

## LOVING THE ALIEN? CITIZENSHIP, LAW, AND THE FUTURE IN SOUTH AFRICA'S DEMONIC SOCIETY

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### ABSTRACT

In May 2008, South Africa witnessed two shocking weeks of deadly attacks on foreigners and other suspect outsiders. This article makes sense of the violence with reference to an extended history of South African statecraft that both induced the conflict and hamstrung efforts to address it. In particular, it describes how decades of discursive and institutional efforts to control political and physical space have generated two demons with which the country must now contend. The first is a perceived enemy within: an amorphously delimited group of outsiders that is inherently threatening, often indistinguishable from others, and effectively impossible to exclude spatially. The second demon rests in a society prepared to kill to rid itself of those retarding the country's post-Apartheid renaissance. For many of those behind the attacks or empathizing with them, controlling the movement of people within the country and across its borders remains essential to security, prosperity, and South Africa's national self-realization. Political leaders now face a dilemma: extending legal identities and constitutionally promised protections to outsiders and other foreigners risks being seen as betraying the national project by the demonic and visibly violent society they have helped create.

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ON 11 MAY 2008, RESIDENTS OF ALEXANDRA TOWNSHIP turned on their neighbours. The conflict soon spread across Gauteng Province to informal settlements and townships around the country. During two terrible weeks,

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citizens murdered more than 60 people, raped dozens, wounded close to 700, and displaced over a hundred thousand.<sup>1</sup> Along the way, perpetrators destroyed or 'redistributed' millions of rands worth of goods and hundreds of foreign-owned houses. Most victims were from beyond South Africa's borders, but a third were South Africans who had married foreigners, refused to participate in the violent orgy, or had the misfortune to belong to groups that were evidently not South African enough. After initially denying a crisis and making unheeded appeals for calm, the government deployed the armed forces to contain the violence.<sup>2</sup> With most offending outsiders cleansed from their hostile communities, the belligerents slipped back into the embrace of the townships from which they had emerged.

Government officials have since claimed that foreigners are safe,<sup>3</sup> and a year after the attacks the presidency's spokesman, Thabo Masebe, reported that 'we have moved forward'.<sup>4</sup> If fortune smiles, South Africa may indeed never again see the kind of violence it saw in May 2008. However, while officials have moved on, community leaders continue to issue threats and draft ultimatums demanding that foreigners get out. Where words are not enough, business associations and gangsters have kept on killing foreign shopkeepers and residents. Since the violence 'ended' in June 2009, dozens of foreigners have been targeted and killed while mass expulsions continue.<sup>5</sup> Official responses to attacks have been confused, contradictory, and often overtly ideological. During the violence, the government first denied the crisis<sup>6</sup> and then blamed criminal elements, opposition parties, and 'sinister forces', occasionally evoking a mysterious 'third force'.<sup>7</sup> Ronnie Kasrils, Minister for Intelligence, later admitted these accusations were 'misguided'.<sup>8</sup> Indeed, statements from

1. See Tara Polzer and Vicki Iglesdon, 'Humanitarian assistance to internally displaced persons in South Africa: lessons learned following attacks on foreign nationals in May 2008' (Report, Forced Migration Studies Programme, University of the Witwatersrand, 2009).

2. 'Minister: xenophobic violence under control', *Mail and Guardian*, 26 May 2008, <<http://www.mg.co.za/article/2008-05-26-minister-xenophobic-violence-under-control>>; 'Attacks on foreigners not xenophobic: Mbeki' (ANC daily news briefing, 3 July 2008).

3. 'Gauteng says reintegration going swimmingly', *Mail and Guardian Online*, 25 July 2008.

4. Quoted in Mandisi Majavu, 'Khumbula ekhaya (remember your home)', Inter Press News Service, <<http://ipsnews.net/print.asp?idnews=46784>> (10 May 2009).

5. Consortium for Refugees and Migrants in South Africa, 'Protecting refugees and migrants in South Africa 2009' (Report, Consortium for Refugees and Migrants in South Africa, Johannesburg, 2009); 'More than 2,000 Zimbabweans flee, fearing attacks', *IRIN News*, 17 November 2009, <<http://www.irinnews.org/Report.aspx?ReportId=87090>>.

6. Then Minister of Safety and Security Charles Nqakula initially responded to the attacks in Alexandra by claiming, 'It is a problem, but I would never define it as a crisis', in 'Government inaction is fuelling xenophobia', *Cape Argus*, 17 May 2008, p. 4.

7. 'It was the third force in Alex', *Sowetan*, 13 May 2008, <<http://www.sowetan.co.za/News/Article.aspx?id=765595>>.

8. Quoted in Jeremy Gordin, 'Ethnic cleansing, SA style', *Sunday Independent*, p. 1.

perpetrators and other ordinary township residents made it clear that the frustrations and impetus behind the violence were their own.

Activist and academic accounts of the violence have also been incomplete and often unconvincing.<sup>9</sup> Blaming everything from a ‘culture of violence’, ‘negrophobia’, neoliberalism, poor service delivery, and the lack of border control, most explanations falter when faced with empirical or logical interrogation: Unless we accept a binary view of race dividing the world into ‘white’ and ‘blight’, negrophobia cannot explain regular attacks on Chinese and South Asians. Nor does it help us understand why citizens of Swaziland and Lesotho were left alone and some South Africans targeted. Even among the black citizenry, it seems some are friends, others fraught. Statistical analysis also illustrates that the poorest areas were not those on the rampage, suggesting poverty and disadvantage cannot alone explain the violence.<sup>10</sup> As for arguments that the state was not doing enough, South Africa may no longer control its borders with electric fences, but the deportation of 300,000 people in the year prior to the attacks reflects impressive levels of energy and determination.<sup>11</sup> Glaser’s argument that the attacks reflect a democratic uprising importantly captures the social legitimacy behind the attacks, but naively ignores the elite political manipulation and precedents that informed and, to some degree, animated the violence.<sup>12</sup>

This article makes sense of the violence by focusing on an extended history of South African statecraft that both produced the conditions for the violence and continues to hamstring efforts to address it. Decades of discursive and institutional efforts to control political and physical space have

