

REJECTING RIGHTS: VIGILANTISM AND VIOLENCE IN POST-APARTHEID SOUTH AFRICA

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ABSTRACT

Academic and policy interest in the emergence, development, and efficacy of rights has increased substantially over the last twenty years. One particular effect that scholars have recently identified is the connection between the spread of rights across the globe and large-scale reductions in violence. While the expansion of rights may enable reductions in violence, the evidence in this article suggests the opposite may also be true. Drawing on ethnographic research on vigilantism in South Africa, a country deeply invested in the twentieth century rights revolution, the article shows how vigilantes have used the state's expanding rights regime to justify violence. Specifically, it examines the growth and spread of what was at one time South Africa's largest vigilante group, Mapogo a Mathamaga. Mapogo first emerged shortly after the country's transition to democracy and rapidly grew as its leadership preached a gospel that rejected rights, claiming that rights enabled crime and allowed immorality to proliferate. By assaulting suspected criminals, Mapogo's members claim that they are correcting the criminal, the post-apartheid state, and the flawed rights regime on which it is based, an outcome which the existing literature on rights and violence has difficulty explaining.

THE PAST DECADE HAS SEEN A MARKED INCREASE in books explaining large-scale reductions in violence.¹ The gradual downward slope in the rate

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1. Azar Gat, *War in human civilization* (Oxford University Press, New York, NY, 2006); Joshua S. Goldstein, *Winning the war on war: The decline of armed conflict worldwide* (Penguin, New York, NY, 2011); Human Security Report Project, *Human security report 2013: The decline of global violence – Evidence, explanation, and contestation* (Simon Fraser University, Human

at which humans kill or harm one another has been explained as the consequence of a number of interrelated, continuing processes including the rise of well-organized states, the economic returns offered by peace, evolving norms of non-violence, and increased humanitarian intervention by the international community.² Though the claims in these works are complex and various, an important argument is that humanist emotional impulses nurtured by the rise of modern states have made it increasingly less likely that people will consider engaging in violence against others. A key part of this process, scholars have argued, is the long rights revolution which began in the eighteenth century and has continued until today. As the empathetic emotions and equitable legal institutions enabled by the rights revolution advanced, the literature claims, virtually every form of violence – from murder to the use of torture, to cruelty to animals, to lynching – has declined.³

Yet even as scholars associate growing empathy and expanding rights with a long-term decline in violence, the evidence presented in this article suggests that the connection between the two is neither natural nor inevitable. Paradoxically, rights may actually elicit anger and enable violence. Where the literature on declining violence draws on long-run historical data, the argument presented here utilizes ethnographic research on vigilantism in post-apartheid South Africa to explore the effects of rights as they are put into practice. It shows that citizens often claim rights for themselves while denying that they should be afforded to others (criminals in particular). Rights, in other words, may not have the linear and progressive effects often ascribed to them in the historical literature. Instead, I show that the language of rights can be used to foment anger about rampant crime and justify violence against others. In this regard, the argument builds on existing scholarship on rights and vigilantism in South Africa,⁴ but more precisely identifies the mechanism through which rights can spur violence by engaging with the historical scholarship on emotion and violence and

Security Press, Vancouver, 2013); Ian Morris, *War! What is it good for? Conflict and the progress of civilization from primates to robots* (Farrar, Straus, and Giroux, New York, NY, 2014); Robert Muchembled, *A history of violence: From the end of the Middle Ages to the present* (Polity, Malden, MA, 2012); Steven Pinker, *The better angels of our nature: Why violence has declined* (Penguin, New York, NY, 2011).

2. For a review of this literature, see Azar Gat, 'Is war declining – and why?', *Journal of Peace Research* 50, 2 (2013), pp. 149–57.

3. See especially Lynn Hunt, *Inventing human rights: A history* (W. W. Norton, New York, NY, 2008), Chapter 2; Pinker, *The better angels of our nature*, Chapter 7.

4. Lars Buur, 'Democracy and its discontents: Vigilantism, sovereignty and human rights in South Africa', *Review of African Political Economy* 35, 118 (2008), pp. 571–84; Lars Buur and Steffen Jensen, 'Introduction: Vigilantism and the policing of everyday life in South Africa', *African Studies* 63, 2 (2004), pp. 139–52; Barbara Oomen, 'Vigilantism or alternative citizenship? The rise of Mapogo a Mathamaga', *African Studies* 63, 2 (2004), pp. 153–71; Deborah Posel, 'Afterword: Vigilantism and the burden of rights – Reflections on the paradoxes of freedom in post-apartheid South Africa', *African Studies* 63, 2 (2004), pp. 231–6.

flipping it on its head. In doing so I show how, instead of fostering empathy and corresponding visions of individual moral autonomy, expanding rights may produce feelings of anger, claims that rights foster immorality, and violence that seeks to 'correct' this supposed problem.

To make these arguments I draw on interviews and ethnographic research conducted at an anniversary celebration for Mapogo a Mathamaga, at one time South Africa's largest vigilante group and an especially important example of a more general process.⁵ South Africa is a particularly apt place for examining claims connecting the extension of rights to reductions of violence. It democratized in the midst of the late millennium's 'rights revolution' and created a constitution often lauded for enshrining some of the world's most expansive political, civil, and social rights guarantees.⁶ As a result, South Africa has often been cited as a beacon for what the extension of rights can offer to opponents of authoritarianism. Yet, just when the South African state was championing its new rights regime in the years immediately following its 1994 democratization, vigilante violence exploded and has not abated since.⁷ The evidence presented here suggests that this was no mere coincidence and that anger over the alleged effects of these new rights has enabled the proliferation and continuation of vigilante violence. In short, contrary to the expectations of the literature on declining violence, South Africa's celebrated rights regime has generated anger about its effects and provided remarkably durable grounds upon which to justify extra-judicial vigilante violence.

