The limits of political development and constitutionalism in South Africa[1]

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Abstract

The article investigates political development and constitutionalism in post-apartheid South Africa by focusing on two general features of this society. These are firstly the enduring prevalence of violence defined broadly. The second feature is the particular democratic deficit manifested in the politics of professionalism associated with the New Public Management (NPM) informed developmental state. The article interprets these two trends as characteristic of ruptures and continuities with the apartheid state. It scrutinizes the underlying assumptions of political development and constitutionalism and critiques both as ideals for the post-apartheid state. It is concluded that political development and constitutionalism, as they have manifested in post-apartheid South Africa, are insufficient in alleviating the structural violence which characterizes the everyday for millions of South Africans. Ordinary citizens must obtain greater access to the decision-making processes in which they are currently not meaningfully included through contemporary developmental practices. Such inclusion would serve both as an end in itself and as a means towards greater two-directional integration between marginalized citizens and dominant processes of material and symbolic production and consumption. At the same time, constitutionalism, by enshrining a relatively inflexible approach to property rights, is impotent in the face of persistent and increasing material inequalities.

Keywords: Political Development; Constitutionalism; South Africa; Violence; Professionalism; New Public Management; Structural Violence; Waste.

More fortress-like gated communities are being built, guarded around the clock by armed men. Most of the white and black middle class barricade themselves behind increasing layers of security: bright lights; high perimeter-walls topped with electric fencing or razor wire; guard dogs; panic buttons and an alarm system linked to one of the many armed rapid-response security firms that promise to arrive within three minutes of a call.[2]

The IEP singled out South Africa as being in conflict internally – driven by poverty, inequality, and the slow pace of reform by government, which, in turn, fuels crime, violent strike action and political confrontation.[3]

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1   An earlier version of this article was presented at the South African Association for Political Studies (SAAPS) regional colloquium. Vanderbijlpark. 1 October 2015.

2   Anon., *The Economist*, "President Jacob Zuma talks tough. But can he make a difference?", 1 October 2009 (available at www.economist.com, as accessed on 25 September 2015).

3   Anon., *BusinessTech*, "The worst crime hot spots in South Africa", 15 July 2015 (available at http://businesstech.co.za/news/general/93294/the-worst-crime-hot-spots-in-south-africa, as accessed on 20 January 2016).

Introduction

The quotations cited above are by no means unique. They represent some quite common views and realities associated with crime and violence in post-apartheid South Africa. Such extracts from the popular media suggest that South Africa's transition from authoritarianism to democracy has not been perfect. The country is crime-ridden and especially prone to violent crime. Quotations such as these, however, also paint a misleading picture about the victims, the perpetrators, and possibly about causality, by decontextualizing the crimes committed from history. It focuses on the ruptures between the old and the new and underplays the continuities between the "new" South Africa and the apartheid state. The popular media, it might be argued, perpetuates the impression that crime is necessarily a problem unique to the democratic era and often not deeply rooted in history. This article does not focus on crime per se, though violence, including but not limited to violent crime, is a major point of focus. This point of focus is contextualized by the continuities and discontinuities of South Africa's democratic transition. Of course, there is insufficient space to focus on each and every facet of the country's democratisation. The article does however highlight a few general trends.

The new South Africa was founded upon liberal principles, offering individual rights – and as it is argued in this article – impotent (formal) rights-based solutions to deep-seated structural problems of poverty, inequality, racism, physical insecurity and other forms of violence. The result has been, as Mamdami suggested in 1997, a denial of justice.[4] And so, there is (formal) rights-based discourse and ascription to hegemonic (Western) notions of political development which supersedes meaningful action upon the problem of lingering injustice. Liberalism may have been a progressive discourse in a context of authoritarianism, but it has hampered decisive and just transformation since the advent of democracy.

The aim of this article is to critique South Africa's democratic transition, but not in a way one may deduce from the quotations above. Rather, the article is critical of constitutionalism as it has manifested in post-apartheid South African political development as a means toward the social justice many might have envisioned twenty years ago. The analysis draws on two broad bodies of literature in order to substantiate the argument. The first deals

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4   M Mamdani, *When does reconciliation turn to a denial of justice?* (Paper, Sam Nolutshingu Memorial Lecture, Pretoria, Human Sciences Research Council, 1998), pp. 1-6.

with the matter of violence in South Africa. The second body of literature deals with the professionalization and bureaucratization of development or emancipatory praxes in post-apartheid South Africa. The discussion is structured as follows: the article offers some brief initial and explanatory notes on the concepts, political development and constitutionalism, which are then brought to bear on South Africa's democratic transition. This is followed firstly by a diagnosis of sorts, in the form of structural violence and the rendering of ordinary citizens as waste, as a trope for framing the status quo. This framing depicts an urgency not often observed through the lenses of constitutionalism and political development. The article then critiques professionalized emancipatory practices that manifest under the rubric of New Public Management (NPM), which arguably epitomizes contemporary approaches to development at municipal level, as means towards intervening upon structural violence. The analysis concludes by considering alternative modes of thinking about the problem and the implications thereof for political development and constitutionalism in South Africa.

