

**An Evaluation of the Relevance of Different
Theories of Social Justice to a Particular
Ethical Problem, that of the Development of
Block AK in
the City of Durban.**

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1. GENERAL INTRODUCTION

1.1 INTRODUCTION

This study is broadly situated in the realm of planning ethics. Its principal concern is with gauging the relevance and usefulness of various theories of social justice for purposes of ethical deliberation in urban planning in general, but more specifically in the case of Block AK, situated on the northern periphery of Durban's CBD. Block AK therefore will be used as a case study in determining this relevance. Although this may seem like an exercise in academic analysis, it is motivated by practical concerns, underpinned by a huge moral dilemma generated by various options for development of the site. This dilemma will look to theories of social justice for guidance, in an attempt to find out whether these theories can provide the necessary guidance relating to the development of Block AK. Notions of social justice and equity have a new kind of resonance in the democratic South Africa whose constitution is underpinned by such concepts, allowing planners the space to explore in their field of endeavour.

1.2 PROBLEM STATEMENT

Block AK comprises approximately six hectares of vacant land situated to the east of the Greyville racecourse on the northern periphery of Durban's CBD (see *CBD Land Use* map). As a result of many complex issues, the land has been lying sterile for more than two decades.

The site was originally inhabited predominantly by the Indian community, who were forced to move in terms of the Group Areas Act and the "city formalisation" process. The whole process of forced removals entailed some 40% of Indian owned land (in

terms of value), which was to be set aside for white occupation. In the case of Block AK, some five to six thousand people were forcibly removed.

A major impact of the Group Areas Act on urban land use was that it undermined the overall efficiency of the land market. This resulted in vast tracts of land such as Cato Manor and Block AK in Durban remaining sterile, incurring astronomical costs over a prolonged period of time. Block AK, however, was subsequently purchased by the Durban City Council at a price of R5 million from the state.

When Operation Jumpstart, a partnership between the Durban City Council and corporate business was conceived in 1991, Block AK appeared on its agenda of property redevelopment, along with Cato Manor and other areas (White : 1992). Proposals for mixed land use, with the emphasis on low cost housing catering primarily for the needs of the disadvantaged, were drawn up.

A simultaneous cry for land restitution emerged within the ranks of the displaced Indian community who responded to the challenge with the formation of The Block AK Action Committee in 1992. Several meetings were convened, and submissions were made to the Metro Council. However, the establishment of the Land Commission, and the passing of the Land Restitution Act in 1994 facilitated and added further impetus to the work of the Committee.

The most recent development (1998) is that the Metro Council, discovering that low cost housing would not be feasible because of affordability, jeopardised by the prohibitive cost of the land, has arrived at a decision to sell the land to the Department of Land Affairs for purposes of restitution. More recent hearings (November 1998) have incurred the wrath of some of the claimants who were opting for financial compensation, on the grounds that the compensation offered is totally unrealistic.

The problem this poses is that, in the new democratic South Africa, planning has been mandated to arrive at a just and equitable distribution of resources, giving priority to the needs of the disadvantaged. There are several ethical questions this poses :

- Has justice been achieved?
- For whom has justice been achieved?
- Whose and which needs have been served?

The ramifications of these and other related issues, all prompted by the considerations of various theoretical perspectives on social justice and equity, will be explored in subsequent chapters of this dissertation. In view of the preceding events and statements, this dissertation explores the hypothesis that

there is a disjuncture between the guidelines for ethical deliberation provided by theories of social justice, and the reality of planning in the case of Block AK.

1.3 RESEARCH QUESTION

The main research question then, assumed the formulation below :

How useful are theories of social justice for purposes of guiding ethical deliberation in planning generally, and especially in the case of Block AK?

This generated several related sub-questions :

- What is the meaning of the concept "Social Justice"?
- What are the theories of social justice?

- How useful are theories of social justice for making ethical judgements in planning?
- How useful are these theories in guiding ethical deliberation for the purpose of planning the development of Block AK?
- In terms of previous and current proposals for the development of Block AK, have theories of social justice provided the guidelines necessary for ethical deliberation, implicitly or explicitly?

Although the likelihood of all these questions being answered by this study may seem remote at this stage, making the whole undertaking seem highly ambitious, suffice it to say that even if this study is able to cast some light upon this labyrinth of ethical complexity, the purpose would have been achieved. At this stage in the process, the study hesitates to make any claims. It is purely an exploratory endeavour and, hopefully, some answers will emerge during the course of its evolution.

1.4 RESEARCH CONTEXT

Issues pertaining to ethics in any sphere embrace the normative dimension, i.e. concern with what ought to be. This is usually provided by a combination of the dictates of conscience which is cultivated by a process of ongoing socialisation, and a set of written rules providing guidelines for action. The position statement of the South African Council for Town and Regional Planners implicitly embraces the notions of social justice and equity when it states that the cornerstone of its code of ethics consists of furthering the interests of the under-privileged and disadvantaged communities. It urges planners to take on this

“special responsibility in order to redress past imbalances and create improved living environments for all.”

In the new democratic South African planning context, this is synonymous with redistributive justice and making amends for the indignities, and the manifold forms of deprivation historically experienced. However, ethical paradoxes and dilemmas constantly emerge to confront planners, often rendering a convergence between the ideals of social justice and the pragmatics of planning unattainable. How then, do planners negotiate the chasm between the two?

Hence, planning theory faces immense challenges, and whether it can provide the necessary guidelines remains to be illustrated by this case study of Block AK.

An abiding interest and curiosity in the development of Block AK, especially in the current climate of land restitution, has influenced my induction into this field of study. Despite the fact that the future of Block AK has been enveloped in much patient speculation over the decades, which recent decisions have ended, the ethics underpinning those decisions continue to confound.

This study is slightly constrained by the fact that a measure of speculation remains about the future of Block AK. No final decision has as yet been made, with the process of hearings presently continuing.

1.5 RESEARCH METHODOLOGY

The research methodology was basically of a qualitative nature, largely because of the type of information that I tried to obtain and the nature of the analysis I undertook. The research sought to establish values, opinions, perspectives, etc, an undertaking that is not directly amenable to empirical methodology.

Two basic research methodologies were employed in this undertaking:

1.5.1 HISTORICAL METHOD

This entailed engaging in a historical analysis of the area and its former inhabitants. For a meaningful analysis of the dynamics of any social phenomenon, it is imperative that it be situated, examined and understood in its historical context. The interpretation of that historical process is crucial to providing a sense of direction, as well as the development of our subsequent analysis, because, the past has continuing relevance for the present as well as the future. Historical knowledge is therefore essential to the interpretation of the argument.

For an insight into the history of Block AK, both primary as well as secondary sources were consulted.

1.5.2 INTERVIEWS

This required firstly, an identification of the major interest groups, and subsequently, interviews with key personnel in each of these groups. The major interest groups identified include the Durban Metro Council, the Block AK Action Committee, and the major business and commercial enterprises operating in and on the periphery of Block AK.

The interviews were of an informal, unstructured nature. Questions were open-ended. The interview was preceded by a short letter indicating the purpose of the interview, briefly alluding to the nature of the questions. This ensured preparedness, and generated interest and enthusiasm when the appointment was made, and the interview finally took place.

Interviews were conducted with the Block AK Action Committee, Metro Housing and some of the business and commercial enterprises including Natal Newspapers, Doves KZN, Standard Bank, and Farar Jeena.

1.6 CHAPTER OVERVIEW

Chapter one is concerned with an explanation of the research problem, and situating the problem in a research context. In the process, relevant questions are formulated which guide the research methodology as well as the interpretation of data obtained in the research. The chapter also concerns itself with an explanation of the research methodology employed to elicit the specific data required.

Chapter two deals with situating the research problem within a conceptual framework. Various relevant concepts as well as theoretical perspectives which inform the study are examined.

Chapter three is an analysis of the concept of social justice in terms of its application to planning practice. The use of various theoretical perspectives, calling for the use of different approaches in planning in an international context, is examined.

Chapter four examines Block AK as a case study. A historical overview of the area, its inhabitants, and its peculiar history in terms of broad urbanisation policy formulations is provided. A critical examination of existing proposals for the development of Block AK, as well as the feasibility of land restitution is undertaken.

Chapter five addresses the question of the ethical dilemma in planning, in the context of the various theoretical formulations which were outlined in chapter two. It entails a discussion of the perceptions of social justice as expressed by the various interest groups existing in Block AK.

Chapter six draws conclusions from the preceding analysis, in relation to the original statement of the research problem and hypothesis.

Chapter seven puts forward recommendations for the development of Block AK, based on the conclusions in the previous chapter.

2. CONCEPTUAL FRAMEWORK

2.1 INTRODUCTION

Since there are several competing theories of social justice, and no single theory that can adequately provide the necessary guidelines for ethical deliberation, an eclectic approach has been opted for. Useful components exist in several theories which we can draw upon to provide an explanation and understanding of the moral dilemma that we are confronted with. I prefer to think of theory rather as a searchlight in the hands of the planner to focus wherever he finds it useful, than an all-encompassing beam that lights up a whole area of darkness. However, before I engage in the exercise of presenting the various theoretical approaches, it is important to look at the concept of social justice itself, as this constitutes an important and necessary part of the dominant concern and conceptual framework of this study.

2.2 SOCIAL JUSTICE

There is no universally accepted definition of social justice, for the concept conjures different meanings in the minds of different groups and individuals. It is subjective in that any meaning whatsoever could be attributed to it by any group, depending upon social perceptions existing at that point and place in time. Hence, phenomena which would seem like social aberrations today, such as slavery, colonialism, and apartheid, were at one time considered legitimate and "socially just" by certain groups of people. David Harvey for instance (1993 : 97) argues that the concept of social justice has no universally agreed upon meaning, but a family of meanings which "can be understood only through the way each is embedded in a particular language game".

The concept of social equity which is synonymous with justice, has two primary dimensions: Firstly, the substance or outcome of an act, and secondly, the process by which the act is formulated and implemented. These two dimensions are the equivalent of justness and fairness respectively. In a similar vein, reference is made to substantive and procedural justice. It is these dimensions that Harvey's definition of justice, (Harvey : 1993) which is discussed in his theoretical formulation, embraces. For, justice attained in a manner that is not just, is not socially acceptable.

The concept of social equity specifies a discussion of allocative and procedural equity as an examination of impacts of policy decisions on groups or classes of people, rather than on individuals (Jacobs : 157). The principal dimensions of group or class equity are identified as horizontal or vertical equity. Horizontal equity pertains to whether a public policy affects people within a group or class, whilst vertical equity indicates how policy affects people between social groups or classes. The overall purpose of these distinctions is to show the many ramifications of the concept of social equity, as well as the fact that it is possible to use the concept in a variety of ways.

Although several definitions of justice have been proffered, and the concept has been equated with equity (Davidoff : 1967) and fairness (Rawls : 1973), it has been argued that justice and fairness may overlap, but they are not the same thing (Howe : 130). Fairness, Howe argues, is not only more individual, but it is also more procedural. Planners, for instance are expected to be fair to everyone, as part of their duty as public servants. The duty to achieve social justice on the other hand, is not only more difficult to visualise on a personal level, but it would be an almost impossible task for any individual to accomplish.

Equity therefore, is a matter of distributive justice, and of procedural fairness. It calls for equal treatment of equals and, conversely, for unequals to be treated unfairly. (Lang : 175). Lang claims that in order to decide what is equitable, fair

and just, it would be useful to consider the typology presented by William Lucy (1981) :

- equality - everyone should receive the same service, within reason.
- need - those requiring a service should get more of it.
- demand - those showing an active interest in a service should be rewarded.
- preference - those whose interest in a service is not revealed through use.
- willingness to pay - only people who use a service should pay for it.

This typology demonstrates the complexity of the concept. In trying to apply this concept in waste management, Reg Lang found for example that the five conceptions are often in conflict : some have thresholds, others are difficult to measure, and all are subject to varying interpretations (Lang : ibid).

One of the major problems associated with the concept of justice therefore is that of definition and interpretation. And despite the number of definitions and interpretations which have been put forward and explored in the literature, the concept remains nebulous, largely because it represents an ideal. To translate the concept into practice always presents difficulties because it is not possible to obtain an equitable distribution of societal goods amongst all members of society. Providing for the needs of some, irrespective of what criteria of distribution are employed, almost always results in deprivation for others.

Although social justice is not easily attainable, it is highly desirable. Nicholas Low (1994) believes that planners should aspire to achieve social justice. He argues that planners must work to achieve a better deal for the poor and vulnerable than the market provides. By taking part in political practice, they serve the cause of justice. Therefore, planning for justice should not be optional, but a necessary position for

planning. And, as Krumholz and Forester (1990) point out, planners should pursue social justice, not to find ready solutions, but to help them to participate in political practice, and to be able to evaluate and judge alternative courses of action.

2.3 THEORIES OF SOCIAL JUSTICE

The following progression from one theoretical formulation to the next is largely coincidental with the chronology of events, and should in no way be interpreted as depicting any order of importance or relevance to planning. An evaluation of this nature will be undertaken towards the latter part of this study.

2.3.1 UTILITARIANISM

Utilitarianism, as a social philosophy arose in 19th century Britain, in an attempt to justify reformist legislation, aimed at including the masses. Its chief protagonists, Jeremy Bentham and John Stuart Mill held the belief that the best and therefore morally justifiable act was the one which produced the greatest amount of happiness. They defined social welfare as the sum of individual utilities, which meant that the welfare of society as a whole could be achieved by adding up individual utilities, which would amount to the greatest happiness of the greatest number. A caveat for planners here is that as long as the sum of individual welfares is increased, the welfare of the minority is of no consequence.

There are several types of utilitarianism (Harper & Stein 1995:14). Firstly, unitary utilitarian theories, especially when applied to the public realm, tend to be expressed in terms of a single "public interest" that can be maximised. Secondly, economic utilitarian theories hold that an approximation of this single total can be derived by translating individual utilities into a

commensurable unit (e.g. money), which can then yield a total measure of well-being. Thirdly, pluralistic utilitarian theories hold that individual utilities cannot be measured and summed, but that an open political process will yield the best approximation of maximum well-being.

Coming at a time when scientism and positivism reigned supreme, the resolution of moral issues in terms of the empirical calculation of their consequences, proved attractive. A further attraction lies in the fact that utilitarianism provides a common currency of moral thought : the concerns of different parties and the different claims on one party can all be translated into one common unit - happiness. It is therefore impossible to have a moral conflict between two claims that are both valid and irreconcilable.

The primary focus of utilitarian theory is upon consequences, rather than the means to the consequences. For this reason, it has been termed a teleological theory. It is also hedonistic in that it places emphasis on pleasure rather than pain. Both these concepts become problematic because consequences are not ascertainable in advance, and neither pleasure nor pain is a quantifiable entity.

Despite its shortcomings, it is acknowledged that the utilitarian ethic has dominated urban planning under capitalism. In fact, for a considerable period of time, it has provided the rationale for the rational comprehensive model in planning practice. And it is partly for its reliance on the utilitarian ethic that rational comprehensive planning has been increasingly viewed with suspicion and gradually relegated to the scrap heap. Another reason it has not proved popular in recent years is because of its violation of the liberal ethic - the fact that it does not attach importance to the autonomy of the individual. For this reason, it is not looked upon favourably by theorists we will be considering in this analysis, such as Rawls and Habermas.

2.3.2 CONTRACTARIAN THEORY

It is no act of coincidence that Rawls's seminal work (*Theory of Justice* : 1971) appeared upon the scene when it did, because its major preoccupation with the concept of equality followed closely upon the heels of racial tensions expressing themselves in violent eruptions in some 200 American cities during the latter part of the decade of the sixties. (Bradcock 1984 : 30). Although Rawls's work is claimed to belong more aptly in the field of political theory, nonetheless, the wide commentary it has generated in planning theory is indicative of its tremendous relevance to planning, and moreso now, when planning is considered a political activity. In fact, he has emphasised that his approach, i.e. "justice as fairness", is "intended as a political conception of justice" - an alternative to utilitarianism (Rawls 1985: 224).

In constructing his theory of justice, Rawls takes the critique of utilitarianism as his point of departure, and puts forward a deontological ethical framework, where some actions can be defined as intrinsically right or wrong, irrespective of their consequences. His theory does not display the utilitarian preoccupation with hedonism, and overcomes the problem of the exclusion of minority interests by prioritising the interests of the most disadvantaged groups.

Rawls (1971:302-303) thus postulates two principles of social justice:

Firstly, each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

Secondly, social and economic inequalities are to be arranged to the greatest benefit of the least advantaged, consistent with the just savings principle.

For those born with inherent disadvantages through no fault of their own, Rawls calls for a redress of imbalances by soliciting unequal treatment in their favour. The motivation here is the provision of genuine equality of opportunity. But inequalities are relative, and therefore the usual problematics associated with dealing with relative conceptions are engendered.

Of the two principles, it is the principle of liberty that has priority. Rawls was trying to reconcile liberty, equality and justice, but in order to obtain collective justice and equality, some restriction of liberty is inevitable. Therefore, redistribution necessarily entails the experience of some degree of loss for some so that others may gain.

Rawls made the assumption that citizens are free and equal, and his political ideal is one of fair cooperation amongst them. He constructed a hypothetical situation where citizens operate under what he termed a Veil of Ignorance. In this situation, if members were developing a social contract for society, they would choose to organise institutions in such a manner that the benefits to the least advantaged would be maximised. This standard would allow absolute inequalities to exist only if they maximised the benefits to the least advantaged.