9. See, for example, Human Sciences Research Council, ‘Citizenship, violence and xenophobia in South Africa’ (Research report, Human Sciences Research Council, Pretoria, 2008); South African Institute for Race Relations, ‘Statement by the South African Institute of Race Relations on causal factors behind the violent unrest in and around Johannesburg’ (Johannesburg, 20 May 2008). For more nuanced accounts of xenophobia in South Africa, see Southern African Migration Project, ‘The perfect storm: the realities of xenophobia in contemporary South Africa’ (Migration Policy Brief No. 50, Southern African Migration Project, 2008) and Michael Neocosmos, ‘From “foreign natives” to “native foreigners”: explaining xenophobia in post-apartheid South Africa’ (Monograph Series, Council for the Development of Social Science Research in Africa, Dakar, 2006), and A. Bouillon, ‘Citizenship and the city: the Durban centre-city in 2000’, *Transformation* 48 (2006), pp. 1–37. The negrophobic explanation is made most explicitly by Pumla Dineo Gqola, ‘Brutal inheritances: echoes, negrophobia and masculinist violence’ in S. Hassim, E. Worby, and T. Kupe (eds), *Go Home or Die Here* (Witwatersrand University Press, Johannesburg, 2009), pp. 209–24.

10. Aurelia wa Kabwe-Segatti and Christine Fauvelle-Aymar, ‘Institutions, political participation and violence’, paper presented at the conference on ‘Exorcising the demon within: xenophobia, violence, and statecraft in contemporary South Africa’ (University of the Witwatersrand, Johannesburg, 22 May 2009).

11. See Jean Pierre Misago, Loren B. Landau, and Tamlyn Monson, ‘Towards tolerance, law, and dignity: addressing violence against foreign nationals in South Africa’ (International Organization of Migration, Pretoria, 2008) and wa Kabwe-Segatti and Fauvelle-Aymar, ‘Institutions, political participation and violence’.

12. Daryl Glaser, ‘[Dis]connection: elite and popular “common sense” on the matter of foreigners’ in Hassim, Worby, and Kupe (eds), *Go Home or Die Here*, pp. 53–64.

generated two demons residing within South African society. The first is the enemy within: an amorphously delimited group of outsiders that is inherently threatening to the post-Apartheid renaissance yet remains largely indistinguishable and effectively impossible to exclude spatially.<sup>13</sup> The second is the demon of violence living within a society prepared to turn on itself to exorcise those it sees as denying the promise of post-Apartheid power and prosperity.<sup>14</sup> This latter demon does not rest in the country's universalistic constitution which promises a legal identity and human dignity to all, regardless of legal status or origin.<sup>15</sup> Rather, it is enlivened by current discourse and practice – buttressed by past dispensations and principles – that maintain the imperative to exclude and help dictate the means of that exclusion.

Within the *weltanschauung* of those committing and abetting the attacks, the seemingly irrational May violence is not only rational and legitimate, but necessary. Reflecting the bi-products of the state's pastoral ambitions and efforts to guide its citizens to salvation through economic transformation, outsiders have come to be understood as an obstacle threatening that outcome.<sup>16</sup> When state institutions were seen as failing to protect entitled citizens, the population (or elements within it) took on the obligation to alienate and exclude those standing in its way. This is the rationality, the mentality of governing, behind the attacks and the demonic society.

From this perspective, the violence is not a sign of chaos or a threat to existing political institutions and subjectivities. Rather, such legitimate (if illegal) violence extends and entrenches a form of spatial control, political authority, and sovereignty.<sup>17</sup> Globally, 'modern states . . . have expropriated

13. 'Demon' is used here in the Old Testament sense in which a demon or Satan was less a discrete, animate object than an obstacle or threat. See Elaine Pagels, *The Origins of Satan* (Random House, New York, NY, 1995).

14. The second use of 'demonic' is informed by Mitchell Dean, 'Demonic societies: liberalism, biopolitics, and sovereignty' in T. B. Hansen and F. Stepputat (eds), *States of Imagination: Ethnographic explorations of the postcolonial state* (Duke University Press, Durham, NC, 2001), pp. 41–64.

15. According to the South African Human Rights Commission, 'Undocumented immigrants' (SAHRC Policy Paper No. 3, Human Rights Commission, Johannesburg, 1997), even undocumented migrants have rights against arbitrary arrest or detention; the right to be treated with humanity and with respect; the right to equality before the courts and tribunals; the right to be recognized everywhere as a person before the law; and the right against arbitrary deportation.

16. This essay borrows from Foucault's notion of pastoral power as outlined in Hubert L. Dreyfus and Paul Rabinow, *Michel Foucault: Beyond structuralism and hermeneutics* (University of Chicago Press, Chicago, IL, 1982), pp. 213–15.

17. See Robert Latham, 'Social sovereignty', *Theory, Culture and Society* 17, 4 (2000), pp. 1–18; John Agnew, 'Mapping political power beyond state boundaries: territory, identity, and movement in world politics', *Millennium: Journal of International Studies* 28, 3 (1999), pp. 499–522; and Darshan Vigneswaran, Tesfalem Araia, Colin Hoag, and Xolani Tshabalala, 'Criminality or monopoly? Informal immigration enforcement in South Africa', *Journal of Southern African Studies* (Forthcoming).

from individuals and private entities the legitimate “means of movement” to order and improve their populations’.<sup>18</sup> Although the South African state has long sought to monopolize control over space in the interest of national self-realization, the violence reveals a population that remains active in determining the boundaries and means of control. Rather than resisting the oppression of the state, this violence acts as a demonic proxy for it.

Faced with this demonic society, South Africa’s universalistic constitution can claim only partial hegemony over the country’s territory and residents. Instead it irregularly determines the nature of socio-political interactions or effectively endorses those who stray from its principles.<sup>19</sup> Moreover, were leaders or others to demand that constitutional protections be effectively extended to non-nationals and other outsiders, they would undoubtedly elicit resistance, illustrating and potentially exacerbating the precarious gap between legal principle and popular legitimacy. This leaves national and local political leaders and other state agents with an acute dilemma: to embrace the demon outsider as part of a collective endeavour – as a group entitled to basic rights to work and space – risks betraying the demonic and visibly violent society they have helped to create.

