Afterword: Vigilantism and the Burden of Rights: Reflections on the Paradoxes of Freedom in Post-apartheid South Africa

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This brief article serves to locate the initiative which Lars Buur and Steffen Jensen have taken in assembling this volume, in relation to the wider research programme of which they have been part, and to comment briefly on central themes of the collection.

This guest edition has its origins in a symposium, co-hosted by the Wits Institute for Social and Economic Research (WISER), the Centre for Applied Legal Studies (CALS), and the School of Law, at the University of Witwatersrand, in September 2003. The event was one in a series of joint initiatives aiming to promote interdisciplinary research and debate at the interface of law and society.

Within WISER, interest in this venture has been animated by the research programme on Law, Criminality and the Moral Logics of Everyday Life, which poses a series of questions about the legal and normative dimensions of the democratisation process in South Africa post-1994, and how these compare with other countries which have undergone transitions from authoritarianism. In the South African case, as in many others, the project of political democratisation, coupled with assertions of the newfound moral legitimacy of law, has been accompanied by an escalation in various categories of crime, provoking widespread popular perceptions of a juridico-legal system which is failing dismally to protect its citizenry. This historical conjuncture raises intriguing questions about the powers and meanings of law, the contestations these provoke, and the competing notions of justice, punishment and moral order associated with these conflicts. Whereas in many other countries, the collapse of authoritarian regimes seriously destabilised the juridico-legal system and institutions of state, the institutional fabric and idea of law in South Africa retains a strong purchase. Yet competing notions of social order and justice have proliferated, with complex and ambiguous relationships to the new constitutional democratic hegemony.

In this conjuncture, therefore, the interface of law and society is a particularly revealing and pertinent site of research and analysis, promising to open up issues
which bear critically on the character of democracy in the country and the production of new modes of citizenship. As the WISER research programme puts it, we need to consider:

How are the obligations and responsibilities of new forms of social citizenship understood and engaged? Are old notions of moral community being redefined, particularly among younger generations of citizens? How are notions of right and wrong mobilised tactically in the practice of everyday life? What are the normative parameters that shape individual judgements about criminality? ... What are the cultures of “law” and “lawlessness” and how are these manifest in the realm of everyday life? What are their historical trajectories? What conflicts and contestations surround them, and how are they adjudicated? What is the popular purchase of modern notions of law and justice, and why? What are the competing genres of punishment, retribution and justice, and what are their effects? What are the multiple moral logics of everyday life?

The guest editors, Lars Buur and Steffen Jensen, both research associates of WISER, have made important contributions to this research endeavour. Indeed, their own work, along with other contributions assembled in this volume, go a long way in engaging several of the questions posed above.

Collectively, the papers raise fascinating and challenging questions about contending notions of law, justice and punishment, their purchase in everyday life, and the alternative moral universes which undergird them. All papers are located in the context of South Africa’s transition from apartheid, a time during which the phenomenon of informal policing — and vigilantism in particular — has become more varied and more frequent (Harris 2001; Institute for Security Studies 2002) Indeed, the volume speaks to the paradox, that popular recourse to vigilantism has proliferated in the midst of efforts to stabilise the new — and newly inclusive — democratic order. From one point of view, democratic constitutionalism represents a profound victory, the culmination of South Africa’s freedom struggle, which has liberated its citizens from a repressed and discriminatory past. The constitution has installed a robust regime of rights, which enables and protects newfound liberties. Yet, from another point of view, democratic constitutionalism is a set of prescriptions and proscriptions, both moral and legal, which sit rather uncomfortably with some popular preferences and predelictions. Democracy, from this standpoint, is a new mode of surveillance, which is confining and restricting.