Despite the amount of criticism Rawls's theory has generated (e.g. Nozick, who claimed that he allowed for too much intervention, and Marxists who claim that he is unrealistic because he ignored the process of production), it has provoked an enormous amount of debate and discussion, and has been widely applied in planning practice. And despite the fact that Rawls did not refer to the application of his principles to planning, it is believed they can provide a rational, cognitive, and fair approach to making difficult decisions that are often called for in both urban and regional planning (McConnell : 31).

Invariably, Rawls's principles, especially that of prioritising the needs of the most disadvantaged groups, has featured prominently in recent planning practice requiring decision-making of an ethical nature. Notable examples are:

- (i) Marlin's use of Rawls difference principle in the Glebe traffic planning process, where he highlights the difference between the utilitarian and deontological approaches.
- (ii) Timothy Beatley's study of environmental ethics, where he draws on Rawls's difference principle.

2.3.3 NEO-MARXIST THEORY

The Neo-Marxist perspective on social justice, exemplified by David Harvey, takes into consideration power relations, and the processes of production and distribution in capitalist society. Power is a crucial component in this analysis, since he identifies injustice as embedded within the dominant ideology of the ruling class.

In his earlier work (1973), he moves from a predisposition to regard social justice as a matter of eternal justice and morality, to regard it as something contingent upon the social processes operating in society as a whole. Exploring the notion of social justice in the context of social processes and spatial form, makes his work especially relevant to planning theory as well as practice. Although his work has greater relevance for regional planning, his notion of social justice, as will be seen later in the analysis, can be applied on a local as well as individual level. In fact, Harvey makes the assumption that justice achieved at the territorial level implies justice at the individual level, although he concedes that this is not necessarily the case.

In Harvey's formulation, social justice is achieved when a "just distribution is justly arrived at" (Harvey : 98). Equity therefore, is a matter of distributive justice and of procedural fairness, calling for equal treatment of equals and unequal treatment of unequals. His "just distribution" (of income) is based upon three selected criteria:

- (i) **Need:** He maintains that if we have to obtain a normative measure of social justice, we have to first define and measure need, which is a relative concept, in a socially just way. Minimum needs will vary with social norms at any given time.

- (ii) **Contribution to common good:** This criterion concerns itself with consequences which the allocation of resources in one quarter will have upon other areas. In the search for social justice, the distributive consequences are more important than the actual contribution.

- (iii) **Merit:** The emphasis here is on the fact that extra resources should only be allocated to an area if a facility is both needed and contributes to the common good.

Harvey implicitly alerts planners to the fact that programmes which seek to alter distribution without altering the capitalist market structure within which income and wealth are created and distributed, are doomed to failure. Therefore, to attain social justice it is necessary to make major structural transformations.

He maintains that in a capitalist society, the market mechanism is

“institutionally bound to maintain patterns of appropriation, deprivation and scarcity, and institutionally incapable of distributing according to need or of contribution to common good. The social organisation of scarcity and deprivation associated with price fixing markets makes the market mechanism automatically antagonistic to any principle of social justice” (Harvey 1993 : 116).

Whilst the state plays a fundamental role in manipulating the market mechanism, its intervention in the sphere of production is vehemently resisted by capitalist interests. This was demonstrated in the case study conducted by Harvey, of the fire in the Imperial Foods chicken processing plant in Hamlet, North Carolina. (Harvey : 1993). Big business used the leverage of financial support to manipulate politicians into acting in its own interest. At the same time, class interests were considerably diluted by the fragmentation of specific disadvantaged groups with their own concerns expressed in various social movements, such as race, gender, ethnicity, etc.

Clearly, the working conditions prevalent in the North Carolina plant represented an industrial anachronism, and were therefore socially unjust, given the norms of “modern” America. This conclusion would be universally accepted. However, post-modernists would scorn such universal truths as belonging to the era of modernism and therefore, constituting an obsolete notion. Harvey, however, whilst acknowledging certain merits of this position, is quick to respond that whilst there is no universal concept of justice, capitalism is a universal phenomenon, and would therefore universally engender similar social conditions. Hence, for Harvey,

“Universality is no longer rejected out of hand, but reinserted in a dialectical relation to particularity, positionality and group difference.” (1993 : 108)

2.3.4 CRITICAL REALISM

This position is best exemplified by Habermas, who represents perhaps the most influential contemporary critical theorist.

Habermas does not question the substance or content of social justice. His conception is therefore purely procedural.

Habermas’s theory of communicative rationality, which serves the human interest of understanding within the community, maintains that knowledge is socially constructed in communication. This is accomplished both through exchanging perceptions and understanding, as well as through drawing upon cumulative life experiences. Communication through interaction involves not merely exchange and bargaining from positions of vested interest, but a process of mutually reconstructing the interests of the various participants, i.e. mutual learning through mutual search for understanding. It is important to acknowledge that the concept of rationality employed by Habermas, goes beyond the traditionally understood concept of rationality embodied in the scientism and positivism of modernism, and embraces moral appreciation and aesthetic experience as well.

The communicative approach has its conceptual roots in the phenomenological interpretation of the relationship of knowledge to action. It builds on the fact that knowledge and value do not merely have an objective existence in the external world, waiting to be discovered by scientific enquiry. Rather, they are

actively constructed through social, interactive processes. Hence, planning is a social process through which ways of thinking, valuing and acting are socially constructed by participants. This shift from the materialist to the phenomenological understanding of ontology and epistemology is encompassed in the institutionalist approach, which is synonymous with the communicative approach which is central to collaborative planning.

The focus of the challenge lies in the process of mutual understanding in a concerted effort directed towards the achievement of consensus. Communication occurs through a multiplicity of modes - analysis, moral fables, poems - in fact, any mode that enhances communication, discourse and debate between divergent groups. Whatever it is that groups reach a consensus upon through the process of communication and understanding, constitute the good and right actions, and therefore, the socially just ones.

However, in order to achieve a constraint-free consensus, we need an "ideal-speech" situation, enabling genuine dialogue and debate to occur. The ideal speech situation is a regulative ideal that requires two conditions:

- (i) an ideological critique of present social institutions, and
- (ii) a social science that is both explanatory and critical.

Habermas argued in his book on the theory of communicative action (1984), that individuals in our liberal democratic society suffer from "ideological distortion", i.e. they fail to realise that the existing institutional structure does not serve their true interests. If we accept this tenet, then we must beware as planners that the goals which people express, should not be accepted uncritically. The role of planners then, would involve helping people recognise their unconscious distortions, and formulating goals expressing their true interests (Harper & Stein : 56).

Habermas was also very critical of a social science that clung tenaciously to a rigid scientism, which he viewed as

“a distorting and reductionist ideology that prevents us from reaching self-knowledge and emancipation because all our communication is systematically distorted” (ibid:55).

This subjugates the individual to a hierarchy of authority, and a power elite which maintains control through technocratic knowledge, a phenomenon that is exemplified in the organisational structure of the bureaucracy.

Whilst Habermas was opposed to the rationality and scientism of logical positivism, he was also responding to the “irrationality” of post-modernism. Instead, he argued for a unifying rationality existent in everyday communication. (Harrison : 306).

Habermas has been criticised on two grounds : Firstly, by clinging to the concept of rationality, the source of modernism’s dominatory potential is retained. But of course, Habermas’s concept of rationality is expanded to embrace moral appreciation and aesthetic experience. Secondly, consensus is not so easily attainable, in view of the high degree of conflict engendered by differences of class, race, culture and gender, which can only be resolved through power struggles. This seems like a very plausible criticism based upon the observable realities of social life.

The relevance of Habermas’s theory for planning lies in the underlying principle of communicative rationality, posing a challenge to planners unique to each and every situation. There are no universalistic guidelines, except to allow the social context to construct its own. The theory therefore would surely have universal relevance, in South Africa, as elsewhere, both at the urban as

well as the regional level. In the present South African context, however, the achievement of consensus might prove somewhat problematic.

John Forester (1993) throws some light on this when he says that critical theory does not necessarily solve problems, but it poses them powerfully. According to him, Habermas's theory brings us closer to developing a framework of social research that neither ignores normative problems nor shunts aside interpretive and phenomenological issues. The research framework poses the challenge for us to act together meaningfully, and nourish social co-operation.

Forester sums up Habermas's work by claiming that it has been:

provocative, controversial, ambitiously pitched and consistently metatheoretical... it provides a framework rather than explanations, poses questions rather than hypotheses to test; it seeks to integrate styles of analysis and research approaches in fresh ways. It shapes our enquiries rather than provide operational tools to manipulate data (p14).

Whilst Habermas's formulation remains for the most part a theoretical exercise, Forester has given it a more specific practical dimension, providing concrete guidelines for planners, indicating how they should behave. Thus, he says to planners that they should speak comprehensively, speak sincerely, speak legitimately and speak the truth. (1982). In fact, Forester was among the first to believe that planning was a communicative process, and suggested the application of Habermas's critical theory to planning.

According to Forester, communicative action allows us to look closely at the "how" and the "what" of practice. We initially conceive the "problem" in terms

of communicative interaction, then reformulate it and arrive at politically richer strategies. However, he concedes that the attempt to "apply" critical theory to issues of planning and administrative practice is still in its infancy (Forester : 1993).

He started out with Habermas's critical realism, but more recently has embraced a course that has taken him in the direction of pragmatism. His critical pragmatism is meant to provide "an empirical, interpretive, and ethically insightful theory" to help us in the present and the future. (Forester 1993 : 37). In fact, as Philip Harrison (1997:306) notes, the gradual trend in planning theory is that "critical realism is being supplanted by pragmatism."

Viewed from the perspective of Habermas and Forester, then, social justice prevails if the outcome of a situation has been achieved in the context of an "ideal speech" situation where people experience freedom of expression resulting in undistorted communication. Therefore, if these conditions prevail in the process, then social justice has been attained.

Following Habermas, Patsy Healey, a prolific contemporary writer amongst British planning academics, does not subscribe to the narrow sense in which rationalism was used by the modernists, but believes in the notion of rational action as ensuing from mutual understanding and consensus. In practice, the essence of communicative rationality is, for divergent groups of people to achieve shared consensus through discourse, dialogue and debate. Through this process, groups must find areas of mutual understanding and consensus. She places the emphasis on the process by which people achieve a negotiated settlement.

According to Healey, the process of communicative rationality can offer a way out of the problem of relativism in planning purposes and practices, when

people in positions of power dominate and make decisions as to what is good or right in planning. Communicative rationality holds the most promise for planning as a democratic enterprise.

She argues, like Habermas and Harvey, that through communicative forms of planning, some aspects of the post-modern challenge to planning need to be resisted because they are regressive and undemocratic. In this vein, she suggests various directions which the new planning can take. Of these, the two most interesting directions which have resonance for this study, can be identified firstly as, enlarged conceptions of democratic socialism to include struggles of race and gender, as well as allowing more space for cultural issues. Secondly, a communicative conception of rationality arrived at by an intersubjective effort at mutual understanding. The first appreciates diversity and recognises differences, making it necessary for collective action to be informed by mutual tolerance and respect. In this process people discover ways of "living together differently but respectfully" (1996 : 242). Here, we need to retain the notions of rationality and scientific understanding, but used in an expanded sense.

The second direction is by far the more important. In this component, following Habermas, Healey argues that the concept of reason as an informing principle should move from the modernist conception to reasoning within intersubjective communication. This fosters mutual understanding which is historically situated, i.e. it is arrived at by particular people in particular times and places. Whilst historically situated, knowledge is constructed by members of the community through intercommunication. Intercommunicative reasoning must acknowledge that differences proceed beyond those of socially and economically generated ones, to encompass systems of meaning.

Healey argues for a new form of planning through what she refers to as interdiscursive communication, which is a way of "living together differently through struggling to make sense together" (1996 : 245). Its language consists of multiple modes, moving between analysis, moral fables and "poems". With its capacity for internal critique, it overcomes the problems of relativism and potential for domination, and allows for progress to take place. The discursive critique generates ideas for action.

As Healey's thinking progressed, a slight shift in emphasis occurred from her earlier position. She moved from her earlier emphasis on consensus to recognising that common understanding is not necessarily attainable or desirable (Harrison : 317).

2.3.5 PRAGMATISM / POST-MODERNISM

Philosophical Pragmatism and Post-modernism share the same epistemological starting points (i.e. a common acceptance that our truths are social constructions and not accurate representations of an external reality). They both also share a willingness to accommodate a radical diversity. Pragmatism, however, diverges from some expressions of post-modernism by emphasising the social usefulness of the ideas we construct. It therefore avoids some of the more frivolous and nihilistic versions of post-modernism. Pragmatism can be viewed as a constructive version of post-modernism (Harrison 1998).

The pragmatist views reality not as a phenomenon out there waiting to be discovered, but rather as something that is socially constructed in daily interaction and social discourse. So there is no universal or natural theory of justice - it has to be socially constructed. The views of three important pragmatists will be considered here:

Richard Rorty

Rorty's view is that reality is language-contingent - it is whatever we describe it to be. Therefore, social justice is contingent on our perception and subsequent description of it - which in turn, is determined by our socialisation process. We are constantly creating and re-creating realities, by substituting new vocabularies for old ones, instead of discovering facts. In the process, we are making changes, and in so doing, we are re-describing ourselves, and our past, and comparing the results with alternative redescriptions. As this process continues, we make improvements to ourselves by constantly revising our opinions, and hence, our moral identity.

The concept of solidarity is of paramount importance in Rorty's analysis. According to Rorty (1989), there is no common human nature creating an affinity between us and others, providing grounds for us to treat them justly. The only common denominator between human beings is the fear of pain and humiliation. Solidarity is an act of deliberate creation and enables us to empathise with those who are close to us.

"Solidarity has to be constructed out of little pieces, rather than found already waiting....." (p 94).

Our sense of solidarity is strongest when those with whom solidarity is expressed are thought of as "one of us", where "us" is something smaller or more local than the human race. He says:

".....feelings of solidarity are necessarily a matter of which similarities and dissimilarities strike us as salient, and that such salience is a function of a historically contingent final vocabulary" (p 192).

Rorty claims that there is such a thing as moral progress, and this progress is in the direction of greater human solidarity. That solidarity is perceived as the ability to think of people different from us - in terms of race, religion, custom etc - as one of "us".

Rorty concedes that the ironist philosophy to which he subscribes, will not do much for freedom and equality, but literature and journalism do alot. For example, victims of cruelty do not have much in the way of language; therefore there is no such thing as the "voice of the oppressed". This calls for someone else to express their plight through language. The liberal novelist, journalist or poet is good at that, not the liberal theorist. One is prompted to ask : What about the planner?

The notion of solidarity is also used by Charles Hoch, but the problem for him is, how this solidarity is to be achieved without creating new forms of domination. (Harrison: 1997). He argues that communities build and strengthen their bonds of solidarity through the process of mutual interaction. He finds Habermas's notion of communicative action useful in building solidarity. However, the work of Hoch in relation to social justice needs to be explored further.

Jeffrey Weeks

His central concern is with the concept of values as they are rooted in different traditions and histories. His notion of the plurality of values, such as "good" is validated and given meaning by tradition, and because there are many traditions, there are many meanings of "good". Hence we have a wide diversity in value systems.

Weeks (1993) argues that it is possible to develop a value system which embraces both diversity and a wider sense of human solidarity. Human solidarity becomes a project of constructing bonds to bridge differences. The principal task of radical humanism becomes the making of a human community, which is a community of communities. To achieve this, we have to invent or reinvent not only particular, but universal solidarities too.

The key issue for Weeks is whether "it is possible to find a common normative standard by which we can come to terms with different ways of life, whether we can balance relativism with some sense of minimum universal values". (p 195).

Henry Richardson

Richardson states explicitly that he is in search of an adequate moral theory, one which can provide useful guidelines in the process of ethical deliberation (Richardson : 1995). He is of the opinion that because there are no natural laws to guide us, we are constantly faced with ethical dilemmas, where we have to make decisions. In such circumstances, there is no single moral theory that we can turn to for guidance. All we have is our own history, tradition and the community we live in.

In an attempt to construct his own theory, he explores the notions of good and right, which govern our behaviour, as they are employed in both the consequential as well as the deontological perspectives. He argues that because these perspectives separate the notions of good and right, they give rise to paradoxes. Paradoxes occur when we encounter situations of moral conflict, such that by doing good we are not doing right. Hence both these perspectives are false, and fall short of acting as adequate guidelines in matters of ethical

deliberation. He comes to the conclusion that the good and the right cannot be separated, but must be considered in tandem.

His theory of constructive ethical pragmatism does just this. This theory holds that the "right act is the one endorsed by the conception of the good best integrating principles of the right within it" (p 129). In Richardson's theory, the good and the right are not fixed, mutually exclusive categories, but rather integrated, so that they are subject to progressive revision. It is this feature of revisability which avoids paradoxes, that makes it a pragmatist conception.

An interesting conception of social justice that focuses on cultural differences is that put forward by Nancy Fraser (1995). She acknowledges traditional conceptions of social injustice that have been understood in Marxist and Rawlsian terms of maldistribution of material resources. These could be remedied by some sort of political restructuring which would lead to redistribution. There is another kind of injustice, however, stemming from cultural or symbolic differences, which can be remedied by recognition. In the context of the widespread inequalities prevalent in the world, she sets as her intellectual and practical task to develop a critical theory of recognition, one which "identifies and defends only those versions of the cultural politics of difference that can be coherently combined with the social politics of equality" (1995 : 69).

