Transition, human rights and violence: rethinking a liberal political relationship in the African neo-colony

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As we don't know the difference between a mosque and a university, because both are from the same root in Arabic, why do we need the state, since states pass just as surely as time? (Mahmoud Darwish)

Abstract

Rather than seeing the prevalence of systemic political violence in Africa as resulting from a purportedly difficult "transition to democracy", this article insists that accounts of such violence must be sought within the modes of rule of the democratic state itself. In particular, the manifestation of a contradiction between democracy and nationalism in a neo-colonial context, takes many different forms which cannot be resolved consensually given existing modes of rule and the enrichment of the oligarchy at the expense of the nation. Xenophobic violence in South Africa is used to illustrate the argument. It is shown that a distinction between domains of politics (including modes of rule) must be drawn. In particular, this means distinguishing between a domain of "civil society" and one of "uncivil society". It is within the latter that most people relate and respond to state power. Within that domain, the state does not rule people as citizens with legally enforceable rights, but simply as a population with various entitlements. In this domain, violent political practices by the state tend to be the norm rather than the exception, so that violence acquires a certain amount of legitimacy for resolving contradictions among people. The overcoming of systemic violence (itself a political choice) can only begin to be conceived via a different thought of politics as subjective practice.

Introduction

The courage, inventiveness and organisation of the people of North Africa in Tunisia and Egypt, as the new year of 2011 was turning, have evidently disproved (if refutation were needed) the thesis of "the end of history". In doing so they have provided renewed enthusiasm for "people power" and a popularly

driven process of mass mobilisation in which people can not only force the resignation of dictators and seemingly the (partial or full) collapse of authoritarian states, but crucially also demand a greater say in the running of their own lives. In standing up against oppression in this manner, people have asserted that they are no longer victims but full blown political subjects[2]. Yet the appearance of the masses on such a broad scale on the political scene for the first time since independence cannot be assumed to mean that they will remain there, and not only because coercive military power has yet to be transformed. Given the fact that this process is generally understood as one of "democratisation", it becomes sooner or later systematically accompanied by an invasion of experts on "good governance", "democracy", "empowerment", "civil society" and "transitional justice" *inter alia*. All these experts purport to provide advice to the struggling people on how to come to terms with past atrocities, in order to consolidate their hard won gains, via a transitional judicial process of reconciliation between erstwhile enemies in order to produce a functioning democracy[3]. As Rosemary Nagy puts it:

> The question today is not *whether* something should be done after atrocity but *how* it should be done. And a professional body of international donors, practitioners and researchers assists or directs in figuring this out and implementing it (Nagy, 2008: 275).

In fact in an interview in early April 2011, one such practitioner, the president of the *International Center for Transitional Justice* (ICTJ), David Tolbert noted:

> Obviously we're living through a truly extraordinary moment in the Middle East. It's not something most experts would have predicted two or three months ago, and it opens enormous opportunities in terms of transitions. That's true in Tunisia and Egypt, and hopefully across the Middle East and North Africa more generally. We've sent missions to Tunisia and to Egypt, and we're gearing up to work in both of those countries[4].

In particular, these experts intend to pursue such "opportunities' because they and their funders are ostensibly concerned with the plight of victims of violence[5]. But they rarely conceive people from the Global South as knowledgeable rational subjects of their own history, but as sad pathetic victims in need of "empowerment' who thus require the benevolent support of the West

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[2] During the occupation of Tahrir Square in Cairo in February 2011, the TV channel Al Jazeera referred to the popular uprisings in Tunisia and Egypt as "people power" on numerous occasions.

[3] See for example Larbi Sadiki, 2011.

[4] See http://ictj.org/en/news/features/4540.html. The *International Centre for Transitional Justice* (ICTJ) is an international NGO based in New York City founded by the South African liberal TRC vice chair Alex Boraine.   It was reported in April 2011 that President (then in waiting) Ouattara of Côte D'Ivoire had pledged to set up a Truth and Reconciliation Commission presumably as soon as he consolidated his power by force of arms; see http://af.reuters.com/article/ivoryCoastNews/idAFLDE7371YH20110408 accessed 13/04/2011.

[5] Opportunity to spread the gospel of transitional justice? For pursuing careers or to spread the faith? Does the business language constitute a Freudian slip? See Tshepo Madlingozi , 2010.

upheld since the eighteenth century by an ideology of "trusteeship"[6]. As experts from Western governments, multinational agencies and international NGOs (the so-called "international community') descend from on high like clouds of locusts, voraciously eating up the new shoots of "people power", it may be important to rethink some of the assumptions upon which such theories of transition – perhaps most explicitly outlined in the notion of "transitional justice" – are founded[7]. These are so common and so pervasive in their apparent ethical "goodness" that they rarely elicit criticism.

Fundamental to this thinking is the assumption that democracy – understood as a form of state of course, not as a popular practice – must be accompanied by a "culture of rights" which itself is seen as inimical to the deployment of violence and enabling of (multicultural) tolerance. The reason being the belief that democracy implies an acceptance by all contenders for power of "the rules of the game", that a consensual value system based on the mutual respect for each other's rights (and identities) and the rule of law, excludes violence as a way of resolving differences. The reason is also that the commitment to such a consensus, built during a period of transition through the judging of past abuses (gross violations) of human rights through legitimate legal procedures, can lead to (elite) political reconciliation and consequently to (popular) social peace. The core assumption therefore is that "transition" is to be understood as a process of change from a state of authoritarianism and violence to a state of democracy and peace, the idea being that violence should decline as a "transition to democracy" and a "culture of rights" are gradually realised.

A number of characteristics of this form of reasoning are evident even at this stage of the argument. It is manifestly a variant of the old historicist notion of change from the "traditional" to the "modern" made (in)famous by the hegemony of modernization theory in the immediate postcolonial period in Africa in particular. What appears to be "the past", seen as an undifferentiated whole, is simply defined negatively in relation to an idealised (future) state of affairs. Much as the term "traditional", the predicate "authoritarian" refers here to any form of state - irrespective of its historical location - which deviates from the Western liberal-democratic model, now global in its scope. It includes most obviously the past "communist" states in Eastern Europe, the old militaristic states in Latin America as well as African post-colonial states whose secular nationalism diverged from the neo-liberal ideal until around the late 1980s when formal universal suffrage was adopted by elites worried at the prospect of losing their power under democratising pressures from "above" (by the "Washington Consensus") and from "below" (by the popular masses). African states in particular were seen as having embarked at the time on a "transitional" process of "democratisation" as "multi-party elections", "good governance", "civil societies" and "human rights" were promoted *inter alia* through the use of

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[6] See Michael Cowen and Bob Shenton, 1996.

[7] The seminal text here is Ruti Teitel, 2000; but see also Richard Wilson, 2001, and more recently Audrey Chapman and Hugo Van der Merwe, 2008. There is an extensive bibliography on this topic.

"political conditionalities" by the "Washington Consensus" as part of a process of incorporation into the globalised "New World Order" of neo-liberal capitalism and democracy[8].

When "political conditionalities" proved insufficient, it was (and still is) always possible to (threaten to) enforce such democracy, human rights and incorporation into the global order through the deployment of military might, more or less justified by notions of "humanitarian" intervention. This may simply have lengthened the process of "transition" but was never meant to alter its final outcome. In fact the "transition" is apparently a never ending one as the ideal of the West is rarely attained. The present then is turned into an ongoing "transition" to an always receding future, all along guaranteeing careers in the business of "good governance". Moreover, the theoretical foundation of human rights discourse (HRD), on which this whole reasoning was constructed, is that people are seen only as victims, in particular as victims of oppressive regimes, and not as collective subjects of their own liberation. As such the law, along with its trustees (governments, transnational and national NGOs, multinational agencies), is understood to be their saviour[9]. The neo-colonial relationship here should be apparent, not because HRD is in itself inherently colonial, but because it is a form of state politics which is applied to neo-colonial conditions with all the zeal of a "democratizing mission" (Wamba-dia-Wamba, 2007). It is these conditions which require elucidation and analysis.

The construction of indices as measures of democracy and the training by Western NGOs of experts from Africa in the use of these, much in the same way as indices had been constructed in the past in order to measure development, evidently shows how politics has been reduced to a technical process, for only a technique can be quantitatively measured[10]. Democratisation which ultimately has its roots in the struggles of people from all walks of life for greater control over their daily lives – hence in the self-constitution of a *demos* - is now transformed into a technical process removed from popular control and placed into the hands of experts such as "human rights lawyers", "social entrepreneurs", "governance professionals" and "gender mainstreamers" who together staff an industry whose tentacles hold up the liberal global hydra of the new imperial "democratising mission" on the continent. Rather than a transition from authoritarianism to democracy, what occurred on the African continent during the 1990s can be more profitably understood as a process of systematic de-politicisation, a process of political exclusion.

If we agree with the philosopher Jacques Rancière (2003: 202) that "politics begins exactly when those who 'cannot' do something show that in fact they can", when those who have hitherto been excluded affirm their inclusion, then it

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[8] This process was referred to as the "second liberation" of Africa. See Michael Neocosmos, 2010b.

[9] See M. Wa Mutua, 2001, 2002, Chatterjee, 2002 and Neocosmos, 2006.

[10] See Neocosmos, 2010b. The German NGO *Inwent* for example has specialised in constructing and training in the use of such indices.

is not too difficult to visualise "de-politicisation" as a reversal of this process. More specifically this reversal consists of a political process whereby those same people are to be convinced — through the deployment of national legal strategies - that they really are clearly victims of violence, that they therefore could not have undertaken anything significant, new or different after all, despite what they may or may not have thought, as it would have all happened anyway and that in any case their suffering is now (largely) over[11]. Everyone should return to their allotted place in the social structure and vacate the field of politics, leaving it to those who know how to follow unquestioningly the rules of the game (of the state): the trustees of the excluded. In fact if historicist categories are preferred, this process could be described as a never ending "transition" from the inventive politics of popular agency to the oppressive technicism of state and imperial power.

A core feature of this process in South Africa in particular has been the emphatic and open construction of people as victims rather than (and after many had been) political subjects, through an emphasis on legal procedures which apparently only recognise juridical agency but not political agency (Neocosmos, 2006a). Being a victim, one can then lay claim to state largesse. At the root of what may be called this "politics of de-politicisation" is a technical understanding of transition inspired by a legal notion of change from in-justice to justice founded on a liberal notion of development from the in-human to the human as reflected in legal rights. Together the technicism of state politics and the idea that the law is in a position to change society for the common good, set out the parameters of a transition to renewed political exclusion — a return to socially allocated places and identities within the hierarchy of power.

The relative success of this process has in the past relied *inter alia* on people's lassitude with violence and demands for justice which they have so long been denied, on the physical and emotional exhaustion of daily militancy, and on the fetishism of power. The latter promises a world in which the difficult questions and problems of "decision-making" can and should now be left to professionals eminently qualified, and hence paid, to do so. Yet it is apparent that this largely technical process gives rise to political exclusion which is not overcome by the creation of a "vibrant" civil society of "stakeholders", for the latter's politics are in harmony with those of the state given that such politics are founded on place, interest and identity (Neocosmos, 2010, Chatterjee, 2002). The result is that violence does not necessarily disappear along with the construction of a democratic state. A new oligarchy is formed (or the old one is reconstituted) precisely as a result of the de-politicisation of the masses and their political exclusion, so that the authoritarianism against which people had rebelled in the first place is likely re-created, although now within the context of a somewhat different mode of rule and different forms of political exclusion.

