

The state of the state: Contestation and race re-assertion in a neoliberal terrain

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Introduction

How should we assess the state of the state in South Africa? Let me begin by affirming that discussions of the post-apartheid state are fraught with contradictions, and it could not be otherwise during a prolonged period of flux. While, in general, the most intense theoretical debates about the state are currently located in writing on globalisation, most would agree that examining the case of South Africa needs to proceed from local specificities. In the first instance this means addressing the transition from the apartheid state to the post-apartheid state (for an overview, see, for example, Habib 1995). There are indeed several broad positions taken on the nature of this political transition: a first position sees the new state as having arisen out of the ashes of the old, defeated state;¹ a second suggests that the post-apartheid state has been constructed on the foundations of the previous political structure and that the essentials of the state were given; at another extreme, a third perspective asks whether post-apartheid South Africa has simply changed (or is busy changing) the complexion and the political allegiance of the occupants of the same edifice.²

The African post-colonial state has often shown itself to be a vehicle for theft and illegal accumulation, for repression and massacre, and for inter-state warfare. During the liberation struggle in South Africa, the state was seen as that which had to be captured and utilised towards various noble and developmental ends. In its existing form, the state was accepted as the logical starting point in a world consisting of states.³ There was little need to think carefully and critically beyond many of the apparently common-sense elements of statehood.

It is not often that the opportunity arises when a people can self-consciously be called upon to construct a state, or at least be said to have a direct say in such construction, rather than have it surreptitiously or violently thrust upon

them. In Africa, the process of decolonisation provided that historical moment several times in the late 1950s and early 1960s, stimulating much academic interest in the processes of state formation. Yet, the results of these processes have been far from auspicious (Freund 1984; Kapuściński 2001; Mamdani 1976; Saul 1979; Shavit 1976). Events around the division between India and Pakistan similarly provoked interest (for example, Alavi 1972). More recently, the collapse of the Soviet Union provided opportunities – such as in the cases of Georgia or Czechoslovakia and Yugoslavia – for examining the growth of new institutions and practices, as well as the intended or unintended continuation of old political patterns.

South Africans, through decades of struggle, opened up new political possibilities for themselves – from meek beginnings of requests for recognition and incorporation during the early twentieth century, to calls for a radical rejection of the political and economic order that had been created through western capitalist expansion. In the 1990s, South Africa's people appeared finally to have achieved the opportunity to decide on what moral order, what economic system, what gender relations, what kind of political representation, what institutions of social control, justice, welfare, punishment, and education, in short, what state would serve them best.

It proved a tall order. To an extent that should not be underestimated in its implications for democratic claims and assertion of a culture of involvement, the oppressed grasped this opportunity, people who had for so long been excluded from participation in political decision-making or who had been granted a peripheral, twisted notion of democracy. They did so in the most down-to-earth way, by standing all day in the blazing sun on 27 April 1994, and voting to approve what they believed had been done in their name and to elect representatives to a government which would give form to a newly inclusive state. Prior to this, however, they had to all intents and purposes been sidelined and excluded, not only in the formal process of negotiations from 1990, but also through the very circumstances that had been the result of their previous social segregation under apartheid – illiteracy, poverty, rural isolation, and oppression of various kinds (race, gender, class, and political; also, most strongly in the case of rural women, under traditional authority structures).

Instead of exploring innovative ways to involve those who would be newly incorporated into a shared society, the new state became the product of negotiation and compromise between elites, namely, between leaderships

representing the militarily and economically undefeated apartheid state, and those of the opposition – primarily what had been known as the 'Mass Democratic Movement'. The vibrant organisations of civil society and popular uprisings that characterised the struggle years were eclipsed from their roles as direct participants, their power abstracted to use as a bargaining tool during negotiations.

So, is a new form of state order in the process of creation in this new South Africa? If so, is the new form an adaptation to conditions of imprisonment within the processes and institutions of globalisation, and/or within the legacy of apartheid? Is this state formation something within which, in the view of President Mbeki, 'the overwhelming majority of our people consider themselves as actors ...' (2002: 1)?

Such an assessment of the post-apartheid state needs to be considered in terms of four broad issues, even if a final verdict is far from possible. First, we must affirm that analysis of the state in South Africa is inevitably obligated by its descriptive prefix, 'post'-apartheid. The post-apartheid state should be measured by the manner in which it came into existence, as reflecting a commitment by people attempting to redress an oppressive past and create a humane society. Such commitment to a multi-faceted rupture gave rise to the Constitution, a checks-and-balances document both for the state as an institution and for individual state agents within it. At the heart of this redress is the question of what the state has inherited in terms of social inequalities, and how it has confronted that legacy.

The second issue is to assess the sources of the political legitimacy of the current state, to assess the extent to which it reflects a durable relationship between citizens and state. The (non-)transformation of the ANC from liberalisation movement to ruling party raises important questions about the nature of its hegemony. As a formal representative of a people the modern state is about ideas of what is supposed to be and what exists; it is about notions of nation; about a moral order in which expression is given to the values of the society, both internally between citizens, and in its relations to the rest of a world consisting of states; it is about belief and trust in the impartiality and the efficiency of the practices of civil servants, especially those charged with delivery in welfare services, security, justice; in the efficacy of each vote in shaping society; in the strength and durability of democracy; and its continual adaptation to new conditions.

Third, the state may be assessed in terms of its effectiveness as a delivery mechanism to the people it represents, the actual structures and institutions that have been retained or created to suit the needs of the new inclusiveness that characterises the country at a political level. The state is about structures, institutions and practices, and about the individual agents that fulfil the many tasks required of the ideal of an impersonal and efficient bureaucracy that Weber characterised as the essence of the modernising and modern state. This demands that we also assess the abilities and shortcomings of the state and the causes, as well as the effects, of failure and of successes.

Finally, the state should be considered as a site of struggle between competing interests, most especially between class interests. This means addressing the state as existing within a capitalist system with struggles over the resources, benefits and rights that the state has the power to ensure or mediate. The state has a monopoly over the legitimate use of powers of social order and repression, but also those of allocating important benefits to citizens. Who gains and on what basis are they fighting for what?