### *Methods and approach*

This article is not concerned with furthering an ideological agenda or outlining a strategy for protecting the vulnerable in South African society. Instead, it uses the horrific violence of May 2008 to reveal something broader about the echoes and evocations of state power in contemporary societies (South Africa and others). Inspired by the insights of political geography, this essay blends broader discussions of state power with the control over space and movement. At issue here is not whether actions are right or wrong/legal or illegal, but how law is popularly understood; to whom it applies; the mechanisms of allocating rights and the origins of such practices; and those who enact the principles that practically shape South African society. Reflecting the popular amalgamation of state, bureaucracy, and government, this article intentionally speaks of these bodies as an unduly coherent actor.<sup>20</sup> Instead of reflecting on competing discourses of domination and resistance, my analysis – if not the discussion – begins with the current discourse, practices, and political logics that explain the violence.

18. John Torpey, *The Invention of the Passport: Surveillance, citizenship, and the state* (Cambridge University Press, Cambridge, 2000), p. 4.

19. See also, Sally F. Moore, *Law as Process: An anthropological approach* (Routledge and Kegan Paul, London and Boston, MA, 1978).

20. This approach accepts the naturalization of certain forms of political order as described in Timothy Mitchell, ‘The limits of the state: beyond statist approaches and their critics’, *American Political Science Quarterly* 85, 1 (1996), pp. 77–96.

From this point of departure I look to South African history and statecraft for the origins of the issues under review.

This article's historical scope and relative brevity together deny the possibility of offering a careful, robust account. At best it is an empirically informed, conceptual enquiry into a set of relationships that can only be grasped through extrapolation and inference. In illustrating the relationships, I rely on primary and secondary data collected during seven years of research on migration and South Africa's socio-political transformation. Included in the data are two surveys conducted by the Forced Migration Studies Programme at Wits University. The 2006 Johannesburg survey relied on 847 respondents – non-nationals and citizens – in seven central Johannesburg neighbourhoods; the 2003 iteration on just over 600.<sup>21</sup> Though these data do not represent South Africa's 'migrant stock' or Johannesburg's population as a whole, they nevertheless point to new forms of socio-political organization and categories of belonging and exclusion. Where appropriate, I also draw on four months of fieldwork in Gauteng Province, the Western Cape, and the Eastern Cape in late 2008 and early 2009. For this research, a team selected seven sites where xenophobic violence occurred between January 2007 and June 2008, and two sites where the presence of foreign nationals did not lead to significant violence. In total, almost 300 people participated in a mix of interviews and focus group discussions.<sup>22</sup>

### *Alienation, exclusion, and South Africa's rebirth defect*

As with all historically significant moments, the May 2008 violence was overdetermined by macro- and micro-level factors influencing events at various temporal scales. Leaving others to describe specific triggers, the actors, and the peculiarities of specific incidents,<sup>23</sup> I direct my gaze to three facets of contemporary South African society that resonate with past political order and internalized social norms: the demonization of outsiders and human mobility; ineffective, arbitrary, and often extra-legal efforts to ensure socio-spatial separation; and the state's inability to effect a post-1994 national rebirth.

21. For more on the survey methodology, see Karen Jacobsen and Loren B. Landau, 'The dual imperative in refugee research: some methodological and ethical considerations in social science research on forced migration', *Disasters* 27, 3 (2003), pp. 95–116.

22. For more detail on the post-violence data collection, see Misago *et. al.*, 'Towards tolerance'.

23. See Misago *et. al.*, 'Towards tolerance'; Romi Singworth, Collet Ngwane, and Angelica Pino, 'The gendered nature of xenophobia in South Africa' (Centre for the Study of Violence and Reconciliation, Johannesburg, December 2008); Tamlyn Monson, 'The violence: actors, structure and events,' paper presented at the conference on 'Exorcising the demon within: xenophobia, violence, and statecraft in contemporary South Africa' (University of the Witwatersrand, Johannesburg, 22 May 2009).

There are other relevant factors and some may dispute my emphasis. Nevertheless, it is these continuities and trends that have created and demonized the 'alien' while encouraging and empowering the citizenry to alienate and liquidate in the name of political self-actualization.

**Generating the demon alien within:** The history of the 'alien' has colonial roots but achieved a more sophisticated, insidious status during the Apartheid era. Turned against its own would-be citizens, the state worked to exclude those it categorized as 'surplus people' from both politics and urban centres. Under its grandest machinations, Apartheid turned black South Africans into 'foreign natives' within the country, guests of the South African Republic should they stray beyond the 'homelands' (dubbed Bantustans) to which they ostensibly belonged. In law, if not always in practice, black South Africans were made temporary sojourners in the city, aliens whose usefulness lasted only for as long as it could build the city, care for gardens and pools, or nurture white children. As a 1921 Transvaal Province Commission argued, 'the Native should only be allowed to enter urban areas, which are essentially the white man's creation, when he is willing to enter and to minister to the needs of the white man, and should depart therefore when he ceases to minister'.<sup>24</sup>

The dual pre-Apartheid concerns of utility and protection of privileged insiders culminated in Apartheid-era spatial planning and regulation.<sup>25</sup> Although this grand design was never perfectly implemented (see below), interlopers who were neither explicitly required nor authorized were officially and popularly seen as a drain on resources and a threat to the state's realization of its cultural and political order. Indeed, the motivations for alienating and spatially excluding citizens were not only about efficiency and health, but emerged from concerns that high population densities and acute deprivation would resist the state's distorted, racist vision. As Posel argues, 'In the state's view, the larger the urban African proletariat, the greater the concomitant threats to the country's political stability and industrial peace.'<sup>26</sup>

The point here is not to decry the injustices of the *dompass* system which was, after all, a logical extension of the bio-political technologies employed

24. Transvaal Province Local Government Commission, 1921, TP 1/1922, para. 42, cited in Deborah Posel, *The Making of Apartheid 1948–1961: Conflict and compromise* (Clarendon Paperbacks, Oxford, 1997 [1991]), p. 40.