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[11] This political subjectivity is an example of what Alain Badiou (2009:108) refers to as a "reactive" subjectivity, e.g. "the reactive subject is all which orients the conservation of previous economic and political forms... in the conditions of existence of the new body".

Of course such de-politicisation in practice is simply replicated within, as well as enabled by thought and subjectivities, as analysis becomes focussed on visualising the world through state categories. Such categories (governance, civil society, power, interests, democracy, law, reparations, etc) objectify politics by "representing" the social and thereby stress the immutability of given social places, cultures, identities and hierarchies to such an extent that state thinking becomes constructed as natural and the immutability of place as an incontrovertible fact evident to all. The inevitable conclusion is that there can indeed be no alternative to the politics of the state. Contrary to this reasoning, we must think beyond place; we must attempt to think what I have referred to elsewhere as "excess" over the categories of existing divisions and identities (Neocosmos, 2011: 198).

In this article I shall be concerned to show how the neo-colonial state in Africa exhibits characteristics which, in addition to its neo-liberal features much emphasised in the current sequence by political economy[12], give rise to a fundamental contradiction between human rights, multiculturalism and the rule of law on the one hand and state nationalism and the current concerns of national consciousness - often founded on state-propagated notions of the (newly acquired) rights of the indigenous - on the other. While democracy is said by the state to be its guiding principle, nationalism is partially collapsed into vulgar nativism and corrupt practices - from which is derived for example the oligarchy's "right to steal" justified in terms of the national interest (private accumulation is said to be in the public interest) - but it is also manifest in popular struggles against such practices, most clearly in North Africa in the current sequence. This overall contradiction is manifested in different ways in different cases but appears to be a universal feature of the state in Africa in the current period of globalised neo-liberal politics[13].

This contradiction, which is a product of state politics in the neo-colony, is largely insoluble through elite consensus, partly because national grievances are irresolvable through the medium of human rights discourse, and partly because the oligarchy is provided with legitimised forms of enrichment at the expense of the nation. It thus regularly finds expression in forms of violence which seem largely incontestable within the framework of the neo-colonial state without the deployment of more state (or multi-state) repressive violence. These violent contradictions arguably currently include the repressive violence of the state in Zimbabwe where the state sees human rights as little more than an imperial conspiracy, the recent conflict between presidents in Côte D'Ivoire (where one relied on international support for his legitimacy and the other denounced foreign intervention), as well as the ongoing popular upsurge against the compromised nationalism of the North African secular and militaristic authoritarianisms.

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[12] See David Harvey 2005, chapter 3, and also Abu Atris 2011.

[13] It is significant that the ubiquitous signifier at the protests of Tahrir Square in Cairo was the Egyptian flag which made the evident point that the protestors were affirming a new nation which the Mubarak regime no longer represented.

They also include the case of xenophobic violence in South Africa - itself the archetype of a successful transition to democracy - which erupted in the public sphere in all its chauvinistic starkness in May 2008. Despite its popular character, this xenophobia was founded on a state politics of fear (Neocosmos, 2008, 2010a). South Africa had also experienced a mass popular uprising against an authoritarian regime lasting approximately from 1984 to 1988 which was also referred to as "people's power" (Neocosmos, 1998). From 1990, this was followed by an explicit and extensive "transition" which systematically depoliticised and closed down popular political agency in favour of state politics, *inter alia* by transforming political agents into victims of human rights abuses via the now famous *Truth and Reconciliation Commission* process.

In this case, which I shall discuss below at some length, HRD has arguably provided one of the conditions of existence of xenophobic violence as HRD is simultaneously opposed to a resolution of the national question and inimical to the self-empowerment of the politically excluded. This is fundamentally because HRD is not so much concerned with the inclusion in the field of politics of the excluded, as with legal redress. It is not so much concerned with encouraging militancy (or even less radically with enabling an "active citizenship") as with producing the political passivity of victims: it thus privileges state solutions and through prioritising the law, reduces all political thought to state subjectivity. In this manner, people become transformed from subjects of history to victims of power and subjected to oppression until they re-discover their political agency with a renewed Idea of freedom in a later sequence.

It follows that to attempt to understand political change in Africa through the medium of a transition from authoritarianism to democracy privileges the thinking of state politics. As a result, such a perspective can only fail to make sense of the increase in certain pervasive forms of violence in neo-colonial (*post-democratic*) African states. Such forms of violence are not an indication of regression to authoritarianism or of loss of momentum in an ongoing democratic transition or even of a (supposedly "pre-democratic") "culture of violence"; neither is this violence pathological. Rather, they are a necessary outcome of the combination of neo-liberal capitalism and state democracy in a context of neo-colonialism wherein a dominant form of oppression and indeed of resistance can only be national in content[14].

My critique of the neo-liberal relationship between democracy and violence, along with its view of "transition", thus extends well beyond the usual radical left critique which consists in stressing that human rights and transitional justice fail to acknowledge the issues of structural violence, social justice and re-distribution (e.g. of land and other resources) in favour of the historically

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[14] This does not preclude the existence of other forms of violence, neither does it assume that liberal-democratic states do not exercise violence on certain of their citizens; however the fact remains that the extreme violence and mass slaughters of the Western (neo-) liberal state take place beyond its borders and are well hidden from its own populations apart from in controlled images.

dispossessed[15]. This perspective ultimately boils down to "extending" the neo-liberal conception of rights to include social, economic or cultural rights much along the lines propounded by T.H. Marshall in the 1960s[16]. This radical nationalist critique is thus limited and fundamentally statist because founded on notions of legal redress, so that it remains well within the terrain of a depoliticised technical process. At best it may advocate a modification of the state and a form of justice which is not founded on the power of victors but which would ensure greater social inclusion in the interest of all survivors[17]. Rather, social justice issues constitute only a part of a much broader national political question which is systematically reproduced in a neo-colonial context by the politics of state and empire, and which is thus irresolvable via the deployment of state nationalist thinking.

Given the disastrous politics of both state nationalism and state democracy in Africa which are both founded on the immutability of place, the solution to this question can only begin to be constructed by bringing the politics of affirmation back in to thought in order to re-politicise what has become a fundamentally depoliticised subjectivity. In this manner politics can be (re-) apprehended as subjective thought detached from social location and hence as capable of transformation rather than as the objectively immutable "truth" of power and institutions. In other words the lessons of popular mass politics in North Africa must be allowed to percolate into the domain of the subjective so that a politics beyond the state can become and remain the object of thought.

Transition, human rights discourse, violence

How then are we to think around the issues of "transition" in a context in which violence has been deployed according to political subjectivities which are state founded, not in the sense of what the social location of the perpetrators may be, but rather more in terms of who the originator of the ideology deployed by the perpetrator is? It should be noted first of all that the question is not asked in this manner by transitional justice theory (TJT). For TJT the issue is thought around a number of social "actors". These include victims, perpetrators, saviours and the state itself. The state can be both a perpetrator and a saviour, NGOs and Western powers are usually seen as saviours, some collective organisations (gangs, armies, ethnic organisations, etc) are seen as (savage)

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[15] Including the more sophisticated versions such as Robert Meister's and Mahmood Mamdani's. See Meister 2002a and 2002b; Mamdani 1996 and 1998; see also Nagy, 2008.

[16] See T.H. Marshall, 1964, and for a critique in the context of Africa, Neocosmos, 2006.

[17] In a recent lecture at the University of the Western Cape, Mahmood Mamdani advocated a notion of "survivor's justice" as opposed to the "victor's justice" derived from the Nuremberg model. The former is necessitated by the fact that victims and beneficiaries have to live together. The idea is important but it is not at all clear which social force(s) would have an interest in upholding such a notion and what kind of political practice would enable it. In actual fact this idea seems to suggest the existence of a politics beyond interest (i.e. beyond social location) which is what I am arguing for here.

perpetrators and the majority of the population are seen as victims. The fundamental idea is to enable through the law (i.e. the state) some kind of "consensus-building" in order to reconstruct state institutions of a non-particularistic character and to found them on shared liberal-democratic values and the rule of law. There is little space here for thinking political subjects.

People only enter the domain of political "transition" as represented by their trustees (states, NGOs, multinational agencies); they do not exist as independent actors within this domain of thought except as victims, who are "passive actors" if such a thing is indeed possible. The core conception of trusteeship is that of the state, whether in the form of the law, legal systems, the rule of law or electoral systems and political actors or even history. As Teitel puts it, "the problem of transitional justice arises within a bounded period, spanning two regimes" (2000: 5). The former is "evil" or "illiberal" (2000: 3), the latter is liberal, democratic and good; the former is characterised by violence, the latter by the rule of law. The core concept of the transition between the two is the legal idea of "justice" which "is alternately constituted by and constitutive of, the transition" (2000: 6). The "role of law in periods of political change" affects and is affected by change through its various forms such as: "punishment, historical inquiry, reparations, purges and constitution making" (2000: 6).

Central then to this discourse and reasoning is a linear change from one idealised state form to another. It is this which defines a "transition". "Transnational histories generally imply a displacement of one interpretive account or truth regime by another, even as the political regimes change, *while preserving the narrative thread of the state*" (115, *emphasis added*). Rituals of history-making are part of what constructs the transition, they divide political time, creating a "before" and an "after". "How the history is told over time is a delicate matter. The historical narrative constructs the state's understanding of its political order. Transitional historical justice is linked up to the preservation of a state's political identity over time" (2000: 117).

History in TJT aids the law to transform society so that transitional "justice" becomes a technique of change: "TJ is an *instrument* of broad social transformation, and rests on the assumption that societies [read states - MN] need to confront past abuses in order to come to terms with their past and move on" (Andrieu, 2010: 2, *emphasis added*). Transitional justice is then seen as a political intervention to construct a new state, but it is a technical intervention by the state itself (along with empire) often explicitly directed against the popular or "informal" structures of power set up by the people themselves within the context of their emancipatory struggles. It thus amounts to a self-transformation process by the state which thereby is primarily concerned to assert its dominance and sovereignty. Interestingly the state itself is not subjected to any analysis whatsoever within TJT; it is simply taken as given. Moreover, whether and how this "transition" in fact "impacts" on society will largely be the result of a distinct process altogether, one which cannot be derived automatically from such changes at the level of the state. This is

especially so if people do not or cannot constitute themselves as a people in society, which they are usually prevented from doing[18]. But this is to think well beyond the limits of TJT for which the terms "democratic state" and "society" tend to be used interchangeably so that experts speak of "societies in transition". To sum up, although TJT is primarily if not exclusively concerned with legal changes, it sees the goals of TJ as:

> nothing less than the transformation, or the regeneration, of a whole society. It involves political, economic, cultural, sociological and psychological actions: prosecutions, Truth and Reconciliation Commissions, lustration, public access to police and government records, public apology, public memorials, reburial of victims, compensations, reparations, literary and historical writings, and blanket or individual amnesty (2010: 3).

It should be clear that the state along with various other self-appointed trustees of the people's welfare such as NGOs, are always and without exception the prime movers of the process of transition and the outcome, whether by state actors or NGO activists, is always said to be a democratic state. As the ICTJ puts it, in the 1980s and 1990s "activists and others wanted to address the systematic abuses by former regimes but without endangering the political transformations underway. Since these changes were popularly called 'transitions to democracy', people began calling this new field 'transitional justice' " (ICTJ, 2011).