Fraser focuses on axes of injustice that are simultaneously socio-economic and cultural. She claims that the distinctions between the two types of injustice is analytical, and that in practice, both are intertwined and reinforce each other. She considers redistribution (socio-economic, e.g. class) and recognition (cultural, e.g. sexuality) as the polar opposites on a continuum representing various axes of injustice. Lying along the continuum between the extremes are the bivalent collectivities, such as gender and race, which contain elements of

both redistribution and recognition. As such, for inequalities stemming from these to be redressed, it is necessary to effect changes in both political economy as well as culture. In society as a whole, there are many such intersecting inequalities and the challenge is to be able to address all of them effectively.

Fraser therefore goes beyond Rawls who stressed economic factors only, and adds to his concept of parity of participation (1998). She argues that a requirement of social justice is that social arrangements exist in which all adults be able to participate in social and economic life as peers. For this to occur it is necessary to ensure individual independence, with people having certain basic minimum resources. At the same time, cultural conditions should be such that there is recognition and equal respect for the values of participants. The existence of these conditions would mean the attainment of a system of social justice.

Fraser's perspective has important implications for planning because all societies have varying components of multicultural entities experiencing varying degrees of recognition and integration into the host or dominant culture. As such, patterns of domination and subjugation emerge depending upon particular historical contingencies, that generate sets of power relations which affect planning decisions at all levels. In subsequent chapters these ideas will again be taken up to see how in the case study considered in this dissertation, the dynamics of divergent interests operate to achieve specific outcomes.

In summing up the pragmatist conception of justice, it is possible to conclude that justice is a social construction. There are no objective and universal criteria for social justice. Hence social justice is always contingent, making the context important in its conception. However, the recognition of contingency

does not mean that there can be no commitment to a particular conception. In the social construction of justice, norms and values are constructed within communities, which is also the source of our solidarity. From this we derive our criteria which enable us as individuals, to make normative choices.

To a limited extent, pragmatists within planning, such as Charles Hoch, have addressed questions of social justice.

This venture through the maze of theoretical perspectives on social justice, has progressed in a very cursory manner. For now, only a preliminary discussion of the theories has been entered into, and a more intensive discussion will be engaged in, on the basis of the findings of the research.

In very broad terms, the theories introduced in this chapter represent a gradual progression from rigid scientism, instrumental rationality, and universalism to emphasis on values, intersubjective communication and particularism, characteristic of post-modernism.

Whilst the discussion thus far has shown that the concept of justice has various dimensions, and has been addressed by various theories, other dimensions not addressed in this dissertation are also important, for example, ecological/environmental justice.

3. JUSTICE IN PLANNING

This chapter will attempt to show how the theories of justice outlined in chapter two have been applied in the thinking and practice of planning, with reference being made to specific cases. This exercise will also help to elucidate the latter part of this dissertation, which will focus on whether these theories provide meaningful guidelines in the process of ethical deliberation pertaining to the case study of our concern, i.e. Block AK. This will indicate the level of explanatory power of theories, because no single theory can provide guidelines in the unending diversity of ethical issues confronting planners. I have therefore opted for an eclectic approach. This chapter deals with the planning applications of the theoretical perspectives considered in the previous chapter. At the expense of repetition, therefore, this chapter should be read in conjunction with chapter two.

3.1 UTILITARIANISM

Although utilitarianism expressed a radical point of view at the time it was propounded, it has fallen into disrepute in the evolution of philosophical thought largely because of its hedonistic calculus, i.e. basing its sense of social justice on the greatest happiness of the greatest number. Utilitarianism has at least partially underpinned a key legitimating conception within planning, that of the "public interest". In fact, the notion of the public interest continues to surface from time to time even in current planning theory as well as practice, and is akin to Harvey's notion of the "common good". The notion of the public interest, however, though still invoked in current planning, remains an elusive category. In the utilitarian perspective, the public was assumed to comprise a homogenous entity, a mass undifferentiated in terms of race, class or gender. One of the reasons rational comprehensive planning fell into disfavour was because it embraced this notion, but gave voice to only one interest, and ignored the needs of the poor and the weak, and the diversity of interests

that cannot be subsumed under a "common good". Advocacy planning in the late 1960's arose largely as a critique of this focus on society as a whole, which gave no space to particular interests.

Being the oldest of the theoretical perspectives considered in this dissertation, utilitarianism falls squarely in the modernist tradition, characterised by grand theorising and the Enlightenment ideals of rationality and objectivity, freedom and justice. Its associated notions of the public interest and rational comprehensive planning have had a considerably long reign in planning practice. Until recently, many government decisions in western society sought ethical justification in utilitarianism. A local example of its application in planning is quoted by McCarthy and Smit (1984). The re-routing of the south-bound national highway linking Durban to the south coast entailed the loss of revenue gained from passer-by trade for a craft market that had spontaneously located itself at Umgababa along the highway. This was clearly a top-down decision, serving the "public interest" by saving travel time and cost, without taking into account the negative impact on the informal craft industry and the poor people who were sustained through its existence. In utilitarian terms, because it served the interests of the wider public, it was a socially "just" decision.

It will become evident later, that planning practices throughout have embraced certain characteristic features of utilitarianism and the related rational comprehensive model. For instance, whilst Krumholz (1990 : 95) prioritised the interests of the disadvantaged, broad planning policy occurred within the parameters of the public interest and comprehensive rational planning. Using the broadest interpretation of the public interest, Krumholz urged planners to inject comprehensive rationality into the decision-making process.

The rational comprehensive model is attractive because it offers rules that are logical and clear, and allows planners to look at alternatives and consequences. (Sandercock :1996) It enjoyed credibility for such a long time largely because of its precision, creating the illusion of certainty and objectivity.

Apart from a radical critique of notions of the common good (e.g. advocacy), there is also a liberal or neo-classical critique. Although some utilitarians are regarded as liberal, Harper and Stein (1995:14) argue that utilitarianism violates what they believe to be the fundamental liberal value, i.e. it does not grant autonomy to the individual. Liberal welfare economists reject utilitarianism because it allows the poor to become worse off, so long as the total social utility has increased. It is also severely handicapped in that it is not able to handle competing claims and the conflicting interests of minority groups. Post-modernism would also criticise utilitarianism for its lack of attention to diversity. (For more criticisms of this perspective, see chapter two).

In sum, social justice for the utilitarians means following the course of action that leads to the greatest happiness of the greatest number. If a decision which has to be made, is governed by the promotion of the public interest, it is deemed the socially just decision. The interest of minorities or disadvantaged groups is of no consequence.

In the instance of re-routing quoted here, invoking the notion of the public interest created no ethical dilemma because the Umgababa traders comprised such a comparatively small, socially visible enclave. The fact that as a consequence, they lost considerable revenue and goodwill clearly did not move the authorities.

3.2 ADVOCACY PLANNING

Advocacy planning constituted the first serious challenge to rational comprehensive planning and utilitarianism. Davidoff's article, *Advocacy and Pluralism in Planning*, published in 1965 appeared in response to the Civil Rights movement and the major riots that were occurring in American cities at the time.

Racial discrimination which led to residential discrimination concentrated urban blacks in the central ghetto areas, which were often blighted by unemployment, poverty, lack of education and health care, deteriorating infrastructure and substandard housing - "unfit for human habitation". As they moved into the inner city areas, whites moved out into the suburbs with single detached houses and landscaped parks and gardens.

Davidoff challenged planners to become advocates of participatory democracy, and overcome poverty and racism - to reduce disparities between the rich and poor, white and black, and men and women. He viewed planning as a political process aimed at promoting democratic pluralism in society. In this process diverse groups would be represented and would participate in political debate and public policy. He argued that pluralism would stimulate city planning by providing the public with choice, and by forcing the planning agency to compete with other groups for political support.

Davidoff's ideas found favour with the liberal left intellectuals, who were mostly white, middle-class professionals. They went into the neighbourhoods of Harlem and Boston, and found that what the poor lacked was the power to control actions that affected their lives. Gradually, White advocacy organisations were formed, which soon gave way to Black organisations focusing on issues of Black perception and empowerment, which undoubtedly became the forerunner to parallel movements in South African planning history approximately twenty years later.

Perhaps the best documented and known work of Advocacy planning is that of Norman Krumholz in Cleveland, Ohio. Commencing in 1969, Krumholz and his team of city planners worked as advocates of the poor and oppressed in Cleveland for a period of ten years. When Krumholz came to Cleveland, the city was characterised by a large Black population that was segregated and poor. Cleveland was the first large American city to elect a black as mayor (Carl B Stokes in 1967), despite it being the most segregated city in the nation (p18), with its black population constituting only a 39% minority. Yet it has had a history of racial tension, conflict and violence.

This was demonstrated in the plans to decentralise public housing in Cleveland. Although the Fair Share policy in which all municipalities in Cleveland were to have their fair share of public housing did not succeed, approximately two-thirds of the public housing was erected at great cost and amidst much protest. Krumholz and his team also had some success in other areas. Their intervention in the police force proved minimally successful, whilst the areas of solid waste and electricity were more successful.

The policy and planning shift that occurred with the arrival of Krumholz on the scene has a very significant resonance for current planning initiatives in South Africa today - the pursuit of equity through the redistribution of resources in favour of the most disadvantaged sectors of the community, viz, the historically disenfranchised and powerless black minority. The Cleveland planning exercise has taught us how to incorporate considerations of equity into our daily planning operations in the context of the rapid changes occurring in contemporary South Africa. Ideas relating to advocacy planning influenced the formation of such organisations as the Built Environment Support Group in Durban during the 1980's, which was the first example of advocacy planning in South Africa. The Cleveland exercise also introduced the notion of distribution of material resources, which the utilitarians ignored.

The advocacy approach proposed by Davidoff and practised by Krumholz is linked to a pluralist perspective with competing interests, and notions of legal planning. It embodies procedural justice with the focus on oppressed minorities, which, to some extent, is akin to Rawls's idea of prioritising the interests of the least advantaged group.

Although this perspective has gained an ethical following largely because it addresses issues of inequality and equity, it has been correctly criticised for failing to understand the historical and structural character of these same issues (Forester :1982). In essence, this is saying that the advocate planners treated the symptoms and not the causes of social problems. Forester adds that in doing so, the irony is that their best intentions may be betrayed. Largely because of the advocate planner's neglect of the structural dimension, Forester believes that the term "advocacy" is overly narrow and opts instead for the term "progressive" planning. Progressive planning then, is seen as a refinement of traditional advocacy planning, based upon "practical political-bureaucratic recognition and anticipation of systematic sources of misinformation" (Forester1982:77). Translated into planning practice, this may mean in neighbourhood planning for instance, the demystification of the planning process and local government itself.

Krumholz was advocating the politicisation of planning, arguing that when planners refuse to press for redistributive goals, they too often allow a status quo of poverty and powerlessness to remain unchanged. Advocacy planning had a considerable impact at the time in the sense that it expanded the definition and scope of planning activity. However, it was still criticised for leaving the structure of power intact. (Sandercock : 1998).

In the context of their understanding of the limits to planning, the task of planning for the advocate planners was to improve the lot of the poor and powerless, and if this was achieved it would have represented, in ethical terms, the right and just course of

action. It follows that justice is the outcome of a process in which all groups are properly represented. Procedural justice is different to the Habermasian conception in that it is not necessarily consensus seeking, and could entail conflict.

3.3 CONTRACTARIAN THEORY

Although not strictly included as a theory in planning literature, this theory propounded by Rawls has been included in this section because it has substantial relevance for planning practice, especially in the field of planning ethics. It is also widely quoted in planning literature, which is indicative of the fact that it has had significant impact on planning. The timing with advocacy planning would appear to be coincidental, with its main target being utilitarianism. Whilst utilitarian justice focused upon the achievement of the greatest happiness of the greatest number of people, contractarian justice focused upon according priority to the least advantaged group in society, irrespective of numbers. Contractarian theory focused on individual liberty, which utilitarianism neglected. Thus, Clark and Gintis (1978 : 302) claim that Rawls's primary concern is "to construct a workable and systematic moral conception to oppose utilitarianism". In complete antithesis to utilitarianism, Rawls (1971 : 3) specifically states:

"Justice denies that the loss of freedom for some is made right by a greater good shared by others. It does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many."

Rawls's conception of social justice revolved around the Enlightenment principles of liberty and equality. Of the two principles, liberty should take precedence over equality, which is to be attained through a redistributive process, according priority to the least advantaged, and taking into account the "just savings" principle. This latter

principle, broadly interpreted, meant the conservation and enhancement of existing resources for consumption by future generations. In general terms, liberty, opportunity, income and wealth, and the bases of self-respect are to be distributed equally, whilst an unequal distribution is permitted only if it favours the least advantaged.

Although Rawls did not make reference to urban or regional planning, his principles of social justice have permeated many instances in the planning arena when decisions had to be made. Examples abound throughout the world, including the United Kingdom, North and South America, and now South Africa, where planning decisions in terms of both policy as well as implementation, have accorded priority to the least advantaged. In the United Kingdom, during the late 1970's and through the 1980's, despite a Conservative government in power, many Labour local authorities prepared plans with explicit social goals. The Greenwich Borough plan for example, specifically referred to the need to plan for people disadvantaged in terms of gender, age, ethnicity, infirmity and sexual orientation. Similarly, the Borough of Ealing indicated particular regard for the needs of the elderly, disabled, women, ethnic minorities and people on low income. (McConnell 1995 : 39) In terms of implementation, this translates into special parking bays with easy access for the disabled, certain women-only projects, sheltered housing, and so on. All these reflect the goal of social justice.

In a world where minorities are becoming increasingly vociferous and aware of their status, situations assume much greater complexities than the instances quoted above. In cases where several divergent groups are involved, and minorities are disadvantaged and marginalised in terms of different criteria, how does one determine which is the most disadvantaged group? Clearly, Rawls provides no guidelines in such instances. For example, is a black woman from a low income group at a greater disadvantage than a white woman who is physically challenged? One could make such comparisons in various combinations with different stigmatised groups ad infinitum, and the

complexities would continue to confound. Therefore, each case would have to be considered in terms of its own historical and contextual contingencies. No theory of social justice could have general application and consistently provide specific guidelines, using the notion of advantage or disadvantage as a criterion. As will be shown, the postmodernist critique now highlights this flaw in the Rawlsian approach.

3.4 NEO-MARXIST THEORY

Alternatively referred to as the radical political economy model, (Sandercock : 1998) this theory broke new ground when it arrived on the scene with the publications of David Harvey's *Social Justice and the City* and Manuel Castells's *The Urban Question* during the 1970's. This became a powerful critique of mainstream planning, which, according to the neo-Marxists, was serving the real interests of the power structures in which it was embedded. Castells produced one of the first case studies of the role of urban planning in the development of the growth pole of Dunkirk (Sandercock :1998).

Harvey focused upon conflicts between competing fractions of capital in the built environment, arguing that the role of planning is to achieve a balance between these fractions, and between capital and citizens through a mixture of repression, cooptation and integration. In short, the neo-Marxists argued that planning will always serve the interests of capital. The focus in this chapter will be on the work of Harvey because he has written specifically on social justice. Castells's position, however, should not be ignored because he brought the sphere of social consumption into neo-Marxist thought, which would otherwise have focused solely on production.

Whilst a typical liberalist perspective such as exemplified by Rawls, separates the processes of production and distribution, Harvey (1973) argues that they are closely intertwined, and that in fact production is distribution, and that efficiency is equity in

distribution. Rawls was concerned with the nature of distributive justice, but did not mention production. It was assumed that the market mechanism would take care of this. For Harvey, distributive justice is concerned with income, which is defined by production. The market mechanism in a capitalist society, argues Harvey (1973), is incapable of delivering justice because the state plays a fundamentally important role in manipulating it. The market mechanism is therefore automatically antagonistic to social justice principles. It is incapable of distributing either in terms of need or contribution to the common good, two of Harvey's criteria of distribution. In this respect, Harvey contributes a political-economy perspective to counter not only liberal democracy, but also the dominant paradigm of rational comprehensive planning.

Harvey's perspective is enlightening in the context of postmodern interpretations of social justice and its implications for planning practice. Harvey (1993) is responding to the particularistic deconstructionism of postmodernism which, logically, deems even the act of a rapist "just" behaviour. In trying to bridge this gap and retain universalism in a broad general sense, he quotes the example of the fire in the broiler chicken plant in Hamlet, North Carolina in 1991, where the unifying potential of class on a broad level was fragmented by focusing on particularisms such as race and gender. Ultimately, he argues, we have to assume some general principles of social justice, and universalism should not be rejected out of hand, but "reinstated in a dialectical relation to particularity, positionality and group difference" (p108).

Harvey argues that marginalised groups are afforded more protection by social class in social democracies than in the United States where there has been a Republican-party class war over the past two decades against the welfare state and working class rights. He quotes Segal (p112) who has made the observation that although United States women have the largest and most vociferous feminist movement in the world, they have made less progress in the last twenty years compared to other western democracies. Although, as Nancy Fraser notes (1989) there is a gender bias in many welfare policies, Segal continues that it seems perverse to pose women's interests

against rather than alongside traditional socialist goals. The bases for alliances and solidarities is therefore brought into question, with differing groups ideally forming alliances with groups having similar concerns. Thus Harvey states (p114), "only through critical re-engagement with political economy, can we hope to re-establish a conception of social justice as something to be fought for as a key value within an ethics of political solidarity". He adds that the ideal of social justice can still, despite the confusion, function as "a powerful mobilising discourse for political action".