While these four considerations do not formally structure the discussion that follows, they form the basis of my investigation into the state of the post-apartheid state.

This paper, exploratory and suggestive as an introduction, is presented in two broadly-defined sections, framed by the four questions above: first, thinking about the apartheid state and the nature of the transition and, second, locating a discussion of the post-apartheid state within its own local specificity. This, the first chapter in this volume, sets out to suggest ways both of theorising the state and of assessing its mode of operation as we move towards the third post-apartheid elections in 2004. The chapters that follow are more concretely located.

The apartheid state: What was it?

Pre-1994 debates on the apartheid state were at times heated, but there was general consensus on its essential elements. In the first place, it was a state form based on notions of race that demanded and justified the exclusion of the majority from any involvement in the central institutions of power. The racialised native population was further fragmented into ethnic 'nations'. The way in which race categorisation was achieved and firming under apartheid has been the subject of scrutiny (for example, Dubow 1995; Posel 2001a, 2001b). Posel notes that rather than engaging in the 'uneconomical waste of time and money' to try and determine race 'with precision', the National Party (NP) government instead engaged in a 'deliberately more flexible, elastic approach to the definition of race categories' (2001b: 55). The 'confidence in the authority of everyday experience as the site of racial judgement' (Posel 2001b: 56) that characterised this approach, unfortunately lives on – something to which I will return.

Second, the apartheid state was also analysed as a peripheral capitalist state that relied on a migrant labour system, which allowed a form of cheap labour that was required especially by the mining industry. The migrant labour system itself rested on the maintenance of a spatially and socially separate society of subjects (to be distinguished from the citizens that formed part of the modern democratic state), and, therefore, also a specific gendered order (where a migrant system of single males relied on the continued subsistence production of women in spatially-separate areas) and reliance on traditional authority for control over and legitimisation of distinct social relations (Mamdani 1996). One reason for the defeat of the Boer Republics was that British imperialism needed a more efficient and centralised form of control over labour for the mining industry, perceived to be the engine of growth in what was to become the Union of South Africa in 1910, while continuing with and establishing extreme forms of segregation. From its inception, therefore, the state was tied into a global system of markets, based on its raw materials extraction, where diamonds and gold played a central role from the second half of the nineteenth century.

The apartheid state upheld and regulated an existing economic system that was, therefore, most often characterised as racial-capitalism. Freund has, however, questioned the value of such a slogan in terms that remain appropriate: He questions the extent to which 'one can simply so marry racism and capitalism. Moreover, it can lead to a fancy way of talking about racism without taking the problem of capitalist values and forms seriously' (1986: 127–8). The class system followed lines that approximated the racialised divisions of the country: an overwhelmingly (but not exclusively) white bourgeoisie; largely skilled and supervisory workers, drawn from the white population, and supplemented by Indian and coloured workers where legal or *de facto* preference areas were created (Western Cape and Natal). The proletariat (urban and rural) and non-commercially active rural population was overwhelmingly black African.

The segregationist and apartheid state was a site of contestation between different class interests. O'Meara, for example, argues that from 1933 to 1939 the 'struggle between the national and metropolitan-oriented fractions of the bourgeoisie eased slightly ...' (1977: 186), illustrating this approach. The structures of the state illustrated the struggles for control and direction, especially at the level of advantage to fractions of capital. Policies relating to migrant labour and urbanisation most clearly reflected the contest between different fractions of the bourgeoisie – such as between agricultural and mining capitals. O'Meara notes that the NP benefited from the apparent ambivalence of the United Party on the issue of labour stabilisation through a relaxed policy on urbanisation, and came to power when Afrikaans-speaking workers, farmers and petty bourgeoisie combined to take control in 1948 (1977, 1983). O'Meara (1996) displays this analytical approach with greater complexity in his analysis of the 40 years of apartheid domination of the state. Hudson and Sarakinsky (1986) added the role of an urban African bourgeoisie as a factor in relation to struggles over the direction of the apartheid state in the mid-1980s.

Third, the apartheid state inherited the Westminster model of parliamentary representative democracy established in 1910. The issue of the apartheid state as also a democratic state was often overlooked in the literature – serious and polemical – in favour of simple condemnation. The fact is, however, that by the time of the transition, institutions of democratic representation had long been in existence in South Africa, attendant with a long undeniably tradition of democratic participation and representation of interests – even if applied

to a specified margin of the population. It was thus why some analysts described South Africa as an '*herenvolk* democracy' (Adam 1971), while it is that very democratic participation by the *herenvolk* that adds, in the eyes of some, to the culpability of white voters (see Alexander 2002).

In addition, the apartheid state was also a repressive state, employing the range of institutions at its disposal to maintain both the racial order – against all those deemed not to be white – and the capitalist – acting against trade unions and trade unionists. Here too, the state was partnered internationally in a range of issues – from training in torture procedures to development of nuclear and biological and chemical weapons. South Africa was also a successful exporter of arms in this highly competitive market (and contentiously continues with this lucrative trade to this day).

During the PW Botha era (1978–1989), the form of South Africa's race-exclusive democracy was eroded. Parliament and the Cabinet were peripheralised during this period, as Botha created a parallel state system of security structures, and centralised control into his office through a National Security Management System. The Office of the State President was characterised by Swilling and Phillips as:

the lynchpin of key strategic thinking and action. By 1988 this office and its incumbent had become the most decisive decision-maker in the state – a level of power centralisation not uncommon in societies going through a violent interregnum. (1989: 80)

It was these structures that FW de Klerk attempted to dismantle before the period of transition.

While there was general agreement in the apartheid-state literature about the central characteristics of the apartheid state, there was much less consensus in debates about the relative weight to be given to class and race elements in their explanatory power – as separate or in their articulation. This meant that the resolution of the problems created by class and race dynamics in the construction of an alternative future society was not agreed upon generally. Some held that the racist or racialised state placed a massive hindrance in the way of unfettered capitalist development. This position was best reflected in what became known as the 'O'Dowd thesis' (see O'Dowd 1974, 1978). Its logic was thus – the market would in time do away with the racist order and do so without the need for revolutionary struggle; in its place, capitalism would flourish and the country would join the ranks of the developed world.

