

What do ANC youth leader Julius Malema, Wall Street bankers and South Africa's Constitutional Court judges have in common? The answer is provided by Niall Ferguson, the Oxford & Harvard historian. He is one of that precious but small breed of historians who understand the role of economics and financial markets in the shaping of history. (Cornelis de Kiewiet and Simon Schama also count among them).

Ferguson's point is that to spread democracy one must "...come up with rules that are 'self-enforcing' so that the more they are applied, the more respected they become, until at last they become inviolable". He traces the development of the British constitutional system with its remarkable adherence to unwritten rules and conventions. The Magna Carta, agreed on in 1215, was merely the beginning. From there, via the Glorious Revolution in 1688 to the Victorian 1860s, a network of interlinking rules and norms developed among the British people, making Britain an ever more stable and peaceful society. And yet even in the 1860s there was corruption in Westminster, the rich was over-represented and the franchise was restricted. Hardly a liberal democracy, certainly not corruption-free.

Now back to an impetuous youth leader, American bankers and Constitutional judges.

Mr Malema attacked judges and the courts, and threatened to kill for his leader, Mr Zuma. These posturings were widely condemned and they exacerbated the current schisms in the ANC, but the young man remained defiant. Then a High Court judge found in favour of Mr Malema's leader. Oops! Difficult to condemn the judge now.

In November, the same judge will hear an application by Mr Zuma to have his prosecution stayed indefinitely. Mr Malema will not have much credibility left if he attacks that judgement, whatever it is. Slowly he is being forced to accept a rule that is to the benefit of the whole of society: the sanctity of judges and that the law has to be respected.

This is not the only rule Mr Malema is being forced to learn. After the infamous "kill" comment, the Youth League was publicly rebuked by (now) Pres Kgalema Motlanthe for their intemperate and "reckless" language. The League threw all their toys out of the cot and went really intemperate, lambasting Mr Motlanthe in public. A week or so later, Mr Malema had to sit at a press conference where Mr Zuma announced that Mr Motlanthe would be the ANC candidate to replace Mr Mbeki. Mr Malema had to address the press conference and declare support for Mr Motlanthe. A hard lesson in the rule of temperate behaviour. It is noticeable that Mr Malema's defiance has subsided a bit.

Now on to the Wall Street bankers. They have also had to relearn some very basic rules lately: you should not lend to people who cannot repay; understand what you buy; debt does not stop being debt simply because it is not on your balance sheet. These rules strike me just as basic and as fundamental as the ones Mr Malema was confronted with. The only difference is that when he defied the rules of his environment, the cost was considerably less than when the bankers defied theirs. Whether the bankers' actions were born of greed or plain stupidity, the bottom line is they defied the rules. New behavioural rules will now come into being (some thru regulation), and the next generation of bankers will be forced to behave differently.

Every sphere of life in society has its own rules, written or unwritten, defiance of which carries a cost.

How does that apply to SA Constitutional Court?

A full bench of the High Court recently ruled that the Honourable Judges of that highest court in the land did not respect Judge John Hlope's rights when they laid a complaint against him.

That is a sad comment on the Constitutional Court judges. After all, they are the final custodians of citizens' rights. One feels like saying, "Shame on you". Indeed, we have heard several people make scathing comments on the Honourable Judges. I am more sympathetic. There are no ready-made rules on how to deal with a situation like Judge Hlope's. Yes, the principles are set out in the Constitution. But we all know that "heaven is in the principles, hell in the details". The High Court found that the Honourable Judges got the rules about the details quite wrong. We learn the rules as we go along. Just like the English did between 1688 and 1860, ala Ferguson.

All the excruciating court cases, cases within cases, appeals, counter appeals and applications are nothing but a process of developing the rules. For example, after Judge Nicholson's ruling that resulted in Mr Mbeki's dismissal I cannot see how the cabinet can interfere with NPA decision making. The NPA is probably much stronger after the Nicholson judgement and Mr Mbeki's recall than at any time since it was created in the late 1990s. (Better to fight in the courts than to do real fighting.)

What is currently happening, in my view, is that we are, like the English of old, in a process of rule making. The rules around political rhetoric are becoming clearer and more entrenched, the political reaction against defying it more severe. Next time the Constitutional Court judges want to lay a charge, they will do it more correctly. Even the bankers will learn to correct behaviour. The process is unnerving, the direction fairly clear.