To sum up, Harvey says that we cannot avoid universalism, but it must be seen in conjunction with particularity. It becomes the task of progressive politics to find a persuasive way to relate the universal and the particular in order to define justice from the perspective of the oppressed. It is necessary to eliminate the processes that generate identity differences, rather than to merely address them once they have arisen.

Harvey's theoretical position has also been influential in the interpretation of the political economy of urban and regional planning in South Africa, during the decade of the 1980's. Observations made by students (notably Daniel Smit and Jeff McCarthy) exposed to the works of Harvey and Castells during their stay in the United States have thrown much light on the political dynamics of the South African situation at a crucial period prior to the birth of the new democracy.

Smit (1989) provides an analysis of the evolution of advocacy and progressive planning in South Africa, shaped by the political dynamics not only of race but also class. He analyses the formation of alternative organisations such as the Planning and Development Association (PADA) in the face of the unyielding position of the South African Institute of Town and Regional Planners to adopt resolutions that would focus on the needs of the politically disadvantaged. This gave birth to a number of locally based organisations, articulating political objectives, urban social movements and the politics of reproduction in the black communities. (p 316), indicating that the locus of conflict had shifted from the sphere of production to that of consumption.

The Neo-Marxist paradigm has endured throughout the literature on justice in planning. However, Sandercock (1998: 92) believes its lasting value is greater at the level of critique than action. Its structural reality cannot be ignored in planning practices or policy. She notes, ".....Marxist critique has demystified the idea that planning operates in the public interest, making it very clear that class interests are always the driving force" (p 92). But she adds that in this process they have either ignored or subsumed other forms of oppression, such as race, gender, ethnicity etc. Neither has the model provided an alternative definition of planning and what planners can do.

3.5 CRITICAL REALISM

Habermas's major work focuses on the concept of rationality and its relations to problems of social action, intersubjective communication and social-historical change. He develops his theory of communicative rationality, central to which is the role of language and the search for undistorted communication as a basis for consensus and action.

Habermas focuses on the processes of collective dialogue and its potential for transformative action. Collaborative planning is an integral part of the post-modern challenge which embodies the shift from scientific or instrumental rationalism to a phenomenological and interpretive approach.

In practice, his ideas have translated into collaborative planning, the best known proponent of which is Patsy Healey (1997), who discusses this method of planning in the British and European contexts. She claims that his work on communicative action is having a "transformative" impact within planning on conceptions of planning processes. It is also influencing practical policy-making as role players use the

techniques of mediation and facilitation to deal with disputes and organise discussion among various groups. (1997 : 50).

The collaborative style of planning entails a characteristic style of defining the problem as well as formulating strategy, and this is again embedded in their whole approach to their view of reality and how it is comprehended. Unlike the modernists who see planning as an objective science 'outside' themselves, and devoid of a value component, the collaborative planners see social reality as a social construction of which they are a part. They interpret meanings that are attached to the complex web of social relations, which are imbued with values, beliefs, sentiments, power etc. Habermas for instance, emphasises how peoples' conceptions of their preferences are communicatively and intersubjectively constructed. Unlike the view of the rational planning process, this view sees planners entering the arena with their professional and socio-cultural frames of reference, and in a continual state of interaction with their environment, and contributing to its change, not just managing it.

Similarly, the notion of the public interest which is central to the concept of rational comprehensive planning has been largely extinguished and replaced with the notion of pluralism. Planning therefore occurs not within consensus-based homogenous entities, but rather, in situations with a wide diversity of interest groups, based upon a variety of cultures. "Cultures" in this context has a more anthropological connotation, referring to systems of meaning and modes of thought and action. Hence, the communicative approach draws into the planning arena people from these widely divergent interest groups - some more powerful than others - to articulate their interests. Contemporary social configurations are referred to as being "fragmented" in nature, embodying a transition from the "modern" period of shared values and objectives to a "postmodern" one of social diversity and the "celebration of difference". In this context, collaborative planning operates through the adoption of an interactive and participative approach based upon rational discourse and negotiation rather than confrontation. In practical terms, if these processes have occurred in the

planning process, then social justice has been achieved. This perspective therefore cannot predict in advance if justice is going to be achieved, and can only arrive at such conclusions after the act.

The collaborative planning approach views us as living in a world of power relations, which are not external to us, but are a part of us. We therefore have some power to make choices, invent new techniques, use rules in different ways, and bring about change. We have the power to challenge dominant power structures through dialogue and reflective discourse. In the process, we learn to respect each other, and to build consensus which respects difference. This is attained through recognising the potential cultural dimensions of differences and building shared systems of meaning. Spatial planning seen in this way takes on the connotation of management of co-existence in shared spaces. It is faced with integrating the economic, environmental and social dimensions of issues as they co-exist in a place. The Habermasian concept of communicative ethics is a useful tool in understanding how relations of understanding and trust which promote multi-cultural communication and learning are built in such an environment of cultural and social diversity. We live in "unequal, culturally diverse and conflict-ridden societies" where collaborative planning helps to achieve pluralist democratic practices for governance (1997: 71).

In traditional spatial planning, dominant discourses prevailed in a context of exclusivism. Planning trends have now become more inclusivist by making links with all stakeholders, and in this context, collaborative planning is especially useful in making judgments about institutional capacity building. This has a special resonance in South Africa now, where spatial planning is integrated with social, economic and environmental policy practices at the municipal level.

Healey quotes two recent innovative examples of collaborative planning undertaken in Western Europe, the case of Lyons in France, and Lancashire County in England. In the case of Lyons, experiencing social segregation and high levels of

unemployment during the 1980s, the public and private sectors came together to focus on a new strategy for development by creating consensus amongst the communes. Lancashire County, engaged in an exercise aimed at redistribution of opportunity from the more affluent western part of the county to the eastern part, set up an environment forum, drawing in discussion groups from across the country, where issues were debated.

A critique of this theoretical perspective has been launched by Bent Flyvbjerg (1998), whose primary concern is with Habermas's central concept of rationality. Flyvbjerg introduces the notion of power as the dominant force into the equation, claiming that Habermas fails to comprehend the relationship between rationality and power. According to Flyvbjerg, the relationship between the two variables is an asymmetrical one, with power having a clear tendency to dominate rationality. Whilst collaborative planning acknowledges that planning occurs in a context of power relations, it sees power not as dominating rationality, but rather as an instrument of rationality. Flyvbjerg substantiates his position in terms of the planning experience in Aalborg, Denmark, where a project which attempted the integration of environmental and social concerns into city politics and planning, went wrong in the implementation stage after winning the European Planning Prize at inception in 1995. Institutions which claimed to operate in the "public interest" were found to be exercising power in pursuit of their own self-interests. In this case it became evident that the powerful were concerned with defining reality to suit them, and not with discovering the true nature of reality.

Although Habermas extends the concept of rationality beyond its modernist interpretation (see chapter 2), Flyvbjerg views rationality as an ideal of the Enlightenment, and argues that given this status, is weak at the practical level. The case of Aalborg demonstrated that rationality is penetrated by power, and it is meaningless for politicians and administrators to operate in a context of rationality where power is absent. Power often operates underneath the facade of rationality.

Situations in which rationality dominates invariably are characterised by stable power relations. But, according to Flyvbjerg, stability does not imply justice, and stable power relations do not imply "communicative rationality". All that is achieved in such stable situations is a working consensus with unequal relations of dominance. It follows then, that the power of rationality can be maintained only insofar as power relations remain non-antagonistic and stable. Hence, democratically elected government officials and politics could end up in a weaker position vis-a-vis antagonistic interest groups. Therefore the power of rationality is weak, and the asymmetry between rationality and power makes for a fundamental weakness in planning.

Whilst Flyvbjerg acknowledges that it is not possible to make generalisations from this one instance, this example nonetheless can provide useful guidelines in researching rationality and power in other contexts.

It would appear that a major bone of contention with the Habermasian model is the notion of rationality, for which no substitute has been found, except for other paradigms to work around the concept whilst still retaining it. Harper and Stein (1996) for instance, caution that liberal democratic societies are in danger of resorting to power in search of conflict resolution. As a result, they advocate "a broader sense of rationality (incorporating communicative and critical rationality) as the replacement for instrumental rationality, with democratic dialogue as the appropriate mechanism for resolving planning issues."(p 414) They elaborate on this, maintaining that reasonable and meaningful dialogue towards consensus is still possible, that coercion need not replace rational persuasion. They propose a method that bridges the worlds of Rawls and Habermas. They fuse Rawls's notion of Wide Reflective Equilibrium (which focuses on self reflection to achieve consensus across one's own differences) with Habermas's interactive communication, and come up with a method that recognises that intellectual, moral and social progress occurs not by reference to absolute foundations but through self-criticism and interactive critique with others.

Collaborative planning has also been severely criticised by Tedwyr-Jones and Allmendlinger (1988) for being unrealistic, optimistic, utopian and placing too much emphasis on consensus and too little on conflict which characterises modern society today. In view of this, the general applicability of collaborative planning is severely undermined. Its quest for a certain style that would achieve social justice in planning makes assumptions about people and power relations that are far from realistic. Jones and Allmendlinger argue that at a crude level, communicative rationality is about undistorted communication, openness and a lack of oppression. In the real world, however, stakeholders and divergent interest groups have their own hidden agendas, and try to dominate discourses through the assumption of power, reflecting their own values and objectives. It fails to acknowledge that individuals can be dishonest, and can deliberately obfuscate facts and judgements to suit themselves. They claim that Forester (1982) has addressed this issue, by making reference to the three faces of power (decision centred, agenda setting and felt need shaping) which function to thwart citizen participation or encourage responsible political action and democracy. Little has been said on the other hand, by Habermas or others subscribing to communicative rationality. Participatory democracy, upon which communicative planning depends, and consensus which it strives for, are not necessarily values that everyone subscribes to.

Moreover, they argue that the assumption is implicitly made that consensus will be reached. But in instances where this is not the case, and in order to achieve justice, if courts have to intervene, then this entails employing the very mechanism rejected by Habermas.

However, despite these criticisms, there have been instances as noted earlier, where collaborative planning has been used with some success. As Tedwyr-Jones and Allmendlinger have conceded (ibid), communicative planning " has raised a set of serious issues about how common values can be forged and applied in a field of differences and power plays".

Sandercock (1998 : 97) argues that whilst this is on the whole a more inclusive theory of planning than that of its predecessors, it fails to address the issue of empowerment. It ignores categories of gender and race, suppressing crucial questions of difference and marginality, and their relationship to social justice.

3.6 PRAGMATISM/POSTMODERNISM

Whilst Habermas embraced the notion of universal validity, the pragmatists and the postmodernists embrace a radical diversity. According to Rorty (1989:83), Habermas assumes that the task of philosophy is "to supply some social glue which will replace religious belief, and to see Enlightenment talk of 'universality' and 'rationality' as the best candidate for this glue". Habermas needs some kind of political consensus about what is universally human. For Rorty, on the other hand, this consensus is not necessary. All that matters is the widely shared conviction that we shall call good or true or just whatever is the outcome of free discussion. In other words, if we can take care of political freedom, truth and goodness will take care of themselves.

The central concern in the pragmatist perspective is with practical ethics and values, which have been accorded an unrivalled prominence. As Steven Connor (1993 : 31), borrowing from John Fekete says :

".....we live, breathe and excrete values". He attributes the exile from evaluation in the west to scientific and technical education in which facts, knowledge and interpretation have gained ascendancy over values.

According to the pragmatist conception, our values are derived not from overarching universal principles such as philosophy or religious morality, but rather, they are socially constructed from subjective and experiential knowledge within our own communities. Jeffrey Weeks (1993) argues that our value systems are given validity through the communities in which we participate. In the absence of a universal truth

then, the individual is totally responsible for making her moral choices in terms of her own value constructs which act as a reference point providing guidance.

This position has elicited much criticism from those who believe that if there is no universal truth, there can be no absolute conception of any ethical position or morality, giving rise to a crude relativism in which "anything goes". As Harrison notes (p 390), there is a "vulgar pragmatism" referred to by Friedmann, but individuals informed by the philosophical tradition of pragmatism have strong commitment to moral positions and ethical codes. It is also possible to be a pragmatist and accept agreed standards of evaluation. On a common sense level it is still possible to defend truths relating to such ethical concepts as freedom, equality and justice, which can be simultaneously objective and universal as well as subjective and culture-contingent.

In practical planning terms, the postmodern pragmatist could face enormous challenges. But these are not insurmountable if for instance value positions are explicitly stated at the outset and any deviations from them adequately explained. It is given that with social reality constantly changing, our perceptions of that reality will simultaneously change, and so will the guiding principles for our ethical decisions. Richardson's notion (1995), of constructive ethical pragmatism argues for a cumulative wisdom which would help us make moral judgements each time without having to constantly revise our traditional notions of morality. He believes that justice can be attained in planning if the notion of the good incorporates the notion of right not in a fixed fashion, but in a continual process of revision.

This section will use the work of Sandercock (1995) as an example of how pragmatism/postmodernism is now being used in planning thought. Pragmatism is useful in planning practice from the point of view of acknowledging diversity in cultures and therefore accommodating, tolerating and empathising with people subscribing to alternate and different value systems. New vistas are opening up in planning theory and practice for people hitherto discriminated against and

marginalised, on the basis of race, ethnicity, gender and sexuality. Hence "Voices from the Borderlands" (Sandercock : 1995) are now being increasingly heard, highlighting the fact that the analysis of injustice and inequality extends beyond class analysis, to include writers like Gloria Anzaldua (Chicana), bell hooks (African American) and a host of others - Native Americans, Vietnamese, Chinese and Japanese. These are the voices of people that experience a "collision of cultures" and fractured realities, generating conflict and tension. They live without universals, but not without meaning, and negotiate their reality whilst traversing multiple moral codes.

They are not only providing planners with a new challenge, but also giving them clues as to improved ways of dealing with cities and looking at the world. As Sandercock notes (1995:79), they "raise questions for planning practice that are arguably the most difficult we face in this and coming decades". The contribution of these radical postmodernists has even greater relevance for planning practice if theory is seen as synonymous with practical philosophy, ie "thought crafted to guide action" (ibid).

In discussing her multiple and conflicting identities, June Jordan (Sandercock : 1995) makes reference to the paralysis of identity politics, and suggests that a way out of this paralysis is "a moral attachment to a concept beyond gender and race - the concept of justice" (p83). Living on the "wrong side" of the tracks, creates the space for conflict, resistance and an "oppositional worldview" which has to be negotiated. It provides the opportunity both for looking in from the outside, as well as looking out from the inside. Thus, marginality transcends deprivation and strengthens the sense of self and solidarity, a dominant theme in Rorty's pragmatist conception. Thus, a new cultural politics of opposition is born, embracing the notion of coalition and emphasising a collective struggle for justice and equality. Rorty's concept of "imaginative identification" is relevant in understanding the meanings of these voices i.e. making sure that when suffering occurs, it is noticed.

These themes pertaining to identity and difference, multiple voices, and the importance of storytelling create more inclusive ways of looking at social justice, providing planners with a way forward in practical ethics, situated within the context of the postmodern, revised democratic tradition. Sandercock argues that these multiple voices provide some hope out of the grip of postmodern helplessness, a belief espoused by Robert Beauregard in 1989, urging planners to address the challenges of postmodern critiques.

The cumulative impact of these theories on planning literature has created a wealth and diversity of knowledge as well as confusion hitherto unknown to students and planning practitioners. It would appear that all these competing paradigms, in certain cases remnants of them, are still alive and continue to be invoked for guidance. Clearly, theorists continue to cling tenaciously to the Enlightenment ideal of rationality, now looking at it in conjunction with power. Although debates around the local and the particular flourish in the face of new theoretical challenges around the politics of recognition and identity, the notion of universalism has not been discarded altogether.

4. THE HISTORY OF BLOCK AK

4.1 THE STATUS QUO

Block AK comprises the area to the east of the Greyville Race Course bounded by Kolling Road, Umgeni Road and Epsom Road. The area relevant to this project, however, comprises only the remainder of Block AK which is the vacant portion of this land. The site is bounded by Mitchell Road adjacent to the Race Course situated on its western boundary, Osborne Road to the north, First Avenue to the east and Ascot Road to the south (refer to *Block AK Location* map).

It covers approximately six hectares in extent, and is zoned for General Residential, purposes. It has not been developed since it was expropriated from Indians during the 1970s. It was initially intended as a White Group Area, but a market for white residential development did not exist in this area, with the result that the site deteriorated and was set aside for urban renewal. The area has been lying sterile for over three decades now with limited informal economic activity taking place on the site.

The remainder of Block AK was purchased from the Development and Housing Board by the Durban City Council in March 1993 for an amount of R5 million, although the market value at the time was R12 million (Minutes: Durban City Council, July 1991). Several proposals were put forward for its development, but because it continued to remain an unresolved and contentious issue, with the claims for restitution submitted by the Block AK Action committee, development was suspended.

The land recently (during 1998) reverted to the Department of Land Affairs for restitution. It is envisaged that the original owners would now be paid a more just compensation, after which it will be in demand for development.