A second analytical position theorised a relationship of mutual ('but, importantly, non-essential) effect between class and race. Racism had allowed the very rapid growth of capitalism in South Africa, and along with the mineral wealth and the ability to attract skills during the nineteenth century, infrastructural development and a measure of industrialisation had taken place. This was in contradistinction to other settler-colonial states in Africa. South Africa had, therefore, managed to escape from total dependence on mineral extraction. Lipton best articulated this position from a liberal perspective. She argued that 'the standard question in the debate about South Africa – whether economic growth shores up or erodes apartheid – is too crude and needs reformulation. The first question is: what kind of economic growth?' (1986: 9).

A more radical take on this same position was that while it was possible to support the National Democratic Revolution (NDR) (that is, the creation of a normal, non-racial and democratic capitalist society), this would not lead inevitably to socialism. Where the successful NDR would lead would depend on struggle – in which the working class would play the leading role – towards a society that must be rid of capitalist exploitation, one that would at the very least have to redefine itself away from the existing racialised cheap labour system. For radicals who saw race and class as mutually interacting variables, the revolution would require two stages – the second driven, as Freund pointed out, by the working-class organisations, the only elements that 'have an interest in pressing forward with socialist demands meaningfully' (1986: 124).

Third, an argument was advanced for an essential link between capitalism and racism in South Africa. In this view, to destroy racism (apartheid) was to destroy class oppression (capitalism). It was, therefore, possible, and made sense, to support a broad, multi-class struggle against apartheid, even if your support was aimed at the demise of capitalism (see, for example, Cronin & Suttnar 1986: 129; Hudson 1987: 57).

While the 1980s was marked largely by popular struggles, some analysis focused on the class nature of society. The apartheid state was in obvious and growing trouble, brought about by both visible and extreme forms of protest within a multitude of sites (from townships to the workplace, from religion to sport), as well as by structural problems in the economy (both internal and international). This crisis had to be addressed. Thus, some contributors to the *South African Review* (SARS 1983) described politics in South Africa as being

in a process of restructuring designed to conserve the system of racial capitalism. The state was characterised as reflecting an alliance between the government, big business and the military. Apartheid was seen as setting the limits to the unfolding of the tension between, on the one hand, repression, and, on the other, reform and restructuring: the link between race and capitalism demanded the continued exclusion of the racialised majority – contributing to the general tension (SARS 1983).⁴

These debates are central to the task of understanding the dynamics of the transition and the restructuring of the state it entailed. They marked the points of active contestation over the shaping of the new state. For, if the dominant perception during the struggle against apartheid was that the state was essentially racially exclusive and only secondarily, economically exploitative, then the restructuring aimed to make the new state reflect the racialised demographics of South African society. It therefore would enable a new aspirant and racialised bourgeoisie to emerge as the prime beneficiaries of new state policy, in odd echo of the previously powerful who benefited from the struggle for *volksparkitalisme* 60 years earlier (O'Meara 1983, 1996).

To be sure, the inclusion of the majority of South Africans into a new franchise system had to alter the balance of forces to include new, now legitimate, demands for welfare, infrastructure development, education, health benefits and so on – something that was notably absent from the apartheid society. And it was to be expected that in the new order it would shift such demands off the street and into the terrain mediated by political representation – that is, into parliament, policy-making and elections. Potentially, these new agents would then be involved in structuring society. In other words, it could be expected that the poor and oppressed, overwhelmingly women, would be given greater leeway in struggles over state form and direction. However, as O'Meara reminds us, '... there are real structural limits to the efficacy of agency' and what he terms the 'boundaries of the possible' (1996: 482) are set in ways that are not necessarily directly reflected in the notion of majority rule.

If, on the other hand, the dominant interpretation of the past had been that the system was capitalist, within which racism and racialised exclusion served to bolster a particular form of exploitation, then for this position to carry the day the working class and those sympathisers located within the liberation movement would have strongly advanced an alternative, amounting to a rupture with the apartheid state and the dominant interests within it.

However, as indicated above, this position was neither dominant nor homogeneous – the two-stage revolution would immediately dilute demands for the inclusion of radical demands within transitional negotiations.

The state in transition: 1990–1994

Inheriting the apartheid state?

The government that came to power in 1994 operated with a commitment to alter the social landscape within an absurdly short time – and hence with possibly the wrong tools. The worst of the calamitous social inheritances were inequality and exploitation, racism and race thinking, and the relegation of women to a peripheral role – within a context that had not been experienced before: the horror of the HIV/AIDS epidemic with its cumulative decimation of society.

Moreover, the country's full global integration occurred immediately after the political change measured by the seismic event of the fall of the Berlin Wall – a condition that affected the previous regime in immeasurably different ways from those that shaped the new state, or that set new parameters of possibility in its actions. I have already mentioned that South Africa, since Union in 1910, owed its growth to integration into primary commodity markets. If two broad periods characterised the pre-transition period (British domination and then the post-World War II integration into a world shaped by the Cold War), the world in which the ANC, the apartheid state, and national and international pressure groups during the negotiations found themselves was that of turmoil after the fall of the communist alternative.

Both in terms of practical support and an ideological alternative to capitalism, the collapse of the Soviet Union affected the confidence of both main parties to the negotiations process; it strengthened, however, the neoliberalism of the new world order and the apartheid negotiators wishing to minimise disturbance of the essence of the old order; and it provided ammunition for those who were all too willing to argue that there is no alternative to competing for a place in global production and consumption.

The ANC's negotiating position was also severely constrained because conservative forces to the right of it had not been defeated effectively, and during negotiations the threat of a far-right and military counter-offensive remained. Structurally, too, there were demands on the state form that had to be acknow-

ledged. The legacy of apartheid is not only to be found in social conditions. At most levels, the state was inherited. This meant that state structures themselves had to be reformed to meet the demands both for the extension of functions (where quantitatively more and qualitatively more diverse people had to be serviced by a central state) and the extension of access (to people – black people and women particularly – previously excluded from participation at the higher levels). It should hardly surprise that the political transition to democracy in South Africa has been condemned by some as an incomplete transformation. Alexander, for example, notes that ‘...since its inception in 1912 and throughout its history, the ANC has never been a revolutionary organisation. Its leadership was not even rhetorically committed to the overthrow of the South African state’ (2002: 46; also Marais 2001). Alexander notes as well that the international legality of the apartheid state was not questioned.