25. See Jenny Robinson, 'The geopolitics of South African cities: states, citizens, territory', *Political Geography* 16, 5 (1997), pp. 365–86; M. W. Swanson, 'The sanitation syndrome: bubonic plague and urban native policy in the Cape Colony, 1900–1909', *The Journal of African History* 18, 3 (1977), pp. 387–410; and Paul Maylam, 'Explaining the apartheid city: 20 years of South African urban historiography', *Journal of Southern African Studies* 21, 1 (1995), pp. 19–38.

26. Posel, *The Making of Apartheid*, p. 76; see also Philip Bonner, 'African urbanisation on the Rand between the 1930s and 1960s: its social character and political consequences', *Journal of Southern African Studies* 21, 1 (1995), pp. 115–29.

elsewhere in the colonial world and the more liberal states of Europe and North America.<sup>27</sup> Rather, it is to highlight the antecedents to contemporary socio-political configurations. Here I wish to draw attention to two particular features that continue to resonate in contemporary South Africa: first, the coding of unregulated (and even regulated) human mobility as a threat to insiders' economic and physical well-being and national (or sub-national) achievement; second, the use of individuals' geographic or cultural points of origin to determine utility and claims to citizenship.

Deep suspicion of those who move – particularly those moving to urban areas – continues to infuse official and popular discourses. As Peberdy notes, 'the state's restrictive and exclusionary immigration policies include all immigrants – black and white – in order to protect the new members of the "new" South Africa'.<sup>28</sup> Indeed, throughout its post-colonial history, South African policy has regularly spoken of the nation as a body that could be bolstered or, more regularly, contaminated by outsiders – native or foreign. Many government leaders, regardless of race or political affiliation, privately (and occasionally publicly) share a former Minister of Home Affairs' sentiment that:

South Africa is faced with another threat, and that is the SADC ideology of free movement of people, free trade and freedom to choose where you live or work. Free movement of persons spells disaster for our country.<sup>29</sup>

As a consequence, the South African government has all but derailed plans to create a regional labour market through a Schengen-like system of visa-waivers and portable labour rights.<sup>30</sup> Despite these official prohibitions, the fear and accusations remain: foreigners are the source of HIV, the primary cause of crime, and a threat to jobs and culture.<sup>31</sup> Even academics who should know better often succumb to the zero-sum logic that hosting non-citizens is necessarily harmful to poor South Africans.<sup>32</sup> It then comes

27. See Ambe J. Njoh, 'Colonial philosophies, urban space, and racial segregation in British and French colonial Africa', *Journal of Black Studies* 38, 4 (2008), pp. 579–99.

28. Sally Peberdy, *Selecting Immigrants: National identity and South Africa's immigration policies 1910–2008* (Witwatersrand University Press, Johannesburg, 2009), p. 178.

29. From the keynote address by Mr Mangosuthu Buthelezi, Minister of Home Affairs, at the Southern African Migration Project's Conference, 'After amnesty: the future of foreign migrants in South Africa' (20 June 1997).

30. See Aurelia wa Kabwe-Segatti, 'Reforming South African immigration policy in the post-apartheid period (1990–2006): what it means and what it takes' in A. wa Kabwe-Segatti and L. Landau (eds), *Migration in post-Apartheid South Africa: Challenges and questions to policy makers* (Agence Française de Développement, Paris, 2008).

31. See Ingrid Palmary, Janine Rauch, and Graeme Simpson, 'Violent crime in Johannesburg' in R. Tomlinson, R. A. Beauregard, L. Bremner, and X. Mangcu (eds), *Emerging Johannesburg: Perspectives on the post-Apartheid city* (Routledge, New York, NY, 2003); Martin Murray, 'Alien stranger in our midst: the dreaded foreign invasion and "fortress South Africa"', *Canadian Journal of African Studies* 37, 2/3 (2003), pp. 440–66.

32. See Glaser, '[Dis]connection'; Hussein Solomon, 'Turning back the tide: illegal immigration into South Africa,' *Mediterranean Quarterly* 16, 4 (2005), pp. 90–111.

as little surprise that a 2006 national survey conducted by the Southern African Migration Project revealed that 84 percent of South Africans believed that the country was admitting too many foreigners, with many supporting strong measures to be rid of them.<sup>33</sup> Or that 64.8 percent of South African Johannesburg respondents in a 2003 survey conducted by the Forced Migration Studies Programme thought it would be good if most of them left.<sup>34</sup> Of the 70 percent of South African respondents who thought that crime had increased recently, three-quarters identified immigrants and increased diversity as primary reasons.<sup>35</sup>

Importantly, the emphasis on the foreigner as bogeyman has not fully displaced a discourse demonizing newly urbanized citizens. In his 2004 State of the City speech, Johannesburg's Executive Mayor reflected a widely held sentiment when reporting that, 'While migrancy contributes to the rich tapestry of the cosmopolitan city, it also places a severe strain on employment levels, housing, and public services.'<sup>36</sup> The concern here is not so much with those from outside South Africa as with those from within who are more likely to drain than augment the lifeblood of those already rooted in the city.<sup>37</sup> In private meetings, and occasionally in public ones, some officials wistfully pine for a return to influx control and stronger border policies. President Zuma's renewed emphasis on rural development reflects this familiar (if often implicit) political logic. For municipalities, ward councillors, and local leaders, the old logic is reborn: uncontrolled urbanization is a financial, political, and security threat; for reasons of politics and morals, people should remain where they belong and the state is responsible for ensuring that they do so.

**The law as arbitrary, localized, and extra-legal:** Throughout the twentieth century, the South African state has employed its full coercive power to label and separate populations. Through its efforts, it has helped create divides between a deserving citizenry and outsiders who can be denied legal identities despite their proximity and utility. Whereas the Apartheid state sustained an onslaught on South African citizens' residential rights,<sup>38</sup> the post-Apartheid state has employed similar techniques to alienate and isolate non-nationals. In both, there have been means

33. Southern African Migration Project, *The Perfect Storm* (IDASA, Cape Town, 2008).

34. Forced Migration Studies Programme, 'New African cities survey' (University of the Witwatersrand, Johannesburg, 2003). For more on the data and survey, see Jacobsen and Landau, 'The dual imperative'.

35. See also Jonathan Crush and Vincent Williams, 'Criminal tendencies: immigrants and illegality in South Africa' (Migration Policy Brief No. 10, Southern Africa Migration Project, Cape Town, 2003).

