

13 Images of Punishment in the People's Courts of Cape Town 1985–7 : from Prefigurative Justice to Populist Violence

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INTRODUCTION

Since 1984, the intensified challenge to white domination in the wake of the tricameral constitution brought with it an attempt by extra-parliamentary groupings to establish organizations of people's power within their townships.² One of the components of people's power are people's courts (referred to in some areas as Street Committees) whose aim was to enforce a new morality, a people's morality that conformed to the political ideals of their liberatory projects. These courts took shape and operated during times of relatively high daily levels of pervasive street fighting and skirmishing between the armed state machinery – police and army – and predominantly young blacks in the townships throughout South Africa.

This case study of the formation and development of people's courts in Cape Town's African townships in times of heightened political struggle raises several issues. It describes the antecedents of people's courts as a product of incomplete colonial conquest and the lack of legitimacy of the criminal justice system of the apartheid state. In so doing it attempts to trace some of the historic roots of the people's courts at various stages of their development. Crucial to these images of punishment are a range of complex forces, among which are firstly the punitive practices of the state's armed forces in the context of a near civil war, secondly the political ideals of the liberation movements whose members attempt to influence the direction of the courts, and thirdly, the processes by which these courts are legitimated to the communities they profess to serve. And among the many questions raised is the degree to which informal structures in times of intense struggle need to be linked to political movements in order to avoid populist excesses diverting them from their projected path. This path, which included an attempt to enforce a new morality of a future democratic society is a precarious one. The attempts to pre-figure a part of a post-

apartheid adjudicative infrastructure were by no means assured of success as the developments will demonstrate.

It is still unclear how it came about that people's courts mushroomed throughout the entire country within a relatively short time period. Between March and August 1985 people's courts were established in all major African townships. The state alleges that there were 400 of them.³ In one perspective these people's courts may be viewed as an important pre-figurative project, an attempt to create adjudicative structures consonant with popular notions of justice for a post-apartheid society. The state alleges that this happened in terms of the M-Plan (the Mandela Plan) and was therefore in keeping with orders from the African National Congress. It is attempting to substantiate these allegations by means of the major current Supreme Court trials on the subject, in which members of such courts have been charged with treason, sedition, subversion, assault and other crimes. These attempts to criminalize the activities of the people's courts and to reassert the authority of the state evidently involves a basic struggle as to who shall define and censure political violence. The final outcome of this struggle remains to be seen. Meanwhile, a crucial question remains: to what extent did the people's courts embody pre-figurative visions of justice and /or to what extent was their dynamic provided by populist images of violent punishment?

We will argue in this chapter that this question cannot be answered in terms of any set of simple and categorical alternatives, and that the historical development of the people's courts is to be understood as a complex dynamic in a particular setting. The notion that the modern state is characterised by arrogating to itself the monopoly of violence does not stand without challenge.⁴ Ordering and enforcement take place throughout a spectrum of institutions, be they state institutions or others.⁵ Varying degrees of violence are utilized in such structures, and they receive more or less condonation from the state depending on the situation. In times of heightened political struggle in which an oppressed majority attempts to negate the legitimacy of the state and highlights unjust laws and the excesses of the armed forces, popular organizations often create alternative adjudicative and policing structures.⁶

Under such circumstances the whole question of legitimating the fledgeling structures is an extremely delicate matter, more particularly to the extent that the subject population has some choice as to which institution it prefers to use. Its choices are influenced by a whole range of factors, not least the perception of fairness of the competing structures. And one of the components of this perception is the level of violence meted out by the respective courts.

In the final analysis what may be at stake here are the competing ideals of two disparate systems of justice: state justice and collective justice.⁷ While both types of structures claim that they administer justice, the