Performing dignity:
Human rights, citizenship, and the techno-politics of law in South Africa

ABSTRACT
Since the end of apartheid, rights-based languages of human dignity have often been central to articulating state obligation and making claims on the state in South Africa. In this article, I explore this moral–legal politics by focusing on a legal case brought against the City of Johannesburg by five Soweto residents on the basis of their constitutionally guaranteed right to water. Examining the epistemologies and evidentiary practices on which it was built, the debates and protests that surrounded it, and the residents’ informal articulations of their discontents, I use the legal case as a lens to explore how the political terrain has been transformed in South Africa in the context of this rise of human rights and the law as languages and modalities of politics. Thus, I explore how citizenship—as a set of techniques, imaginaries, and practices—is refashioned via languages of humanity, and I highlight the ambivalent ethical and political effects of this shift.

In May 2011, shortly before the nationwide local elections, South African newspapers announced “The Toilet Election” (see Mail and Guardian 2011b). The announcement—transmitted via headlines posted alongside roads and displayed on front pages—came in the aftermath of a drawn-out dispute in the Western Cape province between the locally ruling Democratic Alliance (DA) and the opposition African National Congress (ANC). For weeks, the ANC had accused the DA-controlled City of Cape Town of building toilets without enclosures in the township of Khayelitsha. The construction was part of a larger “site and service” scheme in which residents are provided with a plot of land and infrastructure connections but are expected to build their own housing. In this case, the toilet walls were to be added by residents themselves. In articles illustrated by photographs of the exposed toilets in the midst of empty plots, political commentators lamented the “image of a woman sitting on a toilet without an enclosure” as an “indignity” demonstrating the “lack of compassion” in postapartheid South Africa (Grobler and Montsho 2011). Shortly thereafter, the Cape Town High Court ruled that the city had violated the residents’ constitutional right to have their dignity protected and ordered officials to build enclosures for the toilets. Grudgingly accepting the judgment, DA leader Helen Zille argued in defense that “it was precisely because we believe communal toilets impinge on the dignity of people that the city sought to extend sanitation services to every household within available budgets” (Mail and Guardian 2011a).

Commentators would later describe the open toilet debacle as an “election stunt,” especially since it turned out that unenclosed toilets had also been installed in ANC-ruled municipalities. Yet the public spectacle and the moral anxieties it prompted ultimately pointed to larger questions; here, in the language of rights, dignity, and populist electoral gamble, a woman exposed on an open toilet became a metonym for the disappointments of the postapartheid condition. Indeed, the toilet debate and the way it was framed by the courts and the media demonstrated with...
particular clarity how central moral–legal languages of human dignity had become not only as a repertoire for making claims on the state but also as a form of rationalizing and articulating citizenship and its entitlements. For, political differences aside, dignity was a value no party to the debate could afford not to lay claim to.

Of course, many other ways could have been found to express discontent with the toilet situation; the politics of infrastructure in South Africa comes in many shapes and forms. Most obviously, perhaps, the altercation took place in a context of widespread and, at times, violent “service delivery protests” all over the country, of the kind that, in the past, had rarely received similarly sympathetic coverage or public support. Shortly after the toilet debate, Cape Town would also witness the rise of the “poo wars” during which residents of informal settlements protested by spilling sewage at central locations. Moreover, the controversy transpired amid persistent concern about the inability of communities to participate in decision making regarding housing or basic service provision and, more broadly, a pervasive disappointment with the speed of postapartheid transformation. Yet, here, as in many instances before, a moral–legal language of human dignity framed the ensuing public debate around state obligation.