36. City of Johannesburg, <www.joburg.org.za> (July 2005).

37. See Provincial Government of Western Cape, 'Migration study in the Western Cape', compiled by Simon Bekker (Provincial Government of the Western Cape, Cape Town, 2002).

38. Posel, *The Making of Apartheid*, p. 231.

of gaining a legal foothold in the city, largely through fraud, dissimulation, or playing to the state's instrumental logics.<sup>39</sup> Nonetheless there are at least three areas of political action that illustrate the state's legal and coercive efforts to exclude the threatening alien: legal status and documentation; arrest, detention, and deportation; and a general lack of access to constitutional protections through the court and political processes. On their own, none of these exclusions are unique to non-nationals; many of the poor are similarly marginalized and are popularly considered less than full citizens. What separates non-nationals is the degree to which exclusion is both bureaucratically institutionalized and socially legitimate. In all cases, it is not only the material acts of marginalization that matter – imprisonment, denial of services, or harassment – but also the nationalist discourse evoked to legitimize and explain them.

Migration and asylum policy in South Africa is inconsistent on paper and remarkably sloppy in practice. Much as the Apartheid state recognized its need for the kind of labour only its disenfranchised black population could provide, the viability and legitimacy of the post-Apartheid order depends on the skills and manual labour offered by an otherwise threatening foreign population.<sup>40</sup> Although almost all South African politicians are publicly committed to tolerance and regional integration and nominally recognize the country's humanitarian obligations, such objectives and responsibilities are not supported by the legal or administrative mechanisms. So, while the South African government actively promotes regional integration *vis-à-vis* foreign direct investment and highly skilled labour, it has actively discouraged the movement of low and moderately skilled migrants. It is almost impossible for non-nationals with temporary contracts, without contracts, or with refugee/asylum status to regularize their stay or claim the status of inalienable, inviolable insiders. Consequently, the majority of non-nationals – estimated to number 1–1.5 million – remain in South Africa with few practical legal protections and rights to residence.<sup>41</sup> Even those with state-granted rights often struggle to convert their legal status into

39. See the history of citizens' residential rights in Bonner, 'African urbanisation'. On non-nationals' residential rights, see Peberdy, *Selecting Immigrants*.

40. Republic of South Africa, 'White Paper on International Migration' (1999), for example, recognizes that one of its challenges is 'to formulate policy that takes advantage of the positive aspects of globalization, including the unprecedented movement of people'.

41. The number of non-nationals in South Africa is hotly contested. The 2001 South African census found 477,201 foreign-born residents out of a total population of close to 45 million. This figure was later revised to between 500,000 and 850,000. The nationally representative 2007 Community Survey (undertaken by Statistics South Africa) estimated the total number of foreign-born residents at just over 1.2 million or 2.79 percent of the total population. Of these, approximately 150,000 are recognized refugees or asylum seekers, while the majority remain undocumented. See Consortium for Refugees and Migrants in South Africa, 'Protecting refugees'.

effective claims to services or protection from the police.<sup>42</sup> Without substantive legal standing, non-nationals' lives parallel those of Apartheid-era black labourers: omnipresent and economically active but nonetheless stigmatized and vulnerable to the whims of neighbour and state.

The combination of stigma and vulnerability is best illustrated by the state's continued efforts to expel supposedly parasitic aliens. Throughout the country, foreigners are regularly arrested and detained merely on the basis of their physical appearance or their inability to speak the right language, or simply because they fit an undocumented migrant 'profile'.<sup>43</sup> In many instances, South Africans who are too dark, undocumented, or belong to linguistic minorities are similarly harassed, arrested, and occasionally deported. Although mandated to respect non-nationals' rights, police often refuse to recognize work permits or refugee identity cards.<sup>44</sup> Some of this reluctance is rooted in illicit economies where bribes are exchanged for freedom, a practice so common some police see foreigners as 'mobile ATMs'.<sup>45</sup> Beyond the corruption and violence, the police often see even extra-legal forms of harassment and immigration control as central to crime prevention and protecting the South African social project.<sup>46</sup> Beyond the beat cop, the city of Johannesburg and other municipalities have also deployed massive resources to rid the city of a presumably hostile alien presence. As counter-intuitive as it may seem, senior city officials proudly report on their successes as a way of combating social exclusion and helping the city to realize its potential.<sup>47</sup>

Those arrested for immigration offences – at least those unable to buy their way out of police custody – are typically remanded to Lindela Repatriation

42. Consortium for Refugees and Migrants in South Africa, 'Protecting refugees'; also Florencia Belvedere, 'National refugee baseline survey: final report' (Community Agency for Social Enquiry, Japan International Cooperation, and United Nations High Commissioner for Refugees, Johannesburg, 2003).

43. Emma Algotsson, 'Lindela: at the crossroads for detention and repatriation' (South African Human Rights Commission Report, Johannesburg, 2000); Steve Lubkemann, 'The transformation of transnationality among Mozambican migrants in South Africa', *Canadian Journal of African Studies* 34, 1 (2000), pp. 41–63; Morten L. Madsen, 'Living for home: policing immorality among undocumented migrants in Johannesburg', *African Studies* 63, 2 (2004), pp. 173–92; Consortium for Refugees and Migrants in South Africa, 'Protecting refugees'.

44. Palmary *et al.*, 'Violent crime in Johannesburg'.

45. South African Human Rights Commission, 'Open hearings on xenophobia and problems related to it' (2004), <<http://www.sahrc.org.za/sahrc/cms/downloads/Xenophobia%20Report.pdf>> (17 September 2006); Percy Zvomunya, 'From terror to misery', *Mail and Guardian*, 25 August 2005; A. Templeton and S. Maphumulo, 'Immigrants get raw deal', *Star*, 20 June 2005. In the latter article, the authors quote a police officer referring to refugees as 'mobile ATMs'.

46. See Vigneswaran *et al.*, 'Criminality or monopoly?'

47. Caroline Kihato, 'Governing the city? South Africa's struggle to deal with urban immigrants after apartheid', *African Identities* 5, 2 (2007), pp. 261–78; Loren Landau, 'Immigration and the state of exception: security and sovereignty in refugee-affected Africa', *Millennium: Journal of International Studies* 34, 2 (2005), pp. 325–48.

