

Reflection

Play it again 20 years later

Daniel Nina

dnina@hostos.edu; fdnina@hotmail.com

I was probably very frightened. I was probably very young. I was probably a Puerto Rican in South Africa, to play with the lyrics of Sting.¹ In fact, sometimes I think that I was the right person in the right place at the right time.

But in 1991 I moved to live indefinitely in South Africa. For some strange reasons, I was awarded a scholarship through the Rotary Club International – Johannesburg branch. However in 1992 I was awarded a second fellowship, this time being named the Jill Natrass Research Fellow at the Centre for Social and Development Studies (CSDS) at the then University of Natal. My idea of being Joseph Conrad or Ngugi wa Thiong’o, was very close to become real.

I was awarded two consecutive fellowships to conduct a rather unique research: my work focused on non-state forms of legality or justice, commonly known as popular justice. I was researching on the side of people who were claiming at the time to be organising a revolution. I really believed that I was part of the revolution.

In fact, popular justice throughout the world has been seen as metaphor for taking state power and sovereignty. Still today, almost 20 years later, I am not too clear why the Rotaries or the University of Natal, wanted me and my research. However, my research work was about exploring people’s subversive ideas and practices.

However, the events that were taking over South Africa, in particular as from February 1990, were much more complex and difficult for me to understand, than what I thought. I was a young Puerto Rican trying to comprehend life, and I was caught in the middle of one of the most important social transformations of the late twentieth century. I was indeed part of that history. However, I never knew how my colleagues at Centre for Social and

Development Studies saw me: I asked myself if they ever thought if I was coping with the experience.

In the process of understanding myself in this complex country, where I was conducting an unusual research project for someone trained as a lawyer, in addition to all the related work on my research, I decided to read more on postmodern theory and culture rather than law. Probably it was the right decision. I was not a traditional Marxist. In fact, I came from the radical middle classes of the Caribbean, where everything is political but where ideology is not everything. Some sort of political pragmatism did apply – and still is needed – in order to understand South Africa and to understand myself in this country.

But almost 20 years later, I can assess my two articles published in *Transformation* 17 and 21(1991 and 1993), not only from what I wrote at the time. More precisely I assess these articles from the effect that South Africa and what I wrote at the time had on me in my academic work and life –beyond South Africa. Although in the past decade I have been in and out of South Africa, I have settled again in my home country, Puerto Rico, and in my local continent, the Americas, where I have continued implementing some of the learnings from South Africa. In this regard, I take this opportunity to both comment and to share what happened in South Africa and in other countries where I remain involved at present, such as Puerto Rico, Bolivia, Colombia and the Basque Country of Spain.

Beyond the frontier: civil society revisited

In fact, this paper came out of a discussion at CSDS with Mike Morris. I do not remember his position or mine but I do remember that he suggested that I give a paper on the issue. So I did. At the time I was not too clear on the issues and debates, but I did my homework and got prepared. My memories of the seminar were that beyond Mike Morris and me, just two or three other people attended. Neither good nor bad. Just as it happened. However, when I look back to what I wrote in 1992, in the middle of a yet-to-happen political transition, this paper was, to say the least, provocative. I suggested something which was novel at the time, at least in South Africa, and moreover, it was politically incorrect. At least I learned that from post-modern theory: politically correct practices need politically incorrect practices.

In 1992, people in the struggle still believed in civil society. People still talked about a ‘new South Africa’. In fact, people were very much worried

about the IFP-ANC fighting in Natal, the hidden forces of the state and the nature of the eventual post-apartheid government. To talk at the time of civil society, questioning the very essential nature of it was not politically correct.

My general argument, based at the time on Tony Negri's work (1989), was to challenge the existence of the very same dual category. Negri, a Marxist, was not necessarily on the same track as Marx or Gramsci on this issue. But at the time, I could not comprehend that what I was arguing was the point that the two categories are necessarily in order to understand certain limits but not to make politics. In order to make politics, you need to transcend the frontier. This means, that you have to ask for equal rights both at the state level and within civil society; that you need to talk about participatory democracy not only when asking for rights and making demands from the state but also from the private sector. Moreover, that social inequality, that which allows certain people to receive surplus value, and others just to sell work-value, needs to be re-examined.

Perhaps I was talking in that piece published in *Transformation*, of a radical concept of social politics, which in fact did not pretend to continue in the old categories but to examine new categories of social interaction. At the end, my impression is that the political society, that is the state, in the case of South Africa, pursued a particular agenda which required the division. However, civil society in itself became much more fragmented, as interest groups developed, promoting their particular needs.

Because in the past few years I have not been totally living in this country, my assessment of what I said, cannot be totally honest. However, my general impression is that South Africa suffers from similar problems to other countries. Where, for example, a rights culture is continuously demanded from the state, but not necessarily from civil society – in particular from corporate capital, which has managed to fragment middle class individuals into 'little people', as they said in *Blade Runner*.² But as in many other countries where I have been engaged, the construction of the bi-polar concept of civil society/state is useful at times and irrelevant in many other moments.

Popular justice and civil society in transition: a report from the 'front line' – Natal

Funny enough, but a significant part of my academic work today, takes into consideration my experience in South Africa. In particular my work on popular justice still helps me to intervene in different regions of the world,

for example, Colombia.³ In addition, this experience helps me in getting invitations to talk and to write articles. As a lawyer and law professor, I get more – interesting – work talking about non-state forms of justice, than talking on positive law. In this regard, I owe a great deal of my intellectual life today to this country, in particular to my research on popular justice.

At the time that I offered Mike Morris and Bill Freund the article on popular justice, I was going through the most intensive period of my research. This is probably due to the war conditions that one confronted in the province of Natal (now KwaZulu-Natal). Understanding the regionalisms of South Africa at that time was not an easy task for me. I was learning how to do research at the same time that I was trying to survive. War was real, and in places like Imbali in Pietermaritzburg, I had to run away on more than one occasion when bullets were flying.