To be sure, some state departments restructured their functions and some structures were completely abolished (for example, the bantustan authorities and the tricameral parliamentary system to cite the most obvious). Yet mechanisms for change, other than market forces, have been left up to policies of affirmative action, the handing out of rewards for decades of loyal service in the struggle against apartheid, and the need to ensure a new social commitment beyond the narrow confines of the exclusivist apartheid state (see, for example, Hugo 1990, discussing affirmative action in the public service).

The Mandela presidency and the state 1994–1999

Ensuring loyalty

The uncertainty of the transition provided Nelson Mandela with the greatest challenge of his presidency, namely, to ensure a balance between the clear need to effect rapid change to meet the demands of a majority that had been excluded from state benefits, and the need to achieve loyalty to the state from dominant or threatening elements within society. The former, it was believed, would be loyal as long as service delivery and steps towards a state that reflected their aspirations were rapidly addressed; the latter if it could be seen that neither lifestyle nor opportunities in the longer term were under threat. The focus from Mandela was, therefore, on changing the face of government, and engaging in gaining the symbolic capital that would ensure national loyalty, even while restructuring took place. Events such as the Rugby World Cup, tea with Bestie Verwoerd, the notions of the ‘miracle transition’ and the

'rainbow nation' were examples of this shallow and symbolic, but also effective, exercise. Similarly, the 'sunset clause' ensured that too rapid a change of personnel in the state structures did not occur due to the pressures for redress through affirmative action.

But this attempt at legitimising the new state, through both looking backwards and forwards to meeting the needs of the newly enfranchised, was bound to be an uneven process. Continued reliance on many of the agents of the previous state, both black and white, left certain departments and activities vulnerable to heel dragging and even to sabotage. Positive signs, however, were the Constitution (of which more below) with a left-leaning Constitutional Court; emphasis on getting into place affirmative action legislation (although the *Employment Equity Act* was some years off); speeding up of black economic empowerment – that had already started during apartheid; a commitment to gender equality and affirmation of women; and restitution and redistribution of land.

At the same time, however, there were signs of disappointing continuities as well as unexpectedly rapid breaks. A continuity that promises to continue to create disturbances in the social landscape was that of accepting the racialised past, with its view of the population represented in the four spokes of the national wheel. The population continued to be addressed in race terms, and individuals were expected to behave in terms of race solidarities, and events were often in the first instance interpreted in racialised terms (see Maré 2001, Posel 2001b). Mandela was also guilty of this, such as his reprimand to dark-skinned journalists, pointing out clearly where he saw their loyalties properly lying, and where criticism was seen as traitorous behaviour.

An example of the unexpectedly rapid change was the departure from the RDP, a programme that had provided continuity with the rhetorical commitment to the Freedom Charter in the ANC's first election campaign. Two years after these first elections, the RDP with its 'growth through redistribution' approach was superseded by the 'distribution through growth' mantra that has since driven macroeconomic policy (see Padayachee 1998 for a discussion of policy formulation before and during the transition).

Whatever else may be said in retrospective evaluation of Mandela's presidency, the overwhelming evaluation will always be in terms of the transition to democracy and his iconic role within that. That role also left the state with the imprint of an organ of power with a human face.

The Mbeki presidency and the state 1999–2003

Freezing the 'National Democratic Revolution'

Ideological contestation for hegemony within the state has been both open and vicious, as well as diplomatic and cloaked in the language of struggle solidarity (that is, as a question of location within the 'movement'⁵). Mbeki's repeated reiteration of the NDR as the hegemonic project of the Post-apartheid state has been a pointed reminder to the ANC's Alliance partners of the limits of state restructuring and of government policy. But now, in distinction from the struggle past, the NDR is being presented as an end in itself and not as the first of a two-stage process. The near total disappearance even of a mention of the Freedom Charter, (never mind debates over the tenuous socialist content of the clauses of this document which was so central to mobilisation during the struggle against apartheid), is a pertinent measure of the extent to which Mbeki's ANC no longer feels it necessary to cast the ideological net wide. Instead the NDR, expressed through black economic empowerment and employment equity policies at higher levels of the state, serves to direct state policy. The employment of race categories and racialised justifications by the ANC ring increasingly hollow as the dynamics of multi-racial capitalism unfold and the poor and the sick are still left behind.

While economic space within a capitalist framework has opened up visibly under Mbeki, the liberal space created in the immediate aftermath of 1994 and during Mandela's Presidency is closing down. An intolerance of dissent marks Mbeki's style, with pressure on the media more consistent than was the case with Mandela's occasional outbursts. The government has even had to take on the Constitutional Court as that state organ is called upon to enforce service delivery. It is difficult not to see repeated calls for the transformation of the judiciary as anything other than a cry for a more conservative and pliable high court system.

While the continued assertion of the total relevance of race in understanding and acting on society has never been in question at the level of government, the Constitution did prohibit the inappropriate racialisation of post-apartheid South Africa. However, inside Mbeki's ANC, notions of race are used more and more as a tool of explanation – and to justify certain actions (or inactions). Thus, for example, the DA is written-off as 'white' and ignored; in Zimbabwe, the Movement for Democratic Change is conceptualised not as

representing the interests of flesh-and-blood (black) Zimbabweans, but as a ‘puppet’ of the (white) British. The Zimbabwe African National Union-Patriotic Front (Zanu-PF), however, (while perhaps guilty of some mistakes) is seen as representing the real aspirations of black Africa. Across a spectrum of issues – inequality, capitalism, the HIV/AIDS epidemic, criticism – one sees a degeneration of the national debate to a level of race populism.

Simultaneous with this intolerance of dissent, commentators have remarked on the centralisation of power under Mbeki. This is reflected in the growth of the Office of the Presidency, and the peripheralisation of Parliament as a forum for debate – non-attendance by Cabinet members and by the President; a very low level of debate; a lowering of ethical standards (not to be measured against apartheid standards but against those set by the movement itself); and instead, a preference for political solidarity (Daniel 2001/2).