It is this theme which has shaped my reflections in this brief commentary. In my view, the interest of this volume derives substantially from its focus on the simultaneity of these two sets of popular verdicts on the transition to democracy. It is the uneasy, and yet sometimes productive, tension between the constitutionally authorised justice system, and popular — somewhat liminal — modes of justice, along with the contending moral worlds associated with each, which lies at the heart of much of the research rendered here.
In a recent article, Jean and John Comaroff point to the “tensions between the philosophical tenets of universalism and the practical realities of difference, between the abstract language of individual rights and the vernacular sentiments of collective identity”, and their salience within the “everyday politics of culture” (Comaroff and Comaroff 2004) since 1994. Several of the articles in this volume give some sense of the hybridity of this tension as it is lived in everyday life, and of the intersections- along with the contradictions- between these different realms of belief and practice. The regimes of informal policing analysed here represent popular critiques of the formal democratic ethos, and yet their practices are not wholly disconnected from the formal policing systems against which they position themselves — as in cases “where police officers are members of vigilante groups, or when police officers sit in on community courts” (Buur and Jensen, Introduction). This volume, then, is keenly sensitive to the ambivalences of democratic “freedom”: its dislocating social and moral effects, in the midst of, and entangled with, the new opportunities created by it.

Julia Hornberger’s paper, “My Police — Your Police” illuminates these ambivalences within the ambit of the South African Police Service (SAPs) itself. In some respects, the SAPS — under some pressure from other institutions of state — has newfound visibility as a police force which has embraced the requirements of robustly formal, impartial policing, mindful of the standards and expectations of a non-racial democracy; hence a series of “transformation” initiatives and efforts at community policing aimed at bolstering public trust in the “new” SAPS. And yet, as Hornberger demonstrates, the everyday practice of the SAPS is far more fluid and complex, subject to crossovers and tense interplays between methods and norms of formal and informal control.

Other studies of vigilantist movements and organisations which have emerged since 1994 locate their trigger in “the widespread perception that, along with liberation, had come licence and lawlessness” (Dixon and Johns 2001), which the police establishment was not managing effectively. Oomen’s article confirms this diagnosis in the case of Mapogo. Here, the disappointments of democratisation are stated from the perspective of a moral order which valourises African “traditions” of gender and age-based inequalities, along with corporal discipline and punishment. This is a brand of vigilantism which emerged in the midst of a popular sense of a world going astray, and of the menace which inheres in the gift of freedom — particularly in respect of the breakdown of generational and gender-based forms of authority.

This perception of the burden of rights — and the unruliness of social relations which follow in their wake — is an increasingly prominent theme in research on gender relations in post-apartheid South Africa (for example Sideris 2004; Walker 2003). Oomen’s analysis shows how these anxieties about masculinity, age and moral order have come together in the call for modes of popular justice at odds with many of the tenets of the democratic constitution. Yet, Mapogo is
not simply a reinvention of "tradition", even if it makes copious reference to indigenous African ways. Alongside these, is a symbolic repertoire closely associated with the country's modernising elites: BMWs, cell phones, elegant and expensive Western clothing, displayed by leaders who style themselves as cultural entrepreneurs, replete with the status symbols which mark the beneficiaries of "freedom". And Mapogo's relationship with the formal, democratically authorised systems of policing and justice is similarly syncretic.

Buur and Jensen's article on "Everyday Policing and the Occult" shows that witchcraft represents another articulation of (democratic) freedom and (vigilantist) revenge. In the most interesting cases, this linkage is mediated by new and disturbing patterns of death, closely associated with the birth of the country's democracy. The root cause is the rampant HIV/AIDS epidemic in the country. While incubated during the last decade of apartheid, the spread of HIV/AIDS has largely been a post-apartheid phenomenon, manifest in rising death rates, particularly among young and middle-aged adults — people who are not normally expected to die in such numbers. Despite the powerful and palpable impact of the disease in the lives of people with AIDS, their families and communities, the widespread stigmatisation of HIV/AIDS has produced impulses to secrecy and silence: the disease often remains largely unspoken, and in some instances, altogether unrecognised and unacknowledged. The acceleration of death since 1994, which the epidemic has caused, is therefore mysterious and disturbing. This is an environment in which witchcraft accusations have flourished. Here again is a version of vigilantism, prompted by a sense of the moral and spiritual damage associated with "freedom", for which corrective punishment in the name of an alternative moral and spiritual order becomes necessary: too much death, amidst people who ought to be alive. In the words of one of the workers on the sugar farm created in the new spaces for black entrepreneurship opened up after 1994, "when sugar came in 1994, people started to die".