My impressions and my notes helped me to go back once in a while to these intensive years. My relation with this province has been probably, after the Western Cape, the most complex in South Africa. But at the time I did believe that organs of popular justice can be kept and maintained in a post-apartheid South Africa. In fact, the work that people like Jeremy Seekings, Wilfried Schärf and Clifford Shearing, amongst others, did, suggested to me that it was possible in the future. At that time, I did believe in making real my dreams.

Although we tried our best, research, training or canvassing in favour of popular justice was not enough. When I wrote the article, I thought that the new government was going to take notice of our work and incorporate popular forms of participatory democracy into the new constitutional structure. But I have to say, came the first constitution and later the second and nothing really happened. Popular forms of justice were never truly incorporated. In this regard, and differently to the first article on civil society that I wrote for *Transformation*, my feeling was that this was a very unsuccessful experience – at least if one wanted, taking Schärf and others into consideration, to organise prefigurative state institutions.

The question that I asked myself, after all the efforts taken in the field of non-state law, was why so little of it was incorporated in the post-1994 events in South Africa. Moreover, and in the last decade as I have been coming and going, I still ask myself why the press and dominant culture still talk in negative terms about popular types of justice. Perhaps the answer rests on the acceptance that any form of popular justice, besides the human problems that it causes, is still a very radical idea.

Lessons from South Africa

The experience on South Africa has helped me to understand quite a few things. In particular, after my years here in the country, I have been able to reflect on the following ideas:

- The state and civil society are limited by other factors not taken in consideration by myself in 1992 such as capital relations and the market forces;
- The strength of capital in this country has made in certain situations the line between the state and corporate society disappear;
- To understand much more in detail and complexity the class structure of South Africa, might have been relevant. The complexity of this country, in terms of ethnic division, class structure between urban and rural communities, and other factors such as gender and race, could have produced other results in my work;
- The lack of a critical ethical analysis of social relations is something that needed to be integrated at the time. We all had the illusion that the future was going to be different. Why? The future is just the future, bringing on board other people that were not there in the past. We were naïve on this one;
- At the time, my illusion was to think that state law could incorporate non-state law. I aiming at a nonsensical idea. Life taught me that the wrong lay not in the baby but in the ideology of the hygienic. In other words, modern law only incorporates modern law equivalents;
- My research also taught me to consider my equals in the research project. In other words, out of the experience of Clermont here in KwaZulu-Natal, or in Port Elizabeth, I learned that to conduct research with the ‘other’ does require an ethical framework of intervention.

Lessons after South Africa

However, I left South Africa in 1999, and my life continued, taking now with me the intellectual lessons that I learned here. In this regard, South Africa taught me a few lessons that later caused me in other scenarios to reflect on them:

- I no longer use the dichotomy state-civil society as a normative category, but more as descriptive categories. My field of analysis goes through both sectors;
- The politics of democratic transformation does require today not seeing any frontier or division. It is just one plain field of social interaction;

- For many social contexts, this dual category might be irrelevant. In particular, because it does not take into consideration factors such as culture, history, and the development of its socio-economic forces;
- In the past decade, I have introduced in a much comprehensive way post-colonial studies, which I felt were very much absent in the debate in South Africa. For example, the work of Anibal Quijano (2000) or Franz Fanon (1966), have contributed a lot to my understanding of other social contexts;
- On the question of non-state forms of justice, South Africa did follow the path of many other states, including most of African in not incorporating this social expression into the mainstream;
- History has shown that modern law makes use of non-modern types of laws but does not incorporate them. With the exception of Bolivia today, and perhaps Ecuador, there have been very little attempts to transform or abolish the project of modern law. In this regard, I recognised that I was naïve in the 1990s (Rivera Lugo: 2011);
- What South Africa offered me in the 1990s was perhaps to understand the value of true participatory democracy. In those many communities where I did research, long-lasting hours of social discussion were always needed in order to take decisions. The 1994 experience in South Africa has challenged and transformed that social practice. However, it is a form of learning that today has become very popular and prevalent in most Latin American social movements and political transformations;
- The experience in Latin America, in a current debate between Toni Negri and the so-called Bolivian Commune, has led to the emergence of a different understanding of all normative definitions. What has become much more adequate is the definition of a common good, which helps us to understand that there is no difference between state or civil society, or between state law and popular justice. What has become relevant is to ascertain whether we have an equal understanding of the common good (Negri 2007, Tapia 2002, 2009, Prada 2009).

Conclusion

Perhaps I was very young. But I think I learned very fast. Coming back to South Africa is always an amazing experience. It is a sensation of standing between the overwhelming capitalist relations of domination and the possibility of challenging capital. It is about understanding that perhaps we should include post-colonial theory in our framework of analysis. It is about

defining a common good, as a way forward in the conversation.

In a country where I am not too sure whether or not the ‘nation’ has been equally defined by all, it is about time that we began a process of reflection. The World Cup of 2010 might have been a good example. But also taking crime seriously could help us on this direction. However, the question that needs to be asked is what for? Most probably the human dawn is currently happening in the Americas. People are beginning to think more in the direction of building a common good as a way of building a common country for all.

Notes

1. “I am a legal alien, I am an Englishman in New York”.
2. I am referring to a particular debate in the film *Blade Runner*, where Captain Bryan stops Decker and claims that either he works for the state or becomes no one, literally just one of the ‘little people’ (Nina 2008).
3. I have been involved in Colombia since 2004, where I participated in conferences on popular justice and also on conflict resolution amongst community people and people related to the violent [military] conflicts of the country.

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