Political development and constitutionalism

Constitutionalism, simply put, means that a state is governed based on the principles set out in a written or unwritten constitution.[5] As such, at least in theory, a constitution should determine the manner in which the state is governed. Constitutions often recognize human rights, protect minorities, establish the rule of law and set up democratic institutions.[6] They also spell out the distribution of powers between different organs of government.[7] It is a check on government and on democracy by enshrining certain core values to be upheld amidst a potential onslaught by the majority.[8] Constitutionalism potentially has many advantages, not all of which can be dealt with here. It may be quite critical in delivering justice and the rule of law, by enshrining the fundamental rights and privileges of citizens. It may also help avert corruption and personal rule by establishing counterweights or "checks and balances". By establishing a society on such principles and demonstrating how these are

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5   A Heywood, *Politics* (London, Palgrave Macmillan, 2013), p. 337.
6   J Rubenfeld, "Two conceptions of constitutionalism", *Proceedings of the Annual Meeting, American Society of International Law*, 96(13-16), 2002, pp. 394.
7   J Mubangizi, "Some reflections on recent and current trends in the promotion and protection of human rights in Africa: The pains and the gains", *African Human Rights Law Journal*, 6, 2006, p. 156.
8   J Rubenfeld, "Two conceptions of constitutionalism", *Proceedings of the Annual Meeting, American Society of International Law*, 96(13-16), 2002, pp. 396.

informed, "uncertainty" of various sorts is limited, leaving citizens to go about their lives with relative peace of mind in an environment they can rely on, while potentially aiding investor confidence in the economy.

In this era of globalisation, constitutional values too are transferred between societies with liberal democratic, free market economics and human rights-based ideals promoted from the USA and Washington based multilateral institutions in particular. However, as Rubenfeld notes, this displacement of democratic politics by international law and multilateral institutions is problematic as it is potentially too far removed from democratic processes. The alternative is a constitutionalism that is not prior to democracy and although still typically inclusive of many of the above elements, remains open to development through democratic processes. Unfortunately, as will be explained, the latter is far less evident than the former in South Africa.

States, societies and the global political and economic system are not static entities. They are all subject to incalculable daily social processes. Moreover, societies and their positions within the global system differ, which may require diverse constitutional arrangements. If one adopts a theoretical lens informed by Michel Foucault's notion of governmentality, where power is omnipresent and intertwined with knowledge, then it easy to grasp how some ideas become more dominant than others in the governing of the everyday.[9] Governmentality is a broader term than government or governance. It functions through various intended and unintended actions, reflections and interactions, where power is exercized influencing the day to day actions of individuals, groups and institutions both directly and indirectly. As such, it is a function of the structuring effects of the combined forces of discourse and power in constituting "subjects". Therefore, the term "subject" is contested since there strictly speaking is no truly independent agency.[10] It is therefore no surprise that much of the world informed by mainstream media has been subject to discourses emanating from the dominant West emphasizing individual rights, including freedom of speech, freedom of association, free enterprise and private property rights under the rubric of "universal" human rights. In this regard South Africa's democratic settlement of the early 1990s and its legacy are exemplary. These "universal values" are also associated with

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9   M Foucault, *The birth of biopolitics: Lectures at the College de France* (London, Palgrave Macmillan, 2010); M Foucault, *The government of the self and others: Lectures at the College de France*, edited by F Gros and translated by G Burchell (London, Palgrave Macmillan, 2010).

10   G van Riet, *Instrumental reason and neoliberal governmentality: A critical analysis of disaster risk assessment and management in South Africa* (D Litt et Phil, University of Johannesburg, 2014), p. 5.

other related discourses and modes of governing, such as political development.

Political development, despite the qualifier, "political", is defined by the inherent imperialism on which it is (in)advertently premised. This has taken on the form structural-functional approaches as per the work of Gabriel Almond, of modernisation, structural adjustment, "good governance" and many other associated terms.[11] Accompanying logics of state-building are often preoccupied with various modes of institutionalization. With institutionalization there is always a risk of form trumping function, means becoming ends and so forth, in the service of instrumental rationalities, often in the service of generic liberal democratic structures.[12] Institutionalization may also hamper democracy, as structures for participation become formulaic, and even sites of elite capture through donor funded NGOs or the state and their respective clients. Here democracy is more akin to what Dworkin calls the statistical conception of democracy. There is very little equality of voice where all partners in democracy's ideas are considered equally.[13] Democratisation in South Africa has coincided with constitutionalism through formal rights-based jurisprudence and development through widespread institution building. As will be explained below, diverse structures for participation do not equate to broad opportunity for meaningful participation and a marked move beyond statistical notions of democracy.