4.2 HISTORICAL EVENTS LEADING UP TO THE PRESENT SITUATION

The settlement of Block AK goes back to the middle of the nineteenth century, when the white population came to Durban. The Indian settlement began in 1873, when a former indentured Indian by the name of Telucksingh was granted a licence to trade in West Street. He is believed to have lived on a site close to Osborne Road, where Natal Newspapers is located. Telucksingh was subsequently followed by 'passenger' Indians who came to South Africa from Mauritius as traders, and settled around Umgeni Road, on the edge of Block AK, where they conducted their businesses. This started a regular movement of relatives and other traders from India, mainly from Surat, Gujerat and Bombay. By the 1880's, a substantial number of these traders had built homes in the Mitchell Road complex, adjacent to the Greyville Race Course. Gradually, as the period of indenture expired, a number of the ex-indentured or 'free' Indians settled along Fynn and May Streets in what is now Block AK.

The Group Areas Act was promulgated in 1950, and by 1955, mechanisms had been put in place for expropriating land from people displaced in terms of the Act, and for paying them compensation at a controlled price. At the time that Block AK was proclaimed for White ownership and occupation on 4 October 1963, there were approximately 5000 Indian families living there. Very shortly afterwards, it was declared an Urban Renewal area and in 1968 was "frozen" for a period of ten years. This freezing order was subsequently extended for a further period of ten years until 15 September, 1988. The Department of Community Development then gradually expropriated the land in terms of an expropriation notice issued in 1969. By 1967, however, approximately 6000 Indian families had already been relocated in terms of the Group Areas Act. By 1978, all privately owned land had been expropriated by the Department of Community Development.

Relocation on a mass scale began occurring in Durban during the decade of the sixties. It was during this time that the formal townships of KwaMashu and Umlazi for Africans and Chatsworth for Indians experienced large scale growth, absorbing people who were forcibly removed from Cato Manor. Removals from Block AK were of a more gradual nature, but altogether, the impact of the Group Areas Act on the Indian population was severe. In 1951, 21,43% of the total Indian population lived in the Borough of Durban. By 1980, this figure was reduced to 2.24%, while 60% of the Indian population lived in Phoenix and Chatsworth.

During the decades of the seventies and eighties when Block AK was "frozen", the land was left to deteriorate. Disused houses still stood there, bare and vandalised, in the midst of rubbish dumps and scrap heaps, depreciating the market value of the land in Block AK. The City Engineer's Department contended that 'freezing' the land was necessary to enable the co-ordinated replanning of the whole area with new traffic routes.

Those who received compensation for their "loss" were paid the market prices at the time of declaration, and not the current value at the time of the expropriation notice, which followed six years after the initial proclamation. As a result, huge losses were further incurred, inflicting severe losses on the Indian community. Altogether, some six thousand people were affected by the relocation process. During the 1970's the process of expropriation was almost complete, but the only factor impeding development of the area was the proposed Umgeni-Umbilo Freeway. By 1980, all the buildings were demolished, with the exception of a few houses occupied by Indians who were still resident in the area. The last Indian traders were finally evicted in 1983, after a protracted and bitter struggle to stay on the land. The area was subsequently serviced and re-subdivided, with the Durban City Council and the Group Areas Board sharing the costs equally. In terms of land use, the area to the west of First Avenue was zoned for General Residential development, whilst the area to the east was zoned for business purposes.

During the 1980's, land in the area zoned for business was released and auctioned, and development finally commenced with the erection of warehouses, shops, light industrial factories and general business premises in the First Avenue and May Street area. Several new businesses have also mushroomed near the Durban railway station, with Umgeni Road as the frontage. Some of the more prominent business enterprises located in Block AK, adjacent to the vacant site are, Standard Bank and Ascot Park, a block of offices, Doves KZN, a funeral parlour and the offices and printing works of Natal Newspapers. All these buildings are prestigious and of high quality, contributing to the enhancement of the area.

The area zoned for general residential (flats) use remained sterile because there was no demand from the white community for this type of housing. After consideration for office development, advertisements for the two northern sites in 1984 received no favourable response. Despite the fact that the Indian community exerted pressure for re-zoning of the area between First Avenue and Mitchell Road for Indian ownership and occupation, using the rationale that it was situated within close proximity to the Indian CBD in Grey Street, the Council refused to acquiesce. Block AK continued to remain zoned for white occupation until the repeal of the Group Areas Act, despite the fact that Warwick Avenue, another precinct within Durban, for example, had been declared a Free Settlement area. Whilst the residential section lay vacant and represented a considerable loss in revenue to the City Council, businesses and offices grew in other sections of Block AK. Natal Newspapers relocated from the central CBD to Block AK in 1988.

The remaining unoccupied section, that constitutes the present area of contention, is bounded by Osborne Street in the north, Ascot Street in the south, First Avenue in the east and Mitchell Road in the west, at the edge of the Greyville Racecourse. This area comprises three properties as follows (refer *Block AK Location* map):

Block 1

Bounded by Newmarket Street in the north, Ascot Street in the south, First Avenue in the east and Mitchell Road in the west. The total area is 19 500 square metres.

Block 2

Bounded by Fynn Street in the north, Newmarket Street in the south, May Street in the east and Mitchell Road in the west. The total area is 19 500 square metres.

Block 3

Bounded by Osborne Street in the north, Fynn street in the south, First Avenue in the east and Mitchell Road in the west. The total area is 19 500 square metres.

Each of the three blocks measures 150m by 130m, creating a total area for all three blocks of 58 500square metres, or 5,85ha.

The surrounding development is relatively new and of high quality. It comprises predominantly business, with a mixture of retail, offices and light industrial. Heights vary from two to four storeys, with some single storey and high rise developments. The remainder of Block AK is currently zoned General Residential 2, (flats) but this can be changed in accordance with requirements.

The current land uses on the site include the following:

- Approximately a quarter of the block opposite and adjacent to Natal Newspapers is leased by them for the parking of approximately 150 cars.

- A portion of the southern block on the corner of Ascot Street and First Avenue is being leased for a boat yard.
- Fynn Street is currently used by taxis as a repair area.

4.2.1 CONSTRAINTS

- One of the consequences of the presence of informal dwellers is the high incidence of crime in the area. Car thefts are common and a number of highjackings have occurred, instilling fear and insecurity into the people working in the area.
- The Natal Newspapers parking poses a potential problem in terms of environmental impact of displacing the cars currently parking there, on to the street.
- Largely because of the stigma of expropriation attached to it and the sensitive nature of the history associated with the site, it has become a highly contentious issue.

4.2.2 OPPORTUNITIES

Situated within close proximity to the CBD, on a major access route, this piece of ground is favourably located in terms of urban opportunities, such as employment, transport, shopping and recreation. Its central location also makes it quickly and easily accessible from both the Western Freeway and the main access routes to the north of the city. Its eastern edge handles large volumes of traffic, and the area on the whole, is easily accessible from all parts of the Durban Metropolitan Area (DMA).

4.3 PROPOSALS FOR BLOCK AK

4.3.1 OPERATION JUMPSTART

This was a broad-based city led initiative of the Durban City Council intended to unleash the potential strength of the Greater Durban area to promote economic growth and job creation. Operation Jumpstart started in 1991 as part of a process to kickstart development in certain parts of the city, with Block AK being one of them. It drew together all major players - the public and private sectors, communities and major political groups. The operation was action oriented, and focused on short term projects with the objectives of reducing poverty, improving living conditions and effecting reconstruction. The organisation was intended to act as a pressure group, and facilitate and monitor projects. It was people oriented and seen as a pioneer amongst South African metropolitan initiatives.

The Steering Committee had representation from the following quarters:

- Natal and KwaZulu administrations
- Durban Municipality
- Port Natal-Ebhodwe JSB
- African National Congress
- Inkatha Freedom Party
- Organised business and professionals involved in the Durban Functional Region's (DFR) development.

The functions of Operation Jumpstart were prioritised in the following manner:

- Identify projects to stimulate economic growth and create jobs.
- Act as a broad based pressure group lobbying for specific projects.
- Facilitate contact between different players to keep projects on track and effect implementation.
- Monitor what is happening in the DFR.

They pushed for Inner City opportunities on well-located undeveloped land in Durban, Pinetown and other DFR centres to create jobs, provide housing and bring hope to disenfranchised communities. This included multi-use development and housing for the poor in Block AK, Warwick Avenue Triangle, and smaller pockets of serviced, undeveloped land.

A feasibility study of Block AK was conducted by consultants Maughan-Brown and Associates. In drawing up their proposal, they considered the development potential of the area in terms of firstly, the opportunities and constraints related to the site, and secondly, in terms of the range of possible responses from the market to those opportunities and constraints. They canvassed opinion in terms of what would be acceptable or unacceptable to the business enterprises operating on the edge of the area as well as political bodies and certain professional organisations. On the basis of these as well as the existing development controls and zoning regulations, they put forward certain proposals:

The land should be sold without profit, at its historic value by the Durban City Council (who owned it at the time) to a Development Company which should be formed on the basis of Section 21 ie with no profit motive. With assistance from the Independent Development Trust, development should take place in such a manner that the needs of the disadvantaged are taken into consideration

by cross-subsidisation from the businesses which would form a crucial part of the development project.

In terms of development they suggested/recommended that the edges of Block AK bordered by Ascot Street in the south, First Avenue in the east and Osborne Street in the north should have two floors of business space with middle income housing (a total of 350 flats of 80 square metres each, situated above them. Mitchell Road should be closed, thereby creating more space for development. The space contained within the perimeter of business space and middle income housing should be used for the development of subsidised low cost housing. This component would comprise flats of 50 square metres each.

The overall assessment of this proposal can be summarised as follows:

- According to the authors of the document, there are very good reasons for the City Council and the Operation Jumpstart to intervene in the development of Block AK in a facilitative capacity.
- Such intervention would produce very beneficial results through a process which would cost the city and its ratepayers virtually nothing.
- With the exception of one or two private concerns, "virtually every organisation or individual with any claim to an interest in the development of the area has indicated support for the proposals put forward." (Maughan-Brown & Associates:1991)

The report implicitly assumed that there were no land claims, and no other interest groups. In terms of this report, Block AK was not a contentious issue.

4.4 RESPONSE OF THE URBAN DEVELOPMENT DEPARTMENT (CITY COUNCIL)

In October 1994, in response to a brief from the City Council's Housing Think Tank and Housing Development Unit, a report was compiled by the Urban Development Department, based upon the Operation Jumpstart proposals. In providing a reassessment of those proposals in the light of changes which occurred in the intervening period, it found that the provision of multi-storey, multi-unit housing in the Inner City is not financially viable for those households earning under R2 500 per month. The major changes which occurred related to the changed political situation with a new commitment to equity, and the fact that Block AK was now owned by the City Council.

The report also indicated that if housing for the lowest income category (<R1 500 per month) is to be provided, it would have the following implications:

- Additional subsidies would become necessary.
- It would not be replicable or sustainable.
- It would lead to a distortion in the housing market.
- In all likelihood, it would require local authority commitment to rental housing.

In the case of Block AK itself, the report notes that considering its value, surrounding land values, the broader housing market, the question of additional subsidies and the nature of multi-storey developments, a financially viable development could provide housing for the upper bracket of the Regional Housing Board subsidy categories (ie, R2 500 - R3 500 per month). This would be to the advantage of the broader city, and result in a sustainable and replicable solution. It would be beneficial both directly, (by filling a housing market niche not currently catered for) and indirectly, (by generating

finance which could be used to cross-subsidise lower cost housing or public amenities elsewhere in the city).

It is interesting that this report also makes no mention, in discussing all the relevant issues at stake, of the Block AK Action Committee and the land claimants.

4.5 BAY PROPERTY CONSULTANTS

This proposal was drawn up in 1995, in response to a request from the transitional metro council. The main objectives of the brief as supplied by the council contained the following requirements:

- To accommodate predominantly residential "walk-up" type development to a maximum of five storeys, with a mixed use component.
- Should provide housing units for sale at the lowest levels of affordability that are financially viable.
- Speedy and efficient delivery of such housing units was to have priority. As a secondary concern, the promotion of skills training, opportunities for smaller sub-contractors and work opportunities for persons amongst disadvantaged communities, was to be taken into consideration.
- The beneficiaries of the housing units were to qualify for a Provincial Housing Board subsidy, and the aims and objectives of the Reconstruction and Development Programme were to be fully supported.

Further, a mix of housing units was to be achieved, to encourage a "healthy, family-living environment", with a range of unit types and sizes, catering for all stages in the life cycle - singles, couples and small families. The unit types were as follows:

UNIT TYPES	% FLOOR AREA	UNIT AREA
Studio	20%	33 sq metres
One-bed	30%	39 sq metres
Two-bed	35%	48 sq metres
Three-bed	15%	57 sq metres

Although the land use was to be predominantly residential, allowance was made for mixed use as well. This was to comprise small commercial / light industrial opportunities on the ground floor with residential situated above, or one or more nodes of dedicated commercial space on one or more levels. In terms of planning controls, the total floor area of 82 500 square metres would comprise 74 400 residential accommodation and 8100 square metres of commercial / light industrial space. The lower bulk factor was suggested to encourage heights to vary between three and five storeys. In the case of the five storey "walk-up" developments, the fifth storey was to be the upper level of a duplex arrangement situated on the fourth level.

The Council was to assume the responsibility of developer through the development company, using the Provincial Housing Board subsidy and conventional mortgages to assist beneficiaries to purchase the units once they are built. This was to be achieved with the Council forming a Development Unit with a separate legal identity, to be charged with the responsibility of developing Block AK. Initially, the Council was to "own all the shares" of the Development company, and would gradually release them as the units are purchased by beneficiaries. The intention was to reduce the number of shares held by the Council to zero.

The broad objective was to deliver affordable housing units to beneficiaries in the shortest time possible, whilst simultaneously taking into consideration employment creation and training opportunities for the construction and allied industries, in accordance with the principles of the Reconstruction and Development Programme.

This proposal was based upon the fact that the Council had resolved the legal issues regarding the ownership of the site, and the Land Claims Court would make its ruling on compensation to former land owners and eliminate historical inequities.

Some of the development principles underpinning the proposal are as follows:

- The land i.e. Block AK was to be viewed as a resource which should be developed for low income persons who will benefit from the advantages of an inner city housing developer.
- The land will be made available by the Council at a stand-in cost of R5 million. Land prices will be apportioned to residential units accordingly on a pro-rata basis. Sales of the commercial nodes will be at the market related prices of the land, thereby creating an over-recovery of the R5 million stand-in cost for the land.
- Tenure for the housing units was to be on a freehold basis.
- Beneficiaries would be eligible for Provincial Housing Board subsidies.
- The commercial facilities must be completed at the same time as the residential component, although it may be executed under a separate contract.
- Although targeting lower income people, this development was intended to offer sufficient open space, access and thoroughfares, parking and recreational areas.
- The Council was to bear the cost of all bulk services.
- The correct zoning of the land was to have been undertaken by the Council to accommodate the envisaged development.

Block AK was seen as an opportunity to set an example for a hybrid housing development of its kind, both at metro as well as at national level. The Council was to evaluate proposals inter alia on the extent to which they:

- offered equality of and access to opportunity.
- favoured local rather than foreign firms.
- favoured labour intensive rather than capital intensive construction methods, and therefore took into consideration the affordability of the product.
- applied Affirmative Action principles.
- applied holistic principles in the approach.

The commercial component of the development was to be determined by market demand, and was to comprise the type of facilities and services that would have been required by the beneficiaries of the housing development. The residential component was to include communal amenities such as creches, community centres etc. These were to be determined by the developer in consultation with the stakeholders.

Proposals submitted in response to the brief prepared by Durban Bay Consultants were to be assessed on the basis of the criteria listed below. This is important because it is indicative of the factors that were considered significant in the conception, evolution and completion of the project. These were:

- The achievement of the lowest financially viable unit costs for the residential component within an innovative design.
- The extent to which proposals respond to the design guidelines provided by the Urban Development Department.
- The extent to which proposals offer feasible opportunities for skills training, small contractor involvement and labour-intensive construction approaches.
- Compliance with National Building Regulations.
- Acceptability of units to financial institutions for bond purposes.
- Speed of delivery of units to purchasers.
- Quality and desirability of construction.

- The level of amenity to be provided within the development, and how successfully the interface between residential and commercial usages is treated.
- The land price offered for the Commercial component of the development.

The historical process leading up to a resolution for the development of Block AK, which has to be considered in terms of theories of social justice consists of three aspects as follows:

- The proposals submitted by the various organisations.
- The question of restitution.
- The future development of Block AK.

The above three aspects are also situated in the past, present and future respectively. It is believed for several reasons that some movement is very likely to occur in the development of Block AK in the very near future. Some of these reasons are as follows:

- The protracted nature of the battle over the issue of Block AK.
- The enormous loss of revenue incurred to the metro Council.
- The transformative nature of local government and the urgency to develop valuable land in the inner city area.
- The pressures to create employment and re-structure the apartheid space-economy.
- The need to develop tourism in the context of globalisation.

It is also the intention in this dissertation that Block AK would constitute a case study, and therefore set a precedent to be followed in instances of a similar nature.

4.6 PROPOSALS SUBMITTED BY THE VARIOUS ORGANISATIONS

4.6.1 OPERATION JUMPSTART

The proposals were drawn up by Maughan-Brown and Associates. Very briefly, Operation Jumpstart considered retail and office space along the edges of the site, with two floors of middle to upper income housing above this. The quadrangle was to comprise multi-storey walk-up flats for low income groups. Through a process of cross -subsidisation with funds generated from the sale of the shops and offices, low income housing would have been rendered feasible.

This is clearly in keeping with the Rawlsian concept of prioritising the needs of the disadvantaged. Its downfall lay in the process of implementation.