In this article, I track the ambivalent consequences of this contemporary prominence of moral–legal forms of claiming and adjudicating state duty. Building on anthropological work that has examined the centrality of law and rights-based politics in South Africa (Comaroff and Comaroff 2006; Robins 2006), I explore how conceptions, techniques, and practices of citizenship have been reconfigured in a moment in which languages of humanity increasingly frame not just state obligations but citizenship itself. My argument unfolds via an ethnographic exploration of Lindiwe Mazibuko and Others v. City of Johannesburg, Johannesburg Water Pty. Limited, and the Department of Water Affairs and Forestry (2009), a much publicized and precedent-setting legal case in which five poor Soweto residents took the City of Johannesburg to court on the basis of the right to water enshrined in the constitution. While Mazibuko has been of particular interest to legal scholars, here, I use the case, and the epistemologies and evidentiary practices on which it was built, as a lens to explore “what human rights do” in relation to citizenship and the political terrain. Following the legal techno-politics that came to define the case, and the debates and protests it sparked, I ask: How are particular discontent narratives rationalized as moral–legal problems and as violations of “human dignity”? What meanings does “human dignity” take on as it travels between different contexts, and what are its performative effects? How do globally circulating norms intervene in historically specific political arguments and how are they appropriated and transformed? What new formations of citizenship emerge in this context?

The “human” as a political terrain

Beginning with Edmund Burke and Karl Marx, the distinction between man and citizen, first articulated in the Declaration of the Rights of Man and Citizen, has often functioned as both target and heuristic for the critique of human rights. In one of the most searing commentaries, Hannah Arendt argued that human rights were hollow without citizenship: “Man had hardly appeared as a completely emancipated, completely isolated being who carried his dignity within himself …, when he disappeared again into a member of a people” (2004:369). Appeals to the “human,” she argued, were at best meaningless without membership in a political community where such rights could be claimed, recognized, and protected. Recent anthropological scholarship has critically explored the implications of Arendt’s argument and has also gone beyond it in important respects. There is now a large literature documenting the ambivalent ethico-political consequences of humanitarianism and human rights as new governmental grammars and, importantly, also as languages to stake political claims. This scholarship has focused largely on populations outside normative modern structures of accountability, such as refugees, undocumented migrants, the stateless, or populations unprotected by state institutions (see, e.g., Feldman 2007; Malkki 1996; McKay 2012; Redfield 2013; Ticktin 2011).

While this focus on “exceptional” populations has been extremely productive, less attention has been paid to how citizenship itself has been transformed in the context of this global prominence of languages of humanity. Indeed, critical discussions of human rights and humanitarianism at times implicitly hinge on the modernist figure of the citizen as a constitutive outside or normative foil. In what follows, I explore a peculiar contemporary reversal of Arendt’s problematic: To make effective claims on the state, citizens today often need to use the language of human rights to be “heard.” Rather than being trumped by and subordinate to citizenship, as Arendt argued, in the contemporary moment, human rights become a specific mode of articulating citizenship and its entitlements. Thus, my discussion analytically follows the activists who mobilize notions of human dignity on the streets and in the courts and the experts, lawyers, and judges who adjudicate, measure, and attempt to fill the concept with content. In analyzing the specific modalities through which “human dignity” is performed and the publics it interpellates, I trace the transformation of a political terrain shaped by the modernist languages of liberation, solidarity, and social citizenship of the antiapartheid struggle and its articulation with more minimalistic idioms of individual rights and the satisfaction of “basic needs.”

These transformations take shape against the larger backdrop of a seemingly paradoxical post–Cold War
moment of widespread neoliberal reforms, on the one hand, and the rise to prominence of economic and social rights as an extension of global human rights frameworks, on the other. While many activists and legal scholars view economic and social rights as a counterpoint to neoliberal reforms, in the following, I explore some of the more complex and less obvious links between the two.