Democratization and transitional (in)justice

By the end of the 1980s South Africa was at a crossroads. Some within the West had "done their damndest", as PW Botha invited them to do in his *Rubicon Speech* of 1985. The country might have crossed a Rubicon, but if so, it was clearly a move that abetted an untenable situation. The government, ruling through successive states of emergency, had reached a mutually hurting stalemate with its internal opposition. Furthermore, the geopolitical landscape had shifted dramatically. With the crumbling of the Soviet Union came the end of any claim to legitimacy the apartheid state

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11 P Burnell and V Randall, *Politics in the developing world, 2* (Cape Town, Oxford University Press, 2008), pp. 18-23; T Mkandawire, "'Good governance': The itinerary of an idea", *Development in Practice*, 17(4/5), 2007, pp. 679-768; M Doornbos, "Good governance: The metamorphosis of policy metaphor", *Journal of International Affairs*, 57(1), 2003, pp. 3-17; M Doornbos, "Good governance: The pliability of a policy concept", *Institute of Social Studies,* 8(4), 2004, pp. 372-387.

12 T Adorno and M Horkheimer, *Dialectic of Enlightenment* (London, Verso, 1969).

13 R Dworkin, *Keynote address* (Paper, Conference in honour of Ronald Dworkin, Cape Town, 11-12 February, 2002), p. 6.

might have had and importantly, the end of support for the government and opposition forces from their respective superpower benefactors. Negotiations and a relatively peaceful transition would follow, leading to inclusive elections in 1994. Here "relatively" is the appropriate descriptor as the democratic transition was peaceful only compared to what might have been. It was still significantly violent in nature if one for example considers the impact of the government-sponsored third force aimed at sustaining a violent conflict against the ANC through, amongst other means, the Inkatha Freedom Party, while simultaneously engaging in formal negotiations.[14]

The mode of post-apartheid justice envisioned and the type of constitutionalism implied have been described as transitional justice. This entails a form of governing through policy and jurisprudence aimed at addressing inequality enforced by centuries of colonial rule.[15] The precise meaning of "transformative", however, is highly contested.[16] One conception might be that of an on-going process, with transformation not being a once-off event.[17] As such, there is a link to the notion of constitutionalism as a process amenable to ongoing democratic dialogue. In reality however, the focus of jurisprudence has been on formal as opposed to substantive ideals.[18] The final constitution, adopted in 1996, has been labelled one of the most liberal in the world. Such a classification is often spoken of with immense pride. The Bill of Rights makes extensive provision for human rights. As is explained below, the tools afforded through this form of constitutionalism and global governmentality may not be fit in affecting the type of change required for entrenching a stable post-apartheid democratic settlement.[19]

The year 1996 also saw the introduction of South Africa's neoliberal Growth Employment and Redistribution (GEAR) macroeconomic strategy, which in some shape or form has continued until this day. With GEAR came significant fiscal discipline and inflation targeting, aimed at providing stable macroeconomics which would attract investment. Fiscal discipline has been

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14 S Ellis, "The historical significance of South Africa's third force", *Journal of Southern African Studies*, 24(2), 1998, p. 287.

15 This understanding of colonialism is not necessarily opposed to interpretations of apartheid implied in the phrase "colonialism and apartheid". Crucially though, this view is similar to that of Mamdani (as cited) in that apartheid was colonialism and not necessarily "colonialism of a special kind".

16 P Langa, *Transformative constitutionalism* (Paper, Prestige Lecture, Stellenbosch University, 2006), p. 351.

17 P Langa, *Transformative constitutionalism*..., p. 354.

18 P Langa, *Transformative constitutionalism*..., p. 357.

19 The notion of "democratic consolidation" could be used here as long as consolidation is not equated to entrenching generic institutions with very little by way meaningful, open-ended and enduring state society interaction.

associated with municipal cost recovery and essentially making everyone pay for amenities they often cannot afford, regardless of the complex and structural causes for their inability to pay. GEAR is significant for the manner in which the "shock doctrine" described by Naomi Klein was applied to a country riddled with uncertainty about its political stability, its position within the world and its future. South Africa was previously isolated and in need of reincorporation into a globalising world.[20] The country had just been brought back from the brink of civil war or the ever looming *bloedbad* or "bloodbath" as the popular discourse of the time foretold. Crisis is important for neoliberalism. It is a political strategy designed to capitalize on crisis by "resolving" it towards conservative ends.[21] And so, the context was perfect for such reform as the Reconstruction and Development Programme (RDP) had been largely abandoned. Hegemonic dogma, both politically and economically, was applied (arguably) under strict surveillance from the West and its proxies inside the country. The message from the Mbeki government was that "South Africa was open for business" and there was a sufficiently large domestic middle class – some would say, a group key in our "peaceful transition", for they had too much to lose from any other outcome – ready to make the most of neoliberalism, wittingly and unwittingly acting as key figures in the Foucauldian net of governing power in the politics (small p) of the everyday. Most salient among these roles are those modes of governing which perpetuate the pre-eminence of (neo)liberal discourse.

