

DEBATES

Marikana and the politics of Law and Order after Apartheid

With their *pangas*, and machetes mixed in with ethnic regalia, the striking mine workers at Marikana have become ‘spectacularized’. It is a stark reminder that the mineworker, a modern subject of capitalism, is in this part of the world also the product of a colonial encounter. Many of us are trying to make sense of the massacre at Marikana through the obvious dire economic conditions, wage rates, and inequality that these workers face. We should also try to make sense of it through the lineages of law, order and the new configurations of politics emerging in post-apartheid South Africa. The dominant response to violence in South Africa, whether in its political or criminal forms, reveals a post-apartheid state more and more relying on law, order and administration to govern, and less on the anti-colonial and democratic idealism of its founding political and moral vision.

A few years ago, when I was doing research on criminal violence at the Human Sciences Research Council of South Africa, we decided to visit Bogota in Colombia, to learn more about the innovative policies that two successive Mayors introduced into that city, which seemed to have effective and dramatic results in lowering crime rates. On the trip, we also visited Sao Paolo and Rio in Brazil. In Bogota, we met with the former Mayor Antanas Mockus, and we learnt about an approach which emphasized less force and punishment. In the Brazilian favelas, we witnessed the opposite – the militarization of a war on gangs who themselves act like military organisations. What we heard and saw in Bogota encouraged us to think differently about criminality and violence. Mayor Mockus, a former university president and philosophy professor, had argued that in countries of the South, like Bogota, the most effective and sustainable trans-formation required to reduce violence would be to produce a self-regulating citizen who chose to act in a particular way, not out of fear, but out of social and self-regulation. While Rio turned to militarized policing, Bogota

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hired creative artists and drama students from local universities as key members of its crime fighting team. What seemed more than eccentric turned out to be just the opposite, reflected in declining levels of aggression and homicide during the periods in which these policies were allowed to come to maturity. We decided to invite the former Mayor of Bogota, Antanas Mockus to visit South Africa. In meetings in Cape Town and Johannesburg, his ideas were met with much enthusiasm and interest. But familiar habits are difficult to change, and our policy makers demurred on the opportunity to govern creatively rather than punitively.

We can track with alarm the growing faith in retributive law in order to change practices considered inappropriate to civic and communal life in post-apartheid South Africa. In Cape Town, the Democratic Alliance, for example, draws more and more on the discredited policy of zero-tolerance policing which emerged from the United States, an approach widely associated with the criminalization of racial minorities like African-Americans and Latinos, who make up the bulk of the offenders in US jails today. The Premier of the Western Cape renewed a call last heeded under the State of Emergency of the 1980’s, for military troops to be sent into townships, this time to deal with gangsterism. And the President has authorized the deployment of military troops inside the country from September to January. We have to be concerned with the proliferation of punitive actions to transform social behaviour. We have to ask ourselves if this is the guiding ethos of a new form of citizenship we want to cultivate? Up to now, we could take cynical comfort in the lack of capacity to implement the bulging phalanx of

regulatory laws and administer them efficiently. This tended to ensure that their bark could never really become their bite, beyond certain geographical spaces in the city. Then came Marikana.

Whilst law is celebrated as the highest form of civilization, we should also recall that the history of law is entwined with colonial conquest and rule. This complicates the legitimacy of certain legal traditions in most of the formerly colonized world. Law was not only an expression of the codification of order, but also the expression of the imposition of liberal conduct, and of liberal paternalism. The rule of law and constitutionalism, the scholar James Tully tells us (drawing on the Australian experience), is not a culturally neutral set of ideas, but is rather the hegemonic imposition of a set of norms which originate in colonial conquest and are imposed on subject populations in order to transform their behaviour to produce what we might call good modern subjects. The early justifications of colonial rule were based on doing good for the native by, for example, outlawing ‘barbaric practices’ in India and Africa in order to ‘civilize’ us. My point is not to celebrate these outlawed practices, but to point out that liberalism has historically relied on the force of law to enact its paternalism on populations in order to transform conduct into what is seen as the good subject and good citizen, who acts and thinks in a particular way. Apartheid was, after all, a legal policy.

In 2001 the respected legal historian Martin Chanock observed with some consternation:

As it had been nearly a century earlier, South Africa was colonized in the 1990s by a new kind of internationally sanctioned state: this time, not the ‘Westminster system’ but the ‘Constitutional State’. A form of political liberalism that had notably failed over the whole history of the South African state to attract significant support from any segment of the population,

found its philosophy entrenched at the heart of the new constitution. The constitution inflated the role of law, and the political power of judges, in an attempt to remedy the faults of the previous state's version of the 'rule of law'.