The rights revolution and violence

Why should we expect that expanding rights would reduce violence? Scholars argue that since the eighteenth century the confluence of strengthening

5. The evidence presented here emerges from a broader study of vigilantism in post-apartheid South Africa. I conducted ethnographic and archival research on vigilantism over eighteen months between 2008 and 2011. The research was conducted primarily in KwaMashu, near Durban, and Sebokeng, south of Johannesburg, although other field sites in KwaZulu-Natal and Gauteng were studied. I conducted over sixty formal, semi-structured, or open-ended interviews with vigilante leaders, community policing officials, and current and former gang members, among many others. Those interviews were supplemented by countless informal conversations while on patrol with anti-crime groups or attending anti-crime protests, civic association meetings, and community justice initiatives. Although only a small part of a much broader study of vigilantism, the concerns expressed by Mapogo's leaders and members offer a particularly dramatic instance of processes I observed throughout the country.

6. Heinz Klug, *Constituting democracy: Law, globalism, and South Africa's political reconstruction* (Cambridge University Press, New York, NY, 2000).

7. To be sure, there was right-wing vigilante violence under apartheid but it was of a different character, associated primarily with suppressing anti-apartheid mobilization rather than crime suppression. Nicholas Haysom, *Mabangalala: The rise of right-wing vigilantes in South Africa* (Centre for Applied Legal Studies, University of the Witwatersrand, Johannesburg, 1986).

states,⁸ spreading humanitarian ideals backed by domestic⁹ and international institutions,¹⁰ and swelling empathetic emotions spurred by an emerging rights revolution¹¹ conspired to stigmatize violence. Much of this scholarship owes a debt, in one form or another, to Norbert Elias's classic work, *The Civilizing Process*, which illustrated how European state formation involved more than just institutional growth. Instead, it was a process of habitual, moral, and emotional change that co-evolved with increasingly consolidated state institutions to produce more disciplined, less violent subjects.¹² The social and psychological effects of state formation were especially hastened by the emphasis Enlightenment thought placed on individual moral autonomy and empathy for others.

At the forefront of these changes was the rights revolution, because the movements that constituted it were not merely campaigns for extended legal privileges (though they were certainly that, too). Rather, rights movements precipitated moral and emotional revolutions in which violence perpetrated against others came to be seen as violating a sense of common humanity.¹³ As Steven Pinker writes, the rights revolution was 'propelled by an escalating sensitivity to new forms of harm', in part made apparent by rights movements working to stigmatize violence against different groups of people like ethnic or racial minorities, women, or children.¹⁴ This process created momentum for increasing rights expansion as the extension of rights to one group would bring better treatment of the group's members, only increasing the urgency with which rights were claimed by other groups. As a result, Lynn Hunt argues, claims for rights had 'a tendency to cascade', as did the social effects of such claims.¹⁵ In this sense, the rights revolution has had an underlying, progressive logic. As Pinker writes, 'Dull habit or brute force may prevent people in certain times and places from following this line of argument to each of its logical conclusions but in an open society the momentum is unstoppable'.¹⁶

While growing empathy, expanding rights, and declining violence may be connected, this article suggests that they are not inherently tied to one another in large part because extending rights is as much a political

8. Gat, *War in human civilization*.

9. Muchembled, *A history of violence*.

10. Goldstein, *Winning the war on war*.

11. Pinker, *The better angels of our nature*, Chapter 7; Hunt, *Inventing human rights*, Chapter 2.

12. Norbert Elias, *The civilizing process: Sociogenetic and psychogenetic investigations* (Blackwell Publishing, Malden, MA, 2000).

13. On rights being an emotional claim as much as a legal one, see Hunt, *Inventing human rights*, pp. 26–34; Michael Ignatieff, *The rights revolution* (House of Anansi Press, Toronto, 2000), p. 2; Pinker, *The better angels of our nature*, p. 475.

14. Pinker, *The better angels of our nature*, p. 381.

15. Hunt, *Inventing human rights*, p. 147.

16. Pinker, *The better angels of our nature*, p. 381.

process as it is a normative one.¹⁷ After all, the rights revolution was the product of contentious demands for civil, political, and social equality.¹⁸ But revolutions often produce counter-revolutions, and the rights revolution has been no different. In other words, we should see the rights revolution and its attendant consequences less as the result of long-term normative change and more as the result of ongoing political struggles. By focusing on the political contestation inherent in advancing rights we see that claims for new rights produce a reaction, one that can be quite violent. And this reaction happens through the same mechanism scholars argue should prevent violence: emotion.

In this sense, Elias and his followers are correct that state building is as much an emotional process as an institutional one. As institutions of the state advance they shape emotional habits and expectations. However, the emotional changes are neither inevitable nor unidirectional. Indeed, the Mapogo a Mathamaga case suggests that instead of fostering empathy and associated ideas of moral autonomy, expanding rights may produce anger through claims that rights enable immorality. For Mapogo members, criminals are afforded too many rights by the state – rights which perpetuate insecurity and upend justice by allowing criminals to go unpunished. Worse, in the Mapogo worldview, rights actually perpetuate the immoral behaviour that they see at the root of crime. Crime, for Mapogo supporters, is a problem of (generally youthful) immorality and ill-discipline caused by the breakdown of ‘traditional’ and ‘proven’ methods for controlling crime.¹⁹ To Mapogo members, rights empower criminals while neutering communities who seek to discipline them. In this sense, the expansion of rights in the particular context of post-apartheid South Africa has spurred anger, along with empathy.

We should not take such responses to the expansion of rights as the lingering effect of some sort of pre-modern sensibility, destined to fade. Rather, we should see the confrontation with the state’s rights regime as an active, political challenge to ongoing processes of state formation that are as modern as the state itself. Indeed, Mapogo’s leaders rapidly capitalized on the anger rights have produced to grow a movement. To be sure, they advocate forms of punishment that they claim are premised on the restoration of ‘traditional’ forms of discipline. However, the degree to which the practices

17. Vigilantism, too, is a deeply political phenomenon. See Laurent Fourchard, ‘The politics of mobilization for security in South African townships’, *African Affairs* 110, 441 (2011), pp. 607–27.

18. See Margaret R. Somers and Christopher N. J. Roberts, ‘Toward a new sociology of rights: A genealogy of “buried bodies” of citizenship and human rights’, *Annual Review of Law and Social Science* 4, 1 (2008), pp. 385–425.