Many authors have delivered strong critiques of South Africa's democratic transition, mostly focused on aspects such as self-imposed structural adjustment through GEAR and the subsequently growing inequality. Politically, the hegemonic principles of polyarchy and human rights have been cornerstones of the settlement enshrined in 1994 and then in the 1996 Constitution.[22] When compared to the hard-line and ill-conceived stance of the likes of Botha, these discourses are clearly progressive and they may even have served a purpose in the early days of democracy. Their combination with hegemonic economic dogma however, has largely detracted from the merits of rights-based discourses, which, with regard to jurisprudence, have in reality played second fiddle to notions of "affordability".[23] Therefore, human

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20 N Klein, *The shock doctrine: The rise of disaster capitalism* (New York, Metropolitan Books, 2006).

21 S Narsiah, "Neoliberalism as spatial fix: An example from South Africa", *Geoforum*, 45, 2013, p. 137.

22 Republic of South Africa, *The Constitution of the Republic of South Africa,* Act 108 of 1996 (Pretoria, Government Printers).

23 M Pieterse, "Resuscitating socio-economic rights: Constitutional entitlements to health care services", *South African Journal of Human Rights*, 22, 2006, p. 498.

rights-based discourses have been relatively impotent tools for the substantive improvement of society's well-being. Moreover, the constitution has arguably been subjected to abuse by conservative agendas. For example, some authors have exploited the Constitution to make arguments against Black Economic Empowerment in principle.[24]

The combination of hegemonic discourses described above has over the years helped to grow inequality. Neoliberalism has not worked as a tool giving substance, borrowing from Amartya Sen, to individual rights, at least not for the majority of South Africans.[25] Here one may recall the question Mamdani posed in 1997, namely, when does reconciliation turn into a denial of justice? He argues that rights have supplanted social justice. Similar notions of injustice have informed many critiques of South Africa's transition, where the so-called "sell-out" has been a significant analytical trope.[26] The implication is that for many, "freedom" has in reality not brought what might have been expected as the redistribution of material resources, but has mostly occurred at the elite level. In this regard, Dworkin once again makes a valid contribution in insisting that political equality cannot be separated from economic equality. Some sense of economic equality is required for people to be equal partners in government.[27] Therefore, to meaningfully move beyond statistical notions of democracy, greater equality of voice is required, which necessarily implies greater equality of material wealth.

With regard to the ruptures and continuities between the apartheid and post-apartheid states, the argument presented here is not that nothing has changed since 1994. That would be ludicrous. There have been victories for example in the form of formal rights. But formal rights by definition are not substantive rights, and expecting people to fend for themselves in achieving the latter in a context where poverty and many other forms of subtle and not so subtle marginalisation (and of course the opposite) are inherited, is to be extremely naïve. Changes in the intergenerational transfer of wealth have seen some additional beneficiaries, and some finding themselves in positions

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24 F Venter, "Die beperkings van regstellende gelykheid", *Potchefstroom Electronic Law Journal*, 7(1), 2004, pp. 1-26.

25 A Sen, *Development as freedom* (Oxford, Oxford University Press, 1999).

26 P Bond, *Elite transition: From apartheid to neoliberalism in South Africa, 2* (Pietermaritzburg, University of KwaZulu-Natal Press, 2005); S Terreblanche, *The history of poverty and inequality in South Africa,* (Pietermaritzburg, University of Kwazulu-Natal Press, 2002); H Marais, *South Africa: Limits to change: The political economy of transition* (London, Zed Books, 1998).

27 R Dworkin, *Keynote address...* (Paper, Conference in honour of Ronald Dworkin, Cape Town, 11-12 February, 2002), p. 7.

more marginal than before. These are of course complexities at play which cannot possibly be captured here. Amongst other aspects, property rights were safeguarded by the democratic settlement, and new structural processes of division and sub-alternation were introduced. The remedy, Black Economic Empowerment, has been described as "hapless", as only a small proportion of the population have benefitted.[28] To be clear, there should be a differentiation made between critiques of how BEE has manifested in South Africa, and arguments against BEE in principle. The former may for example relate to the limited impact of BEE in arresting historic inequalities. Those engaged in the latter may for example hold that BEE may not be fair to white South Africans. The position of this author is that there are structural inequalities that define South African society. Consequently, there are compelling ethical and pragmatic justifications for intervening upon these inequalities through affirmative action, such as long-term political stability. Not addressing this would do greater harm to society than the suspension of privilege for a small minority. Of course structural intervention requires qualifications and conditions, for example, transparency and clarity on the objectives to be met, timeframes and cooperation between state and society towards meeting these objectives. But whatever complications there might be with regard to effective implementation of BEE, these, in this author's opinion, do not justify the type of legal arguments made against the idea of BEE.