Centre, a privately managed detention centre outside of Johannesburg. Here too we see evidence of the state denying outsiders the legal identities which they are constitutionally guaranteed. In *The Centre for Child Law vs. The Minister of Home Affairs* (15 September 2004), Judge Annemarie de Vos accused Lindela's operators of turning the Constitution's lofty ideals into 'hypocritical nonsense' through their treatment of minors. Reports of sexual abuse, violence, and bribery within Lindela are also common, and there is evidence that Lindela's operators unduly extend inmates' stays in order to maximize the money they receive from the government for every person they house. Not only are inmates regularly denied access to legal representation, but there are even reports that detainees must pay bribes to be deported.<sup>48</sup>

For many (especially poor) foreigners living in South Africa, the state behaviours described above have created conditions where the 'proof of a criminal charge is a redundant complication – at least as far as foreign refugees are concerned'.<sup>49</sup> This is not a mistake but officially (if not legally) mandated by urgent necessity. In 1997, then Defence Minister Joe Modise remarked:

As for crime, the army is helping the police get rid of crime and violence in the country. However, what can we do? We have one million illegal immigrants in our country who commit crimes and who are mistaken by some people for South African citizens. That is the real problem.<sup>50</sup>

Five years later, a statement from then Director-General of Home Affairs, Billy Masetlha, justified strong actions by again speaking of the almost inherent threats aliens present:

Approximately 90 percent of foreign persons who are in RSA with fraudulent documents, i.e., either citizenship or migration documents, are involved in other crimes as well . . . it is quicker to charge these criminals for their false documentation and then to deport them than to pursue the long route in respect of the other crimes that are committed.<sup>51</sup>

A. B. Xuma's report to a Commission of Inquiry in 1950 could equally describe policing practice in the years preceding the 2008 attacks: 'flying

48. Although people are often detained for extended periods at Lindela, the facility has not been classed as a prison nor its occupants as prisoners. Accordingly, they are not entitled to the legal protections officially granted those within the country's correctional facilities. Ongoing research by Tesfalem Araia, Roni Amit, and Darshan Vigneswaran confirms the intrinsic and often intentional illegality of practices within Lindela (discussion with author, May 2009).

49. Zygmunt Bauman, *Society under Siege* (Polity Press, New York, NY, 2002), p. 112. See also Hannah Arendt, *The Origins of Totalitarianism* (second edition, Meridian Books, New York, NY, 1958), p. 279.

50. Human Rights Watch, 'Prohibited persons' abuse of undocumented migrants, asylum-seekers, and refugees in South Africa' (Report, Human Rights Watch, 1998), p. 124.

51. Billy Masetlha, 'Remarks at the presentation of the Department of Home Affairs on the migration system in South Africa to the Home Affairs Portfolio Committee' (15 April 2002), <<http://www.info.gov.za/speeches/2002/02042002146p1002.htm>>.

squads, pick-up vans, troop carriers, and mounted police are all abroad [*sic*] irritating and exasperating Africans by indiscriminately demanding passes, cause or no cause, often addressing and handling them in an insulting and humiliating manner'.<sup>52</sup> However ineffective in 'stemming the tide', such actions only enforce the category of the threatening outsider who not only can be, but should be, alienated. Indeed, the security and welfare of the citizenry depend on it.

As much as it is official state policy to exclude and remove unwanted outsiders – non-nationals and slum-dwellers – local officials and quasi-governmental actors retain enormous discretion in how they fulfil such imperatives. In places, this means police can choose to do little about the alien invasion or capitalize on opportunities to develop protection rackets that allow them to stay. As during the Apartheid period, police have tacitly endorsed gangs and others keen to eliminate business competition or secure non-nationals' property to distribute to political supporters.<sup>53</sup> Despite these arbitrary, localized mechanisms, efforts to exorcise the alien have been stymied by outsiders' creativity, institutionalized corruption, and the general impracticality of the exercise.<sup>54</sup> In describing Apartheid-era enforcement, J. Simons characterized it as resembling 'the labour of a man who tries to empty a barrel of water with a sieve'.<sup>55</sup> Decades later, a Johannesburg city councillor echoes the sentiment: 'as much as we might not want them here and whatever we do, we cannot simply wish these people away'.<sup>56</sup>

In part because of the inability to control migration in practice, the issue of human mobility has become a menace, an official and popular obsession, and a convenient scapegoat for poor service delivery, crime, and other pathologies. Although Apartheid-era controls of space were never as absolute as many analysts and citizens remember,<sup>57</sup> they have neverthe-

52. Evidence before Commission of Inquiry into riots in Newlands, Krugersdorp, and Randfontein, 1 March 1950, cited in Posel, *The Making of Apartheid*, p. 123.

53. See, Loren B. Landau and Hakima Haithar, 'Somalis are easy prey', *Mail and Guardian*, 2 March 2007, p. 15; also Misago *et. al.*, 'Towards tolerance' for accounts of the police role in the May 2008 xenophobic violence and in numerous instances preceding the May attacks; and Loren B. Landau and Tamlyn Monson, 'Displacement, estrangement, and sovereignty: reconfiguring state power in urban South Africa', *Government and Opposition* 43, 2 (2009), pp. 315–36. For historical parallels, see Clive Glaser, *Bo-Tsotsi: The youth gangs of Soweto 1935–1976* (Heinemann, Portsmouth NH, 2000).

54. See Caroline W. Kihato, 'Invisible lives, inaudible voices? The social conditions of migrant women in Johannesburg', *African Identities* 5, 1 (2007), pp. 89–110; Julia Hornberger, "'My police – your police": the informal privatisation of the police in the inner city of Johannesburg', *African Studies* 63, 2 (2004), pp. 213–30.

55. In Posel, *The Making of Apartheid*, p. 223.

56. Personal communication, 13 July 2005.

57. See Posel, *The Making of Apartheid*; Bonner, 'African urbanisation'.

less entered the popular imagination as such. Even groups who once chafed at restrictions on their own mobility now call for the kind of robust state controls seen in decades past. However fanciful, these memories and contemporary imperatives to protect drive policy and practice. And where officials do not act, a socially empowered citizenry is prepared to intervene.