19. For a similar process in other parts of South Africa, see Buur, ‘Democracy and its discontents’.

they advocate are actually part of a longstanding cultural tradition is historically questionable,²⁰ suggesting that the underlying roots of their support of ‘traditional’ punishment lay in an alternative moral vision for how communities should be governed, one distinct from the individual rights-based order being introduced by the post-apartheid state.²¹

In this sense, rather than merely being an atavistic reaction to ongoing processes of modernization, Mapogo members are engaged in proactive politics – a deliberate attempt to shape the moral basis upon which both individual communities and the country as a whole should be governed. Mapogo members claim that criminals violate the rights of others – the rights to live in peace, to retain private property, and to prosper – and therefore do not meet the moral criteria for being rights bearers themselves. As a result, these vigilantes challenge the rights restraining the state from violently addressing criminality and work to ‘correct’ the state’s extension of rights to criminal suspects.

To be sure, while challenging rights talk has been the language through which Mapogo’s leaders have rallied support, it is not the only reason the group has cohered or its supporters have used violence. Concerns about police corruption and the uneven ability of the state to reduce crime are important. The account presented here, therefore, does not suggest that anger over rights is the only reason the group has garnered support or the only end to which they use violence. Why the language of rights features so prominently next to these other concerns, however, is not obvious. Nor is it preordained that the group’s leaders would use anger over rights to generate support in the first place. In this sense, the group’s rights talk cannot be assumed to be epiphenomenal to some underlying political or economic motivation, even though the group has capitalized on the anger to achieve both political and economic ends. For Mapogo’s leaders, anger over rights, concerns over state effectiveness, and worries over politics are joined. This article will explain how anger about post-apartheid rights has been used alongside these other issues to justify violence – when the literature on rights and emotions predicts the opposite should have happened.

20. For example, the ‘traditional’ weapon they often utilize – the *sjambok* – was a tool for enforcing ‘discipline’ on white farms under apartheid. John L. Comaroff and Jean Comaroff, ‘Popular justice in the new South Africa: Policing the boundaries of freedom’, in Tom R. Tyler (ed.), *Criminal justice: International perspectives* (Russell Sage Foundation, New York, NY, 2007), pp. 215–39, p. 229.

21. That vigilantes put forth an alternative moral vision to state judicial regimes is also apparent across cases. See, for example, Angelina Snodgrass Godoy, *Popular injustice: Violence, community, and law in Latin America* (Stanford University Press, Stanford, CA, 2006); Jennet Kirkpatrick, *Uncivil disobedience: Studies in violence and democratic politics* (Princeton University Press, Princeton, NJ, 2008); Michael J. Pfeifer, *Rough justice: Lynching and American society, 1874–1974* (University of Illinois Press, Urbana, IL, 2006); David Pratten, ‘“The thief eats his shame”: Practice and power in Nigerian vigilantism’, *Africa* 78, 1 (2008), pp. 64–83.

Mapogo and the dawn of a new democracy

I first encountered John Magolego, the ‘Life President’²² of Mapogo a Mathamaga at the up-market Centurion Mall in suburban Pretoria. Nattily attired in a tan pinstriped suit, Magolego carried himself with the gentleness of a grandfather, his temperate demeanour contrasting sharply with the image of a wild vigilante leader for which I had prepared myself. We settled into seats at a café, ordered breakfast, and began a lengthy interview about Mapogo’s history, Magolego’s views on crime, and his acquittal on murder charges in connection with a fatal beating allegedly administered by Mapogo members.

Magolego told me that he founded Mapogo in the Sekhukhune region of Northern Province (today Limpopo) in 1996, just over two years after South Africa’s first democratic elections. The area is part of the former Lebowa “homeland”, a stretch of arid hills and agave plants two hours north of Pretoria that the apartheid government handed over to a series of puppet rulers charged with leading the ostensibly independent Bantustan. Mapogo began life, as with many vigilante organizations, by responding to an acute fear of crime. The charismatic Magolego founded the organization after eight local business owners were murdered in just one month. However, he saw the murders as more than just everyday crimes. Instead, because it was exclusively businesspeople who were being targeted by the area’s criminals, to Magolego the violence was an incipient class war being waged against property owners in the wake of the country’s democratic revolution. ‘I called all the business people together,’ he said to me while describing the group’s first meeting. ‘And I started to address them and made them aware that it was not an ordinary theft or just to get something so that [thieves] could get something to eat. I made them aware this was war – wide killing’.²³

Although formed in direct response to a panic about crime, Mapogo’s founding came during a moment of growing anxiety over changes in the social order brought by the new democratic dispensation. Chiefs and elders who held power in rural areas were being challenged by young subjects from below, while white farmers feared they were targets of a crime wave intended to drive them from the land. In both the black and white communities the effect of this changing order was to produce a moral panic about South Africa’s recently adopted rights-based constitution and the ways in which it supposedly hamstrung the police force, which many already perceived as ineffective. Mapogo responded to these assumed limitations by

22. This is the title Magolego used to describe himself during our interview. Interview, John Magolego, Centurion, Pretoria, South Africa, 11 August, 2010.

23. *Ibid.*

supplying swift justice, which they claimed was premised on 'African' values with the goal of restoring respect for 'traditional' authority.²⁴

Magolego set up the organization as a combination of social movement, community group, and membership association. In the immediate wake of the killings, a group of several hundred businesspeople marched to the provincial capital under Mapogo banners to demand better protection for business owners and harsher punishments for convicted criminals.²⁵ At these early stages, the group was tenuously dedicated to working with the police, despite the leadership's scepticism over the effectiveness of the state's law enforcement institutions.²⁶ When the group's volunteer patrollers performed citizens' arrests, they would hand the suspects over to the police. However, this uneasy cooperation was brief. Within three months, after the courts released several suspects on procedural legal grounds, the group changed tactics and began to deal out summary beatings to suspected criminals that it apprehended.²⁷ In this sense, the group did not limit itself to "correcting" the state's effectiveness in a technical sense. Rather, it challenged the basic terms on which the state protected its citizens by attacking the strong legal rights afforded to suspected criminals.