Regarding poverty and inequality, Bhorat and Van der Westhuizen find that although poverty in South Africa decreased from 1994 to 2005, inequality has increased, making South Africa possibly the most unequal society in the world.[29] Such persistent inequality is problematic, especially in a context where it has an historical association with discrimination and concomitance, and with other forms of marginalisation found in South Africa. This includes discrimination based on race and gender.[30] It also includes marginalisation sustained in part through a lack of access to public goods such as education,[31] water and sanitation[32] and their unequal apportionment, including basic needs,

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28 A Mbembe, "Achille Mbembe on the state of South African political life", *Rozenburg Quarterly*, September 2015 (available at http://rozenbergquarterly.com/achille-mbembe-on-the-state-of-south-african-political-life/, accessed, 21 September 2015).

29 H Bhorat and C van der Westhuizen, *Economic growth, poverty and inequality in South Africa: The first decade of democracy* (Working Paper, 12/151, Policy Research Unit, University of Cape Town, 2012).

30 H Moffett, 2006. These women, they force us to rape them: Rape as narrative of social control in post-apartheid South Africa, *Journal of Southern Africa Studies*, 32(1), 2006, pp. 129-144.

31 E Raab and A Terway, "School fees in South Africa: Increasing quality or decreasing equality?" (available at http://www.epdc.org/sites/default/files/documents/School%20Fees%20in%20South%20Africa.pdf, as accessed on 24 September 2013), p. 9.

32 N Nleya, "Development policy and water services in South Africa: An urban poverty perspective", *Development*

food[33] and shelter.[34] Similar to their parents and grandparents before them, the overwhelming majority of South Africans find themselves marginalized in what Nduna and Jewkes describe as the intergenerational transference of vulnerability.[35] Intervening upon this continually reinforced pattern requires intervening upon the structural processes aiding the reinforcing. However unpopular some might find it, this might require breaking with one or both of the abovementioned hegemonic (neo)liberal discourses.

In a context where convincing arguments have been made that social justice has failed to materialize and where it could be argued, as Antjie Krog does in a recent interview, that the forgiveness offered by many black South African has not been repaid, the ethical argument against the status quo is easy to make.[36] So too is the argument that the current state of inequality is rather dangerous. In support of Krog's statement, much evidence may be cited of bad faith on the part of many white South Africans with regard to the democratic settlement, and of attitudes counter to the transitional justice described above. In 2015, one of South Africa's principal online news platforms made the decision to disable reader comments as a default setting to articles. The reason given was irresponsible and indiscriminate use of this feature by readers engaging in conduct often amounting to nothing less than racism and hate speech.[37] In January 2016 another popular online news platform followed suit. Again the reason given was the hate speech of a significant minority of participants, which had tarnished the website's brand.[38] Similarly, while walking home from work one day in 2015 this author personally witnessed an ANC Youth League march in Potchefstroom. Having stopped to observe for a few minutes, the march seemed rather peaceful. Then, after leaving and having walked about 100 meters further on, there was the distinct noise of a stun grenade, as some

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Southern Africa, 25(3), 2008, p. 278.

33 M Aliber, "Exploring statistics: South Africa's national household surveys as sources of information about household-level food security", *Agrekon*, 48(4), 2009, pp. 384-409.

34 M Huchzermeyer, "Pounding at the tip of the iceberg: The dominant politics of informal settlement eradication in South Africa", *Politikon*, 37(1), 2010, p. 145; A Makhulu, "The 'dialectics of toil': Reflections on the politics of space after apartheid", *Anthropological Quarterly*, 83(3), 2010, p. 553.

35 M Nduna and R Jewkes, "Disempowerment and psychological distress in the lives of young people in the Eastern Cape, South Africa", *Journal of Child and Family Studies*, 21, 2012, p. 1024.

36 T Modise, "Antjie Krog: Apartheid compensation – nationalise land to fast-track redistribution", *Fin24*, 23 September 2016 (available at http://www.fin24.com/BizNews/Antjie-Krog-Apartheid-compensation-Nationalise-land-to-fast-track-redistribution-20150922, accessed, 18 January 2016).

37 A Trench, "Farewell to comments: Why we are making a change", 2015 (available at http://www.news24.com/Columnists/AndrewTrench/Farewell-to-comments-Why-we-are-making-a-change-20150908, accessed, 27 September 2015).

38 *Daily Maverick*, "We tried. We really, really did", 2016 (available at http://www.dailymaverick.co.za/article/2016-01-11-editorial-we-tried.-we-really-really-did./, accessed, 25 January 2016).

protestors apparently became unruly. That evening social media erupted with comments from residents, which clearly demonstrated that the attitudes of many whites towards black South Africans had not changed significantly over the past 20 years. What can only be imagined as hurtful, animalistic, references and similes proliferated. Furthermore, many specifically South African derogatory words and phrases used in years gone by to label blacks were widely used in reference to "them", the marchers, and all black people, to mention only a few of the categories and generalizations used.