At the same time, it is the law which is the primary mechanism of transformation, i.e. of the creation of a democratic state. This is made absolutely clear for example by Richard Wilson (2001) in the case of South Africa in the 1990s where he notes that the Truth and Reconciliation Commission (TRC) "was part of a general and long term orientation within state institutions which asserted the state's ability to rein in and control the informal adjudicative and policing structures in civil society" (2001: 21). In particular he notes that in addition to enforcing state sovereignty (over informal justice) and hence the continuity of "the rule of law"[19], the TRC could only operate within a discourse of human rights. Apart from anything else, human rights discourse (HRD) thus came in handy as a consensual bridge between the reformed colonial racist traditions of the outgoing White nationalist elite and the reformed African nationalism of the incoming one. HRD:

> was indeterminate enough to suit the programs of both the NP (Nationalist Party) and the ANC (African National Congress), who came together to form a power sharing arrangement. The ascendency of human rights talk thus resulted from its inherent ambiguity, which allowed it to wield together diverse political constituencies. Constitutionalism became the compromise arrangement upon which the ANC and the NP could agree a "sufficient consensus" (2001: 6).

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[18] "...before considering the act by which a people submits to a king, we ought to scrutinize the act by which people become *a* people, for that act, being necessarily antecedent to the other, is the real foundation of society". Rousseau, 1979:59, *emphasis in original.*

[19] I emphasise "continuity of the rule of law" as, despite the fact that the laws of the apartheid state were racially discriminatory, the legitimacy of that state and its laws were never questioned by the incoming ANC and the new democratic state; see Mamdani, 2000.

Robert Meister shows very well how beneficiaries and not only perpetrators are let off the hook by HRD and why this is so in a post-cold war era. He states: "social melodramas allow the continuing beneficiaries of injustice to pity victims without fearing them because the victim's grief is disconnected from a sense of grievance" (Meister, 2002b: 123). The disconnecting of grief from grievance is what the TRC in South Africa achieved *inter alia* although for Meister this is an effect of HRD in general and not of its particular application to a specific context. The idea of building a consensual state was founded on the notion that the evil of apartheid is now over and its effects into the present need not be delved into: "the cost of achieving a moral consensus that the past was evil is to reach a political consensus that the evil is past" (Meister, 2002a: 96)[20].

At the same time the TRC process would serve to promote a "human rights culture" which itself would militate against the deployment of violence in society and for its (legitimate) restriction to the state which itself would be bound by the rule of law. Violence is then understood as the antithesis of democracy; when it does unfortunately exist it is seen as a leftover from authoritarianism, or as an effect of transition, or else as simply pathological, not as a product of the democratic state itself. This logic can be seen in the assumption of the supposed change in South Africa from "political" violence in the 1980s and 1990s to "criminal" violence post-apartheid. This invocation of increases in criminality explains little to nothing as it is equated with pathological conditions regularly asserted by the state, while of course the empirical (let alone the theoretical) distinction between political and criminal violence is quite tenuous to say the least (Harris, 2006: 10ff). Interestingly although Bronwyn Harris, in her detailed review of the connections between violence, transition and democracy in South Africa, rightly notes that this equating of the violence of the past with political violence and that of the present with criminal violence "has the consequence of minimising or downplaying the criminal nature of early violence", she strangely omits the obverse conclusion namely that this dichotomy also has the effect of downplaying the political nature of present-day violence (Harris, 2006: 11-12).

Concurrently, by reducing all violence to crime, the state is able to criminalise popular social movements which often contest the state's *modus operandi*, and is thus able to legitimise both their exclusion from the field of politics and the exercise of police (or para-state) violence against them. The strange equating of democracy in South Africa with the absence of political violence is a myth which is sustained by the neat separation between different modes of rule deployed by the democratic state. As I shall show below, the democratic state rules via distinct modes of rule within different political domains so that different mechanisms of enforcing and responding to power are consequently deployed in various socio-political locations. For one of these modes of rule - that deployed over the working-people - the exercise of (illegal) state violence is central.

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[20] Robert Meister addresses the contradictory character of Human Rights Discourse in detail in his latest work; see Meister, 2011.

The neo-colonial character of the state in Africa

It is quite apparent that the shift in economic thinking to a neo-liberal dogma along with its application throughout the world from the mid-seventies onwards, has led *inter alia* to a specific form of state and state thinking which is hegemonic throughout the newly globalised world. This combination of neoliberal capitalism and liberal democracy has not bypassed Africa. The character of the state in Africa has been radically transformed from a national and developmental state to a "postnational" and "post-developmental" state form (Neocosmos, 2010b; deAlwis et al., 2009). This suggests that the manner in which the state functions and rules today is radically different from the way it functioned in the immediate postcolonial period. There are four major distinct characteristics of the new state form which are worth briefly sketching here[21].

The neo-liberal state

The first of these concerns what Harvey has called a "neoliberal state", evidently influenced by the neoliberal character of the economy. One of the core features of this state is not simply the often emphasised "withdrawal" of the state from the market, or its privatisation of national social assets and its introduction of Structural Adjustment Programmes in the 1980s and 90s, or for that matter the reduction of its functions to ones of policing an increasingly poor population. Rather perhaps more fundamentally, what has become apparent does not concern policy but the structural change which has wiped away the erstwhile distinction between public and private interests (or public and private administration for that matter). As Harvey puts it, "business and corporations not only collaborate intimately with state actors but even acquire a strong role in writing legislation, determining public policies, and setting regulatory frameworks (which are mainly advantageous to themselves)" (Harvey, 2005: 76-7). Unlike in the 1970s, one can no longer speak in terms of the "relative autonomy" of the state from the interests of (finance) capital. African authoritarian states with a veneer of democracy (usually reduced to elections) have been extremely adept at instituting World Bank celebrated neoliberal economic policies. Abu Atris recently noted with reference to the popular protests against corruption in Egypt that:

> To describe blatant exploitation of the political system for personal gain as corruption misses the forest for the trees. Such exploitation is surely an outrage against Egyptian citizens, but calling it corruption suggests that the problem is aberrations from a system that would otherwise function smoothly. If this were the case then the crimes of the Mubarak regime could be attributed simply to bad character: change the people and the problems go away. But the real problem with the regime was not necessarily that high-ranking members of the government were thieves in an ordinary sense. They did not necessarily steal

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[21] The following can only be a brief sketch. The state in Africa is in desperate need of serious detailed theorisation and analysis beyond the vulgar essentialisms of Africanist prejudices: "politics of the belly", "neo-patrimonialism", "parasitism" etc.

directly from the treasury. Rather *they were enriched through a conflation of politics and business under the guise of privatization*. This was less a violation of the system than business as usual. Mubarak's Egypt, in a nutshell, was a quintessential neoliberal state (*emphasis added*) (Atris, 2011).

It is this collapse of the distinction between the general or national interest on the one hand and the private interest on the other - or that between state and capital which amounts to the same thing - which has developed into one of the dominant features of the state in Africa (and indeed elsewhere); it is this diminishing distinction which is the foundation of corruption and the looting of treasuries and which constitutes a systemic feature of the state in its neo-liberal form. It is totally corrupting of the edifice of the state itself which as a result can no longer be said to represent the national or general will/general interest or the "common good". In South Africa for example it is reflected in major donations by business people to the ruling party - the ANC - in return for having been awarded lucrative contracts through an only apparently neutral tender process. The provision of gifts to individual politicians for favours is against the law; providing donations to parties is not. It is also reflected in individual corruption as those connected to the state can enter into BEE (*Black Economic Empowerment*) deals with White capital, buy shares of privatised companies dirt cheap, and make huge fortunes from one day to the next. The end result is that South Africa has a large number of new millionaires and has, since the introduction of democracy, now overtaken Brazil as the most unequal society in the world, while at least half of its population of 48 million are said to live below the poverty line.

The democratising mission

Another fundamental feature of the state in Africa derives from what Ernest Wamba-dia-Wamba has rightly called the "democratising mission" of the West. After the colonial "civilising mission" and its post-colonial "developmental mission", the West has now insisted since the mid to late 1970s on "democratising" the state in Africa in its own image. This process, largely achieved through the medium of political conditionalities, has focussed on the trappings of the democratic state: elections of the executive through universal suffrage, constitutions, the advocating of multi-partyism and the funding of civil society organisations. The drivers of this process have been Western states, multinational agencies and international NGOs. This has been accompanied by the deployment of a human rights discourse and "humanitarian interventions" by both states (or their proxies) and NGOs. It is this process which has evidently shown the new features of the current democratic imperial system. Chatterjee notes that:

> The theorists of the new empire have talked of still more wonderful things. This empire is democratic. It is an empire without an emperor. The people are sovereign here, as it should be in a democracy. That is precisely why this empire has no geographical limits. This is not like the empires of old where territories have to be conquered by war to add to the size of the empire. Now empire

expands because more and more people, and even governments, looking for peace and for the lure of economic prosperity, want to come under its sheltering umbrella. Thus empire does not conquer territory or destroy property; rather, it encompasses new countries within its web of power... The key to empire is not force but control. There is always a limit to force; there is no limit to control. Hence empire's vision is a global democracy... We can see the exercise of control right in front of our eyes... Even such a deeply political matter as punishment for alleged violations of human rights has now become the jurisdiction of new international judicial institutions. The trial of Milosevic is the most dramatic example of this (Chatterjee, 2002: 100)[22].

This is not all, while supra-national courts such as the International Court of Justice or the International Criminal Court in the Hague are set up by agreement between states in multinational fora, there is also another much more subversive and insidious aspect to the establishing of the hegemony of human rights discourse: the operations of "international civil society". Chatterjee continues:

> If the protection of human rights is a function of empire, then that task is being carried out not simply by the international courts. It is being done daily, and diligently, by numerous such international NGOs as *Amnesty International, Médecins sans Frontières*, or *Oxfam*, whose able and committed activists probably have never suspected that they are, like little squirrels, carrying the sand and pebbles that go into the building of the great bridgehead of empire. But that is where the ideological foundations of empire are being laid[23].

John Laughland goes even further noting that "today's human rights activists... are inspired by a punishment ethic... which often prefers war over peace in the name of 'justice' " (Laughland, 2008: 257). We should never ever forget of course that given that in Africa the state acquires its legitimacy primarily from the West and only very much secondarily from its people, violent conflict - such as that in Zimbabwe for example - as a result of which people are experiencing the destruction of their livelihoods and increased repression, is more often than not restricted to an opposition between the whole panoply of neo-colonial politics (including HRD) on the one hand and authoritarian state nationalism on the other. This has meant that it has been difficult to construct a popular politics independent of both, while the discourse of (especially urban) popular

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[22] It is important to note that Milosevic after dying during his trial at the ICTY (reputedly of poisoning) was later found not guilty of genocide by the International Court of Justice in February 2007. It should also be recalled that the NATO intervention and bombing of Kosovo was said to be a "humanitarian" action justified on the grounds that Milosevic was an international criminal.   See John Laughland, 2007; Laughland also notes elsewhere that: "political trials are the continuation of war by other means", Laughland, 2008:252. This is because, he continues, "the acts adjudicated in trials of heads of state or government are *political acts*, not private ones" (*emphasis added*).