To Mapogo members, undisciplined youth emboldened by their newfound democratic freedoms were responsible for the country's crime problem.²⁸ Such suspicions about youthful freedom have a long history in Sekhukhune, connected most immediately to a 1986 youth revolt against chiefly power as part of the attack on the apartheid system.²⁹ For three months, Sekhukhune youth affiliated with the United Democratic Front, like youth across the country,³⁰ violently mobilized against the apartheid state, leaders of homeland governments, and their elders – whom they saw as too complacent in the face of apartheid's brutality.³¹ In response, local authorities mobilized vigilante patrols to keep the youth down, a movement of which Magolego is a veteran.³² Although the violence was concentrated in a few short months in 1986, 'the scars left by this war of youth against

24. Comaroff and Comaroff, 'Popular justice in the new South Africa'; Oomen, 'Vigilantism or alternative citizenship?'; Antina von Schnitzler *et al.*, *Guardian or gangster? Mapogo a Mathamaga: A case study* (CSV, Johannesburg, 2001).

25. Oomen, 'Vigilantism or alternative citizenship?', p. 156.

26. Comaroff and Comaroff, 'Popular justice in the new South Africa', p. 227.

27. von Schnitzler *et al.*, *A foreign experience*, p. 13.

28. von Schnitzler *et al.*, *A foreign experience*; Oomen, 'Vigilantism or alternative citizenship?'; Comaroff and Comaroff, 'Popular justice in the new South Africa'.

29. von Schnitzler *et al.*, *A foreign experience*; Barbara Oomen, *Chiefs in South Africa: Law, power and culture in the post-apartheid era* (Palgrave, New York, NY, 2005), p. 130.

30. Jeremy Seekings, *The UDF: A history of the United Democratic Front in South Africa, 1983–1991* (Ohio University Press, Athens, OH, 2000).

31. Oomen, *Chiefs in South Africa*, p. 130.

32. Barbara Oomen, 'Vigilante justice in perspective: The case of Mapogo a Mathamaga', *Acta Criminologica* 12, 3 (1999), p. 46; Comaroff and Comaroff, 'Popular justice in the new South Africa', p. 232.

elders could be felt long into the post-apartheid era'.³³ During this period, battle lines were drawn between generations, classes, and competing forms of political authority.

Thus, in an area afraid and angry about a criminal 'war' being waged against the remaining vestiges of homeland authority and about rights protections for criminal suspects, Mapogo gained instant popularity for its swift response to 'disorderly youth'. It shot to prominence for its liberal use of the *sjambok* – a stiff leather whip once used by colonial officials and white farmers to enforce political subjugation and labour discipline.³⁴ When newspapers reported that they threw suspected criminals into crocodile-infested waters and dragged others behind cars, their notoriety only grew.³⁵ That their means for dispensing 'justice' contrasted so sharply with the loping pace of the state's legal apparatus aided the group's popularity. By 2000, Mapogo claimed between 50,000 and 70,000 members spread across the country in 72 branches,³⁶ with its members facing more than 300 criminal charges, including murder, assault, and possession of illegal weapons.³⁷

Such swift punishments were necessary, in the Mapogo worldview, because the country's rights-based legal procedures were cumbersome and fallible. As Magolego bluntly explained to me, '[I]f the law says there must be a warrant of search, which should be signed before we can come and search, that is stupid. You know why do I say so? Because the criminal will start removing items that he has stolen and you can come tomorrow and search.'³⁸ Mapogo's appeal was then, and continues to be, that they bypass such procedures and provide instant reparations to the victim.³⁹

In providing such swift justice, Mapogo challenges the basis upon which the state provides rights, particularly to criminal suspects. That Mapogo's violence is not just a reaction to ineffective policing but a fundamental challenge to the post-apartheid state's rights dispensation is evident in how the group understands the goal of its violence. For example, Magolego insists that beating suspected criminals has positive social benefits beyond crime deterrence. He describes corporal punishment as a conversion or healing

33. Oomen, *Chiefs in South Africa*, p. 130.

34. Oomen, 'Vigilantism or alternative citizenship?', p. 162; Comaroff and Comaroff, 'Popular justice in the new South Africa', p. 229.

35. Oomen, 'Vigilantism or alternative citizenship?', p. 153.

36. *Ibid.*; Keith Gottschalk, 'Vigilantism vs the state: A case study of the rise and fall of Pagad, 1996–2000', ISS Paper 99 (2005), p. 2; Human Rights Watch, *Unequal protection: The state response to violent crime on South African farms* (Human Rights Watch, New York, NY, 2001), p. 99.

37. Human Rights Watch, *Unequal protection*, p. 100; Makubetse Sekhonyane and Antoinette Louw, *Violent justice: Vigilantism and the state's response* (Institute for Security Studies, Pretoria, Monograph No. 72, 2002), p. 18.

38. Interview, Magolego.

39. von Schnitzler *et al.*, *A foreign experience*, p. 18.

experience that morally improves a criminal. '[I]f you offend other people, if you steal, you rape, you kill ... you will be punished,' he explained to me. 'And for that you will never do it again. That is the most important aspect of it. We don't preach the gospel of killing someone. No. Our main idea is let the criminal be punished, let him feel pain so that he should never do dirty things to other people'.⁴⁰ To Magolego, the infliction of pain has a specific, calculated purpose. He told me that corporal punishment 'is a natural practice that we used to see' which enforces 'discipline' on suspected criminals so that they can 'repent and leave their dirty activities' and be 'born again'.⁴¹

On his account, such punitive techniques are not only good for the souls of the suspected criminal but also good for the soul of the nation. As he explained, 'A nation without discipline has got no direction at all'.⁴² It is only when South Africa returns to so-called 'African' ways for dealing with disorder, he argued, that the country 'will have a normal society'.⁴³ Such arguments are consistent with Magolego's claim that Mapogo's tactics work because they address crime in ways that are more 'naturally' suited to an 'African' context than a rights-based legal system derived from 'the West'.⁴⁴ Sounding like a Burkean organic intellectual, he told me that 'The idea is that this is a traditional organization – a traditional and cultural organization. Why do I say cultural? That means we stick to our culture. We stick to our basics. We stick to the natural rules'.⁴⁵ To Magolego, the problem is that the South African police are hamstrung by 'Western' rights protections that are not suited for an 'African' society. Indeed, to Mapogo members the breakdown of 'African' forms of social order and its replacement with 'Western' rights protections has the perverse consequence of enabling disorder, both social and moral. For example, at a Mapogo rally in the wake of the government's decision to distribute copies of the constitution to all South African school children, Magolego decried the action by arguing that 'the Bill of Rights and Duties which has been distributed to schools without consulting us as parents is a piece of dirt and teaches our children lawlessness'.⁴⁶ In other words, if children know that they have rights, disorder will invariably follow.