In early 2016 the ANC laid charges of *crimen injuria* against three South Africans, including an economist, an estate agent, and a fitness guru, subsequent to statements made on social media.[39] The comments in question ranged from ignorance regarding the very structural features of marginalisation and continuities with the old order discussed in this article, to more unequivocally racist utterances, including animalistic references. Clearly none of these are isolated incidences and contempt by many white South Africans for their black counterparts seems pervasive. At best these comments may be the work of a few online trolls or at least a minority, though it certainly remains a vocal and prominent minority. Incessant racism seems to be a fact. People often attempt to justify prejudiced comments as a response to the post-apartheid government and its perceived ineptitude or corruption. However prevalent governmental failures may be, these justifications boil down to a conflation of individuals and smaller cliques to the totality of an Other. Corruption by some serves as a convenient scapegoat, supposedly ridding other beneficiaries of an increasingly unequal status quo of any responsibility. Such hostility by some against many others and the immense absolute and relative material deprivation found in South Africa offers some initial insight into the many faces of violence in South Africa, now investigated more deeply.

The many faces of violence

As the quotations at the beginning of the article suggest, South Africans are subjected to multiple forms of violence. This includes much violent crime. The country has some of the highest incidences of murder, armed robbery and rape in the world. Moffett notes that one third of all South African women

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39 C Bernardo, "ANC to lay charges against racist South Africans", *Mail & Guardian*, 5 January 2016 (available at http://mg.co.za/article/2016-01-05-anc-to-lay-charges-against-racist-south-africans, as accessed on 18 January 2016).

will be raped in their lifetime.[40] Furthermore, over one third of the South African population have been exposed to some or other form of physical violence.[41] However, physical or interpersonal violence, though severe, are not the only forms of violence experienced by South Africans. It may also be argued that such violence is part of a broader category, of a status quo that is largely hostile to ordinary South Africans.

   Degenaar explains that violence is structural when "not exerted wilfully by a person, but by a structure created and perpetuated, for example, by custom or by law in a political context". In this regard Allan Boesak referred to "the structural violence of apartheid", institutionalized through discriminatory laws and enforced by the police force of the day.[42] Structural violence is still a prominent feature of contemporary South African society, even if it manifests somewhat differently, and importantly, is sustained through different structures. Structural violence has material properties, such as physical danger, infections, and hunger, and less-material components in the form of denigrating discourses harmful to human dignity. Authors such as Kohler and Alcock, Hoivik and Farmer, have applied this concept in various research contexts.[43] Farmer, writing on the relationship between HIV/AIDS and poverty in Haiti, notes that there is a significant link between a person's access to opportunities in life, and the quality of that person's future life. While many are blessed with being born into affluent or at least tolerable circumstances, others are born into contexts where daily life is a fight for bare survival. The day to day secular rhythm that maintains such a state of existence is structural violence, as opposed to purely interpersonal or direct violence. Lafayette holds a similar position by referring to the "violence of the status quo", which is committed every day.[44] Structural violence of course affects physical well-being, but it is also less direct than interpersonal violence. It is part of the very make-up of society, including the daily processes by which citizens go about the routines of making money, doing shopping or for that matter, toiling. The focus here is on marginalization, but the analysis

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40   H Moffett, "These women, they force us to rape them..." *Journal of Southern African Studies*, 32(1), 2006, p. 129.

41   D Kaminer, A Grimsrud, L Myer, DJ Stein, DR Williams, "Risk for post-traumatic stress disorder with different forms of interpersonal violence in South Africa", *Social Science & Medicine*, 67, 2008, pp. 1589.

42   J Degenaar, "The concept of violence", *Politikon South African Journal of Political Studies*, 7(1), 1980, pp. 19- 20.

43   J Galtung and T Hoivik, "Structural and direct violence: a note on operationalization", *Journal of Peace Research,* 8(1), 1971, pp. 73-76; G Kohler and N Alcock, "An empirical table of structural violence" *Journal of Peace Research*, 13(4), 1976, pp. 343-356; P Farmer, 1996. "On suffering and structural violence: a view from below", *Daedalus,* 125(1), 1996, pp. 261-283; P Farmer, "An anthropology of structural violence", *Current Anthropology*, 45(3), 2001, pp. 305-325.

44   J Degenaar, "The concept of violence", *Politikon: South African Journal of Political Studies*, 7(1), 1980, p. 19.

requires a crucial distinction. The distinction in question is between marginal as a political category and marginal as an ontological category.[45] The latter is very problematic, as it perennially risks othering a conflated category of people based on an essentialist logic. The former opens up a range of political statements and praxes based on the exposition of unacceptable processes characterising the violent status quo.