[23] Charterjee, 2002:100-101. One of the most important works on the role of international and local NGOs in structuring the contemporary form of neo-colonialism is to be found in Peter Hallward's brilliant detailed analysis of the undermining of the Haitian people's attempt at political independence under Aristide by NGOs; see Peter Hallward, 2007, especially chapter 8.

opposition has been squarely located within a human rights framework and connections with multinational NGOs.

The African state – which has been singularly unable to genuinely represent the nation since independence – owes its survival primarily to whether it conforms to Western precepts. Today this means whether it is labelled "democratic" or not by the West, i.e. whether it fulfils a number of measurable criteria, and not by whether democracy is rooted among the people. After all during the period of the so-called "Cold War", democracy and its attendant notion of human rights was never the main criterion for judging African states; arguably the centrality of human rights in the assessment of African states only became apparent after 1975. It has been argued that this emphasis was the result of an explicit strategy by the United States in its attempt to respond to the USSR's popularity on the continent (Mamdani, 1981). Yet it can also be shown that this emphasis became dominant after the end of "Third Worldism" in Europe; i.e. after the end of the view of Africans as agents of their own liberation and hence the apparent end of their contribution to forging alternatives in World History (in particular with the liberation of the ex-Portuguese colonies and the end of the Vietnam war). The disillusionment of ex-student radicals in particular with the post-colonial state and "Third Worldism" led to the replacement of the idea of Africans as subjects of history by the notion of Africans as victims of history, incapable of exercising agency: victims of natural disasters, of pandemics, of oppressive states, and ultimately of their own supposedly authoritarian cultures (Liauzu, 1982).

The Kenyan intellectual Wa Mutua has outlined this point extremely clearly. For him we can understand the politics of human rights in Africa through a metaphor of "savage-victim-saviour". Indeed Wa Mutua shows that the "victims" of the "savagery" of the African state (which it is assumed has its roots in African culture as the state is supposedly "neo-patrimonial", "prebendal", "venal", etc) require their "saviours" from the West. As Wa Mutua explains, "although the human rights movement arose in Europe, with the express purpose of containing European savagery, it is today a civilizing crusade aimed primarily at the Third World... Rarely is the victim conceived as white" (Wa Mutua, 2002: 19, 30). The metaphor of a "civilising crusade" is particularly apt, as a formalistic conception of democracy, disconnected from any popular roots in African culture and simply grafted onto a largely untransformed colonial state, is at the heart of the West's current relations with Africa and Africans, in the same way as a "development mission" had been at the core of these relations post-independence and a "civilising mission" the hegemonic ideology during the colonial period itself.

Modes of state rule

The third important feature of the African state today can be said to concern the different modes of rule which the state deploys in various political domains. It is important to understand that the state does not exercise its rule in a uniform manner throughout society. Its way of ruling, of controlling the population and

managing difference and hierarchy, varies most obviously in Africa between urban and rural modes of rule, but it also differs within urban areas. While the former distinction has been theorised by Mahmood Mamdani, the latter, which is my main concern here, is most clearly outlined by Partha Chatterjee following upon a political distinction central to the work of the early *Subaltern Studies Collective* in India and particularly to that of Ranajit Guha[24]. Chatterjee's argument although developed in relation to India is meant to apply to postcolonial countries in general including Africa, to "most of the world" as he puts it. Central to Chatterjee's argument is not so much a spatial distinction but more fundamentally a distinction between modes of ruling citizens and populations. Following the work of Michel Foucault on "governmentality" which he saw as "a particular mentality, a particular manner of governing that is actualized in habits, perceptions and subjectivity" (Read, 2009: 24) i.e. as a particular mode of rule as well as a way of being in society (Foucault 2000), Chatterjee argues that:

> the classical idea of popular sovereignty, expressed in the legal-political facts of equal citizenship, produced the homogeneous construct of the nation, whereas the activities of governmentality required multiple, cross-cutting and shifting classifications of the population as the targets of multiple policies, producing a necessarily heterogeneous construct of the social. Here, then, we have the antinomy between the lofty political imaginary of popular sovereignty and the mundane administrative reality of governmentality: it is the antinomy between the homogeneous national and the heterogeneous social (2002: 36).

This antinomy found its way into the colonial state which exercised its governmentality while ignoring sovereignty, while after independence, the nationalist conceptions of citizenship and sovereignty:

> were overtaken by the developmental state which promised to end poverty and backwardness by adopting appropriate policies of economic growth and social reform... The postcolonial states deployed the latest governmental technologies to promote the well being of their populations, often prompted and aided by international and nongovernmental organizations (2002: 37).

The first conception led to a domain of politics which emphasised the law and citizenship; in fact it named "civil society" such a formal and largely middle-class legal domain of contestation. The second refers to a domain of politics where rules are bent, political relations are often informal (if not downright illegal) and where the majority are only tenuously rights-bearing citizens; the majority of the population are to be found in the latter kind of relation to the state. It is not that they are excluded from the domain of politics altogether, only from the domain of civil society which forms the core of the democratic - rights-based - relationship to the state. Chatterjee refers to this second mode of rule and state-society relations as "political society", although I think it better to refer to it as "uncivil society". It is "un-civil" not in any moral or normative sense, but because citizenship is here not the primary manner of relating to the

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[24] See Mamdani, 1996; Chatterjee, 2002 and also Ranajit Guha, 2000.

state; in fact the majority of the population in this domain do not arguably possess a (full, unquestioned) right to rights.

Interestingly, Chatterjee points to a conceptual distinction between rights and entitlements here: "rights belong to those who have proper legal title... those who do not have rights may nevertheless have entitlements; they deserve not compensation but assistance in rebuilding a home or finding a new livelihood" (2002:69). The idea then is a distinction between the rights of property owners and the entitlements of the poor which the state recognizes for whatever reason, even if it is not able to provide, say housing, for all due to financial constraints. The former suggests a core commitment to legal processes both by the state and the people (the rule of law), the latter does not[25]. It is the case, in South Africa at least, that people in uncivil society are cognisant of their entitlement to the delivery of services by the state and protest, often violently, when these are not satisfied[26]. The promise to satisfy these entitlements is also what enables the powerful (local politicians and power brokers) to set up patronage relations within uncivil society.

It follows that in this domain the rule of law is largely absent and ethnic politics, patronage relations and violence can develop as part of everyday life. In fact it is within this domain that what has been dubbed a "culture of violence" can be established, although to call it a "culture" implies an ingrained trans-generational subjectivity which is largely unchangeable in its essence - a flawed assumption. At times violence spills out into civil society itself and it is only then that it becomes noticed (by the mass media for example); otherwise the state ensures that it remains contained and beyond civil experience. The origins of uncivil society are clearly colonial as Chatterjee recognizes, but in neo-colonial society, such a mode of rule is neither ethnically, racially, nationality or

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[25] In some countries un-civil society is regulated by completely different sets of laws. In Botswana for example a state reconstructed national "customary law" is deployed exclusively for control of the working-people in urban as well as in rural areas. One notorious feature of this "customary law" is the systematic use of flogging for derisory offences such as stealing a pork pie from a supermarket. There is even a specific force to police such law. It is easy for accounts of Botswana's liberal democracy to completely overlook this core feature of the state for, as with all liberal accounts, research remains exclusively within the domain of civil society. Of course this "bifurcated" mode of rule was central to the colonial/apartheid state. See Mamdani, 1996. The point however is that distinctions between forms of rule are not restricted to the urban-rural divide.

[26] According to a Wikipedia entry on protests in South Africa, "South Africa... has one of the highest rates of public protest in the world. During the 2004/05 financial year about 6,000 protests were officially recorded... and about 1,000 protests were illegally banned. This meant that at least 15 protests were taking place each day in South Africa at this time... the number of protests has escalated dramatically since then and [it was reported] that '2009 and 2010 together account for about two-thirds of all protests since 2004'... the number of protests was ten times higher in 2009 than in 2004 and even higher in 2010. Just under 40% of all protests take place in shack settlements". See also Alexander 2010. For this author the "underlying causes" of these protests are economic, and he sees no need to provide a discussion of agency. Generally, the politics of these protests stress community interests (rights and "service delivery") and many are led by ANC members, so that they rarely adhere to an axiom of political equality. See http://en.wikipedia.org/wiki/Protest_in_South_Africa (accessed 24/04/2011).

even class specific; although its essence is still colonial, it is irreducible to socio-economic characteristics. Yet at the same time, although distinct, these two modes of rule are interconnected as it is on uncivil society that the pyramidal edifice of the political oligarchy is ultimately founded, a feature which illustrates the neo-colonial character of our states.

The main point however remains that we can establish in Africa also the existence of (at least) two forms of state-society relations: "civil society" and "uncivil society" in which politics is conceived according to distinct subjectivities. Each is fundamentally enabled by two different structural modes of rule which allocate people to their political "places". People whose primary relation to the state is found in uncivil society face extraordinary obstacles when they wish to assert their rights directly as citizens and attempt a movement beyond their political place, for their political existence is outside the domain of rights – civil society. The functioning of the mode of rule itself in uncivil society is such as to enable the distortion/diminution, if not the extinguishing, of the meaning of citizenship itself. Given that people in this domain do not have automatic access to the right to rights[27], if they wish to be heard as citizens, they are commonly forced to accept the mediation of trustees (usually NGOs) who would speak for them in civil society for it is only there that the rule of law operates reasonably consistently. Yet as with any form of state politics, these obstacles can be successfully overcome by the affirmation of a politics beyond place and the re-assertion of the rights of citizenship; as such rights are largely denied, such a politics can end up contesting the character of state politics itself. It is imperative to stress this last point, for in the absence of an affirmative politics, repressive violence, indeed a so-called "culture of violence", is simply allowed to fester so that its prevalence is misunderstood as a natural effect of poverty. Yet in uncivil society this organised dissent and resistance, which bravely attempts to confront the networks of patronage relations, ethnic power and local corruption through democratic collective action, is often unashamedly criminalised by the state and subjected to state violence which is itself, more often than not, criminal in nature.

A growing body of literature is gradually uncovering the functioning of state-society relations within uncivil society, especially within those countries subjected to liberal democratic systems of "governance". In South Africa where this literature is burgeoning for example, one author had the following to say regarding the huge sprawling apartheid created township of Soweto outside Johannesburg:

> The relative short history of Soweto has been marked by a progressive collapse of state authority; an often violent struggle against representatives of the state waged in the name of liberation; a breakdown of paternal authority within families; the establishment and eventual collapse of alternative political structures within local neighbourhoods; and a general rise in crime and insecurity (Chabedi, 2003: 357).

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[27] On "the right to have rights" see, of course, Hannah Arendt, 1973. Arendt understood that the state could exclude people from rights within its own borders.

Post-apartheid generated inequalities have ensured that:

> The expected benefits of democracy failed to materialise for the majority of the population... For every person who "progresses", there are many who are left behind. Yet counterposed to the new dynamics of progress and social mobility is what might be called a moral centre of gravity wherein poverty and greater need result in claims upon public resources and notions of *entitlement to state assistance*. To be poor, then, is to be more deserving, yet to be rich is to be envied. To be envied is to be exposed, for from the envious can come all the malignant forces of witchcraft and sorcery, not to mention more mundane forms of violence (2003: 366, *emphasis added*).