A ‘post’-apartheid state?

So, is there a new state in this new South Africa? At an obvious level, and no less important for that, the answer is an emphatic ‘yes’ with the new state reflecting in subtle and fundamental ways the momentous changes that have occurred in the country since 1990. It does, after all, reflect the victory of the majority for inclusion in democratic practices, and the Constitution stands as symbol of, and tool for, realising that victory. But the specifics of the victory, the special benefactors amongst the victors, the short- and long-terms gains, these and many more aspects can only be judged over a longer period, and not in the flux that continues to characterise the ‘new’ South Africa. It is not avoiding the issues to say this. The turmoil of transition cannot settle, to the extent that it ever settles, so soon.

The centrality of gender issues and gender equality is one such ongoing issue. Govender can note that: ‘In contrast (to the United States of America), in the last five years South Africa has developed one of the best constitutions in the world in terms of its commitment to building substantive gender equality ...’ (1999: 3), but qualify it by referring to the legacies of apartheid, to attitudes that need to change, to the operation of state departments, and to budget decisions that do not give substance to such praiseworthy commitments. The *Women’s Budget* series offers one indicator of practical implementation, or of failure to do so, of constitutional commitments. Others are to be measured against the actions of the Commission on Gender Equality and the Office on

the Status of Women, and against the efficacy of the extension of citizenship to all South African women in alleviating inequalities (see Hassim 1999). The analysis of a gendered state is not to be achieved through measures that focus only on the position of women, but, as Manicom has argued writing on the apartheid state, ‘gender does not feature in the race-class debate ... and it is certainly far from conventional to refer to the masculinist state, the patriarchal state – along with the colonial/segregationist/apartheid/capitalist/reformist state in South African history’ (1992: 444). And it certainly still is not ‘conventional’ to do so.

Earlier, I identified four issues that would allow us at least to make some temporary evaluations, and to indicate positive and negative measures against which to analyse: first, the rupture from apartheid; second, sources of legitimacy for the new state; third, and related to the second, the success of the state as service deliverer; and, finally, the state as site of continuing struggle.

The rupture with apartheid

The break with apartheid is, as already indicated, complete in certain respects. In others, however, the modern state at the end of the twentieth century is a given in terms of its functions. The state continues to ensure the relations of private property, now even more so in terms of intellectual property; it continues to maintain the conditions for profitable investment, and the free circulation of commodities; it ensures territorial integrity, with the increasingly important concomitant of control over the movement of people; it negotiates in the global forums for the most favourable deals for the ‘commanding heights of the economy’; it acts as the representative of a state in dealings with other states; and it controls the legitimate use of force and the major institutions of socialisation.

As such, the post-apartheid state has never questioned the external boundaries of the new state. As a member of the Organisation of African Unity (OAU), now the African Union, it has internalised the mantra of not contesting inherited colonial boundaries, even though these are to the detriment of some of South Africa’s neighbours, notably Lesotho. While internal remapping removed apartheid’s bantustan borders, more significant was the move away from the social content of those spaces (as ones of extreme discrimination: labour reserves, locations of the ‘surplus people’, places of overt bias in allocation of welfare, infrastructure, services, or whatever other

measure one employs), as well as the reasons for their existence (a clear and violently enforced alternative to political and social inclusiveness). But even in the abolition of the bantustans, limits to transformation have been acceded to. The Inkatha Freedom Party (IFP) has been allowed to ensure that the issue of the powers and status of traditional leaders remains on a burner, even if not consistently at the front, and it has found increasing support from across the country for the maintenance and even extension of such authorities. Along with the ANC's far from resolved position on the symbolic or administrative place of such agents and institutions, political manipulation of these distorted remnants of pre-capitalist society continue.

There are other areas where there might have been choices, although some would argue that 'realistically' there were none: South Africa is locked into dependence on international investment – including patents and copyrights, technology, and acquisition of sophisticated equipment, such as in the arms industry; and the country is tied to the organs of regulation of international capitalism, such as the World Bank and the IMF – although here the argument is that 'change from within' is quite feasible. But most centrally, South Africa has remained a capitalist state, an issue to which we have to return time and again, with its obvious and ever increasing displays of private wealth amidst the existence of public squalor. The frequent denials over the last few years that the ANC, rather than the SACP and Labour, ever offered a socialist alternative bespeaks of at least a modicum of embarrassment at the rebuttal of suggestions of alternatives.

In summary then, the post-apartheid state is the state of capitalism. While there remains a very genuine commitment amongst many to the general upliftment of all, it is contradicted by countervailing tendencies and by the choices actually made.

Legitimacy of the state

The Constitution that established an inclusive democratic order in South Africa is also the major source of its legitimacy. It has been seen to provide recourse for citizens, individually and as movements in civil society, to call the government to book. The Constitution of the Republic of South Africa commits the new state to non-sexism, non-racism and to act against all forms of discrimination. It has also been found that while it is accepted that the society was skewed before the transition to democracy, constitutionally the

new state is committed to redress and social transformation (see Govender n.d.: 14, quoting a 1997 Constitutional Court finding). To enable redress it qualifies the prohibition against unfair discrimination with a rider: 'unless it is established that the discrimination is fair' (RSA 1996: 7). Govender writes that: 'It was imperative that a constitution drafted for South Africa responded to this reality [of discrimination and inequality] and imposed obligations and established structural imperatives which sought to ameliorate this crisis' (n.d.: 15). The state is obliged to realise the socio-economic rights mentioned by the Constitution.

What this means is that the citizens have recourse to redress from the state other than during elections. The Constitution allows demands for the provision of rights to basic education, health care, and so on, to be enforced. Govender notes, however, that the Constitutional Court has found that there are times when the state can argue that the general provision of services outweighs the demands of individuals to these services, e.g. expensive health care, as in the case of Soobramoney (n.d.: 16). However, elsewhere it was found that the state had to provide a minimum (and progressively increasing) level of services. The Constitution has created 'a right to social assistance', which was enforced by the Constitutional Court in the case of *Grootboom v. Oosterberg Municipality and Others* in regard to shelter for children (see, for example, de Vos 2001; Liebenberg 2001; Sloth-Nielsen 2001).