Magolego uses this critical stance towards the law to justify the use of violence. He explained the group's use of illegal violence by arguing that 'The lives of the people are more important than the law itself because law

40. Interview, Magolego.

41. *Ibid.*

42. *Ibid.*

43. *Ibid.*

44. von Schnitzler *et al.*, *A foreign experience*, p. 18.

45. Interview, Magolego.

46. Quoted in Oomen, 'Vigilantism or alternative citizenship?', p. 161.

has been made by people. ... If the police are unable to solve the problem, should there be no other person on earth who should come and protect the people?'⁴⁷ And at the root of this failure are the state's strong protections for rights. As Magolego said during our interview, 'It's of no use to brag around saying that we have the most wonderful constitution in the whole world whereas people are dying on a daily basis here. No, we are not happy about that. And, in essence, we are helping our government to govern properly'.⁴⁸ In other words, in his view Mapogo's violence is justified, if not necessary, to 'correct' a state whose rights-based legal institutions prevent justice from being done.

'Repairing' the rights regime through violence

I saw all of these qualities – anger over rights, fear of wayward youth, veneration of disciplinary violence, antagonism towards the state's legal procedures, and a desire to repair the state by bringing it into line with supposed 'traditional' values – theatrically displayed at the group's fourteenth anniversary celebration several weeks after my interview with Magolego. On Magolego's invitation, along with a translator, I made my way to Mphahlele village in Sekhukhune, in the high plateau north of Pretoria. After arriving in the village we asked for the chief's court, per Magolego's instructions. The court – by tradition the place where the chief would gather his senior counsellors, take evidence in criminal cases, and run the public life of the village – is the primary symbolic site of chiefly law and order. We were directed to a community hall where a group of elderly men wearing Mapogo-branded t-shirts sat stoically outside. Restless after an hour's waiting for the celebration to start, my translator and I took a short stroll. Around the corner, in front of the chief's house was a statue of Cedric Phatudi, the longtime chief minister of the Lebowa homeland who ruled over the area during the height of the 1980s youth insurrection. Phatudi was born in Mphahlele, amplifying the celebration's connection to an ideal of re-emerging chiefly authority, which sits antagonistically against the country's rights-based democratic system.

Shortly after we returned to the hall, two buses arrived and Mapogo members poured out. It was a surprisingly diverse group. Elderly women dressed in ethnicized Pedi garb moved to the shade of a tent adjacent to the hall. A group of young men wearing Mapogo shirts over fashion items that owed more to hip hop style chatted amiably with one another. Middle-aged men flaunted *sjamboks* and, from time to time, playfully whipped the ground. A few minutes after the bus arrived, Magolego and his entourage

47. Interview, Magolego.

48. *Ibid.*

rolled into the yard in a line of late-model SUVs. The Mapogo supporters promptly formed two lines on either side of Magolego's jeep. With *sjamboks* held aloft, they walked with the jeep while singing songs praising Mapogo and Magolego that were eerily reminiscent of apartheid-era struggle songs⁴⁹ – a strange effect given their lyrics directly challenged the rights-based order that emerged out of the liberation movement.⁵⁰ 'If you see a criminal disrespecting Mapogo,' one message went, 'he is crazy and needs to be beaten.' Another urged people to 'stop those dogs so they don't bite us'. A third suggested ominously that it was time to be clear about whose side you were on: 'You haven't seen trouble yet and now Mapogo is here.' The presence of so many tightly clustered *sjamboks* gave the otherwise joyful procession an uneasy undertone of anger and violence.

When Magolego alighted from his jeep, he was met with a chorus of ululations. His appearance and demeanour contrasted sharply with the subdued man whom I had interviewed a few weeks before. His conservative business suit had been replaced by a military-style jacket with leopard skin epaulettes and two leopards embroidered on the front and back. He had a militarized Mapogo hat on his head. The outfit gave him the appearance of an ersatz general dressed for a ceremonial occasion, sartorially displaying the martial order his group favoured.

After the crowd had filed into the hall behind Magolego, the celebration proceeded like a cross between a church service and a political rally.⁵¹ People spontaneously broke into song, a common practice in township religious revivals and political meetings. Members of the crowd then took the floor, in a seemingly impromptu manner, testifying to the effectiveness of Mapogo in their community and praising Magolego because he brought Mapogo to them. One man, at the end of a fiery speech about Mapogo's role in restoring chiefly authority and reducing crime in his village, assured the crowd that he was 'speaking the truth' about Mapogo's effectiveness 'as an apostolic prophet would'. He then led the crowd in a pro-Mapogo chant that recalled anti-apartheid rallies from two decades prior: 'Viva Mapogo! Viva! Viva Magolego! Viva!' The crowd responded to the call enthusiastically.

49. The songs were sung in Pedi but translated to me while the group sang.

50. To be sure, not everyone involved in the struggle (nor even every leader of the African National Congress) advocated for a strong rights regime to follow apartheid, particularly given the potential limitations such a rights regime would place on the ability of the state to enact economic redistribution. The emergence of a strong rights regime was as much a product of political compromise during the negotiations to end apartheid, as a matter of principle. Nevertheless, the strong protections for human rights have been celebrated consistently in state institutions, practices, and rituals since democratization. Saul Dubow, *South Africa's struggle for human rights* (Ohio University Press, Athens, OH, 2012).