Many scholars have observed the contemporaneity and kinship between human rights and neoliberalism (see, e.g., Asad 2003:157; Barnett and Weiss 2008; Comaroff and Comaroff 2006); here, I make a more concrete argument about their conceptual association. As I elaborate below, human rights-based forms of rationalizing social provisions can be seen as one way in which modernist forms of social citizenship, with their logics of equality, solidarity, and interdependence, are being rethought. Moving beyond short-hand equations of neoliberalism with the destruction of welfare mechanisms or the celebration of entrepreneurialism, I build on recent scholarship that suggests that neoliberal reforms do not simply curtail state provisions; rather, social provisions come to be authorized in different terms and actualized through different techniques, thus producing specific modalities of care and subjects of need (Collier 2011; Ferguson 2007; Muehlebach 2012). If human rights and humanitarianism abandon the utopian telos of total transformation in favor of short-term relief and a “minimalist biopolitics” (Redfield 2013:18ff; see also Moyn 2010), the neoliberal imagination “evacuates” the near future in strikingly similar ways (Guyer 2007). Social provisions here are no longer necessarily authorized by a modernist utopian horizon and temporality of dramatic societal transformation but frequently aimed at providing more immediate relief and satisfying “basic needs,” often remaining agnostic about the longer-term goals of state assistance (Ferguson 2007).

Bringing these conceptual associations into ethnographic focus, I explore the transformations of techniques and practices of the political in a postapartheid moment in which languages of citizenship and humanity come to be related in novel ways. As activists mobilize “human dignity” to make claims on the state and legal experts try to measure and adjudicate the precise contents of the human and its needs, I suggest a new political terrain comes into view. By political terrain, I mean, on the one hand, the discursive problem space within which certain political languages resonate whereas others cannot (cf. Scott 1999). On the other hand, I use the term to reference the importance of forms of making political claims; the techniques, idioms, and materialities of acting politically. Thus, my interest is in what structures possible actions and conditions intelligibility, what “makes up” political agents, and, in turn, what forecloses other forms of political imagination as modernist hopes and expectations appear to recede from view. In South Africa, where the political terrain was for generations defined by idioms of popular sovereignty and utopian horizons of collective freedom, this turn toward moral–legal languages of the “human” is particularly striking. Against this backdrop, languages of humanity simultaneously open up space for new ways of making political claims and narrow the terrain for others, in the process recombining familiar modernist with novel forms of articulating the political. Neither simply apparatus of domination nor unproblematic language of resistance, and at once enabling and obliging, here, the human itself becomes a terrain of political action.

**Mazibuko v. City of Johannesburg and the locations of the political**

In 2007, five residents from Phiri, a poor area of Soweto, took legal action against the City of Johannesburg on the basis of their constitutionally guaranteed right to access to water. The litigation was prompted by Operation Gcin’amanzi (Zulu for “Save Water”), a controversial, large-scale project initiated by the recently corporatized Johannesburg Water utility to install prepaid water meters in all Soweto households. The project, officially designated a measure to upgrade infrastructure and to conserve water, had replaced the residents’ unmetered flat-rate connections with prepaid meters that automatically disconnected them from water supply if they failed to load up credit in advance. The litigation followed in the aftermath of intense, at times violent, protests against the project. The applicants, all five of them members of the Phiri Concerned Residents Forum, a community group that had emerged against Operation Gcin’amanzi, charged that the meters cut them off without fair notice and that the limited lifeline of free water they received per month was “insufficient for dignified human existence” (Mazibuko, 2009). The ensuing cutoffs from water supply, their affidavits argued, violated their right to access to sufficient water and also discriminated against them on the basis of race, given that the imposition of the meters was limited to the historically black townships.

In April 2008, the residents won the case in the Johannesburg High Court. In an unprecedented ruling and with a clear sense of outrage, Justice Moroa Tsoka argued that the enforced installation of prepayment meters in Soweto residents’ yards and the resultant disconnections from water supply had been unlawful and unconstitutional. In strong language, Tsoka maintained that the utility had shown an apartheid-style “patronization” of poor township residents, that the project had indeed engaged in “discrimination solely based on colour,” and that water prepayment technology was unconstitutional (Mazibuko, Johannesburg High Court ruling, 2008, para. 153). Most importantly, he ruled that the free lifeline of six kiloliters of water per household per month was insufficient to satisfy basic needs. Guided by international human rights norms advocating a specific “minimum core” of economic and
social rights, Tsoka mandated the city to double the monthly water lifeline from 25 to 50 liters per person per day to comply with the constitution. In a relatively unusual move, he thus not only overruled existing government policy but also replaced it with specific directives that drew on international human rights norms and globally circulating standards of “basic needs.”