De Vos argues that the Constitutional Court has accepted that the state has a transformative function that can be legally enforced. The Bill of Rights 'requires the state not only to respect the various rights, but also to protect, promote and fulfil them.' This means that the status quo of immense inequality cannot be accepted as given, but that the state must 'take steps to reach the rights-based goals that might at present seem difficult or even impossible to attain' (de Vos 2001: 261). It would be interesting to see if such legislation could be used to dispute the state's allocation of money through the budget, such as in the contentious arms purchases.

The TAC has also called upon the Constitution to achieve the goal of forcing the state to provide nevirapine to HIV-positive women giving birth in state hospitals. Judge Botha ruled that the state had a duty to undertake measures to prevent or reduce the mother-to-child transmission of HIV? (*Treatment Action Campaign and Others v. Minister of Health and Others* 2002). Here, however, the TAC has resorted to a public campaign of defiance to force implementation.

The Constitution has also created innovative institutions to give citizens greater direct or indirect call on the state for protection, access to information, representation, and so on. To mention some of these: the South African Human Rights Commission (SAHRC); the Public Protector; the National Council of Provinces (NCOP), each add another dimension to the new state form. The SAHRC, for example, has not only taken up the issue of racism in the media, albeit under a cloud of criticism and even ridicule, but also monitors the transparency required of businesses in South Africa under new legislation – such as the *Promotion of Access to Information Act* (2000) and the *Electronic Communications and Transactions Act* (2002).

However, the Constitution has also become a site of struggle in itself. This has occurred not just between the state and citizens (as indicated above), but because of the amendments to allow floor crossing between elections. The events surrounding this issue during 2002 – to strengthen, of all things, an ANC–NNP alliance, and to allow the ANC to take control of KwaZulu-Natal, the very province that provided the scene for a decade of killing fields, and where compromises were justified on the basis of the need to achieve peace – cannot but have harmed the legitimacy of the state, as reflected in the much lauded Constitution and in the democratic process.

As with most nationalist movements, the ANC presents itself as fulfilling a mission. That mission was entrusted to the ANC by ‘history’, but personalised by specific individuals who could give expression to it. This mission was defined in wider terms than the mission claimed by the ANC’s rival, Inkatha, during the years of struggle, but it mobilised its support in a similar way. While Inkatha was conveyed by its leaders as the vehicle of an ethnic mission to give voice to the Zulu nation, the ANC was entrusted with the broader task of ‘founding the African nation’. In the recent words of ANC Youth League (ANCYL) President Malusi Gigaba: ‘the founding of the ANC in 1912 was a culmination of this process [of resistance against colonial conquest] and was to fulfil the historic mission that earlier forms of organisation and struggle had failed to accomplish. Its historic mission was to unite Africans for national liberation’ (*Daily News* 03.02.03). Mbeki also makes a claim that there is an ‘historic goal’ to be realised ‘step by step’ by an undefined ‘we’, of ‘eradication of a centuries-old legacy of colonialism, racism and apartheid’ (2002:1).

Some sociologists argue that what distinguishes the modern nation from its pre-modern prototype is the obliteration of kinship as the principal means of

transmitting political status and its replacement with ‘free’ rational individuals under state bureaucracy and secular law, the implementation of a socialisation system of universal education to replace loyalty to clan with loyalty to a state (see Gellner 1983). In the case of South Africa, I would argue, to the contrary, that the idea of a ‘mission’ referred to by Gigaba (and others) creates a system of ‘moral kinship’ that is defined not by pre-capitalist kinship relations, but by selective inclusion in the ‘historic mission’ defined by the ANC. This is not a unique process, but is a feature of the modern quest for political control that has been shared by similar organisations (the rhetoric of both the NP and Inkatha is replete with examples). The mission creates loyalties, responsibilities and protection that fall outside the notion of an impersonal, rule-bound state and its meritocratic bureaucratic institutions. The effect is that the ANC’s historical mission demands conflation of the movement with the state, argues for the collapse of civil society into the state, and arrogates the dispensation of political morality to those who hold power within the ‘national liberation movement’.

This would seem to be the only way to understand the loyalties towards members (the cases of Alan Boesak and Tony Yengeni come to mind), a loyalty displayed as morally sanctioned through membership or participation in the historic mission (within which the abstraction, ‘the struggle’, was central). Furthermore, the sensitivity and extreme reactions to criticism (see Daniel 2001/2: 2) and to critical questioning of the basis of authority with which servants of the state operate might also be located in such an explanation. Loyalty becomes a means of controlling critical debate, especially serious in the ANC in its transition from political movement to ruling party, and a hazard that greatly limits the ideally even-handed and efficient functioning of the state.

Delivery

Service delivery is essential in maintaining the legitimacy of the state, and not just of the government in power. This is especially the case in a society with such gross inequality (not just poverty), as is the case in South Africa. Liebenberg (2001: 234–5), quoting United Nations Development Programme figures, notes that the country is placed third from the bottom of all countries on the inequality scale – only Brazil and Guatemala are lower. Posing the issue like this immediately confronts us again with the debate on race, gender and class, particularly the questions of whether we address inherited social

inequality through race-based or through class-based policies of redress, and of how gender is sidelined in both class and race discussions?

Inequality indicates discrimination, exploitation and accumulation, as well as the misallocation of the profits made from such exploitation. This applies also to the choices made and pressures applied on decisions on the allocation of taxes gathered by the state. Inequality relates, as well, to power relations that allow certain social groups to ensure the allocation of resources to themselves, or to effectively engage in capitalist accumulation. It also indicates a failure of effective priorities to address the situation. If inequality grows it would seem to be an indication of continuities in the system of economic exploitation, even if democratic reform has guaranteed a greater number of political participants. Political participation, if democracy is effective, does provide the potential that such power be translated in a more even distribution of welfare. This reality is a sore point of embarrassment, explaining the vehement and personalised reaction of the ANC in government to arguments (such as were recently levied by Professor Sampie Terreblanche (2003) in *A History of Inequality*, and through the publicity that preceded its publication) that inequality is worsening, not unexpectedly accompanied by the creation of a small but growing group of black beneficiaries – the black economic empowerment participants whose lobbying powers ensure effective use of the state as site of struggle. The issue of poverty and inequality is indeed desperate and compounded by the effects of AIDS. While certainly not medically discriminating, it is amongst the poor that HIV/AIDS cuts its swathe of destruction most swiftly.