It is interesting that one of the objectives of Operation Jumpstart was

“To ensure that the development undertaken would be acceptable to all major groupings with a legitimate claim to represent the people affected or potentially affected by the development” (p 2).

Eventually it became clear that low cost housing would not be feasible in Block AK and that the best that could be provided was middle income housing. This would defeat the purpose of clinging so tenaciously to the land in the face of land claims.

4.6.2 BAY PROPERTY CONSULTANTS

These proposals were very similar to those of Maughan Brown and Associates. The proposed development was to comprise predominantly of residential apartments with an element of mixed use, on the ground floor. The Council was to assume responsibility for development, and assist the beneficiaries to obtain Provincial Housing Board (PHB) subsidies and conventional loans.

Metro Housing's response to this proposal was that it made assumptions on various issues such as the land price, interest rates, cross-subsidisation etc, which were not necessarily applicable in the current context. After Metro Housing requested its Real Estate Department to undertake a valuation of Block AK, it came to the conclusion that a project was feasible, but only for those in the very upper bands of the of the housing subsidy eligibility. The most disadvantaged would therefore not qualify.

4.6.3 URBAN DEVELOPMENT

Despite the number of proposals submitted and feasibility studies undertaken, it would appear that the Metro Council believed that low cost housing would not be feasible. Infact, in November 1997, another feasibility study was undertaken, which concluded that housing would only be feasible for "those in the very upper bands of the housing subsidy eligibility". It also stated that in the event of there being any cost overruns, the project would become unaffordable to low income people.

Another important factor that was taken into consideration, was the advice of the Executive Director of Metro Housing, that on account of the considerable number of land claims lodged for properties in Block AK and "other issues

affecting the implementation of the project," it would not be worthwhile for the Department to proceed with the Block AK housing project. (Durban Metro Council Agenda 6/4/98).

Low cost housing is clearly no longer an option considered by the Metro Council. In view of the passing of the Land Restitution Act 1994, and Block AK reverting to the state, restitution has now become an option that is very likely to come to fruition.

4.7 THE QUESTION OF RESTITUTION

The notion of restitution is embodied in the White Paper on South African Land Policy (1997). It describes the Land Reform policy which embodies three elements:

- Land redistribution
- Land restitution
- Land tenure reform

Land redistribution is embedded in historical antecedents related to the disproportionate and unequal distribution of the country's resources. For instance, until democracy was ushered in, the African population (constituting over 80% of the total population of South Africa) owned only 13% of the land. Redistribution of resources is now occurring through the RDP and GEAR in an attempt to achieve some measure of equity.

Land restitution is aimed at redressing past imbalances in an attempt to erode tangible forms of deprivation which occurred under the apartheid regime. People who were coerced in terms of the Group Areas Act to vacate properties earmarked for other race groups now have claim to their original properties or to some form of realistic

compensation. This category clearly constitutes the context for areas such as District Six, Cato Manor, and other areas including Block AK.

Land tenure reform programmes have been initiated throughout the country. With all the restructuring that has been occurring recently, the land tenure situation throughout the country has become chaotic. In order for planning processes to occur smoothly it is vital for people to have security of tenure. The Department of Land Affairs has embarked upon a provincially run programme to assist various regional councils with Land Development Objectives (LDOs)/Land Reform for use in their integrated development planning processes. (Land Information Manual : 1998)

The concern in this dissertation, however, is with the concept of land restitution. Land restitution, in terms of the Restitution of Land Rights Act, as amended, is defined as:

“the returning of land (or otherwise compensating victims) lost since 19 June 1913 because of racially discriminatory laws.”

Restitution can take a variety of forms, including:

- the actual return of land rights to the original community or owner
- the provision of alternative sites or land
- financial compensation
- an alternative combination of the above options, and
- priority allocation in state housing and land development projects.

It would appear that on a generic level, there are no major objections to land restitution per se, but rather to the specifics of each case. Whilst there are many parallels, each case is unique in its internal dynamics and its necessary impacts, and therefore has to be looked at individually.

The position of land restoration, which is a facet of restitution is what the Block AK Action Committee has been lobbying for. Their situation was greatly enhanced and strengthened when the Durban Metro Council decided earlier this year to sell the land back to the Department of Land Affairs for purposes of restitution.

This chapter has briefly traced the history of Block AK from its early settlement in the mid-nineteenth century to the present day. The main focus of the historical analysis has been the Group Areas Act and its impact on settled communities. The forced removal of thousands of people left the area lying sterile for a prolonged period, with the result that it became one of the target areas for development with the launching of Operation Jumpstart. This gave rise to the option of low cost housing, which was eventually discarded. The most likely current option is that of restitution. The consideration of these options has resulted in an ethical dilemma, which is the focus of the next chapter.

5. THE ETHICAL DILEMMA

This chapter is concerned with addressing the ethical dilemma in relation to the various theories of social justice in the development of Block AK. The dilemma is created by the fact that there are a number of options to choose from, such as restitution, low income housing, or business development aimed at employment creation. In view of this situation, how do we determine which of these options is "just" and where do we find the guidelines for ethical deliberation?

These issues will be addressed in the context of the various theoretical formulations which were outlined in chapter two, in conjunction with the reality of planning practice in Block AK. This exploratory exercise will be guided by the findings of the research conducted, indicating the close relationship between theory and practice. It is also the intention in this dissertation that Block AK would be a test case and set a precedent for other cases of a similar nature.

I will examine the original hypothesis made at the outset of this dissertation on the basis of the events surrounding Block AK, which would lay the foundations for either confirming or rejecting the hypothesis. The hypothesis stated that:

There is a disjuncture between the guidelines for ethical deliberation provided by theories of social justice and the reality of planning in the case of Block AK.

The situation we are confronted with, very briefly, is that a very valuable piece of land adjacent to Durban's CBD has been lying sterile for almost three decades. During the period of the early 1990's, whilst certain options for the development of this land were being considered, the situation was complicated by the fact that the original owners who were forcibly removed in terms of the Group Areas Act simultaneously instituted claims to their properties. These claims were given further impetus with the ushering

in of the Land Restitution Act, 1994. In view of this historical background, the development of the land has acquired moral and political overtones of a very sensitive and complex nature, rendering the possibility of a resolution in the near future somewhat remote.

It is now the task of this chapter to ascertain whether any or all of the theories of social justice discussed in chapters two and three provide the ethical guidelines necessary for the development of Block AK.

In unravelling the ethical dilemma a number of key questions need to be addressed:

- To what extent can theories of social justice provide the necessary guidelines for the purpose of planning the development of Block AK?
- Will the application of any or all of these theories enable us to arrive at a "just" outcome?
- What course of action should be opted for, and to what extent would that represent a "just" course of action?

Hopefully, the last question will be answered, at least partially, in terms of the broad recommendations that will follow the conclusion to this dissertation. From the answers to these questions it would be possible to deduce whether or not there is a disjuncture between these theories and planning practice in the case of Block AK, and what the nature of that disjuncture is. These are some of the issues that need to be addressed in order to arrive at either an acceptance or rejection of the original hypothesis.

In looking at the reality of planning practice in Block AK, it is necessary to identify the key role players in the situation, and look at the interests of each, providing explanations in terms of the theories of social justice. The following role players have been identified:

- The Block AK Action Committee.
- The Durban City Council, subsequently referred to as Durban Metro.
- Businesses situated on the periphery of Block AK.

5.1 THE BLOCK AK ACTION COMMITTEE

The Block AK Action Committee was formed in 1991 in an attempt to pressurise the state to provide compensation by way of the return of the expropriated land to the original owners. It was to act as a mouthpiece for all those who were dispossessed of their land and property in the Durban area.

From the perspective of the Block AK Action Committee, justice means restitution in the tenure of the land to its original owners. A statement made by the chairman of the committee indicated, "We are asking for no more than justice to be done - that those people who suffered under the Group Areas Act be given what is rightfully theirs" (Daily News, 28/02/1997).

This statement was made with reference to all land that had been forcibly taken by the state authorities, whether it was Cato Manor, District Six or Block AK. Analysing the response of the Block AK Action Committee, it would appear, in the light of recent developments, that there is a very strong likelihood of the victims accepting either financial compensation or a piece of ground of equivalent value elsewhere. However, it would appear from recent discussions with the chairman of the committee that the possibility of land in Block AK itself being restored to the original owners should not be ruled out. If any of these measures are adopted, from their perspective, justice would have been served. However, if the option of financial compensation is taken, the amount of the compensation has to be 'reasonable'.

During the course of November this year, at a court hearing with the Department of Land Affairs, three claimants made representation indicating that they were prepared to settle for financial compensation. The formula used to calculate the amount of the compensation, however, was totally unacceptable to the Action Committee, because it would have compensated them with approximately R18 000 to R20 000 for an approximately 600 square metre piece of ground in Block AK. According to the victims, this represents a "travesty of justice". Moreover, the formula generated inconsistencies in the amounts to be compensated.

The Block AK Action Committee can be viewed in the neo-Marxist sense as being an urban social movement (Castells:1977). They may appear to be very small and extremely focused, but one of their resolutions was to seek out and work with organisations with similar interests. They certainly have the ethos of an urban social movement, acting as a powerful pressure group in the sphere of consumption.

5.2 THE DURBAN CITY COUNCIL

Referred to as Durban Metro after the 1996 local government restructuring, the Durban City Council must be seen as an agent of the central state apparatus. The Council purchased the land from the state initially for the purpose of disposing it to private enterprise (Minutes:30-04-1991).

Before proceeding to look at the role of the City Council, an observation can be made about the role of the state in relation to Block AK. A changing attitude with changing power structures is evident. Hence, prior to the installation of the new democracy in 1994, the state ignored the claims for land restoration, and proceeded with the sale of Block AK to the City Council for private development. It was only with the passing of the Land Restitution Act (1994) that further impetus was given to the claims of the Block AK Action Committee.

Throughout its involvement with Block AK, it is evident that the Council has been inclined towards acting in an entrepreneurial capacity. When negotiations for the land commenced in 1991, the Council investigated the possibility of acquiring it "at favourable prices below market value" (Minutes : 01-07-1991). The Council had no intention of restoring the land to its original owners, because even after the Land Restitution Act 1994 was passed, it decided that it was going to proceed with its plans for the development, irrespective of protestations from the Block AK Action Committee. In fact, in 1996, the Council resolved to launch an application to the Land Claims Commission on the basis that the land should be developed for residential use, and not restored to any claimants (Minutes:04-06-1996). When the Council realised that it was too great a financial risk to proceed with the low cost housing development, it decided to sell the land back to the state. The Metro Council did not consider the question of social justice when the Block AK Action Committee initially made representations for restoration of the land. Subsequently, social justice meant providing low cost housing for disadvantaged groups close to urban opportunities, within the constraints of low incomes. When it became clear that this was not financially feasible and constituted too high a risk, the issue of social justice was overshadowed by practical concerns.

5.3 BUSINESSES ADJACENT TO BLOCK AK

The perspectives of the major businesses adjacent to the remainder of Block AK are outlined below :

5.3.1 DOVES KZN - (A FUNERAL PARLOUR)

An interview with the General Manager, Mr Vusi Ngidi, revealed a preference for office and small business development, rather than low cost housing which would make the site look "like a squatter area". Offices and small business

would not only provide employment which is sorely needed, but would also be in keeping with the general character of the area. Therefore, Operation Jumpstart's proposals would not be acceptable.

It is interesting that he did not believe, like his predecessor, that low cost housing would be inappropriate because it would create a disturbance to the peace and calm which would create the ideal setting for conducting that particular kind of business. He indicated that low cost housing would not contribute to increasing the current noise levels in the area, and therefore will not jeopardise the Doves KZN operation.

In terms of mechanisms for acquiring the site for development, he believed that the former owners should receive some form of financial compensation based upon the prices they were paid at the time the properties were expropriated.

By implication, "justice" is represented by a mixture of a small financial compensation paid to the victims, as well as the 'public interest' in terms of job creation. Unlike the previous management, justice has nothing to do with adversely affecting the profit levels of the Doves KZN operation.

5.3.2 NATAL NEWSPAPERS

They are of the opinion that the site ought to be re-zoned for commercial use, in keeping with recent developments in neighbouring areas, such as the International Convention Centre (ICC) and Kingsmead Park. They believe that this would also be in keeping with the character of the area. The redevelopment of Block AK provides metro with an ideal opportunity to enhance and preserve property values in the greater CBD and the adjacent beachfront. It is interesting, however, that Natal Newspapers

“.....is committed to a negotiated resolution that will receive the endorsement of the previous landowners of Block AK”.

This response skirts the issue of what would constitute a “just” solution, but by implication, justice would have been served if whatever development took place in Block AK, preferably commercial, it would receive the approval of the Block AK Action Committee.

5.3.3 FARAR JEENA (OWNERS OF ASCOT PARK)

The chairman of the organisation, Mr Gaff Osman indicated that his organisation did not believe that the area was suitable for low cost or any other type of housing. In keeping with the general character of the area, and considering the nature of development and utilities in adjacent areas, such as the Kingsmead Office Park and the Greyville Race Course, the most suitable development would be another office park. Moreover, it was felt that housing developments taking place currently such as Cato Manor, are within fairly easy access from the city centre. Housing therefore would not be adversely impacted upon tremendously if Block AK were not used for that purpose.

The organisation, who are owners of the substantial office complex also claimed that they have already experienced the negative impacts from the publicity of the initial plans for low cost housing adjacent to them, when they could not get the desired occupancy rates for their building. However, now that the original plans have been scrapped, their occupancy rate is 100%.

Their overall view is that justice would be served if the claimants received "adequate" financial compensation for their land and an office development were to be erected on the site, which would be in keeping with the general image of the area.

5.3.4 STANDARD BANK

The property division of this organisation was very concerned that low cost housing would lead to the depreciation of their property, which has a current estimated value of R50 million. It was believed that the original owners should be compensated in some way that was acceptable to them. Thereafter, if the land was available for development, the most suitable route would be office and retail development, in keeping with the character of the area generally.

It was also indicated that there are opportunities for low cost housing in other areas relatively close to centres of employment, which ought to be exploited. Not locating low cost housing in Block AK is hardly going to make a dent in the existing housing backlog.

All the responses quoted above clearly share two central concerns:

- The original owners ought to be adequately compensated.
- They are opposed to the erection of low cost housing development in Block AK.

These objections to the development of low-cost housing are in all probability grounded in observations of current trends in the CBD. Clearly the character of Durban's CBD has undergone considerable change during the last five years. Trade has become highly informalised, and a substantial proportion of the inner

city flat dwellings now house African residents. With high levels of crime and muggings, the city centre has seen a flight of office tenants to more prestigious office parks in the suburbs.

It was evident from the nature of the responses on the whole, that notions of low cost housing immediately conjure images of third world conditions, such as many parts of Durban's CBD and other areas are experiencing. The congestion resulting from over-crowding, over-utilisation of facilities, noise and litter pollution are all evident in these areas. Fear of properties within the vicinity immediately depreciating, and owners not being able to sell at their desired prices is currently experienced in many areas in the Durban Metropolitan Area which were once considered prestigious and up-market.

On the whole, the responses received from these larger businesses and some of the smaller ones is reminiscent of the NIMBY syndrome, which occurs in many parts of the world. Norman Krumholz, championing the cause of the disadvantaged in Cleveland, Ohio, received little success and more protest with his Fair Share policy, expecting all municipalities to take their fair share of public housing.

Ironically and interestingly, when Block AK was originally affected by Group Areas, and set aside for white occupation, it would have been settled by the least affluent whites in the Durban area, in accordance with the dictates of the market. In terms of the settlement pattern on the Berea, socio-economic gradations are clearly visible, with the more affluent living on the higher ridges of the Berea (Musgrave and Essenwood Roads), and the less affluent along the lower ridge (Avondale Road, skirting the western boundary of the Greyville Racecourse).

From the foregoing, it is evident as was stated at the outset when examining the various theories of justice, that justice means different things to different people, depending upon their vantage points, perceptions and values.

The Land Claims Court, being a legal institution, is concerned with delivering legal justice. It functions within the broad parameters of the national constitution, and ideally ought not to be influenced in its judgement by any social aberrations such as race, class or gender. The position of the Land Claims Commissioner, Cherryl Walker, was made very clear when her views on the Cato Manor case of restitution were expressed during 1997. Speaking in the context of the return of the dispossessed with 430 land claimants accepting an agreement permitting them to return to Cato Manor, she said that Durban had shown the way for other cities involved in similar disputes to balance public interests with that of justice to claimants. (Daily News : 2 May 1997).

The response of Willis Mchunu, chairman of the Cato Manor Development Association (CMDA) was that the return of the dispossessed would enrich Cato Manor. He added:

“This is clearly justice and a product of all the people affected”.

(Ibid)

Coming back to the different viewpoints expressed above - they necessarily lead one to question whose sense of justice it would be most 'just' to take into consideration. Clearly, because perceptions are subjective, each perception of justice has a particular meaning attached to it, in terms of its own value system. Viewed in this light, the statement that there cannot be one meaning of justice is corroborated. Given this, if an objective decision has to be made, if that is possible, the notion of the 'public interest' would have to be invoked.

5.4 THE ETHICAL DILEMMA IN PLANNING

Having explained earlier in this chapter the nature of the ethical dilemma, I will now proceed to tease out the various strands of the dilemma in terms of theories of justice and planning practice, and arrive at a conclusion as to whether there is or is not a disjuncture between the two. This exercise will be followed by a normative statement in the form of broad, general recommendations for the development of Block AK.