In exhibiting these characteristics, Soweto is no different from most urban townships in the country. In the absence of any organised democratic resistance, such conditions constitute a perfect enabling environment for the development of patron-client relations, and the politics of "strongmen". Whereas HRD is helpful to organising in civil society as it creates legal space for NGOs and social movements, in uncivil society human rights are frequently blamed for the collapse of parental authority, for the apparent sexual freedom of women and for the perceived threats by outsiders/foreigners to community entitlements[28]. There is also increasing evidence that the police themselves act more as the personal agents of municipal councillors - people with power in the local community - rather than as upholders of the law; and that their preferred *modus operandi* is one of terrorising the poor while avoiding any open confrontation with organised criminal gangs. In their 2007 report on local politics in the Durban area, Mark Butler and Richard Pithouse (2007) note:

> The evidence permits only one interpretation: the local state acts in a systematically criminal manner towards its poorest residents on the assumption that this behaviour is within the norms of a shared social consensus amongst the social forces and institutions that count. That elite consensus is that rights formally guaranteed in abstract principle should not, in concrete practice, apply to the poor.

At election time in many poor communities, "opposition politics is not tolerated at all and communities are run as 'vote banks'. It is not unusual for this intolerance to be backed up with armed force on the part of local party leaders or for them to receive the active support of the police. The chronic nature of political authoritarianism at the base of our society invariably becomes acute around elections" (Pithouse, 2009). Many of the poor are aware of this issue:

> as we are [moving] towards local government election the politicians are busy telling people to go in their numbers to voting stations to vote for people who will not even listen to the people who have put them into power. The people on the grassroots are people who don't count in this society except when it is time to vote. The politicians are making all kinds of promises when they want our

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[28] Municipal Councillors and Ward Committees together often operate like traditional chiefs and their henchmen in their control over local communities. They are the ones who most frequently seem to see HRD as an obstacle to their powers, hence their recourse to violence. See Jared Sacks, 2010 and Laurence Piper and Roger Deacon, 2008.

> votes. But when we ask them to keep those promises they tell the police to arrest us, beat us and shoot us (AbM, 2011b).

In fact Pithouse speaks in terms of two "forms of democracy", one kind for the elite and another for the poor. Such observations are of course common throughout the continent and are by no means unique to South Africa. What is perhaps more prevalent today in South Africa than in the rest of the continent (excepting the current North African experiments in popular power), is the existence of a number of important attempts to affirm an alternative politics of equality. These have been met by the state with varying degrees of violence totally detached from legal procedures.

In the forefront of the struggle to affirm such a politics is the shack-dwellers movement from Durban called Abahlali baseMjondolo (AbM). AbM has developed an alternative politics outside both the "political society" of parties and the "civil society" of NGOs. It has placed itself outside civil society by stressing its self-organisation, internal democracy and an axiom of equality. It is however not averse to utilising the legal system when tactics demand it and it won a celebrated victory against the province of KwaZulu-Natal's attempt to introduce legislation which was intended to clear informal settlements from the prime land they occupy in the city of Ithekweni (Durban) (known as the "Slums Act"), and which was planned to be replicated in all nine provinces[29].

As a result of its alternative politics, AbM has been subjected to ongoing police brutality and a campaign of vilification and attack by the local state. This culminated in an attack by organised informal para-state forces and by police in September 2009 evidently directed by local and regional ANC politicians. The violence left 2 people dead, a thousand displaced while members' shacks were burnt to the ground in one of their main settlements, "Kennedy Road"[30]. In a truly Orwellian statement, the regional ANC qualified the organisation which has mass support in the settlement as "illegitimate" and the organisations which were imposed on the people in this violent manner as "legitimate" (AbM, 2009). Evidently this referred to legitimacy in the eyes of the state which was thereby excluding AbM from civil society in this violent manner; in other words from the category of those organisations which it considers legitimate interlocutors or "stakeholders". AbM themselves were clearly aware of the fundamental political reasons for the attack:

> The reason why our movement was attacked in Kennedy Road in September 2009... is well known. We were attacked because we were exposing corrupt councillors, organising the unorganised and running our own projects such as crèches, clinics, feeding schemes, community gardens. We were attacked because we were creating job opportunities for the unemployed. We were attacked because we were fighting nepotism, comradism (sic), and the politicization of service delivery. We were attacked because we organised ourselves outside of the control

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[29] For the documents relating to the Slums Act as well as the South African Constitutional Court judgement see http://abahlali.org/node/1629

[30] The detailed events of the attacks can be found in Chance, 2010.

of the party and its councillors. We were attacked because we thought that urban planning should be a bottom up and not a top down project. And, yes, we were attacked because we challenged the constitutionality of the then Slums Act which humiliated the Provincial Legislature. We were attacked because we took this democracy seriously. We were attacked because we believed that we had the same right as any other person to think and speak and act for ourselves in this democracy and because we acted on that belief day after day and year after year... The only way to be poor and to remain safe in this country is to limit your participation in this democracy to voting in elections. The day that you decide to organise yourself and to express yourself outside of party structures and elections is the day that you must give up your safety (AbM, 2011a)[31].

The point then is that a genuinely democratic politics which attempts to contest the patronage relations prevalent within uncivil society, and thus to claim the same rights as those within civil society, can lead to systematic (democratic) state violence against the people due to the fact that such politics threaten the mode of rule and the vested interests of the local oligarchy. Indeed a politics which takes democracy seriously threatens the basis of uncivil society itself and with it the political "place" to which the working-people have been allocated[32]. Nevertheless such genuine democratic politics are rare; more often than not popular rebellions take place within the limits of state political subjectivities as we shall see in the case of xenophobic violence in South Africa in May 2008.

The postnational state

The final feature of the state in Africa can be understood in terms of its characterisation as a "postnational state" for which human rights are often seen as obstacles to entitlements in uncivil society, and the latter only as the entitlements of the indigenous. The idea of the "postnational state" is meant to suggest a systematic change in state political subjectivity post-1980 in Africa (and elsewhere), to the extent that the state today can be said to represent the nation less and less in favour of particularistic interests as I have already noted. Moreover, this change is apparent in the abandonment of a state project of

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[31] One example of the way in which councillors exercise their power over residents of poor communities concerns the fact that they are often in charge of nominating those who receive employment. This happens in situations when construction companies set up their sites, as they are obliged by legislation to employ a percentage of members from the local community. Councillors then are usually entrusted with selecting potential workers. They stipulate that only card-carrying members of the appropriate party will be chosen. Abahlali have been resisting this in areas where they have some influence by nominating people through drawing lots in order to ensure fairness. Councillors and party members have reacted by violently attacking AbM. This constitutes one example of what AbM refer to as "the politicisation of service delivery" and is one of the reasons behind attacks on the organisation.

[32] It is particularly noteworthy that the attackers of AbM formulated what they saw as the issue in ethnic terms. Thus their slogans concerned "recapturing" the community for "Zulus" from the "Pondos" who had supposedly taken it over. The use of ethnic slogans clearly stressed and attempted to re-establish the identities of place and the power of ethnic interests which AbM has been so successful at overcoming. See Chance, 2010.

nation-building and national construction prevalent in the immediate post-independence era and organised around "development" and the state provision of basic welfare needs[33]. This state project served to unify people under one overarching mode of rule at least in urban settings, although the rural-urban contradiction was not overcome. Today however, the "postnational" state is fundamentally "post-developmental", meaning that the state no longer sees its role as leading a process of national development and emancipation from poverty and economic dependence from which the whole population should benefit[34]. With notable exceptions such as Congo-Zaire, central to the politics of the African state in the immediate post independence era (1960s-1970s) had been precisely such a state-led process of emancipation and economic development; the two were understood as fundamentally synonymous within state nationalist discourse (Neocosmos, 2009b). The collapse of this development process into a neo-colonial project during the 1970s, allowed for the complete abandonment of the idea of national development in the 1980s, for its national content had dissipated. The neo-liberal integration into the globalised world system has led to a situation wherein "the emancipatory potential once embodied in the nation state as a political community of citizens is no longer all that evident" (de Alwis et al, 2009: 35).

The state in Africa no longer thinks in terms of a national project of development, let alone any other form of national emancipation. Hegemonic discourse maintains that the oligarchy apparently fulfils the national interest by enriching itself through access to the neoliberal state and capital, (the two being largely indistinguishable) while the poor are unable to attain what they consider to be their national entitlements, given an increasingly corrupt civil service and the fact that they are relegated to an uncivil society where patronage relations reproduce a crude politics of power. In this context, nationalism can easily collapse into chauvinism as entitlements are seen, in desperate socio-economic conditions, to depend on indigeneity. On the other hand it can be noted that a process of national renewal is precisely what the citizens of Egypt and Tunisia have been struggling for through their mass movements.

Given the mass poverty and the (partial or whole) exclusion of large sections of the population from the rights of citizenship, the "national question" has remained unresolved. This is particularly obvious in the case of some Southern African ex-settler colonies such as Zimbabwe and South Africa, where land, jobs and housing which were fought for as rights for all during liberation struggles, have yet to be provided to the citizenry. For example the failure of the state imagination is so extreme in the case of South Africa that the president of that

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[33] Today the expression "nation building" seems to have been dropped as a public signifier, in South Africa at least, in favour of an emphasis on "social cohesion" with all its conservative and functionalist assumptions associated with vulgar pre-1968 American sociology. Unlike "nation-building" which suggested some form of popular agency, "social cohesion" is merely a state "law and order" concern and suggests a fear of social unrest.

[34] See Neocosmos, 2010b where I outline in some detail the hegemonic political subjectivity of this new state form.

country could only think of a major sporting event such as the Football World Cup to provide a modicum of subjective "nation-building"[35]. Unfortunately the idea of the nation has been reduced to one of indigeneity as various attempts at nation-building around African notions of "ubuntu" have dismally failed to grab the popular imagination. This is not surprising given the level of corruption and self-enrichment among members of the new oligarchy. In fact this form of accumulation is precisely ideologically founded on notions of liberal human rights and inviolable access to property *inter alia*. In this sense the new oligarchy simply joins its counterparts from other countries round the world in living the "good life" of the wealthy.

In other words, while human rights provide the ideological foundation for accumulation and access to resources by the oligarchy along with the legal space to organise in civil society, they do not enable the entitlements of the mass of the population in uncivil society to be satisfied, as these are dependent on state largesse, not on rights as such. Given the fact that the new Black elite stress their indigeneity and nativism in order to justify access to rights and resources, the poor follow suit by also stressing nativism in order to acquire what they see as their own entitlements. Unlike the oligarchy and the middle class, the poor are dependent solely on discretionarily deployed state largesse in order to acquire their entitlements; indigeneity is their only asset and, for them, the sole ideological justification for such entitlements. A complex contradiction therefore develops between a discourse of rights and one of national entitlement.

The failure to find an alternative to the post-independence idea of development has therefore meant the absence of any national state project and the total subservience to empire through the emphasis on "good governance", "democracy" and "human rights" as state slogans. At the same time these names have proven unable to provide a collective conception of the nation other than on the basis of a crude nativism and chauvinism, so that the poor can only rely on nativism in order to acquire their entitlements. It is this failure which seems irresolvable other than by recourse to violence as it is founded on political exclusion from the domain of rights, i.e. from the dominant field of politics. It is thus around the idea of the nation and its people - around an analysis of the specific politics with which people are confronted and how they react to them, rather than poverty as such - that any conceptions of "transition" and violence have to be understood in the neo-colony. In order to begin to develop an understanding of these processes, they must be firmly located within the political subjectivities which directly concern the nation for it is the equating of citizenship rights with the entitlements of the indigenous which gives them shape. I want to end by illustrating this point through a discussion of the case of xenophobic violence in post-apartheid South Africa.