In the article by Morten Lynge Madsen, the focus of analysis shifts to the margins of the new democracy, tacitly raising another theoretical, moral and lived dilemma of "freedom". In this case, it is the ambivalent situation of illegal migrants who inhabit a liminal space which is in, and yet not of, this new democracy. Political and legal changes post-1994 have loosened the country's borders, opening up unprecedented spaces for illegal migration into South Africa, on a scale which has provoked nationalistic outrage, and popular vengeance which is profoundly anti-democratic. Illegal migrants have developed strategies of informal policing amongst themselves in order to produce a way of living which is both violently excluded from, and yet tenaciously embedded in, the everyday life of post-apartheid South Africa.

If this guest edition sheds a revealing light on some of the paradoxes of "freedom" in post-apartheid South Africa, it also prompts questions for further
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research and analysis — perhaps most immediately in relation to questions of gender, and masculinity in particular. As indicated earlier, this volume has suggested a link between the reinvigoration of vigilantism and the politicisation of gender in the post-apartheid era. This connection merits greater scrutiny, in ways which might deepen the analysis of the moral communities associated with vigilantism, and the ambivalent relationships between democratic and vigilante modes of justice.

The transition from apartheid has politicised the regulation of sexuality in unexpectedly intense ways (Posel Forthcoming 2005a). One element of this process has been the destabilisation of "traditional" versions of manhood, provoking backlashes from men who feel themselves undermined or emasculated by newly "empowered" women and children. Mapogo, as Oomen suggests, is one among a number of vigilante organisations and movements which have sought to rehabilitate "traditional" male authority over women and children, in the face of the perceived assault delivered to men by the new regime of rights. Yet, gender-based vigilantism has taken other forms, also prompted by the post-apartheid micro-politics of sexuality, and more specifically, the politicisation of sexual violence.

Sexual violence has a long and notorious history in South Africa, associated with political and cultural mechanisms of secrecy and marginalisation. The shift to democracy has contributed to an unprecedented public exposé of sexual violence, accompanied by outpourings of popular anger and outrage (Posel Forthcoming 2005b). With democratisation, legal sanctions against sexual violence have intensified, and its victims allotted newfound rights to legal and police protection. And, as the public discourse of rights has spread, the likelihood to expose a sexual violation, and claim recourse to the law, has grown.

In this milieu, male sexuality has come under intense public scrutiny, in some instances, to the point of a moral panic about the moral frailty and sexual menace of manhood. Indeed, this version of masculinity — as flawed and dangerous — has also prompted vigilante activities. Newspapers have reported many instances in which the alleged perpetrators of sexual violence have been subjected to brutal assault, castration or death, on the grounds that the official, democratically authorised regimes of discipline are inadequate and ineffectual in delivering an appropriately severe punishment. Here, then, the ambivalences of freedom are writ large: popular outrage against sexual violence has been enabled and facilitated, in various ways, by newfound democratic sensibilities and opportunities in respect of gender; yet the version of justice at play is profoundly anti-democratic.

A full understanding of the relationship between the proliferation of vigilantism in the post-apartheid era, and the politics of gender, would require looking at the ambivalences which mark vigilante responses to the question of manhood itself,
and the ways in which these speak more widely, to the anxieties and ambiguities of newfound freedoms.

Note
1. For the full text of WISER's research programme on Law, Criminality and the Moral Logics of Everyday Life, see www.wits.ac.za/wiser.

References