Justice Tsoka’s emphatic and wide-ranging ruling was celebrated by water rights activists globally as a precedent-setting outcome and a confirmation of the emancipatory possibilities of judicial activism. For the Soweto activists gathered inside and outside the High Court in downtown Johannesburg, the unexpected judgment finally gave official recognition to their long-standing complaints, which the city had dismissed for years. To them, Tsoka’s ruling was a political as much as a legal victory.

From a different perspective, this was also the assessment of Johannesburg’s Mayor, Amos Masondo, who, clearly furious, suggested in a press conference that the ruling was “distorted” and that Judge Tsoka “should not interfere with the government” (Mabuza 2008b). In a striking choice of words, he announced that the city would appeal the judgment: “Judges are not above the law. We cannot have a situation where a judge wants to take over the role of government. Judges must limit their role to what they are supposed to do. If they want to run the country they must join political parties and contest elections” (Mabuza 2008a). Mayor Masondo’s angry outburst, much criticized by activists and the media for its alleged disrespect for the judiciary, crystallized a paradox at the heart of the “judicialization of politics” in South Africa (Comaroff and Comaroff 2006). While many activists took Masondo’s statement to be symptomatic of a pervasive elite arrogance among government officials that effectively prevented the poor from participating in the political process, Masondo apparently saw himself as defending postapartheid democratic sovereignty against intervention by unaccountable judges and decontextualized references to international human rights norms. This quarrel was not merely about the specificities of a legal judgment; it was a more fundamental disagreement about the proper location of politics, including different conceptions of democracy, sovereignty, and justice.

A year later, the Constitutional Court justices sided with Masondo when, ruling on an appeal, they unanimously overturned the judgment of the lower courts and dismissed the case, arguing that the constitution does not require “courts to take over the tasks that in a democracy should properly be reserved for the democratic arms of government” (Mazibuko, Constitutional Court judgment, 2009, para. 161). This outcome was an immense disappointment to the activists and lawyers who had worked on the case, many of whom suggested that the ruling followed a pattern of implicit judicial endorsements of the government’s neoliberal policies, in this instance the harsh enforcement of cost recovery via prepaid water meters. Thus, here again, while the activists saw in human rights a political language to challenge what they perceived as the neoliberal antipolitics of an otherwise tone-deaf state, the mayor and the judges viewed this use of human rights as interference with popular sovereignty guaranteed by the electoral process. In the following, I suggest that one way to disentangle these divergent interpretations is to think anew about the relationship between citizenship, human rights, and neoliberalism.

From the social to the human?

One of the defining pillars of social rights as they emerged in the late 19th and into the 20th century was a universalist account of social citizenship often animated by utopian ideas of equality, interdependence, and solidarity (cf. Donzelot 1988; Marshall 1992). This universalist quality distinguished social rights from the earlier “poor relief,” which was primarily residualist and “disaggregated” from citizenship. Viewed from this longer historical perspective, the contemporary moment appears paradoxical. In many parts of the world, there has been a noted hollowing of social citizenship in a context of neoliberal reforms, as state services are cut, privatized, or made contingent on specific conditions. Yet, at the same time, there is also an increasing focus on economic and social rights, both internationally and locally, often via the inclusion of such rights within national and international documents. Thus, while social citizenship appears to be in decline substantively, formally it is stronger than ever before, as human rights have been expanded to cover new ground, including, for example, rights to water, food, or health, and such rights are now increasingly recognized as justiciable within national constitutions.