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[35] See *Mail & Guardian* online http://mg.co.za/article/2010-07-06-world-cup-investment-paid-off-says-zuma

Human rights discourse and xenophobic violence: the case of South Africa

The "truly extraordinary moment" in North Africa and elsewhere recognised by all, has shown, if nothing else, that secular nationalism is not dead as a vehicle of emancipatory politics. It is precisely the national consciousness of the youth and young workers of these countries which constituted the core political content of those movements. Such nationalism was affirmed in opposition to the pseudo-nationalism of the state which was seen to have betrayed its own people. In Africa then, emancipatory nationalism must be re-affirmed both against the view of those who see it as necessarily oppressive of difference and against those who distort it into a statist conception by systematically de-politicising it, as Fanon in particular clearly saw. In order to think the possibility of this re-affirmation, politics need to become again the object of thought.

The difficulty in the context of South Africa - as for much of the rest of the continent - concerns the provision of an explanation for the transformation of national consciousness from an emancipatory inclusive discourse, to one of exclusion and chauvinism manifested in xenophobic violence, particularly in May 2008[36]. To ask this question is of course to jettison the notion that nationalism is necessarily oppressive of divergent views and authoritarian by nature. It is crucial in this respect to distinguish between popular emancipatory nationalism and state nationalism. The former is purely politically affirmative; the latter is founded on naturalised socio-historical notions of indigeneity; the former's politics tend to be inclusive, the latter's exclusive. The most sophisticated thinker of this distinction on the African continent was Frantz Fanon. In his work one finds not only a recognition of this distinction, but also an account of the transition from the first form of nationalism to the second (Neocosmos, 2011). Fanon thinks the emancipatory character of popular nationalism as follows: "The living expression of the nation is the moving consciousness of the whole of the people; it is the coherent and enlightened praxis of men and women. The collective construction of a destiny is the assumption of responsibility on a historical scale" (Fanon, 1990: 165, *translation modified*).

For Fanon then the nation is constructed in practice, in political struggle by people — one is tempted to say "ordinary people" — themselves. However this is not a "spontaneous" occurrence. What is a spontaneous subjectivity is the Manichean dualism of the good embodied in the native versus the evil embodied in the settler. But the nation is not simply to be equated with natives. In fact many settlers "reveal themselves to be much, much closer to the national struggle than certain sons of the nation" (1990: 116) while many natives are to be found on the side of colonial power; "consciousness slowly dawns upon

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[36] The dominant accounts of the May 2008 pogroms insist on the centrality of structural factors (poverty, inequality) and are hence simply deterministic, denying agency to perpetrators; the arguments which follow are taken from my book Neocosmos, 2010a, especially the epilogue, pp. 117-149.

truths that are only partial , limited and unstable" (1990: 117). The nation is constructed in action and this is not a nation which is simply reflective of social entities such as indigeneity, ethnicity or race. It is a nation which is made up solely of those who fight for freedom (including "foreigners", Fanon himself being a foreigner in Algeria); it is a purely political conception; an affirmation on the part of those who consider themselves the nation much as the occupants of Tahrir Square in Cairo in February 2011: "The colonized's challenge to the colonial world is not a rational confrontation of points of view. It is not a discourse on the universal, but the untidy affirmation of an original idea propounded as an absolute" (Fanon, 1990: 31, *translation modified*).

On the other hand "nationalism, that magnificent song that made the people rise against their oppressors, stops short, falters and dies away on the day that independence is proclaimed" (1990: 163). This process Fanon accounts for in terms of the rise of a "national bourgeoisie" which acquires control of the nationalist movement, its politics and the state itself; this national bourgeoisie is:

> only a sort of greedy caste, avid and voracious, with the mind of a huckster, only too glad to accept the dividends that the former colonial power hands out to it. This get-rich-quick middle class shows itself incapable of great ideas or inventiveness. It remembers what it has read in European textbooks and imperceptibly it becomes not even the replica of Europe, but its caricature (1990: 141).

But there is much more in Fanon than a simple moral critique of the post-independence African bourgeoisie. What he suggests is that this newly formed class and its state contemplate the nation through nativist lenses. It is now indigeneity which defines the nation because it is through a claim to being indigenous that the national bourgeoisie can acquire the businesses and positions of the departing colonizers. Whether their concern is accumulation or whether it is one of asserting a "narrow [racially-based] nationalism" (1990: 131), "the sole slogan of the bourgeoisie is 'Replace the foreigner' " (1990: 127, *translation modified*). As a result:

> the working class of the towns, the masses of the unemployed, the small artisans and craftsmen for their part line up behind this nationalist attitude; but in all justice let it be said, they only follow in the steps of their bourgeoisie. If the national bourgeoisie goes into competition with the Europeans, the artisans and craftsmen start a fight against non-national Africans... the foreigners are called to leave; their shops are burned, their street stalls are wrecked... (1990: 125).

The nation now refers to something else than a purely subjective affirmation; it refers to a social category founded on indigeneity. Who is and who is not an Algerian, a Ghanaian, an Ivorian, now becomes defined in terms of a state politics founded on asserting indigeneity: place of birth, history, religion, race or ethnicity (i.e. descent). We can note then that it is not simply a class politics which is at stake here, one representing economic interest, but more broadly a politics associated with ascribing the nation to an objective social category of the indigenous; a politics concerned with maintaining divisions, hierarchies and boundaries: in sum a state politics. It is thus the state which defines the nation

in social terms and is unable to sustain a purely affirmative politics. The nation is now a representation of the social, no longer a presentation. At the same time it becomes apparent that this statist way of defining the nation is gradually naturalized in thought, as given by history and communitarian "belonging" (birth, descent, etc). The result as Fanon makes clear is collapse into xenophobia and chauvinism: "we observe a permanent see-saw between African unity which fades quicker and quicker into the mists of oblivion and a heartbreaking return to chauvinism in its most bitter and detestable form" (1990: 126).

A similar process can be shown to have taken place in South Africa from 1990 onwards which eventually culminated in massive pogroms against African "foreigners" in May 2008 when 62 people were killed and thousands were displaced and herded into refugee camps. But unlike in the Africa of the early 1960s which Fanon was observing, the South African nation came into being through a new state form within a new world political sequence. It is this new state form which modifies the conditions of production of xenophobic politics and the collapse of nationalism into chauvinism. These conditions, which included the promotion of HRD, produced a politics of fear which largely accounts for the rise of xenophobia and its attendant violent expression throughout the country.

The TJ industry in general and the TRC process in South Africa in particular went about producing victims. As Madlingozi (2010: 210) has rightly pointed out, "whether it is through "fact finding" reports, conference papers, academic journal articles, "field notes", or more egregiously, funding proposals, the core task of a transitional justice entrepreneur is to speak about or for victims". While the TRC did indeed give a platform for victims of "gross human rights violations" to tell their stories, the latter had first to agree to their victimhood. The TRC in fact compiled a register of such victims. Victims were thus constructed, not simply given. Being interpellated (in the Althusserian sense) by the state power as a victim, one acquires a victim's identity unless one consciously resists it[37]; only a minority are able to do so:

> They just want us to be victims and tell our stories so they can help us. I am sick of telling my story. It makes them feel good to show that they are helping us. They don't really want to change things and what good does telling our stories over and over do? They are just white professionals who want to keep their jobs. (Western Cape Khulumani member, cit. Madlingozi, 2010: 213).

Such comments though are rare, at least in public. Yet in South Africa as previously in Algeria, the people had constituted themselves into a nation through an affirmative politics which stressed national unity and a firm opposition to the apartheid state which was founded on enforced separation; it also had a "truly extraordinary moment". For example here are a couple of observations on popular forms of organisation in South Africa from the 1980s:

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[37] See Louis Althusser, 1971. Even a full academic discipline of "victimology" has recently been created.

> We... are engaged in a national democratic struggle. We say we are engaged in a *national* struggle for two reasons. Firstly, we are involved in political struggle on a national, as opposed to a regional or local level. The national struggle involves all sectors of our people - workers (whether in the factories, unemployed, migrants or rural poor), youth, students, women and democratic-minded professionals. We also refer to our struggle as national in the sense of seeking to create a new nation out of the historical divisions of apartheid... When we say that "the people shall govern", we mean at all levels and in all spheres, and we demand that there be a real, effective control on a daily basis... The key to a democratic system lies in being able to say that the people in our country can not only vote for a representative of their choice, but also feel that they have some direct control (Morobe, 1987: 81-2).

> The battle in the factories... has also given birth to a type of politics which has rarely been seen among the powerless: a grassroots politics which stresses the ability of ordinary men and women, rather than "great leaders", to act to change their world (Friedman, 1987: 8-9).

How can we then elucidate the trajectory of South African nationalism from an emancipatory (non-identitarian) conception founded on popular agency in the 1980s, to a chauvinistic one based on victimhood in the 2000s? There is little doubt that this political change resulted from the hegemony of state politics from 1990 onwards, very much along the lines outlined by Fanon for an earlier period[38]. Yet although necessary, this argument does not constitute a sufficient explanation for democratic South Africa was born during a new political sequence as I have noted; moreover this only accounts for xenophobic politics as such, and not for the violent form it took. Given the dominance of HRD, one could have expected a reduction in violence and indeed this is what neo-liberal theory and TJT assumed. In order to provide a fuller answer, our account must follow the features of the African state as outlined above.

Clearly then we should begin from the idea of the worldwide "democratising mission" which saw the day during the late 1970s and early 1980s. It is apparent that South Africa and its TRC process have become paradigmatic for the whole transitional justice industry. Not only does this process seem to have avoided the collapse of the country into internecine violence, but it now provides a model for other similar situations throughout the world. In fact it is supposed to be one of TJ's "success stories". Yet the situation is not so rosy. There been no fundamental reconciliation between so-called "racial groups" in South Africa; the Western notion of multiculturalism - the local version was called the "rainbow nation" - has not led to any form of "creolisation". The new African bourgeoisie has allowed itself to simply parrot White norms and values including an adherence to South African exceptionalism which fetishes commercialisation and an arrogant superiority of South Africans in relation to the rest of the African continent (Neocosmos, 2006b). The ethno-philosophy of "ubuntu" which had the potential of becoming a unifying national conception

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[38] For details see Neocosmos, 2009a. The new state in South Africa dates from 1990 and not from 1994; 1990 is the date of the entry of the ANC formally into the state, 1994 is simply that of the first elections by universal franchise.

has not been pursued other than finding its way into a couple of judgements of the Constitutional Court in the 1990s. Moreover, the TRC has been criticised for having mainly benefitted perpetrators rather than victims. This comes across quite clearly from the experience of an NGO (Khulumani) which was set up to defend the rights of "victims" and thus found itself in the invidious position of accepting the appellation:

> Khulumani was created in order to enable victims and survivors to access the TRC and to make sure that their rights in terms of the TRC Act were protected. Throughout the TRC process Khulumani helped victims obtain and fill out applications and appeals, coordinated meetings with TRC officials, and provided individual and group counselling for victims as they delivered their testimonies. The organization hoped that the official process of truth telling would help them reclaim their dignity. However, for a variety of reasons, the TRC process has left a bitter taste in the mouths of Khulumani members. Khulumani members repeatedly point out that the TRC was a "perpetrator-friendly" process; it betrayed victims in that the promises regarding reparations and truth recovery were never met; and they felt that they were forced to forgive perpetrators while perpetrators and beneficiaries of the apartheid system did not show any remorse (Madlingozi, 2010: 214-15)[39].