**The failed renaissance and the wrath of a demonic society:** The May 2008 attacks reflect the legacy of a political configuration that has continuously defined and demonized aliens while subjecting them to arbitrary, excessive, yet ineffective forms of coercion, harassment, and removal. Where foreigners are concerned – as in many areas of socio-political life – a new and inclusive constitutional order has yet to be realized. Instead, the logics and practices of the chauvinist, spatially segmented political regime have been appropriated and adapted. Having sustained a *doxa* in which outsiders are socially excluded and denied legal identity to promote insiders' welfare, subsections of the citizenry have become enabled, empowered, and often compelled to resist the diffusely defined alien. Viewed from their eyes, there is no irony in insisting on such overt exclusion as a means of overcoming past discrimination and injustice. With such logics in place, the post-Apartheid state's evident failure to deliver prosperity to its citizens at rebirth generated incendiary conditions that ignited in May 2008.

As a revolutionary movement, the African National Congress often evoked religious metaphors in speaking about liberation as a journey to a promised land.<sup>58</sup> Following the first democratic elections in 1994, many South Africans expected that their journey to freedom would mean claiming part of the enormous wealth accrued by the country's white minority. But rather than the expected redistribution, poverty and inequality have not significantly lessened. Instead, South Africa remains the tenth most unequal country in the world with many relatively poorer than they were during Apartheid.<sup>59</sup> Those who have newly arrived in cities are among the most disadvantaged. Together with many long-term residents, they experience levels of physical and economic insecurity comparable to war zones elsewhere in the world. Critically, economic differences map closely with racial categories and populations' spatial distribution. The result is relatively and absolutely poor groups of 'blacks' concentrated in townships on the physical margins of more prosperous and lighter-skinned commu-

58. Raymond Suttner, "'The road to freedom is via the cross': "just means" in Chief Albert Luthuli's life', paper delivered as part of the University of Pretoria's inter-disciplinary seminar series (11 August 2009).

59. United Nations Development Programme, *Human Development Report 2007/8* (United Nations Development Programme, New York, NY, 2008); Human Sciences Research Council, 'Fact sheet: poverty in South Africa' (Human Sciences Research Council, Pretoria, 2004).

nities. This is an explosive configuration. Given South Africa's history of social violence, these divides could again become inflamed.<sup>60</sup>

Along with racial and spatial aspects of South African poverty, Apartheid left the country with a deep suspicion of the public institutions intended to govern the poor and relationships among various elements of its population. This includes both the police and local government. Following the 1994 multi-party elections, the new administration did little to build effective and responsive forms of local government. Instead, true political power became increasingly centralized within the ruling African National Congress elite and popular participation effectively limited. In the subsequent years – particularly during President Thabo Mbeki's second term – poor citizens increasingly saw this elite and the government institutions they represented as out of touch with their primary concerns: jobs, services, and security.<sup>61</sup> These frustrations fed the ruling African National Congress's internal Polokwane coup in April 2008, replacing the seemingly elitist Thabo Mbeki with the more populist Jacob Zuma. With his ascendance came the sense that South Africa's wealth would finally be reserved for its disadvantaged citizens rather than being spent on continental, pan-Africanist fantasies.<sup>62</sup>

The evident failures of the national rebirth were reinforced by skyrocketing fuel and food costs, an electricity crisis, the failure of the Zimbabwe elections and the 'human tsunami' of Zimbabweans purportedly flooding into South Africa (the actual numbers were, of course, far lower than most imagined).<sup>63</sup> These features combined to create both a sense of crisis in the new dispensation and a sense that the government was doing little to protect and promote its constituents. Given the underlying tensions within South African society, it is not surprising that local political and economic leaders took advantage of this 'opportunity window' to mobilize the poor.<sup>64</sup> Given the history of demonization, it was all but inevitable that outsiders became the target of their mass action.

The words of those who witnessed or participated in the violence echo a decades-long history of exclusion and the sense that, if leaders were unable

60. The conditions for racialized conflict in South Africa closely mirror those outlined in Siddharth Chandra and Angela Williams Foster, 'The "revolution of rising expectations", relative deprivation, and the urban social disorders of the 1960s: evidence from state-level data', *Social Science History* 29, 2 (2005), pp. 299–32. See also Walter Korpi, 'Conflict, power and relative deprivation', *American Political Science Review* 68, 4 (1974), pp. 1569–78.

61. See R. Ballard, A. Habib, I. Valodia, and E. Zuern, 'Globalization, marginalization and contemporary social movements in South Africa', *African Affairs* 104, 417 (2005), pp. 615–34.

62. See Alexander Beresford, "'Comrades back on track?' The durability of the tripartite alliance in South Africa', *African Affairs* 108, 432 (2009), pp. 391–412.

63. See Loren B. Landau, 'Drowning in numbers' in *Migration from Zimbabwe: Numbers, needs, and policy options* (Centre for Development and Enterprise, Johannesburg, 2008).

64. See Sydney Tarrow, 'States and opportunities: the political structuring of social movements' in D. McAdam, J. D. McCarthy, and M. N. Zald (eds), *Opportunities, Mobilizing Structures and Framing* (Cambridge University Press, Cambridge, 1996), pp. 41–62.

to control the alien invasion, citizens had little choice but to take action. In an interview conducted ten days after a 2007 attack in Motherwell, a young man explained that:

The approach of the Somalis to come and just settle in our midst is a wrong one. Somalis should remain in their country. They shouldn't come here to multiply and increase our population and in future, we shall suffer. The more they come to South Africa to do business, the more the locals will continue killing them.<sup>65</sup>

These reflect sentiments captured soon after the May 2008 attacks. In one news report, a South African man explained that:

We are not trying to kill anyone but rather solving the problems of our own country. The government is not doing anything about this, so I support what the mob is doing to get rid of foreigners in our country.<sup>66</sup>

Mr Mbatha, an Induna and Inkatha Freedom Party leader in the Madala hostel in Alexandra – the centre of some of the most vicious violence in 2008 – justifies the attacks in terms that resonate deeply with decades of official discourse:

The government is now pampering them and taking care of them nicely, as long as the foreigners are here we will always have unemployment and poverty here in South Africa. There was no poverty and unemployment in South Africa before the influx of foreigners . . . there is too much of them now. If the government does not do something people will see what to do to solve the problem because it means it's not the government problem it is our problem.<sup>67</sup>

A Madelakufa 2 resident adds: 'These people come here to destroy. They come here and as South Africans we are deprived.'<sup>68</sup> Having internalized logics linking mobility and outsiders to threat, the brutal honesty of an unemployed man on the outskirts of Pretoria reflects a disturbing coherence and rationality: 'If the government is failing to stop them at the borders, we shall stop them here in Itireleng. We are not the police; we do not ask for passports, they are forged anyway.'<sup>69</sup> In this statement, we also see a segment of the citizenry reclaiming the right to establish and patrol its social and spatial boundaries. The law itself is suspect; only direct, popular action will achieve the promises of post-apartheid prosperity.

