.

The fact that the ConCourt can overturn the decisions of the Legislature by declaring its processes unlawful and "unconstitutional" should worry us, but it doesn't. Why? Because the media and its "analysts" & "experts" have conditioned us that this is the only way to do things

We have normalised a situation in this country where it is blasphemous to even think about holding a different opinion to the ConCourt. Phrases like "a dangerous attack on the judiciary", and "constitutional crisis" are drilled into our consciousness daily

You now have a situation where one section of the public has zero interest in seriously contesting and winning elections, because who needs that when you have pockets deep enough to influence the people who make The Law?

Again, we are continually indoctrinated that only politicians (especially the African ones) are susceptible to being unlawfully influenced through bribery, for instance. That our holy judges and justices would never do such things, that such behaviour is reserved for the "cadres"

This kind of thinking is absurd in the extreme, yet we have internalised and accepted it as canonical truth. Just the thought of Constitutional Court justices being corrupt and/or biased immediately fills one with pangs of guilt. This is not normal, yet it somehow is

'Case Law' has given us the impression that courts are compelled to be consistent. You often hear "this decision was taken trying to spite one person but will negatively affect someone else in the future, because of 'precedence'". The judiciary doesn't care about such things...

A case in point: in 2017, the North Gauteng High Court issued a judgement in favour of the Public Protector, giving her the right to instruct other organs of state to perform certain actions as necessary. This is what Judge President Mlambo had to say:

"There is nothing in neither the Public Protector Act nor the Ethics Act that prohibits the Public Protector from instructing another organ of state to conduct a further investigation. The Public Protector Act expressly empowers the Public Protector to obtain assistance..."

In early 2020, the same judge, leading a full bench of the North Gauteng High Court had this to say:

"The Public Protector Act and the NPA act are clear that she has no power to direct the NDPP to investigate any criminal offence and how to go about doing this..."

So, when there was a Public Protector who was favoured by the media and establishment, the judiciary gave her unfettered powers (remember when they allowed her to usurp the powers of the President?). Then when a new PP they don't like comes in, the judiciary withdraws the powers

As expected, the coats and briefcases will tie themselves in knots trying to explain away this blatant instance of sheer inconsistency by browbeating everyone into submission with jargon ("the two matters are qui tamsine qua non jurisprudae") until we give up and let them be

Whatever one's views are on the judiciary and its role in the country, oksalayo there is no denying that our political "leaders" are just mascots, that the real power lies in the hands of 11 untouchable, unelected individuals who hold all the keys. It's a judicial dictatorship