51. See also Comaroff and Comaroff, 'Popular justice in the new South Africa'.

Despite the invocations of struggle performances, speakers reiterated anti-rights themes throughout the proceedings. For example, a woman exaggeratedly brandishing a *sjambok* shouted heatedly and at length about how Mapogo ‘will do whatever it takes to prevent crime’, including beating and killing suspected criminals, a clear rebuke of the state’s rights-based constitution. Later, a chief from a nearby village spoke at length about the good things that had happened in his village since Mapogo set up a chapter. He argued that Mapogo’s success is entirely due to its alignment with ‘traditional’ sources of authority: the chiefs, the ancestors, God, and John Magolego. As he said, ‘Mapogo is not only an organization of people but also an organization of ancestors, so we should have no fear’ when conducting anti-crime patrols, because the ancestors would protect the patrollers. This protection from spiritual sources, the chief argued, allows the organization to punish criminals in accord with the ‘traditions’ of the past. As he said, Mapogo would ‘make the government govern well by using the *sjambok*’. In other words, the group’s violence would force the state to improve how it combated crime.

Between speeches, I took the opportunity to read a flier that was distributed to the crowd. It reinforced the speakers’ claims that the decline of traditional authority in South Africa had precipitated a moral collapse, along with rising crime. Under the Mapogo letterhead, the flier told its readers that ‘Our country is saturated with crime, our children are spoilt, they don’t attend schools anymore, they abuse themselves with drugs, and they kill, rape, and commit horrible activities.’ Such ‘disordered children ... without discipline and proper education’ cause South Africa’s troubles. This moralizing message provocatively contrasted with theories of crime which attribute crime to poverty or inequality. Indeed, the flier argues the opposite. Instead of poverty being the cause of crime, ‘crime brings poverty amongst our people, poverty brings illnesses and illnesses bring death’. The leaflet went on to explain, ‘Our government is trying by all means to alleviate poverty amongst our people but criminals are suppressing that.’ And because crime produces such disorder, the way forward is to ‘scandalize crime and suppress it so that we can enjoy our country as proper citizens of our land’. In other words, crime is an attack on the contractual basis of post-apartheid citizenship.

The flier suggested that making crime fighters tough, forcefully pushing back against fear caused by crime, and disciplining disorderly youth is the necessary response: ‘We are tired of thieves and we should get rid of cowardice and be ready to fight a winning battle. This is your message: That if you are afraid of pinpointing a criminal that you have seen, you are opening a road for crime to grow.’ In other words, the flier demanded that Mapogo’s members remain vigilant in order to keep crime down. Doing so would ‘Let rain fall in abundance’ – a clear allusion to local rainmaking

practices which, by custom, venerate communities that work closely together with prosperity.⁵²

All of these themes – that constitutional rights corrupt children and cause crime, that rights make the state's institutions fail, that Mapogo is righteous because it venerates 'traditional' authority, and that Mapogo corrects how the government operates – were reproduced in Magolego's keynote speech.⁵³ He took the floor after being honorifically introduced by a senior Mapogo official who loudly recited his praise names, as would be done for a chief giving a public address. Magolego began by telling the crowd that he was disappointed that even after fourteen years of 'success' there were still many people who wanted to destroy Mapogo. 'But they cannot,' he roared, 'because the ancestors and God are with us. With the ancestors, Mapogo can go through the desert without water and still remain strong.' Mapogo was strong because it had traditional authority behind it, he lectured, and the tragedy of democratic South Africa was that it was rapidly getting rid of 'proven' ways of controlling society's ills in favor of a rights-based legal system. It was 'as a result of the decline of traditional punishment,' he proclaimed, that 'kids have no conscience and can kill easily. So as parents we need to work together to defeat this evil spirit. The government will not help us because they cannot govern.'

Because the government is constitutionally hamstrung, he told the audience, South Africa's citizens need to look elsewhere for support. Magolego made it clear to the crowd that Mapogo is the best place to look. 'If you have a child who is stealing in your house,' he lectured, 'know that you have Mapogo with you. ... Let us protect ourselves like when you go buy an umbrella, when you are standing in the sun to create shade. Let Mapogo be the shade.' He concluded by exhorting the audience to 'Spread the message to those who are doing crime that Mapogo is back. We are going to stop all the nonsense. We are not here to play or do Mickey Mouse things' – an ominous, if veiled, warning about his group's ongoing willingness to use violence to stop crime. At that point, Magolego launched into a Mapogo praise song to enthusiastic participation by the audience, announced that two cows had been slaughtered, and invited people to step outside to eat.

52. Paul S. Landau, 'When rain falls: Rainmaking and community in a Tswana village, c. 1870 to recent times', *The International Journal of African Historical Studies* 26, 1 (1993), pp. 1–30.

53. In what follows, when I quote Magolego, his words are as close to exact as I could produce given the constraints. He spoke primarily in Pedi with occasional English mixed in. A research assistant fluent in Pedi translated as Magolego spoke while I wrote down the translation. Fortunately, Magolego spoke slowly and, being an experienced and charismatic public speaker, would periodically pause to allow for a dramatic build-up or to let points sink in. This allowed us to catch up on the translation and notes. Although the precise translation of Magolego's words is imperfect, the overall meaning of his arguments is captured in the material presented here.

As a buffet meal was laid out for the audience, I chatted with some of the chiefs and their representatives. When I asked one thoughtful man why the group did not rely on the courts to prosecute criminals, he told me that it was because the constitution, which should enable the punishment of criminals, protected them instead. He suggested that the rights regime which came with the democratic transition has created so many protections for suspected criminals that it has allowed crime, and therefore immorality, to flourish. As he put it, ‘Human rights is, in a way, perpetuating crime. So the government is, if I can say, perpetuating evilness.’ The result of this new rights dispensation, he said with frustrated disbelief in his voice, was that ‘Now even a small child can report his parents to the police [for beating him].’ His tone suggested that not only has the constitution enshrined rights that protect criminals, those rights had also turned the moral order completely upside down such that forms of authority which guarantee and produce order – that is, parental authority – had been subverted by the law. Thus, in the Mapogo worldview, democratic rights have perverse consequences: they promote and protect lawlessness and moral disorder, rather than suppressing them as the law should. Mapogo, according to the supporters with whom I talked, is there to make this contradiction go away by reinstating ‘traditional’ authority housed in the institutions of the chieftaincy, parenting, and the ‘legitimate’ deployment of violence.