Clearly, the Utilitarian perspective cannot provide guidelines because of the number of competing claims of divergent interest groups in Block AK. The insistence of this theory on promoting the greatest happiness of the greatest number and the negligence of minority interests, means that this theory is inadequate in explaining the interests of the state, the Metro Council, the adjacent businesses or those who were originally dispossessed of their land rights. However, it is unfair to dismiss this theory so summarily in view of certain concepts associated with it, that might be beneficial in understanding the future development of Block AK.

The notion of the "public interest", for instance, might prove useful in guiding the future development of the land, as will be seen later. Assuming the situation where restitution takes place on the basis of financial compensation to the victims of forced removal, making the land available for new development - what criteria would then be invoked? The possibility exists for the Durban Metro to insist that the land be developed in the "public interest", whilst looking at the activities that would promote such interest in terms of the needs of city, such as employment creation.

Theories of social justice propounded by Rawls and the work of the Advocacy planners eventually led to the incorporation of prioritising the needs of the disadvantaged as a canon in the ethical code of the Town Planning Association in America. In South Africa, various factors have contributed to a similar situation:

- The notion of equity playing such a prominent role in the RDP.
- The mandatory requirements of local councils to produce Integrated Development Plans.
- The empowerment of local government in terms of the White Paper (March 1998).
- The restructuring of local council boundaries to include areas of greatest need, according priority to the disadvantaged.
- The pressures that were brought to bear with the formation of the alternative organisation - the Planning and Development Association during the 1980's.

Thus, according priority to the least advantaged is now a canon in the code of ethics of the Institute of Town and Regional Planners. However, the interpretation of this, as well as certain changes that have occurred recently have given rise to several problems, making it extremely problematic for planners to work with the guidelines provided by the ethical code as well as theories of social justice. These problems will be addressed in the ensuing discussions.

This immediately prompts the question : "What kind of disadvantage is referred to here?" Clearly the notion of "disadvantage" has to be considered in its proper context. In the current context, the "disadvantaged" has become a buzz word in relation to historical inequities propagated by the previous apartheid regime. In terms of the RDP, the most disadvantaged groups i.e. Africans live in areas of greatest need or 'priority one' areas, such as Umlazi, KwaMashu, Inanda etc. Indians, on the other hand, although there is a greater degree of economic differentiation amongst them, live mostly in 'priority 2' areas, such as Chatsworth and Phoenix. This is indicative of the fact that there are gradations or degrees of disadvantage. The problem this poses, however, relates to the manner in which one arrives at judgements relating to the degree of disadvantage that is experienced, and at what point in time the degree of disadvantage is assessed, and by whom are such assessments made?

Given the powerfully emotive character of South African politics, it is extremely difficult to be absolutely objective, and for one group to make pronouncements relating to the disadvantage of another. At the time the Indians were evicted from Block AK and the central area of Durban as a whole, measured in terms of numbers, property values and the trauma caused, it would appear they were the most disadvantaged group. Whilst it could be argued that trauma as a condition is not quantifiable, it is feasible to conclude that the larger the numbers adversely affected, the greater the degree of trauma experienced collectively.

In relation to this, how does one determine which is the greater disadvantage - that incurred as a result of denial and exclusion as experienced historically by the African community, or that incurred by the Indian community as a result of deprivation and eviction in terms of the Group Areas Act? It is feasible to argue that to experience deprivation of something once owned and cherished must have more far-reaching consequences and place one at greater disadvantage than not having it at all.

In 1958, T C Donges then Minister of the Interior, told Parliament that the Group Areas Proclamation would affect 75 000 Indians, 8 500 Coloureds, mostly resident as tenants on Indian owned properties, and 1000 Whites in Durban. At the time, the population of Durban was as follows:

White	177 000
African	196 000
Coloured	24 000
Indian	214 000

From the above, it is evident that the Indians constituted the single largest population group in Durban. Moreover, property losses through Group Areas for the Central Durban area, including Block AK are indicative of the extent of the loss incurred by the Indian community in comparison with other communities. Clearly, in keeping with

the anti-Indian ethos of the Durban City Council, it would appear that Indians were selectively targeted by the system of forced removals.

It is also important to note that the AK complex housed some of the Indian community's most prominent families. These were pioneer settlers whose homes, especially in First Avenue, North Street and Mitchell Road were designed and built to match those of its more affluent White neighbourhood. The municipal valuation of land here, almost entirely Indian owned, exceeded R2.5 million, whilst the market valuation was estimated at R8 million. (Greyville Ratepayer's Association)

Indians had established an equally strong presence in the adjacent quarter of Block G, bounded by Umgeni Road in the east, Stamford Hill Road in the west, Kent Road in the north and Raleigh Street in the south. Here Indians owned property with a market value in excess of R1 million. (ibid).

Most studies on forced relocation show that low income households are strongly attached to their neighbourhoods. Usually, not more than 25% are dissatisfied with their housing and neighbourhood, and it is clear that the majority do not want to move. (Maasdorp & Pillay: 19). That Indians have traditionally been very land-conscious is an undeniable fact, considering that during the 19th century, as soon as their indentures in South Africa expired, most of them immediately acquired a piece of land as a symbol of security. Infact the existence of an Indian community of market gardeners have had long-standing, strong links to that part of Durban that was close to Block AK ie the "western vlei" which is now the Stamford Hill area.

The following table illustrates the property loss incurred by the Indian community in comparison to the Coloured and African communities, as a result of Group Areas in the Durban Central area.

GROUP	ACRES	DWELLINGS	AMOUNT (in pounds)
Indian	6 638	4 626	4 548 620
Coloured	28	95	55 480
African	60	117	20 340

(Figures from documentation of the Greyville Ratepayers' Association).

On a more focused level, based upon the 1951 census, the municipal estimation of property values of the various owners in both Block AK and G collectively was as follows:

GROUP	VALUATION IN POUNDS (Municipal)
Indian	44 250
White	428 190
Chinese	19 160
African	9 110
Coloured	7 740
Durban Corporation	1 490
Government	111 210

(Source : ibid)

From the above it can be concluded that in historical terms, Indians have an indisputable claim to ownership of land and property in Block AK. Moreover up to that point, Indians had been harrassed by the Durban City Council through a whole host of anti-Asiatic legislation, including repatriation to India, despite the

fact that they made an undeniably significant contribution to the economy of Natal at the time of their arrival, and for a long time after that to the present day.

It must be noted, however, that the strong focus placed on the Indian community is in no way intended to overlook the extreme poverty and deprivation endured by the African and Coloured communities as well.

Given the above, it is feasible to conclude that the concept of disadvantage is a nebulous one, and subject to interpretation. Theories on social justice provide no guidelines as to its interpretation. William Lucy's typology (chapter two) tried to tease out the many strands of the notions of what is equitable, fair and just, demonstrating the complexity of the concepts. In terms of practical application, some of the concepts are difficult to measure, whilst all are subject to varying interpretations.

The notion of 'disadvantage' is a relative one, and as such, there are gradations or degrees of disadvantage. There are also different dimensions or types of disadvantage that cannot easily be related to each other. When Metro Housing turned down the proposal put forward by Bay Property Consultants and had Block AK evaluated, they came to the conclusion that housing was not feasible only for the most disadvantaged. It was feasible only for those in the upper bands of the subsidy market. Metro Housing finally relinquished its interest in the project because it was not only high risk and time consuming, but also because of its "dubious financial feasibility". (1998 Report : 3)

When Rawls made reference to the disadvantaged, he did not stipulate the nature of the disadvantage or how it was to be ascertained. There is an underlying assumption that disadvantage is socially visible and objectively quantifiable. Whilst this may be the case, it is important to take into consideration historical antecedents that may have caused one group of disadvantaged people to become disguised as being in a position of comparative advantage. In this respect it is important to note that theories of social

justice thus far considered in this dissertation make no mention of time frames or compensation of any sort. The RDP notion of redressing imbalances does not address the question of compensation for victims of relocation either. It merely mentions the redressing of historical imbalances, which in the current context of urban planning, are being effected by the provision of housing and infrastructure for the disadvantaged. Spatial restructuring is also occurring in terms of the provisions of integrated development plans. Viewed from this perspective, if Indians evicted from Block AK were to receive a 'reasonable' financial compensation, it would represent a redressing of historical imbalances. In the light of the most recent developments, it would prove acceptable to them, and go a long way towards providing a final resolution.

Theories of social justice fall short in that they do not make reference to changing needs of communities, or how these needs should be prioritised. The reality is that changing priorities have impacted on the notion of low cost housing. When the RDP was launched in 1994, the concepts of equity, efficiency and sustainability became buzz words which are still being propped up as guiding principles in development initiatives today. At the time, the immediate concern was with the provision of basic needs, including housing and infrastructure. When RDP funds were allocated to areas of greatest need to kickstart development by producing Integrated Development Frameworks (IDFs), almost all communities indicated the provision of housing, land tenure, and basic infrastructure as first priority. (Urban Renewal Report : November 1998). However, with the establishment of the government's Growth, Employment and Redistribution (GEAR) strategy, needs have been re-prioritised so that the new emphasis is now on employment and job creation. The RDP has been superseded by and incorporated into GEAR. Since theories of social justice do not make reference to changing needs of communities, or how these should be prioritised, in situations such as these, no guidelines for ethical deliberation are provided. Clearly, if the GEAR strategy were to be implemented in Block AK, the focus would be upon economic opportunities which would generate employment. Moreover, even if housing were to continue to receive priority, housing subsidy funds have been exhausted. As a

result, it is highly unlikely that there would be any new housing projects in KwaZulu-Natal, and specifically in Durban for approximately the next two years, unless external funding is accessed.

Theories of social justice, moreover, make broad generalisations, and do not look at context-specific issues. The case of Block AK is highly complex, and involves several interest groups with widely divergent agendas. Social justice invokes moral issues and social values, whereas housing in this context has been viewed from an economic perspective, which makes it unfeasible. Moreover, a precedent has been set with the Kingsmead Office Park, within close proximity to Block AK currently being developed for up-market office space. One is prompted to ask why this site was not allocated to low-cost housing if the latter had such high priority on the metro council's agenda. What this is tantamount to saying is that any land use would be acceptable if it were economically feasible and did not incur externalities that were too severe. Ultimately, the decision is based upon economic criteria. The harsh reality is that social and moral criteria are incidental to economics and pragmatics, and in the context of survival, become relegated to secondary status.

This point will become clearer when we examine the recent turn of events in the saga of Block AK, indicating the complexity of the issues pertaining to restitution. When the Block AK Action Committee was originally formed, the position adopted by the committee was that the land had to be restored to the Indian community. The various options discussed earlier fall within the parameters of the Land Restitution Act, but the Action Committee is currently disgruntled over the issue of financial compensation, which it feels is a far cry from any settlement it had originally envisaged.

The most recent development occurring at a meeting between the Block AK Action Committee and the Commission on Restitution of Land Rights in Durban on 6 November 1998 clearly points out that the whole negotiation process has suffered a

serious setback, instead of speeding up the process of addressing land claims. A representative of the Commission pointed out (in response to claims by three of the victims for financial compensation as opposed to restoration), that restoration would not be feasible because large tracts of Block AK had already been developed. Moreover, financial compensation is to be based upon the amount of the deficit in the amounts of the former Department of Community Development's valuation against three of the claimants. The difference, in some cases amounting to only a few thousand rand was to be multiplied by the Consumer Price Index to realise current values of the deficit amount. The Block AK Action Committee voiced strong opposition, stating that such amounts would be grossly inadequate and totally unacceptable to them. (The Leader, November 13 1998.) The formula used for compensation is also creating inconsistencies in the amounts accruing to victims, and is therefore unacceptable to them.

Moreover, the Committee felt that the Commission needed to take cognisance of other relevant factors such as:

- The deliberate practice of undervaluation of properties by the Group Areas Board.
- Loss experienced in values of properties, following proclamation.
- The high cost of relocation to other, often distant areas.
- The personal trauma of being dispossessed.

Invariably, the cost of relocating meant either being reduced to the status of a tenant, or acquiring property at a much higher cost than was paid by the Group Areas Board. The Committee proposed that there should be a multi-tiered way of addressing the matter by linking present market values with the projections based upon the deficit figures. The Commission indicated that it was possible that valuations based upon "historical costs" would be attempted as part of the process of re-addressing the matter. A further meeting is to be held during early December of this year.

After the issues have been examined from various perspectives, it becomes necessary to examine the notion of disadvantage. There is no problem in arguing with Rawls and the advocacy planners that the needs of the most disadvantaged should be prioritised. The crucial issue here is not who should be the main beneficiaries, but rather, what course of action will benefit the disadvantaged the most, assuming that the black population in the DMA is the most disadvantaged. In the case of Block AK, it does not mean that if the site is not utilised for housing, then the needs of the most disadvantaged will be overlooked. It might well be the case that the benefits accruing to the disadvantaged would be far greater if the area were turned into a development for offices and small businesses. There are additional bonuses to be derived from such a development. For example :

- Additional substantial revenue would accrue to the city council which could be ploughed back into the community.
- New opportunities would be created for employment which is currently a priority at national as well as provincial and local levels. Moreover, local government is now expected to lead the processes of economic development and job creation. (White Paper, March 1998).
- It would be in keeping with the character of the existing fabric of the area, and would therefore not be a source of externalities to existing businesses, all of whom are vehemently opposed to the notion of low cost or other housing on the site. It is extremely important to remember that maintenance and care of existing business is more important than establishing new ones, given the current economic climate.

There is a strong case to be made for the fact that the creation of income generating opportunities in Block AK would increase the revenue accruing to the Metro Council, which could be ploughed back to improve the lot of the disadvantaged.

If, on the other hand, we take the pragmatist/Habermasian view, then the key question is different. The emphasis changes from the outcome meeting a certain criterion, such as prioritising the needs of the least advantaged, to focusing on whether the process of determining what is just was proper i.e. whether it met the "ideal speech" situation of Habermas, or Forester's norms for undistorted communication. To begin with, the environment in which these meetings are conducted are awe-inspiring to people who do not belong in the corridors of power, and therefore likely to affect their freedom of expression. Moreover, the context in which these meetings take place are still imbued with attitudes of racial and ethnic prejudice, a hangover from the apartheid era. Add power which is embedded in the roles of politicians, officials and commissioners, and hidden agendas into the equation, and the final product is not difficult to envisage. It is inevitable that there will be uneven power relations of the sort that Flyvberg made reference to, with the result that justice will reflect the dominant values - those of the powerful. The reality is that it is difficult in practice to achieve a situation of ideal speech or undistorted communication. It is the contention in this dissertation that these will remain ideals for many years to come in the South African situation.

In the final analysis, it must be noted that whilst the equity and advocate planners responded to particular social situations, they did not consciously set out to provide guidelines that would have universal applicability. And whilst the theories of the collaborative planners such as Healey, who drew from Habermas, had procedural rather than substantive content on the notion of justice and equity, they did not address these issues directly. In the case of Block AK, despite the prolonged occurrence of a process of rational debate and discourse over a number of years, a consensus could not be achieved that would have provided a settlement acceptable to all the divergent group interests. In fact, the very process that this perspective rejects, i.e. a court pronouncement, which is eventually going to determine the future of Block AK, is going to be the outcome largely because rational debate and discourse have failed to generate a consensus. Clearly, the situation in Block Ak has been dominated by

conflict, and has been addressed in a confrontational, rather than consensual manner, thereby minimising the usefulness of the Habermasian model and the collaborative style of planning in arriving at a just solution. Forester's concession (1993) that the attempt to "apply" critical theory to issues of planning is still in its infancy, is noteworthy.

A perspective that enables us to understand why a stable and conflict-free consensus does not yield a "just" outcome is that put forward by Flyvberg. Such situations which display an aura of rationality, are in fact dominated by power, which affects the outcomes of decisions in favour of the dominant group. During the early 1990's for instance, when the Block AK Action Committee made representations for the land to remain in the hands of the state so that it could be restored to the original owners, the Durban City Council proceeded with the sale of the land despite attempts at persuasion against such a transaction. Similarly, in subsequent years, when the Committee tried to persuade the Council not to proceed with plans for low cost housing, the latter continued to obtain more proposals and decided to proceed with its plan until such time that it discovered that it was in its own interest not to do so because it was not financially feasible. Clearly, these situations are imbued with unequal power relations. Once again, contrary to the Habermasian view that rationality leads to social justice through consensus, events in Block AK have corroborated Flyvberg's position that at the practical level, rationality is weak, and rational discourse cannot yield social justice.

A concept that is extremely useful in understanding the past and current dynamics pertaining to Block AK is that of the politics of recognition, put forward by Nancy Fraser (1995) (see chapter two). This is especially relevant in multi-cultural societies where cultural recognition displaces socioeconomic redistribution as the remedy for injustice (1995). The struggle for recognition, however, is situated within an environment of material inequality. In the case of Block AK, those who were dispossessed of their properties could be seen to be experiencing both cultural and

economic injustice, and therefore need both recognition and redistribution. In this sense, Fraser goes beyond Rawls by looking at groups that simultaneously experience more than one type of disadvantage.

The removal of the original inhabitants from Block AK constituted an act of racial discrimination, and can be understood in Fraser's terms, as the politics of misrecognition. In fact, the Indian community, who constituted the majority of those displaced from Block AK, were not only a despised cultural group, rooted in the racial-valuational structure of society, but also suffered the injustices of maldistribution. They would fall clearly into Fraser's "bivalent collectivity" (p78), and as such, can be situated along two axes of disadvantage. For this injustice to be remedied, they would need both redistribution as well as recognition. It could be argued therefore, that if the victims of Block AK receive a 'reasonable' compensation, the injustice they suffered would have been partially remedied through a process of recognition. It would constitute only a partial remedy, however, because injustices of an intangible nature, such as pain, humiliation and suffering encountered during the process of forced removals cannot be compensated.