One set of processes is the rendering of people as waste through the combination of racism and capitalism, and related and intersecting modes of marginalisation processes.[46] This is exacerbated by the twin discourses of (formal) rights and neoliberalism via, for example, fiscal restraint, deregulating the economy, superficial municipal performance measurement, and the often ensuing deficient state-society relationships. Gidwani and Reddy consider waste to be a "political other" of capitalist value.[47] It is a consistent by-product and excess of capitalism. Pithouse notes that people rendered as waste exist outside the parameters established as legitimate by bourgeois society.[48] Waste has historically also been shorthand for the colonial difference between colonized and colonizer. It is to be disposed of through "progress" and associated tropes such as development and constitutionalism, although these moral imperatives have not done much to address the accumulation of waste.[49]

There is a danger in adopting an exclusively economistic view of waste. Though linked to material resources, the role of ideas in rendering people as waste should not be understated. Differently put, there is more to waste and its corollary, value, than simple material conceptions can contend with. Therefore, this article proposes that rendering people as waste may be described as the processes by which citizens are made to be superfluous to the society's dominant and valued practices of material "and" symbolic production and consumption. In such a context formal rights are impotent tools in the wake of the as yet narrow reach of jurisprudence on hate speech for example, and South Africa's general adherence to hegemonic economic dogma. Many South Africans are unemployed or underemployed and hence they cannot partake in material production and consumption. Lack of income limits their ability

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45 R Pithouse. "Thought amidst waste", *Journal of Asian and African Studies*, 47(5), 2012, p. 484.
46 R Pithouse. "Thought amidst waste", *Journal of Asian and African Studies*, 47(5), 2012, p. 482.
47 V Gidwani and R Reddy, "The afterlives of 'waste': Notes from India for a minor history of capitalist surplus", *Antipode*, 43(5), 2011, p. 1625.
48 R Pithouse. "Thought amidst waste", *Journal of Asian and African Studies*, 47(5), 2012, p. 484.
49 V Gidwani and R Reddy, "The afterlives of 'waste'...", *Antipode*, 43(5), 2011, p. 1626.

to purchase basic daily requirements, never mind the excesses conspicuously consumed around them by the minority, fully engaged in a consumer culture. This is potentially humiliating and serves as a daily reminder of the gross inequalities in society.[50] Furthermore, the unemployed are often labelled as "lazy", "without talent" or "stupid".[51] The precariousness endured by many South Africans makes it difficult to enjoy highly valued symbols of the "good life", such as homes with basic amenities, household transportation, branded clothing and leisure activities to name only a few examples.

According to this conception of waste, its opposite is not only value, but in a different sense also integration. As such, what is required are strategies aimed at incorporating more people into the daily processes of material and symbolic production. This would be a multi-faceted and complex project of re-inscribing the everyday life of the citizenry more broadly, and dominant and valued practices of production and consumption merging into one another without subordinating the former. In other words, such re-inscribing must remain open to new conceptions of value itself and what is to be valued, and more decisively, constrain that which should not be valued; for example racist discourse and excess. Interventions would therefore stretch far beyond the ambit of formal individual rights and would likely need to challenge the distribution of economic means and ends currently governed through constitutionally ascribed rights, for example property rights. As is argued below, intervening would have to extend beyond many existing strategies of "development" at the municipal level.

The politics of professionalism

Neoliberal governmentality has often dictated that political development is accompanied by a host of instrumental discourses, deployed by experts in pursuit of individual enterprise and professional identity. This is what Joronen refers to as ontological mono-politics.[52] These are modes of governmentality associated with expert knowledge on the constitutive elements of neoliberal government and the "knowledge economy" in general.

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50 F Ross, *Raw life, new hope: Decency, housing and everyday life in a post-apartheid community* (Cape Town, University of Cape Town Press, 2009), p. 209.

51 F Hajdu, "Local worlds: Rural livelihood strategies in the Eastern Cape, South Africa", *Linköping Studies in Arts and Science,* 366, 2006, p. 64.

52 M Joronen, "Conceptualising new modes of state governmentality: Power, violence and the ontological mono-politics", *Geopolitics*, 18, 2013, pp. 356-370.

New Public Management has been a paradigm of choice for many working in public administration.[53] Amongst other features, this approach entails public administration based on business principles such as efficiency and fiscal restraint, and contracting in specialist knowledge. It is with regard to the latter that the ontological mono-politics mentioned above is pertinent to the South African context. At local government level various specialist fields inform the public service. These include, but are not limited to, Integrated Development Planning (IDP) management, community development and disaster risk management. Over the past two decades consultants have been contracted to draft integrated development plans, assist with or perform infrastructure and housing provision, perform community development work, and other specialized roles. Each of these fields has a unique internal logic. However, when ontological mono-politics is combined with principles such as "efficiency", then democracy and the very "development" intended may be at a major deficit. Open-ended dialogue between state and society may be replaced with once-off and brief consultation driven by relatively disinterested officials or external actors who have no democratic mandate.