While talking after the meal, Magolego echoed these sentiments and the blame Mapogo members place on rights-based democracy. He described to me how he wanted to expand Mapogo through the construction of a permanent headquarters in the rural areas of Limpopo, where he will extend Mapogo’s work beyond security. He told me that it will house a job training institute, provide a chiefly court for large meetings of traditional elders, include a farm to create employment, and, most importantly, host a school where children will be raised ‘traditionally’. ‘At the school,’ Magolego said poignantly, ‘we won’t have democracy – only discipline to teach [the children] how to behave. You see, crime is about a problem of morals, of culture. So what I am doing is repairing the nation.’ In other words, Magolego saw his organization as engaged in a fundamentally political project whose stakes go beyond mere crime reduction and instead go to the heart of the post-apartheid political order.

The business of rejecting rights

As it turns out, rejecting rights is not only popular; it is profitable. The anniversary party I attended was both a celebration of the social movement and a publicity event for a for-profit security company under the Mapogo a Mathamaga brand name – and the group’s extra-procedural justice was at the forefront of the security company’s marketing. But while the membership

organization was targeted largely towards rural Africans, the security company's main target was white farmers.⁵⁴ Indeed, when I first called the Mapogo offices to schedule an interview I was momentarily taken aback when the operator answered the phone in Afrikaans (the operator seemed similarly taken aback when I replied in English.) Nevertheless, despite the different constituencies, its branded use of corporal punishment against suspected criminals can be sold to new customers and new members alike. As Magolego succinctly described the service Mapogo sells, '[W]e do an investigation, we get the perpetrator, and we deal with the perpetrator. That is all.'⁵⁵ Where going through the courts may not result in a victim getting their property back, Mapogo's rejection of rights offers the promise of reparation for the victim for a price.

In this sense, the argument that extensive legal rights are cumbersome and lead to perverse outcomes carries well across racial lines. Indeed, the security company relies on the membership organization's violent reputation for its growth. '[O]ur job has been done long ago,' Magolego explained to me, so 'now it's a very soft job. If somebody has offended somebody, we just send two or three guys who go to say to him, "Hey, Mapogo are looking for you. You must replace whatever you have taken or we will deal with you in a harsher way." Now since it happened very nicely, the person will rush and bring those things without any touch.'⁵⁶ In other words, Mapogo's well known reputation for violence has an investigatory value. And this investigatory value has a commercial value.

Yet even though Mapogo is using its disregard for legal procedures to grow a commercial venture, ironically it has forced the organization to rely on the state's courts to protect its intellectual property rights. In fact, Mapogo has trademarked its violent brand: a picture of two snarling leopards flanking the words 'Business and Community Shield.' Placards bearing the trademark are given out to Mapogo members to place on their homes or businesses to frighten would-be criminals. As the placards have been distributed around the country, however, opportunists have capitalized on Mapogo's violent trademark to establish 'franchises' without any legal right to do so. Ironically, this trademark infraction regularly sends Magolego to court to defend his organization's rights. Although Mapogo was profiting from its flouting of rights, Magolego hired lawyers to defend its brand. 'It's a process,' he told me, with resignation. 'You are going to spend a lot of money and time. Now we just said, "OK. We shall go one by one and [try] to see if we can sort them out."⁵⁷ In other words, as soon as

54. Interview, Magolego.

55. *Ibid.*

56. *Ibid.*

57. *Ibid.*

news of copy-cat Mapogo billboards or websites comes in, the organization's lawyers go into action. If he was aware of the irony of relying on the state to protect his rights, Magolego did not let on in our interview.

The organization's use of lawyers does not stop there, however. Mapogo members have regularly employed teams of lawyers to defend themselves from various criminal charges. Well known by now, Magolego himself, along with other senior leaders, was acquitted of murder charges after a multi-year, oft-delayed trial of the sort against which Mapogo leaders regularly rail.⁵⁸ Less publicized is the (as far as can be determined) ongoing case of a Mapogo branch leader in the KwaZulu-Natal midlands who is fighting murder charges. The charges have followed accusations that, at the behest of his clients, the security boss hired an assassin to kill two farm workers purportedly planning to harm the owners of the horse farm where they worked. Despite allegedly ordering extra-judicial justice for the two farm workers, the Mapogo manager has been fighting the charges so vehemently in the courts that he depleted all of his financial resources and now relies on a legal aid lawyer.⁵⁹

In this sense, rather than a complete rejection of rights, Mapogo might best be described as engaged in a critique of rights, albeit a violent one. As Magolego once said, 'Mapogo is already in politics because we are debating the law of the country. ... Just as when Mandela and his group were worried about influx control and pass laws. This is exactly the same thing.'⁶⁰ In other words, just like the ANC of the 1960s, Magolego sees himself engaged in a crucial critique of a legal system in order to make it more just. Of course, the irony is that where Mandela fought for a law based in constitutional rights and social justice, Magolego is fighting for a very different idea of rights. For him, '[I]f criminals bother business people, the business people will retaliate and hit back. That is why we formed Mapogo – to fight for our rights'.⁶¹ Rights are understood here in a conservative, almost Hobbesian sense of the right to defend oneself in the state of nature. Even if it means using illegal violence, Mapogo's members 'have vowed to be arrested for the sake of our properties and our lives'.⁶²

It is a fight that continues. Although the group's membership waned in the wake of Magolego's arrest and trial – an arrest he insists was designed to kill off Mapogo⁶³ – its activities continue and appear to be picking up pace.

58. Oomen, 'Vigilantism or alternative citizenship?', p. 164.

59. Sherlissa Peters, 'Murder accused to use legal aid lawyer', *IOL News*, 1 April 2014, <<http://www.iol.co.za/dailynews/news/murder-accused-to-use-legal-aid-lawyer-1.1669069#.VA-XX1czchw>> (20 April 2014).

60. Magolego, quoted in von Schnitzler *et al.*, *A foreign experience*, p. 27.

61. Interview, Magolego.

62. *Ibid.*

63. *Ibid.*

In 2011, for example, several of its members were arrested on charges of murder and attempted murder following an ‘investigation’ into a robbery of one of its member’s liquor stores. Although they denied the accusations, they allegedly kidnapped the two men at gunpoint before severely beating them, and driving nails into the feet of the suspect who survived.⁶⁴ More recently, Mapogo has drawn condemnation from the Congress of South African Trade Unions after a series of alleged assaults on labour organizers long associated with the organization on white-owned farms.⁶⁵ In sum, despite claiming to be an organization established to protect the rights of its members, it still appears to violently reject the rights of others. In this sense, the anger provoked by the alleged effects of South Africa’s rights system has proved remarkably durable and consistently spurs the violent rejection of those rights, even as those who voice this rejection contradictorily claim rights for themselves.