Unlike social citizenship in the 20th century, contemporary economic and social rights are not usually tethered to national welfare traditions but are part of a broader, international move toward human rights in the aftermath of the Cold War. Thus, they are often not anchored in a solidaristic notion of the body politic or universal civic entitlement but, instead, are frequently based on a minimalist conception of absolute basic needs without a necessary utopian telos. By extension, the recipient of social provisions is often no longer the universal citizen and part of a larger, interdependent collective but, rather, an individual subject of needs, a figure that in the liberal imagination has often functioned as the constitutive outside to the autonomous, rights-bearing citizen (Brown 1995). In South Africa, this recoding of the social via the human is visible in the shift in language and content from the 1955 Freedom Charter to the country’s 1996 constitution. While the Freedom Charter deployed a modernist idiom of “the people” and called for large-scale economic redistribution and a program of public services, the constitution is distinct in both content and tone.
The constitution, often hailed as one of the most progressive in the world, was an important pillar of the compromise that ended apartheid. While the constitution's property clause preempted radical redistribution, the inclusion of socioeconomic rights was viewed by many as a way to balance the sanctity of property with a more transformative agenda (Huchzermeyer 2003; Sachs 2005). At the same time, the establishment of the constitution also coincided with a neoliberal reform program that rendered unfeasible many of the more wide-ranging distributive reforms originally envisioned by the liberation movement. This paradoxical context of liberation and liberalization in part accounts for the prominence of human rights language in South Africa and has shaped it in specific ways.

The constitution recognizes a justiciable right to access to housing, health care, food, water, social security, and education, closely following the International Covenant on Economic, Social and Cultural Rights (ICESCR). Crucially, the state does not have to fulfill these rights immediately (which it might be financially unable to do); rather, it is charged with the “progressive realization” of socioeconomic rights by taking “reasonable” measures toward their fulfillment. As will become clear below, “reasonableness” and the measurement of “basic needs” sufficient for human dignity became the crux in Mazibuko. In turn, much hinged on the precise definition of human dignity.

Human rights claims often rely on a Kantian definition of human dignity as a realm of individual worth outside of commensuration or monetary valuation. Lori Allen (2009) has compellingly analyzed the specific “politics of immediation” at work in the mobilization of such claims through which human rights gain performative power by appearing to be free from mediation. Thus mobilized, human dignity appears as a presocial and prepolitical value that universally grounds claims to human rights. Yet, when mobilized in a legal argument, human dignity can no longer remain an unmediated floating signifier but needs to be delimited and defined (Riley 2008). Indeed, as I argue below, rather than grounding human rights law, the precise meaning of human dignity is ultimately often produced in court. Thus, what the concept “does,” which projects it is enrolled in and with what targets, is always already dependent both on the ethico-political horizon within which it intervenes and on the specific modes of authorization that propel it. While in South Africa, “human dignity” has often been seen as part of a transformative jurisprudence, rather than simply a tool for the protection of individual rights (Liebenberg 2005), Mazibuko showed both the possibilities and the limits of that promise.

A legal techno-politics: Performing dignity in court

Preparations for the case began in the fraught context of ongoing protest against Operation Gcin’amanzi in Soweto and increasing arrests of activists engaging in direct action. The litigation emerged from collaboration between a legal NGO—the Centre for Applied Legal Studies at the University of the Witwatersrand—and activists of the Coalition Against Water Privatisation, including the Phiri Concerned Residents Forum. This collaboration itself was not without its ambivalences, especially since there had previously been disagreements between members of the social movements and legal professionals and academics. While the activists’ political goals were diverse, the lawyers, though similarly animated by the political and ethical stakes of the case, also needed to find pragmatic solutions to a legal problem delimited by the ambit of the constitution. This need was reflected in the substance and style of the affidavits, which, while raising a much broader set of ethical and political questions, were organized around a number of specific legal arguments.