65. Interview, young male resident (aged 20–25), Motherwell, Eastern Cape, 23 February 2007.

66. Bongani Madondo, 'Foreigner abuse involves all of us, you too', *The Times* (Johannesburg), 16 May 2008.

67. Interview, Mr Mbatha, Induna and Inkatha Freedom Party Representative, at Madala Hostel, Alexandra, Gauteng, 5 September 2008.

68. Interview, unemployed, married, male (40–45) South African, resident of Madelakufa 2, Gauteng, 20 August 2008.

69. Interview, single unemployed male resident (age 35–40), Itireleng, Gauteng, 4 August 2008.

In the minds of those behind the attacks, unless they are controlled, alien pathogens – citizen and non-citizen – will jeopardize both the state and the grander South African renaissance project. Unable to bureaucratically demarcate or isolate the alien, state agents and citizens have instead worked together in *ad hoc* but logically consistent ways to alleviate the threat within. This is not the result of a master plan controlled from an office hidden somewhere in Pretoria or Polokwane. Rather, it is the continuation of an institutionalized exclusion and internalized logics which see agents of the nation state discharging their imperative to protect. While specific incidents may be driven by competition or criminality, the constructed social space within which the violence occurs functions on a set of norms, values, and bureaucratic practices that have become all but invisible.

*Conclusion: loving the alien?*

The violence that shocked South Africa in May 2008 reflects more than the resurgent nationalism discussed by Nyamjoh and others.<sup>70</sup> Nationalism alone cannot explain the deaths of more than twenty South African citizens amidst the conflict, or why foreign Sothos and Swazis were not targeted while Venda- and Shangaan-speaking citizens were. Any explanation must turn on why certain outsiders were killed, maimed, or forced to flee. It is not the victims' individual characteristics, activities or aspirations that provide an answer. Rather, it is in how their spatial origins and movements come to be a threat to those who claim insider, citizen status. Only by seeing how their progeniture and mobility become an essential danger can we explain why they cannot be assimilated or neutralized but must, in Arendt's terms, be removed or liquidated.

Without forgetting the victims, we should also recognize that violence serves both to destroy and create. At the expense of lives, property, and dignity, it has helped to reinforce three incompatible views of life and rights in South Africa. In doing so it calls into question the hegemony of the new constitutional order, the practical meaning of political authority, and the true forms of sovereignty over South African territory.

In the wake of the violence, a small minority of the country's population has expressed a renewed, if circumscribed, commitment to respect the rights and protect the security of all living in the country. Indeed, even during the violence there were neighbourhoods in Alexandra, Soweto, and elsewhere

70. See Francis Nyamnjoh, *Insiders and Outsiders: Citizenship and xenophobia in contemporary South Africa* (Dakar, CODESRIA, 2006) and John Comaroff and Jean Comaroff, 'Nurturing the nation: aliens, apocalypse and the postcolonial state', *Journal of Southern African Studies* 27, 3 (2001), pp. 27–51.

that resisted attackers in the name of fraternity and tolerance. But even those defending foreigners' legal identities often call for somehow 'inducting' or constraining non-nationals' activities, to reduce the economic threat they pose, and to avoid provoking angry South Africans.<sup>71</sup> Those defending the rights of outsiders to claim space in South African cities and towns are undoubtedly outnumbered by subscribers to a second, more exclusive position: killing foreigners may not be right, but South African cities must remain the domain of those who have sprung from certain parts of its soil. If the state is unwilling to continue with the project of alienation and exclusion, then the entitled urban citizenry will carry on the task without it.

At a partial remove from formal political debates over who belongs in South Africa (and to whom South Africa belongs) are the migrants themselves. Rejecting claims to full incorporation into South African society, migrants are further distancing themselves from the citizenry. This distance, however, is social and psychological, not material. Rather, migrants will – as they have for the past decade – claim rights to be in South Africa but not bound by it. More importantly, they will remain within the country: having helped build its prosperity, they will also ensure they are able to share in it.<sup>72</sup>

It is the tension between these competing visions and the socio-legal orders in which they are embedded that have snookered the South African government. To overcome the fundamental forces fostering internal alienation – mechanisms they helped to instil and institutionalize – they will have to admit past mistakes and challenge the long-standing political logics of exclusion. This will require a massive conversion of a population that has imbibed and internalized the language of alienation and is willing to act on it.

In as much as the country's majority opposes further assistance or incorporation of migrants into South African life, the government's legitimacy is at stake, as is the universalism of the post-Apartheid constitutional order. This can already be seen in the words of a police officer at Denver police station, a space of safety for displaced migrants immediately after the attacks. As he explained, 'We have worked for the past fourteen years to be seen as legitimate among a community that had good reason to distrust the police. Now if they see us protecting foreigners, all we've done will be lost.'<sup>73</sup> Unless the South African government and its citizens find ways to address the ethical and practical tensions reflected in these views, and to reconcile the two demons within South African society, the possibility of even more extreme violence may soon be realized.

71. See Wilson Johwa, 'Home Affairs plans to launch induction for asylum seekers', *Business Day*, 28 August 2009, <<http://www.businessday.co.za/articles/Content.aspx?id=79452>> (28 August 2009).

72. See Madsen, 'Living for home'; Kihato, 'Invisible lives'.

73. See also Julia Hornberger, 'Policing xenophobia – xenophobic policing: a clash of legitimacy' in Hassim, Worby, and Kupe (eds), *Go Home or Die Here*, pp. 133–43.