If the injustice of apartheid was the violation of human rights on a large scale in the past, then justice in the future would be thought of as the commitment to the elevation and protection of human rights in the present. We should have some reservations about what happens when the terrain of justice and freedom becomes saturated by law and rights talk, and when law and rights talk becomes the hegemonic discourse through which we are can legitimately articulate political questions.

In our present context, liberal freedom is now revealing its ever present flipside – liberal paternalism, which now seems to be running rampant as the only way in which political authority thinks it can reliably transform our conduct. This encourages more rules, not debate and dialogue designed to transform us through alternative modes of self-regulation. If political authority only relies on the wagging finger, it quickly comes to rely too much on the wagging stick.

Its worth reminding ourselves that, in the constitutional order of post-apartheid South Africa, the grassroots mass has been transformed from being seen as a source of activism to being seen as a population to be transformed, as a target. The developmental state views the population through the lens of administration. It brings to bear experts who devise

technical solutions to socio-economic and political problems. The re-casting the mass as an object of development has meant that majority rule has been interpreted by the state to mean rule 'on behalf' of the majority not rule 'of' the majority. Given the legacy of apartheid, this is not surprising, since most black South Africans – the majority of votes – make up the same majority living in poverty and are the target population of developmental upliftment. In other words, they have become, in the eyes of many in government, 'the problem' to be solved, not the majority to be represented. What we are witnessing now is a growing divide between majoritarianism and the popular. Understanding the majority as 'the problem' has brought out the liberal paternalism of the state and, along with it, the growing tendency to wave the wagging finger. And the more it wags its finger, the more it loses command over the popular. The battle over the popular is becoming a babbling scene of contention, where rival unions, expelled youth league leaders, and new political leaders on the ground battle for hegemony with the traditional ruling party figures of the tripartite alliance – the African National Congress, the South African Communist Party and the Congress of South African Trade Unions.

When these populations start asserting themselves as they are doing now, they quickly shift from being considered objects of development to targets of repression. They are easily labeled and named – as impatient and ungrateful, auto-matons of external interference, 'third forces', counter revolutionaries or

political opportunists – everything but citizens asserting legitimate political expression, simply because these are expressed in increasingly illiberal forms and repressed more often now with illiberal methods. When those populations upon which rules are imposed, already historically suspicious of law, start to find its developmental paternalism offensive, authority slides into authoritarianism. Liberal colonial occupation and the massacre have never been far apart in history. When subject populations resist the liberal gift they are supposed to express gratitude for, the historical response has been to reveal the ultimate authority that gives law its power – violence.

Marikana is its most ferocious recent expression, and might henceforth be the symbolic name we give to that event which revealed the disjuncture between law, politics and people in post-apartheid South Africa. The German political theorist Hannah Arendt was of the view that a turn to violence signaled the end of politics. For Arendt, politics is a process of agonistic engagement with contending ideas, and the moment one resorted to violence to do the work of politics, politics has vacated the building. A reliance on violence, and the punitive aspects of law, as the only way in which we transform social conduct, signals a failure of the imagination, and of political thinking. Are our political leaders, who can rightly claim to be the proud inheritors of a radical tradition, and of a liberal tradition, really be so bereft of their sensibilities to govern that they are already resorting to violence to do the work of politics?

Gender Alternatives for Africa's Development Method and Evidence

Edited by Manthiba M. Phalane & Antonia T. Okosi-Simbine



This book, *Gender Alternatives for Africa's Development: Method and Evidence*, presents discussions on gender and development frameworks with a view to highlighting different ways of analyzing and interpreting data from research in Africa around issues of gender and development, gender based violence and the HIV/AIDS pandemic.

The book introduces gender alternatives for Africa's development and highlights the development of knowledge in relation to gender. It is part of a series that has been dedicated to studying gender struggles for both development in Africa and resource mobilization for sustainable livelihood. Some of the questions raised in the book are: What issues are central to the thematic debate on gender alternatives for development? What other forms of evidence about gender alternatives for development are arising from inside Africa? And what has been the contribution of these alternatives towards generating new knowledge on Africa's development?

The methodology adopted in this book is an inclusive approach that integrates ideas that build on gender and development challenges. It focuses attention on the state of women and development years after the Beijing +10, MDGs, and many other gender related platforms as presented by governments and regional bodies.