The new state did not create capitalism, did not actually ensure the spread of property relations, did not separate people from direct access to and control over the means of production – what Marx called ‘primitive accumulation’. That founding process had occurred under colonialism, and had been extended and maintained since 1910 through the policies of various governments. Instead, unless the capitalist route was to be abandoned in the short or medium term, the post-apartheid state was required to liberalise the boundaries of capitalist control and ownership by deracialising it. Of course there were many black capitalists before 1990, but they were largely located in the bantustans and operated under extremely restrictive conditions (see Hudson & Sarakinsky 1986).

Yet, more to the point than actual participation in class exploitation – which is limited to a small proportion of the population – it is the growing ethos of entitlement to disproportionate reward that permeates the new South African

society, including the state, that affects both inequality and the ruthlessness with which wealth is sought. This is evident not simply in the corruption that is evident in political parties – ruling and opposition – but in the civil service and public control facilities, corporations and the like. It is also evident in the salary figures and justifications of university vice-chancellors and chairs of councils, of chief executive officers and directors of companies, of the discrepancies between entry-level police men and women and their senior officers. My point here, however, is not about the level of corruption (which may well have been more extreme under apartheid, especially in the arms and fuel industries, and around services and facilities delivered to voteless black people), but about the social location of so many cases that have come to court or may still do so, and the manner in which accusations and even convictions are handled. In the numerous cases, of which Tony Yengeni, Winnie Madikizela-Mandela, Joe Modise, the Shaik brothers, and even the Deputy President, Jacob Zuma, are but a small sample, it seems that principle of service counts for less than political solidarity.

This cannot but undermine the legitimacy of the state. Inequality and rampant consumerism must have an effect on the way a society thinks of itself and of the state. It will affect those who benefit or who realistically expect to benefit very differently from the mass of excluded people. French sociologist, Alain Touraine, writing about Algerian urban youth and their availability for Islamic fundamentalism, noted: ‘Their anger was directed against a Western producer-consumer society that was at once so close and so inaccessible’ (2000: 115). The forms that such anger take will, of course, vary from one historical context to the next, but the signs are here too.

Inequality, therefore, demands redress and efficient service delivery. The Constitution commits the state to such delivery, making some of the recent rulings appropriate to mention in this context. The commentators on the Grootboom case referred to above, draw attention to the Constitutional Court’s emphasis on the ‘reasonable implementation of policy’ and not just formulation of policy (Liebenberg 2001: 242). Liebenberg concludes her case study of state social assistance by stressing that there are two ‘key implications’ of the Grootboom case: first, that ‘any policy development must include as an integral component the need to ensure the effective implementation of the relevant social assistance programme’; and, second, ‘the state is obliged to expand, and not reduce, access to social assistance rights by those who are unable to support themselves and their dependants’ (2001: 250).

This point is raised here not just because it reflects the functioning of the state and its abilities and efficiencies, but also because it reflects on the relationship of citizens (and in this case especially the poor, rural people, women, and so on) to the state at a level of trust and of its legitimacy.

A recent case in KwaZulu-Natal highlights what I am referring to. In early 2003 a massacre took place in KwaMare, about 20 kilometers from Bergville in the northern Drakensberg region. Galina Xaba (64), her daughter and five children were shot and then burned in their hut. Local people, and the mayor of the uThukela municipal district, link this regrettable and horrifying incident directly to the inability of the local police to curb stock theft, and bring the culprits to book. Instead a vigilante group, calling itself the 'Black Scorpions' has recovered 80 per cent of stolen cattle since its formation, as against the two per cent recovery rate of the South African Police Service (SAPS). The success of the Black Scorpions is clearly related to extreme tactics, with several people dead after questioning (*Mail & Guardian* 07.02.03). This is simply one example of vigilante activity attributed to the failure of the police. On 9 February 2003 it was reported in news telecasts that the Minister of Safety and Security, Charles Nqakula, had admitted that the SAPS did not have the resources to fight crime effectively in South Africa – an astonishing statement, if not the first such statement.

In addition, the police are deliberately targeted by criminals, undermining morale even more than low salaries and unequal remuneration. While the situation has not yet reached the level of Colombia where, as the drug cartels' assault on the Colombian state increased (from 1985 to the early 1990s), 200 judges, 1 200 police and more than 150 journalists were killed (Adelman 2002), the levels are much higher than in comparable countries.

Corruption, too, is widely linked to inefficient policing, while members of the public have come to expect corrupt behaviour as well as the inability to enforce laws. Legislation is passed to enforce the use of hands-free cellphone systems, but it is soon said by the Commissioner of Police that it will not be enforceable; the Minister of Transport responds to the holiday-time carnage in 2002/2003 by saying that there are simply not enough officers, and that corrupt officials make it impossible adequately to apply laws. The University of Natal's Accident Research Centre notes that in a study that it undertook, 82 per cent of the 80 traffic officers interviewed said that they knew of another officer who had taken bribes, while similar percentages of both drivers and pedestrians believed that bribes were regularly offered and accepted.

It is becoming acknowledged in an increasing number of areas that even if legislation is passed, the ability to act on it – and to enforce it if required – remains beyond the reach of state organs, or open to abuse and non-compliance because of corruption. In the area of pollution control and environmental protection generally, corruption is extensive – with the most recent high-profile case being the allegations against senior politicians in the Western Cape (Peter Marais, former Western Cape Premier, and David Mlatasi,⁶ deputy Social Services Minister in the national government). National conservation director of the Wildlife and Environmental Society of South Africa, Cathy Kay, notes that: 'We have the best environmental laws in the world, but there's no political will to implement them' (*Sunday Times* 26.01.03). Here, as in so many other instances of the public good, it is the poor who suffer most under the consequences of environmental neglect, as they do directly in the area of social welfare.