As Madlingozi shows, being a victim does not enable one to access one's rights; only political organization can begin to achieve this. Madeleine Fullard and Nicky Rousseau also show that the TRC process failed to transform what they call the "habits" (ie. state practices) of the past, by simply relating the contempt with which power treated the powerless during the process itself, an evident continuity from the past if there ever was one. They also note that having the experience of victims officially recognised, was a major achievement for the commission, but these experiences were apprehended ultimately as excesses by individual perpetrators (rather than as the necessary outcome of oppressive state structures and subjectivities) so that "undoubtedly, the TRC failed to adequately situate the gross human rights violations that it addressed in the wider context of apartheid". It is understood then that "those who came to the TRC were not organised political activists... but were most often very poor township residents swept up in the conflicts", they got little or nothing from the process, either in terms of much compensation but more importantly neither in terms of a small victory over power, because of a number of factors including the absence of effective prosecution of perpetrators. They were simply recognised for a while and then cynically discarded.

The impression one gets from Fullard and Rousseau is that it has been "a government choice to keep the TRC on the backburner". In fact, the legitimacy of the apartheid state was never challenged by the new state after 1990, and one could be forgiven for underlining the congruence of interests between apartheid and post-apartheid elites in the maintenance of the system of power as they combined into a new oligarchy. As the authors euphemistically state, this

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[39] Khulumani has a membership of 55 000, all victims of human rights abuses under apartheid; the overwhelming majority are poor.

failure could have something to do with "a more general muting of...
transformative impulses" (Fullard and Rousseau, 2003: 90,97).   It is difficult to
show surprise at the failure of the TRC to cater for the interest of victims; the
production of victims by the state politics of the TRC could not have done so
independently of its liberal intentions, for this would have required a different
kind of political thinking. Thus is popular affirmation replaced by a politics of
supplication.

Given that victims of past apartheid abuses including those organised by NGOs
are overwhelmingly poor, they find themselves in an ambivalent position vis-à-
vis human rights discourse. On the one hand HRD insists on some idea of
reparation, on the other they are at the mercy of power (the state, the law) in
acquiring such reparations. The fact that these do not materialise or else do so
infinitesimally, only confirms the contempt of the state for victims (Chapman
and Van der Merwe, 2008: 285-86). They do not materialise partly because the
victims find themselves in their relations to the state within uncivil society, so
that they have to be represented by trustees who speak for them within the
domain of rights: civil society. Their rights therefore cannot be accessed more
or less automatically as those of the middle class in civil society; they have to be
mediated by trustees. In the absence of trustees they have to struggle simply to
be taken seriously by power whose primary way of relating to them is outside
the domain of rights. The fundamental issue then does not concern the
provision of reparations, but a completely different way of thinking politics so
that people can be able to recover their agency directly and relate to the state as
collective subjects, not as dependent victims who must be represented.

The evidence for the absence of the rule of law in uncivil society is
overwhelming. In a recent article in a daily newspaper, Steven Friedman, one
of South Africa's more observant commentators, summed up the distinction
between different forms of state rule very well:

> In the areas where most of the poor live, local power holders – such as party
> bosses or municipal councillors – do not like being challenged by citizens
> demanding a say in how their neighbourhoods are governed. And often they
> enjoy links with the police, which ensure that life can be made very difficult for
> those who stand up to them... For suburbanites, the problem [of policing] is that
> [the] police do not do enough – it is assumed that if they did more, they would
> protect lives and properties. For people at the grassroots it is often that they do
> too much, because they are seen not as protectors but as predators[40].

The difficulty with Friedman's view is that if people are being denied their rights
on a systematic basis, then it is problematic to refer to them as "citizens"; this
appellation has to be modified and we cannot assume, as he does, that they

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[40] See Steven Friedman in *Business Day*
http://www.businessday.co.za/articles/Content.aspx?id=140782 accessed 20/04/2011. A
recent report on violence in South Africa states inter alia: "The police are... critically important
protagonists in collective violence, both when they are absent from scenes of mass violence, and
when they themselves engage in collective violence against protesting communities". See Von
Holdt et al., 2011: 3.

relate to the state in a domain of civil society[41]. In fact the character of the mode of rule in uncivil society can also be illustrated in the context of the rise of xenophobic chauvinism in South Africa. Some brief illustrations will have to suffice. One concerns an incident in Zandspruit, a township outside Johannesburg, in October 2000[42]. A short while after the United Nations Conference Against Racism and Xenophobia had been held in South Africa, Zandspruit, an informal settlement near Johannesburg, erupted, in an orgy of looting and destruction, which miraculously had no fatalities, 1000 Zimbabweans were made destitute and residents had torched more than 100 shacks belonging to Zimbabweans[43]. Local residents had accused Zimbabweans of being involved in crime and taking their jobs. According to the City of Johannesburg itself, Zandspuit is an extremely poor area where 1 600 families reside in over-crowded conditions with only basic infrastructure[44]. The news media all moralised on the appalling acts of xenophobia, but few went beyond platitudes. It soon emerged however that the Department of Home Affairs had been aware of the tensions in the settlement for several weeks. One of their spokesmen, Leslie Mashokwe, stated that residents had asked the police to take steps against Zimbabweans whom they had accused of stealing their jobs and killing residents[45].

A number of committees were formed in the community in order to deal with trauma, re-housing and complaints. In response to the Zandspruit residents' complaints three weeks previously, Mashokwe was quoted as saying that: "officials from the departments of home affairs and labour launched a joint operation called Operation Clean Up with the local people and moved into the area to root out the illegal immigrants". He was reported to have said that between 600 and 700 "illegal immigrants" were rounded up and deported to neighbouring countries including Zimbabwe and Mozambique; but a few days later residents noticed that the "illegals" had returned, they rushed to the police station to report the matter, and on the way back they decided to "handle it on their own"; they called a community meeting in which they gave "foreigners" ten days to leave or "face the music". The foreigners did not leave so residents burnt them out. Of course a number of perpetrators were then arrested and taken to court, but the important aspect of the story was that state officials from

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[41] Franco Barchiesi has recently argued that work became the "normative premise of virtuous citizenship" during the post-apartheid period, thereby presumably leaving those without work outside civil society in the eyes of the state; see Barchiesi, 2011. He points out that, in the narratives of workers he interviewed, "images of decent work… are deeply linked with ideas of family respectability, strict gendered division of household tasks, masculine power and national purity, where "disrespectful", crime-prone youth are kept out of the streets and under control, women are confined to domesticity, reproductive care, and migrants don't 'steal' national jobs"; see Barchiesi 2010.

[42] For details see Neocosmos 2010a:87-88.

[43] See *Mail and Guardian*, 23rd October 2000.

[44] See http://www.vukaplan.co.za/project2.html

[45] The following account is taken from the *Mail & Guardian* of 29th October 2000.

two government departments had been directly involved in xenophobic raids aided by the local population.

Only one article made the connection between these events and the statements of the *Draft Bill on Immigration* which had emphasised "enforcement at community level" of the "detection, apprehension and deportation" of undocumented migrants[46]. Mashokwe was later reported to have said that his department condemned the attacks as did the cabinet, the SACP and COSATU, while the ANC did so in *ANC Today* its virtual mouthpiece; coming so soon after the United Nations *World Conference on Racism*, this was predictable[47]. To my knowledge, no South African state institution or representative has so far been taken to court for incitement to commit a crime, and yet it seems abundantly apparent that there may have been some case to answer by the Departments of Home Affairs and Labour in the Zandspruit incident. This should have been the logical outcome of a consistent "culture of rights".

The Draft Bill on Immigration was the brainchild of the Minister of Home Affairs at the time, Mangosuthu Buthelezi; the provisions which were designed to enable "community enforcement" of the law by "good patriots" who would "root out" "illegal foreigners" were later thankfully excised from the final Immigration Act. Yet this has helped to create an alliance of state institutions such as the police and local community leaders so that *Community Policing Forums* (CPFs) can end up being controlled by "strongmen" who can whip up anti immigrant hysteria. It seems that in many cases CPFs were expected to act as vigilantes to "root out" supposed "illegal immigrants" while in May 2008, the pogroms in Alexandra township outside Johannesburg started after a CPF meeting after which residents as well as hostel dwellers decided to take the law into their own hands.

"Community policing" so-called was thought up in the 1990s as a way of building trust between community and police and in fighting crime after an apartheid period during which relations between urban communities and police had totally broken down. Yet given the frequent commonality of attitudes (as well as of interests) between community leaders and police in combating the crime of "illegal immigration", the supposed neutrality of the police towards all community members is easily compromised[48]. "Community leaders" have power not only over other community members but also it seems over the police whom they can order to engage in various activities which are in their interests. It is common practice for councillors for example, to order police to engage in coercive actions, particularly against the poor, as it is common for MPs to order

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[46] See *Business Day* 29th October 2000. The Draft Bill on Immigration has helped to create and legitimise a culture of xenophobia in un-civil society.

[47] See http://mail.unwembi.co.za/pipermail/anctoday/2001/00020.html

[48] The police have an interest in arresting as many people as possible as they are promoted on the basis of the number of arrests made and not on the number of convictions. See Neocosmos, 2010b:125-27.

councillors around[49]. In fact, research on the xenophobic violence of May 2008 for the International Organisation for Migration (IOM) showed precisely that it was the politics of leaders at community level which largely determined whether community members engaged in xenophobic violence or resisted it[50].

The postnational character of the South African state has been apparent in the fact that there has been little attempt to construct a nation (other than the weak attempts at stressing an ethno-philosophy of "ubuntu") after the rejection of the social-democratic type state project of post-apartheid development known as the *Reconstruction and Development Programme* (RDP). After its rejection in 1996 under the Mandela presidency and its replacement by a purely neo-liberal economic programme, the final nail was put into the coffin of nation-building. From that moment, the only conception of the nation was indigeneity and no form of state emancipatory project became the object of thought. As the new bourgeoisie scrambled to access capital through the state, such access was provided primarily by means of linkages to white capital through state-brokered deals known as Black Economic Empowerment (BEE) and through the awarding of government tenders, rather than the privatisation of state assets *per se*.

However, debate regarding access to such opportunities has revolved around who is the most native. Indigeneity then becomes the way to claim resources, jobs, and all other perceived entitlements. This has thus led to a debate on who is more indigenous, and hence to nativism, the view that there is an essence of "South Africaness" which is to be found in "natives". Hence what follows from this conception is a stress on the "native" which itself leads to privileging the twin ideas of birth and phenotype ("race") as the essence of the indigenous and hence as the basis for personal accumulation and legitimate private acquisition in the general interest (Neocosmos, 2010a: 143-144). Hence while an adherence to neo-liberalism and human rights discourse conform to the need of the new Black bourgeoisie to form a joint oligarchy with their White counterparts within civil society, in the absence of any alternative popular nationalism, the rhetoric of nativism also provides the legitimate basis for claims to entitlements in uncivil society.