Conclusion

Contrary to recent influential literature on the relationship between rights and violence, this article has argued that as much as the advance of rights might decrease violence in a society, they might also enable violence. Because rights are political as much as they are normative, their extension is likely to spur political resistance. Violence spurred by anger over the alleged effects of rights, as the Mapogo a Mathamaga case suggests, is one possible method used to resist such political change.

What does this violent rejection of rights suggest for the future of South Africa’s legal system? Although it is difficult to say with certainty, recent and disturbing accusations of police abuse suggests that one possible direction is that processes of law making and state making may increasingly mirror practices of vigilantism. The evidence for such a possibility takes a few forms – from rumours that police may deliver criminal suspects to angry crowds for punishment,⁶⁶ to YouTube videos of police officers seemingly sitting idle as crowds assault alleged criminals,⁶⁷ to an ongoing and controversial criminal case against an alleged police hit squad in Durban.⁶⁸

64. *City Press*, “‘Vigilantes hammered nails into my feet’”, 19 March 2011, <<http://www.citypress.co.za/news/vigilantes-hammered-nails-into-my-feet-20110319/>> (21 August 2014).

65. COSATU, ‘COSATU NW condemns attacks on farm workers’, 18 July 2014, <<http://www.cosatu.org.za/docs/pr/2014/pr0718a.html>> (18 July 2014).

66. Sarah-Jane Cooper-Knock, ‘Policing in intimate crowds: Moving beyond “the mob” in South Africa’, *African Affairs* 113, 453 (2014), p. 569.

67. ‘Mob justice in South Africa’, *YouTube*, 3 August 2013, <https://www.youtube.com/watch?v=Sh_YEuaBXmQ> (11 May 2015).

68. The criminal charges were brought after an exposé in the *Sunday Times* newspaper, although rumours of a police hit squad were circulating in Durban’s criminal circles for years before the indictments arrived. For the original exposé, see Stephan Hofstatter, Mzilikazi Wa Afrika, and Rob Rose, ‘The death squads’, *Sunday Times*, 11 December 2011, <<http://www>

Although it is difficult to demonstrate how widespread such actions are, overall increasing rates of police violence⁶⁹ point to a state that has an increasingly contradictory relationship to the rights regime it is charged with protecting. Indeed, police officers, like Mapogo's members, frequently bemoan procedural protections for suspects that might see them released from custody.⁷⁰ Such contradictions, rather than being a precondition for vigilantism, may best be seen as a response to it – a desperate bid by state agents to respond to citizen demands for the swift justice the state is unable to provide.⁷¹

Such a possibility has disturbing ramifications, particularly since South Africa's rights regime is often heralded as a light for late-democratizing countries in Africa and elsewhere. In this regard, the connection between rights and vigilante violence may provide lessons for Africa's increasingly robust democracies. In particular, it suggests that the capacity of states to provide public safety is only one element that can explain vigilantism and may not necessarily be the most important one.⁷² Rather, moral concerns and their relationship to the law may be paramount. Where citizens perceive the state to be upholding a legal system that prohibits the punishment of locally perceived immoral acts, vigilantism becomes more likely as citizens present their brand of popular justice as more closely aligned with local notions of moral justice than the state's legal system.⁷³ This possibility presents a dilemma for state makers and for citizens concerned about vigilantism across Africa. If rights regimes across the continent continue to strengthen, one short-term outcome may be an increase, not a slackening, of vigilante violence.

All of this suggests something deeper about the politics of the rights revolution: that to extend it is a political struggle, not an inevitable process.

timeslive.co.za/local/2011/12/11/the-death-squads> (5 March 2015). For the most up-to-date account of the ongoing legal battle available at the time of writing, see David Bruce, 'Why does KZN lead in police killings?', *Mail & Guardian*, 8 May 2015, <<http://mg.co.za/article/2015-05-07-why-does-kzn-lead-in-police-killings/>> (8 May 2015).

69. David Bruce, *Marikana and the doctrine of maximum force* (Parktown Publishers, Johannesburg, 2012).

70. Julia Hornberger, *Policing and human rights: The meaning of violence and justice in the everyday policing of Johannesburg* (Routledge, New York, NY, 2011); Nicholas Rush Smith, 'New times demand old magic: Necklacing past and present', in Michael Pfeifer (ed.), *Global lynching and collective violence: Asia, Africa, and the Middle East* (University of Illinois Press, Urbana, IL, forthcoming).

71. Julia Hornberger, 'From General to Commissioner to General: On the popular state of policing in South Africa', *Law & Social Inquiry* 38, 3 (2013), pp. 598–614.

72. Survey evidence from Ghana, for example, suggests that concerns about how policing was conducted had greater predictive power for citizen support of vigilantism than perceptions of police effectiveness. Justice Tankebe, 'Self-help, policing, and procedural justice: Ghanaian vigilantism and the rule of law', *Law and Society Review* 43, 2 (2009), pp. 245–70.

73. Pratten, "'The thief eats his shame"'; Daniel Jordan Smith, *A culture of corruption: Everyday deception and popular discontent in Nigeria* (Princeton University Press, Princeton, NJ, 2010), Chapter 6.

That a vigilante group like Mapogo would challenge the rights of others in post-apartheid South Africa, given the struggle its citizens went through to end the arbitrariness of the apartheid state's legal system, is a particularly stark example of this challenge. The creation of a rights regime at the dawn of democracy did not end contestation over the shape of democracy in post-apartheid South Africa. Instead, it created the conditions for new fields of contestation over the future of South Africa's legal system – contestation that, at times, has been violent. So what can be done? Thinking of the rights revolution as the product of contentious political claims, rather than emerging normative ideals, may offer a possible solution. By thinking about the rights revolution and its consequences in this way, it may become clear that overcoming the rejection of rights can only be achieved through continuous activism to see the promises of the rights revolution realized and protected.