It goes beyond whether the state is actually inefficient or corrupt and has to include the general perception by citizens of the functioning of the state. This investigation is, after all, directed at the form of state, of which perceptions shape the overall ethos within which the state is perceived.

Site of struggle

O'Meara concludes his analysis of the domination of the NP over apartheid South Africa with the note that:

analysis of state politics requires a complex and necessarily fluid understanding of the competing power bases within the state, the various (and competing) political and bureaucratic cultures through which actors understand their places in the broader scheme of things, the issue-areas at the heart of state politics and the personalities of the individual actors concerned. (1996: 485)

Such an investigation and analysis cannot be undertaken here. It does, however, need to be highlighted as necessary for further theorising and empirical investigation. I have indicated the areas within which such an investigation of the state as site of struggle needs to be located: class, gender, race, ethnicity (if by that we refer to claims for particularist recognition on the basis of ethnic social identities – such as recognition of traditional leaders, claims to land, language rights, and so on). Struggle is certainly not to be seen as undesirable. On the contrary, the absence of struggle and the closing down of space within

which it can occur is to be guarded against. What it demands is a focus on the issue of power, and how that is mobilised and where it is located.

There are institutions that serve as locations of struggle: constitutionally-created bodies such as the National Economic and Labour Council (Nedlac), the SAHRC, the Commission on Gender Equality, the Pan South African Language Board serve as examples. Nedlac especially, with its representation of labour, business, the government, and civil society, has shown strong disagreements on policy, and not only in strictly economic matters, such as the case of anti-retroviral policy early in 2003.

The struggles are not only about policy formulation, but also about the ideological justifications and approach that dominates within the state. If the working class is to contest the meaning of the NDR, specifically away from it being seen as essentially a victory of the aspirant capitalist class, then it would seem that it also rejects a racialised post-apartheid. With the re-racialisation of politics and the economy, a victory for a black bourgeoisie meets the ideological requirements of both international capital and conservative states, and can be proclaimed a victory for black people – much as Buthelezi had done in his racialised and ethnic populist mobilisation during the 1970s and 1980s, ‘every successful businessman a brick in the wall of black nationalism’, to paraphrase him somewhat.

To perceive the state as site of struggle between competing interests is only half the battle, and this returns me to the starting point: the state reflects changing power locations, and it reflects this in many sites, including ‘non-state sites’ as Manicom has pointed out in relation to ‘gender regulation’ through ‘churches, familial relations, indigenous social organization’ and so on (1992: 457). Such an approach presents social scientists with fascinating studies of the state as a new form, reflecting both old and new social agents.

Conclusion

In opposition to theorists who saw the South African social formation as a ‘special type’ of colonialism, Freud wrote in 1984 that to see the struggle against apartheid as an anti-colonial struggle ‘misses the mark in a country which, despite its colonial roots in history, has been effectively independent for decades’. He concludes by contrasting an Africanist and a Marxist perspective on change in South Africa. The former would see it as the last of a ‘long trail of victories for nationalism’; whereas the latter would see a revolution

which would ‘provid(e) Africa with its first industrialised socialist economy and bring about a storm that would be likely to sweep aside crisis-ridden regimes over half a continent’ (1984: 288; also see Freund 1986). Instead of this appealing vision we have a South Africa that is propping up the crisis-ridden neighbour Zimbabwe from anything but a socialist base. Does this mean that we have to place the South African transition and state within the long line of African transitions that utilised the state for enrichment of a bureaucracy and rapid class formation into a dependent bourgeoisie? Or do we instead have a complex set of (complexly articulated class, gender and race) contestations, occurring under conditions, internally and globally, vastly different from those that applied during the wave of decolonisation?

Most immediately, the transition in South Africa demanded that at the level of political structures and of political representation of interests, the tension between reform and repression that characterised the transitional apartheid period be resolved through the democratic incorporation of all South Africans under equal citizenship rights; but it did not demand that capitalism, as a system, be abandoned or even altered to the extent that the phrases in the Freedom Charter expressed the crafted expression of 1950s ‘popular will’. Rather, the transition demanded that measures ensure the continuation of the capitalist system, and to maintain South Africa’s specific location in terms of global capitalism. The NDR was a call for extension and for incorporation – extension of social and political rights and obligations, and incorporation (for some) into the ruling class.

Notes

- 1 Mathatha Tsedu (now editor of the *Sunday Times*) recently used the phrase: ‘Rebuilding a nation from the ashes of a past like ours is a daunting task’ in an editorial (*Sunday Times* 26.01.03).
- 2 There is an awkward contradiction in politicians and commentators wanting both to claim the defeat of the apartheid system (and hence of the state form that gave it continuity – the ‘ashes’ argument), while simultaneously to hold on to a selection of ‘legacies’ that continue to bedevil the post-apartheid social formation (the foundations of the inherited-house argument).
- 3 See Marais (2001: 2) for the application of this idea as characterising the liberation movement’s approach in South Africa.
- 4 It would be an interesting exercise to look at the vocabulary used to analyse from a critical perspective the apartheid social reality, as against the predominant concepts employed post-1990: then it was ‘classes’, ‘monopolies’, ‘black petty bourgeoisie’, ‘racial capitalism’, etc.

- 5 The governing party sees itself as a 'movement' which raises interesting questions about the separation of a state – seen as the fulfilment of a mission of a 'movement' – and the existence of the ANC as a governing 'party' – protector of a multi-party democracy for which it had fought.
- 6 David Malatsi could serve as an illustration of several other continuities serving as he does in a government that now includes not only the IFP, the Pan African Congress (PAC), but also the NNP. Malatsi is also one of many examples where the old apartheid, tri-cameral and bantustan political and economic elites have seemingly effortlessly become part of the new order – and this transitional migration goes far beyond the necessary compromises to maintain stability, as might have been the argument with high officers within the South African National Defence Force (SANDF) and SAPS, and includes perpetrators of crimes, security police, and individuals against whom questions of murder and assassination hang.

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