However, because groups that are racially and socio-economically disadvantaged, such as the Indian community has historically been, if they pursue the remedies of both recognition and redistribution, they create a dilemma by reinforcing some of those injustices. The recognition-redistribution strategy therefore has to be reformulated to make its internal dynamics compatible, such that the elimination of one type of injustice does not reinforce the other. For example, a socialist system of production would blur group differentiation, and therefore help remedy misrecognition. However, if only surface reallocations of respect are granted to racial and cultural groups, group differentiation is reaffirmed. It is therefore necessary to have a deep restructuring of relations of recognition, thereby blurring group differentiation. Hence if policies of restructuring the productive processes are followed simultaneously with policies that effect a deep restructuring of race relations (deconstruction), remedies for both types

of injustice would reinforce each other, and not work at cross purposes. To quote Fraser,

“For’ race’, the scenario that best finesses the redistribution-recognition dilemma is socialism in the economy plus deconstruction in the culture” (p91).

Based on the foregoing analysis, it is feasible to assert that the usefulness of theories of social justice in providing adequate guidelines for a “just” solution to the problem of Block AK is very limited. It has been shown that aspects of certain theories and some concepts have proved useful in understanding the dynamics of the situation. On a broad level, however, no single theoretical perspective can provide the necessary guidelines for ethical deliberation largely because of the complexity of issues involved.

6. CONCLUSION

The central concern of this dissertation has been to assess the usefulness of theories of social justice for the purpose of understanding the reality of planning practice in the case of Block AK. The study therefore, has been situated in the realm of planning ethics, from which it has sought guidelines to explain both the past events as well as the proposed future development of Block AK in the context of several divergent interests.

The existence of these interests has generated various options which have placed the development of Block AK squarely on the horns of an ethical dilemma that has invoked theories of social justice for guidelines towards a resolution. The events and processes relating to the highly complex issues in Block AK have, by their very nature, therefore provided an ideal testing ground for theories of social justice.

This exercise began with an investigation conducted on the basis of historical research, interviews and an analysis of various relevant theoretical formulations. An eclectic approach was opted for because no single theory can explain the many ramifications of the concept of social justice and how it has been applied in planning practice. The various theoretical formulations considered in this dissertation include utilitarianism, contractarian theory, neo-Marxism, critical realism, and pragmatism/postmodernism. The basic tenets of these theories have been examined, initially in relation to the concept of social justice, and subsequently, in relation to planning practice, thereby relating theory and practice. In the process, the weaknesses and strengths of these theories have been highlighted.

The application of theory to practice has led to the corroboration of the initial hypothesis that there is a disjuncture between theories of social justice and the reality of planning practice in the case of Block AK. This conclusion is based upon the fact that on a broad level, theories of social justice cannot adequately explain the events

and processes related to planning in the development of Block AK. However, on a more specific level, aspects of certain theories and concepts have proved fairly useful in providing guidelines for ethical deliberation. This conclusion is also based on the assumption that a "good" theory is one which has the capacity to provide adequate explanations for social phenomena.

In the evolution of this dissertation, a gradual movement is evident in planning theory away from grand theorising and rational comprehensive planning. A shift is evident from the rigid scientism, instrumental rationality and universalism of modernism, to an emphasis on values, communicative rationality and particularism characteristic of postmodernism. In terms of justice in planning, there is an engagement with the politics of difference, embracing notions of identity and recognition, and planning based upon inclusivity and participation, emphasising concepts such as values and solidarity. There is a concomitant awareness and a subtle attack on white, male domination, especially in planning theory, and a plea for an audience for "Voices from the Borderlands", to borrow Sandercock's metaphor. These dimensions also translate into axes of disadvantage in terms of race, ethnicity and gender that become the focus of the politics of recognition in Nancy Fraser's typology.

Theories that employ notions of identity, difference and recognition, such as that of Nancy Fraser have proved reasonably useful in understanding the process by which social justice can be attained for stigmatised groups that are disadvantaged in terms not only of race and culture, but also of social class, i.e. in terms of recognition as well as distribution. However, even this conceptualisation has limited application in this instance because in order to attain justice for a group that is a bivalent collectivity, it calls for a major structural transformation to a socialist state, which is highly unlikely in the present South African context.

Theories which entail some form of redistributive justice based on the notion of disadvantage, such as that of Rawls, have a special resonance in the new democratic

South Africa where the needs of the disadvantaged are being accorded priority. Therefore, whilst Rawls's theory is useful on a general level, in the case of Block AK its usefulness is limited in that it raises more questions than it can provide answers to, because the issues involved in the case of Block AK are extremely complex. The notion of disadvantage as used by Rawls is too simplistic, and does not address the many ramifications of the concept, as was shown in chapter five.

Clearly, theorists continue to cling tenaciously to the Enlightenment ideal of rationality, and some of them now look at it in conjunction with power. Flyvberg's powerful critique of the notion of rationality in relation to power clearly undermines the strong emphasis placed upon rationality by critical realists like Habermas. According to Flyvberg, outcomes achieved through a process of communicative rationality are always imbued with power relations expressed through hidden agendas, obfuscation of facts and so on. It is not possible to achieve social justice in the context of a working consensus with unequal relations of dominance.

Although debates around the local and the particular flourish in the face of new theoretical challenges around the politics of recognition and identity, the notion of universalism has not been discarded altogether. The concepts of both rationality and universalism have been expanded and reworked so that they acquire greater explanatory power in relation to the concept of social justice. Harper and Stein, advocate a broader sense of rationality, advocating communicative and critical rationality as a replacement for instrumental rationality characteristic of modernism. Harvey tries to rescue universalism by seeing it in a dialectical relation to particularism, so that issues of social justice relating to particular social

collectivities such as ethnicity or gender can be viewed within the universal conception of social class.

The cumulative impact of these theories on planning literature has created a wealth

and diversity of knowledge as well as confusion hitherto unknown to students and planning practitioners. It would appear that all these competing paradigms, in certain cases remnants of them, are still alive and continue to be invoked for guidance. Notions of the public interest feature from time to time in many public issues, and there are still planners out there preparing rational comprehensive plans.

Theories have also become more hybridized with a borrowing of notions and a considerable degree of overlap, which makes them more interesting, but complex. Most of the theories discussed in this study display this trait, but their ultimate value lies in their explanatory power.

The notion of social justice is a nebulous concept. As a heuristic device, it constantly eludes and raises more and more complexities as one works with it. However, whilst it is an ideal, it is pursued in its many ramifications throughout the world, and in the process has accumulated a baggage of meanings and interpretations in both theory and practice. For these reasons, it is not possible to have a single theory of social justice that can explain the diversity of the ethical complexities associated with the concept.

In terms of looking forward, although Block AK is a highly localised issue, it has widespread ramifications for various role players. For the victims of the Group Areas Act it would, if a "reasonable" formula for compensation is arrived at, be celebrated as a victory after a protracted battle, and go a long way in repairing the damage that has been done to promote their confidence in the system. For the Metro Council, it would have solved a "messy" problem which they could not handle, and generate substantial revenue from whatever form of development takes place in Block AK. For the adjacent businesses, it would usher in relief at the finality of the knowledge that Block AK is no longer going to be the location for low cost housing.

In concluding finally, it is feasible to say that the complexities of social reality in general, and social justice in particular, are extremely intricate, with the result that no single theory can explain everything. It is therefore necessary to acknowledge not only the usefulness of a variety of theories, but also the contingency of certain theories. Moreover, social phenomena are not static, but dynamic, necessitating constant revision of theoretical formulations in an attempt to expand their explanatory power.

7. RECOMMENDATIONS

The nature of the discussion thus far does not lend itself to specific recommendations being made in the case of Block AK, largely because it is not possible, given the complexity of the issues involved, to determine what a socially "just" outcome will be, and who it will be "just" for. A consideration of the various theories of social justice has indicated that it is not possible for these theories to provide the necessary guidelines for making ethical decisions in this particular case.

The issues are further complicated by the fact that no final decision has as yet been taken in terms of the option of restitution. In view of the complexities involved, I very reluctantly venture to make any recommendations. Given these complexities, my recommendations will be of a very broad and general nature.

Since it is extremely difficult to determine what would be a socially "just" outcome, recommendations will have to be guided by broad concerns, focusing on a procedural form of justice i.e. by what process justice might be achieved, rather than what justice might mean. In this exercise, it is useful to draw upon relevant strands or aspects of theories that have proved enlightening in providing guidelines, such as Flyvberg's cautionary statement on the embeddedness and dominance of power in apparently rational, democratic processes.

Thus, if this is translated into the practical concern of development occurring in Block AK, all one can say at this stage is that when structures and mechanisms are put in place, they are not dominated by uneven power relations. Processes involving relevant stakeholders must be inclusive and participatory in a context of evenly balanced power relations. Exactly how this is achieved is contingent upon circumstances, and beyond the scope of this dissertation. Whilst it may seem to be only an ideal at this stage, it is an ideal that is worth striving for.

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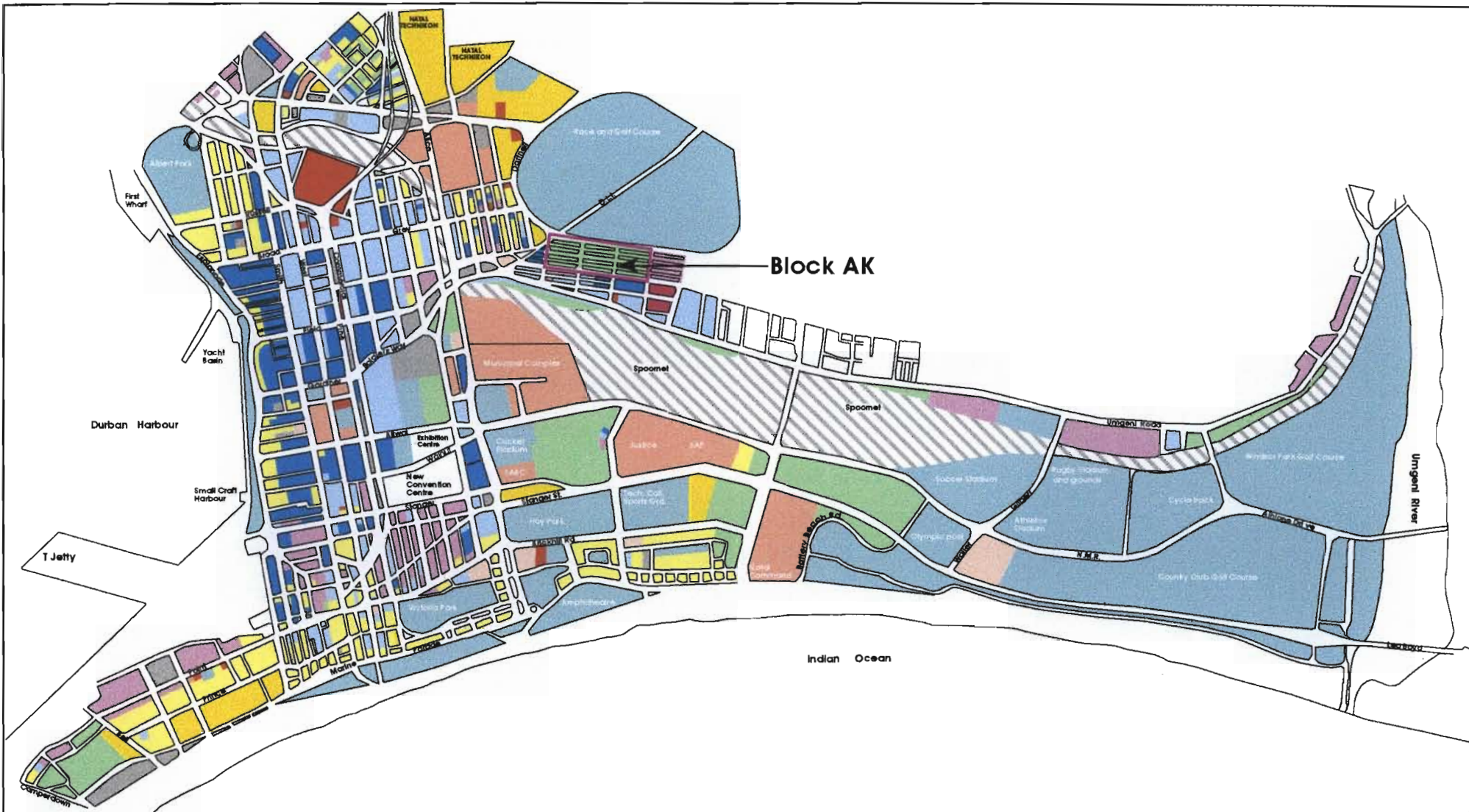
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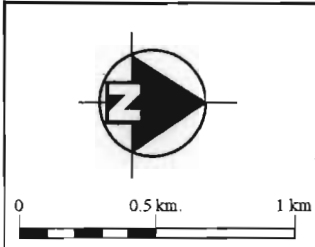
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Block AK

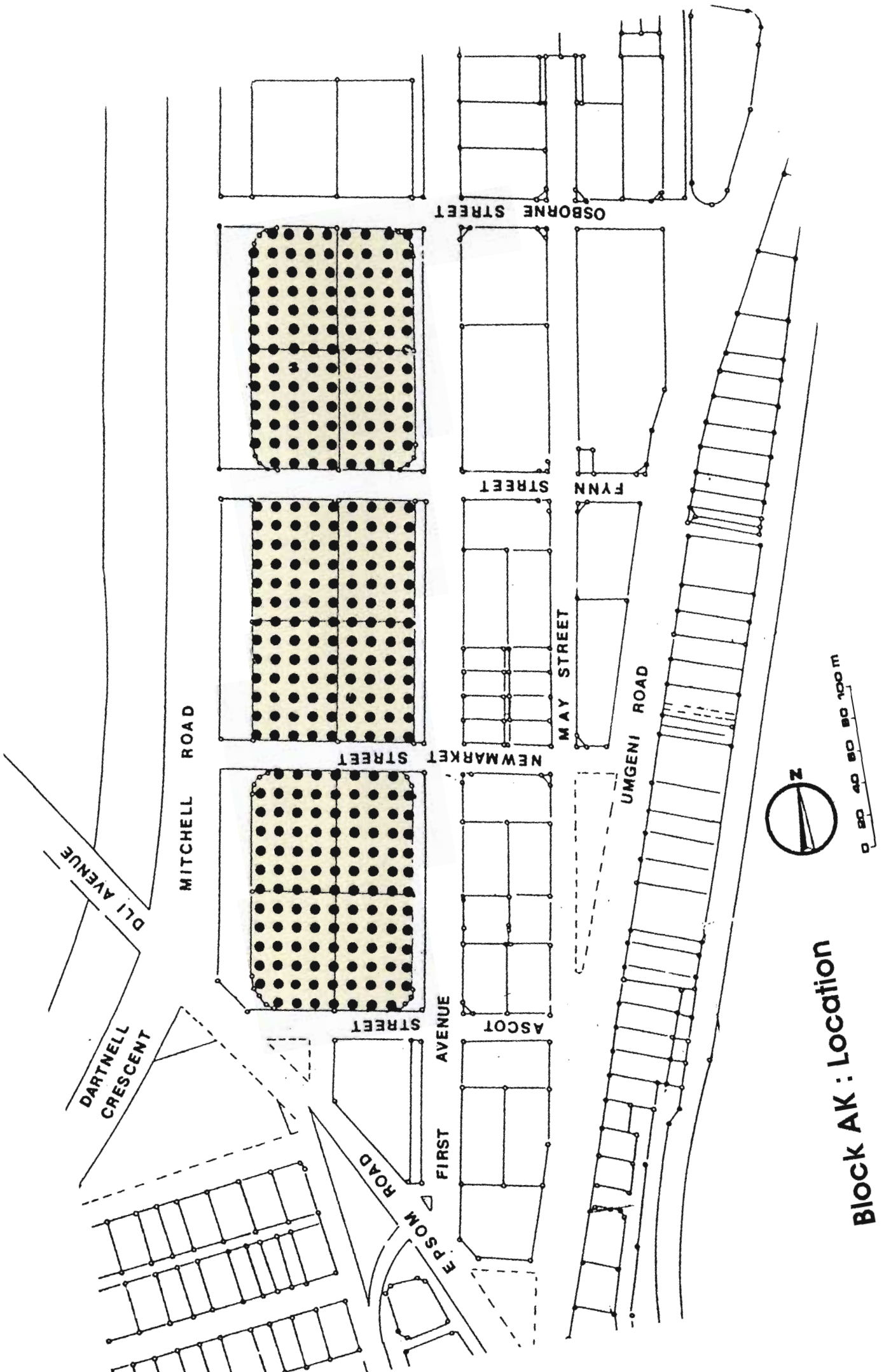


CBD LAND USE

 RESIDENTIAL	 OPEN SPACE	 TRANSPORT/PARKING	 INDUSTRIAL
 OFFICES	 VACANT LAND	 GOVT/MUNICIPAL	 INSTIT/EDUC
 RETAIL	 ENTERTAINMENT	 RELIGIOUS	 UTILITIES

Location

**Block AK
and
Central Business District
Landuse**



Block AK : Location