At the same time, along with the stress on indigeneity, the idea of the migrant has been subjectively uncoupled from that of labour. Whereas in the 1970s and 1980s, the idea of "migrant labour" was the central way of conceiving migrants, today they are thought of as "illegal immigrants" or "asylum seekers". In the 1970s and 80s, the apartheid system was understood as founded upon cheap migrant labour so that at liberation, one of the dominant pressures was to sedentarise labour (Neocosmos, 2010a: 66-77). As a result African migrant labour was discouraged if not systematically stopped. The separation of

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[49] On "community policing" in South Africa see Julia Hornberger, 2008. It is also common for police to illegally destroy the informal shelters of shack dwellers and to participate in illegal "forced removals". Examples abound.

[50] See Jean Pierre Misago et al., 2009, and also the commentary in Neocosmos, 201a: 130-33.

migrancy from labour provision has also meant its separation from the economy and hence from a contribution to the economic development of the nation. Hence, migrants are seen today as coming to steal (jobs, housing, etc) and not as providing anything to the country. Together with a South African exceptionalism held by people of all ethnic and racial backgrounds according to which South Africa is superior to the rest of the African continent due to its levels of industrialisation, its democracy and its "miraculous" transition, this discourse constructs Africans as the "others" of postapartheid South Africa; it thus sees itself as having the "right to exclude". The deployment of violence then becomes understood as a legitimate right exercised to defend the coincidence of national and personal economic interests.

The combination of all these factors then has made it possible to construct a politics of fear of Africans, or "Afrikagevaar"[51]. There develops a "right to exclude" or even a "right to kill foreigners" in order to defend the nation and "freedom" which the government — due to its adherence to HRD - is either unwilling or unable to do: "We are the ones who fought for freedom and democracy and now these Somalis are here eating our democracy"[52] and again:

> The government is now pampering them and taking care of them nicely; as long as the foreigners are here we will always have unemployment and poverty here in South Africa... there is too much of them now, if the government does not do something people will see what to do to solve the problem because it means it is not the government problem, it is our problem (cit. Misago et al. 2009: 28).

The origins of this politics of fear are clearly the state politics applied in South Africa from 1990 onward. Its three main components are systematic state xenophobic discourse and practice, nativist ideology and a hegemonic conception of South African exceptionalism (Neocosmos, 2008, 2010a: 141-147). None of these have been affected by neo-liberal notions of human rights and their centrality in the South African constitution and legal system more generally. Rather, because HRD is inimical to the construction of political subjects and can only think in terms of legal subjects, it has contributed to the systematic de-politicisation of the people with the result that within uncivil society, the dominant political subjectivity remains precisely a state politics of patronage, violence, fear and xenophobia. The politics of xenophobia - for it is a political choice we are talking about - is one determined (in the strong sense) by the structure of the state and the antinomy between civil and uncivil society. It is only an alternative politics such as that affirmed by AbM which emphasises that — "*an action can be illegal. A person cannot be illegal. A person is a person wherever they may find themselves*" (AbM, 2008) - which has the capacity to shift subjectivity, but at the extreme cost of being subjected to state

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[51] State politics in South Africa have been focussed on fear since the 1970s, although at the time what was stressed was the fear of Blacks and Reds (i.e. communists). The appropriate terms were then "Swartgevaar" and "Rooigevaar". That the state is still able to whip up hysteria in order to assert its rule speaks volumes on the continuity in state politics from apartheid days. See Neocosmos, 2008, 2010a:141-147.

[52] Nafcoc leader, Khayelitsha, Cape Town, *Mail & Guardian* September 5-11, 2008.

violence as we have seen. There was no xenophobic violence in 2008 in the areas of Durban where AbM had a strong presence. In fact AbM currently affirm the only subjectivity in South Africa which has the capacity to authorise a mode of politics beyond both state nationalism founded on indigeneity and state democracy founded on the victimhood of human rights discourse:

> Our politics starts by recognizing the humanity of every human being. We decided that we will no longer be good boys and girls that quietly wait for our humanity to be finally recognized one day. Voting has not worked for us... Our politics is about carefully working things out together, moving forward together... We do not allow the state to keep us quiet in the name of a future revolution that does not come. We do not allow the NGOs to keep us quiet in the name of a future socialism that they can't build. We take our place as people who count the same as everyone else. Sometimes we take that place in the streets with teargas and the rubber bullets. Sometimes we take that place in the courts. Sometimes we take it on the radio. Tonight we take it here. Our politics starts from the places we have taken. We call it a living politics because it comes from the people and stays with the people. It is ours and it is part of our lives (Zikode, 2008).

The xenophobic politics which dominate in many African countries (as indeed elsewhere in the World) are an obvious indication that we have yet to achieve our freedom (Žižek, 2008: 35, 87). The French revolutionary Saint-Just (2004: 551, *my translation*) put it clearly in 1793: "the homeland of a free people is open to all men of the world". We have yet to think through the kind of politics which will enable us to achieve that freedom in today's world.

Conclusion: towards the thinking of political subjectivities

The thinking of politics as subjectivity is not an easy matter as one must attempt, to use Alain Badiou's language, an analysis from the point of the "in-existent" rather than the "existent"[53]. This thinking must be in excess of the given categories of social divisions, including identities. The "in-existent" here are of course the politically excluded of uncivil society, those who do not count, or in Rancière's terminology "the part of no part" (Rancière, 1999: 9). I have attempted to make sense of the effects on subjectivity of a process of de-politicisation of thought (of the de-politicising or technicisation of politics) as an effect of human rights discourse, transitional justice and attendant neo-liberal conceptions and practice. In particular if we wish to understand violence in the neo-colony, we need to start by understanding the state politics of exclusion. Political exclusion occurs as a result of a subjective exclusion founded on a notion of the rights of the indigenous which is simply defined by the state as

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[53] For example: "There exists in any world in-existent multiples on which the world confers a minimal intensity of existence. But any creative affirmation is rooted in the identification of these in-existents of the world. Fundamentally, what counts in any real process of creation, irrespective of its domain, is not so much that which exists as that which in-exists. One must learn from the in-existent" (Badiou, 2011, *my translation).*

founded on a social category[54]. But this right is itself made possible by a systematic process of de-politicisation – through the replacement of political agency by juridical agency - wherein people gradually become incapable of thinking for themselves and simply follow state ideologies like zombies. As a result it is not simply "foreigners" who are excluded from rights; large sections of the population in what I have called "uncivil society" are also subjected to political exclusion where they do not possess the right to rights; they are in fact "in-existent" in the domain of civil society.

Subjective exclusion is of course backed up by the deployment of state violence particularly in the domain of uncivil society, but such violence is also deployed by those who are unable or unwilling to think beyond state subjectivities. This form of exclusionary violence is thus systemic in the sense that it is a direct effect of state politics. In South Africa the currently dominant form of violence (post-1994) can clearly be referred to as "systemic violence" in order to distinguish it from other forms of violence in Africa such as riots or revolutionary violence (e.g. North Africa, Burkina Fasso), the carving out of imperial and local fiefdoms (e.g. DRC, Somalia) or inter-party or ethnic violence (e.g. Kenya, Nigeria, Côte d'Ivoire, Sudan). Unlike the idea of structural violence, the idea of systemic violence, as used here, has identifiable perpetrators[55]. Systemic violence in South Africa in the present political sequence is primarily deployed against the *politically* excluded/political minorities: the poor, women, children/infants and African outsiders/foreigners, i.e. broadly speaking the working-people.

Hence it is political exclusion – i.e. exclusion from the field of politics - and not social exclusion and the identitarian development of social boundaries as such, which must feature at the core of any analysis[56]. The idea of "political exclusion" as used here is not that dissimilar from that of "political minority/majority" as distinct from "numerical minority/majority" used quite commonly in political science. Political presence is clearly distinct from

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[54] I have argued at length elsewhere that indigeneity (autochthony) is not a question of history, of parenthood or of race, or descent, let alone "blood"; it is not natural, it is simply defined and constructed by state power and (unless resisted) actualized in subjectivity. It can be redefined according to circumstances; see Neocosmos, 2010a:144.

[55] Most analyses equate structural and systemic violence, e.g. see Žižek, 2008. I am concerned to distinguish the two because systemic violence, while not enacted by exceptional "evil individuals", is at the same time not a simple effect of structure. Political choices do exist, this is the point.

[56] A report of in depth empirical research on violence in seven South African townships has noted: "It seems political entrepreneurs thrive in conditions where people are feeling excluded from mainstream political processes" (Von Holdt et al. 2011:68). It is precisely these so-called "political entrepreneurs", those I have referred to above as "power brokers", who have access to state resources who are able to mobilize people for collective violence. In order to avoid misunderstanding I should perhaps also note that by "political inclusion" I am not referring to variants of corporatism where inclusion takes place under statist conditions. A genuinely democratic state can only be one which enables the inclusion, in the field of politics, of politically independent popular organisations.

numerical size or social presence. The point is to emphasise, not so much the social location of the excluded, but their political location, meaning in this context their difficulty or incapacity to have their voices heard within the formal political sphere which in this instance is the domain of civil society. It is thus political exclusion/inclusion which is theoretically prior to social exclusion/inclusion and which is a central condition of the latter's existence; and it is this which ultimately explains the collapse of emancipatory nationalism into a xenophobic simulacrum of itself.

Of course to say that violence is systemic is not to make a sociological observation; perpetrators, as I have emphasised, are not exclusively state agents. Systemic violence often takes place between the poor themselves (e.g. xenophobic violence, gender violence). However it is political exclusion, i.e. exclusion from the field of politics, rather than (transition to) democracy which must be seen as the "independent variable", so to speak, in any understanding of the deployment of violence. Violence only comes to be seen as a legitimate way of resolving contradictions among people because popular-democratic politics are excluded from the political domain of uncivil society. Given such exclusion, an affirmative politics is not being heard. This is precisely what is happening to the politics of Abahlali base Mjondolo which all trustees (including state and NGOs) are desperately trying to silence so that they do not feature in the national political process. All the evidence points to the fact that, as a result, systemic violence is on the rise[57]. Clearly this phenomenon is not to be viewed simply as an effect of increases in levels of poverty and inequality which themselves are dire. At the same time of course, violent riots and protests also occur in South Africa and throughout the continent, but these are arguably reactive to systemic violence while being regularly portrayed by the state as pathological, or simply as a demand for services or entitlements gone out of control due to the involvement of agitators.   In North Africa however, they have been able, as we have witnessed, to challenge aspects of a mode of rule itself.

Thinking beyond the confines of transition theory is imperative in order to attempt to move beyond the subjective limits of neo-liberal capitalism and liberal democracy, beyond those of state democracy and state nationalism. This is necessary if we are to derive from the inclusive affirmative politics of the North African events, the kind of thinking required to understand changing political subjectivities. Emancipation from neoliberal capitalism in Africa must still begin from affirming the secular nation, although in different ways from the manner it was conceived in the 1960s. But if it is valid to characterise the African state as postnational in form, then it follows that state political subjectivities are unable to help us think an emancipatory politics. If no emancipatory politics can emanate from thinking within the parameters of the

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[57] Systemic violence is at its most extreme arguably in rural areas but that is where it is the least visible. A particular mode of rule based on "tradition" operates in that context as Mamdani (1996) has shown.

state, as the poet recognises, such political subjectivities must be sought elsewhere, among people. This is the main lesson of Egypt and Tunisia today.

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