Nor do specialists have significant local knowledge which can inform their work and make it contextually appropriate.[54]

Although there has been a proliferation of opportunities for participatory democracy in South Africa over the past two decades, such as IDP representative forums, open council meetings and various issue-specific consultation processes, it has become clear that more institutions do not necessarily lead to greater inclusion of pro-poor policy change. Much of the success of participatory structures depends on the power relations around these spaces.[55] Municipal or contracted specialists engaged in ontological mono-politics may only "see what they believe" and thereby impose a particular optic onto the public. Moreover, the vagaries of municipal performance management and the logic of time equals money by which contracted experts are governed, may cause "participation" to be reframed as an end in itself, and not a means to an end. Then public participation may have major pitfalls, as it is adopted mechanistically in order to meet a basic performance requirement, and participation may become a tool for legitimising existing professional agendas and not one for agenda-setting

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53 For an explication of the adoption of NPM in South Africa see R Cameron, "New Public Management reforms in the South African public service: 1999-2009", *Journal of Public Administration*, 44(4.1), 2009, pp. 910-942.
54 G van Riet, *Instrumental reason and neoliberal governmentality...*, p.153.
55 J Gaventa, "Finding the spaces for change: A power analysis", *IDS Bulletin*, 37(6), 2006, p. 23.

and deliberation towards durable interventions. Alternatively, superficial participation may result in wish lists of generic needs, again with the absence of meaningful deliberation and negotiation between state and society, and between different factions within society. Notwithstanding the fact that there have been successful and productive interactions between state and society, this relationship is potentially mediated poorly through the work of experts. This has been demonstrated in the field of Disaster Risk Management for example, where experts are regularly contracted by metropolitan, district and local municipalities. It has been found that officials and consultants do what they have to do in order to get paid. This typically includes very little, if any, public participation, while complex social, political and environmental interactions are framed in a vernacular assumed to be universally germane. The product is often not implemented to any meaningful extent and in many cases is of such poor quality that it is unlikely to be implementable.[56] Meanwhile, there have been reports of participation fatigue, as citizens are continually exposed to an array of professional agendas, with limited meaningful result.[57] Hence it seems that a shift in focus towards quality as opposed to quantity of opportunities for participation seems to be required in pursuit of more substantive results. Instead of spending money on an array of diverse yet superficial participatory exercizes, some resources might possibly be diverted to facilitating more open-ended deliberations, where citizens contribute to setting a particular local agenda and to acting upon that agenda.

Conclusion

Constitutionalism and political development as manifested in the examples discussed above have been elite, compacting and insufficient in alleviating structural violence in the South African context. These discourses and associated practices aid the rendering of human beings as waste outside of and superfluous to the dominant and valued practices of material and symbolic production and consumption. It seems that what is required by the public is greater access to decision-making and to material means by which decision-making is rendered meaningful. In this way, ordinary citizens will be better integrated into the abovementioned processes of production and

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56   G van Riet, *Instrumental reason and neoliberal governmentality...*, pp. 201-227.

57   D Everatt, H Marais and N Dube, "Participation… for what purpose? Analysing the depth and quality of public participation in the integrated development planning process", *Politikon: South African Journal of Political Studies*, 37(2-3), 2010, p. 243.

consumption, and have greater influence over what these practices should be. The quality of opportunities for participation and their openness to being shaped from below and not by imposed professional agendas is imperative. Such an approach to social cohesion would strive towards improved good faith relationships between state and society, premised upon continual open-ended conversation to establish priorities and not to enforce superficial interventions and generic institutions. A number of diverse invited and invented spaces would likely need to be allowed for this purpose. Invited spaces, according to Miraftab, are grassroots spaces occupied by donor and government-legitimized interventions. Invented spaces are grassroots spaces occupied by those who confront authorities and the status quo.[58] These two types of spaces are not mutually exclusive and grassroots strategies may alter pragmatically between different combinations of approaches.[59] Both are essential for the sake of alleviating asymmetrical power relations in aid of the re-inscription described above, though being too specific here would be to repeat the fundamental problem of imposing agendas from outside.

As Dworkin explains, grass-roots participatory spaces alone are unlikely to be sufficient in the absence of greater material equality. Therefore, the perennial "elephant in the room", with increasingly unequal and arguably unjust access to material resources and opportunities, requires some decisive intervention, which may well be at odds with formal rights-based versions of constitutionalism and its modes of reconciliation. It is nevertheless a requirement for greater equality of voice between South Africans engaged as partners in democracy beyond statistical notions thereof. Although constitutionalism may be invaluable for the sake of socio-political stability, it might equally be argued that it currently jeopardies stability. Therefore, in addition, to the bottom-up processes and spaces referred to above, the time might be right for a macro-level process which revisits the settlement of 1994. Such an "economic CODESA" might deliver a new set of foundational principles for society that better balance stability with redistribution and a constitutionalism that is not entirely prior to democracy, but is rather in part constituted through democracy.

Surely, breaking with hegemonic (neo)liberal principles will be tricky, precisely on account of the constraints of global governmentality and corporate

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58 F Miraftab, "Invited and invented spaces of participation: Neoliberal citizenship and feminists' expanded notion of politics", *Wagadu*, 1, 2004, p. 1.
59 F Miraftab, "Invited and invented spaces of participation..." *Wagadu*, 1, 2004, p. 3.

interests. As it stands however, growing inequality and bad faith regarding reconciliation on the part of many white South Africans might indeed mean that reconciliation in South Africa has, as Mamdani suggested in the late 1990s, resulted in a denial of justice.