Apart from charges of discrimination and unfair administrative action, the case against the prepayment water-metering project rested on the amount of water dispensed for free each month. The applicants argued that the free basic lifeline of 6,000 liters was insufficient for Soweto’s large households. This limit, they argued, “subjects the applicants and others who live in conditions of extreme poverty to living conditions that violate our human dignity and amounts to inhuman treatment” (Mazibuko, Founding affidavit, 2007, para. 145). Given this identification of the problem, a primary task was to establish how much water would be required to sustain a “dignified existence.” Of course, this demand entailed a paradox. While human dignity is often defined as a value beyond measure or price, the law, by definition, commensurates, determining specific punishments for specific crimes or, in this instance, adjudicating and delimiting the precise content of “human dignity.” The court’s paradoxical task, in other words, was to measure a value commonly defined by its immeasurability and singularity.

As much scholarship has shown, the law is dependent on knowledges and epistemologies outside what might be popularly understood by “legal knowledge” (Latour 2010; Pottage and Mundy 2004; Sarat et al. 2007; Valverde and Levi 2008). In a context in which the law is called on to adjudicate ever more complex ethical and political questions, such “outside” knowledges—often, but not always, provided by expert testimony—gain importance. Such expertise does not merely guide the court’s decisions but takes on a definitional, performative labor, setting up the parameters of the problem that the court then sets out to adjudicate. How research is presented, by which experts, and through which modes of authorization thus becomes crucial. Often this produces what one might call a “legal techno-politics,” through which political questions are turned into legal-technical ones and, conversely, legal-technical questions are turned into political problems or produce political effects. Thus, while legal evidentiary practices have been of
interest to legal anthropologists (Good 2008; Wilson 2011), I explore them here as both constitutive of a specific techno-political terrain and, more broadly, as a window onto formations of citizenship in contemporary South Africa.

Legal epistemology 1: Embodying indignity

Shortly before the case went to court, I visited Sophia Malekutu, a pensioner and the oldest applicant in the case. A few months earlier, Sophia had volunteered to provide a statement on her difficulties with repeated disconnections from water supply due to a faulty meter. While Sophia was usually very talkative and wont to tell jokes, that day, her mood was somber. As we pondered the proceedings, Sophia said she was a bit anxious about having to appear in court. She wondered aloud why she had been chosen to be part of the case—she was old, she said, and her memory sometimes failed her. Why had the lawyers not asked younger, more knowledgeable members of the residents’ group, who could explain the problem with the prepaid meters in a more articulate fashion? Why her? I tried to reassure her by explaining that she would not need to stand up and speak in court and that the statement she had given to the researchers had been sufficient. Later, it became clear to me that Sophia had put her finger on the peculiar evidentiary protocols and modes of authorization of this legal quest to prove suffering. Indeed, Sophia’s expertise did not take the form of objective or scientific corroboration; rather, her expertise—the specialized knowledge that made her an authoritative witness—was experience, that is, her ability to authentically embody a particular type of suffering, in this instance, the struggles of a poor elderly woman trying to manage and live with the consequences of a malfunctioning prepaid water meter. As I suggest below, this legal epistemology of experience, and the conception of human needs thus mobilized, produces a specific target of social provisions by the state and thus a particular way of understanding, rationalizing, and claiming citizenship qua subject of needs.

The five Phiri residents that had been selected to become part of the case were to represent Phiri as a place inhabited by a particular “class of people” and thus a “disadvantaged community” (Mazibuko, Makoatsane, Replying affidavit, 2008). Each applicant was chosen on the basis of individual predicaments, and each thus represented a particular type of suffering and had a specific function within the larger legal argument. For example, Lindiwe Mazibuko’s “household” included over 20 people, demonstrating the miscalculations of the city and the resulting inadequate water provision. On Vusi Paki’s stand, a fire in a backyard shack had killed two children, because the water credit had run out and there was no water left to extinguish the blaze. Another resident, Grace Munyai, told of her struggles to care for her niece, who was suffering from AIDS and needed to be washed several times a day. Thus, each applicant represented a particular experience of indignity incurred by the lack of water.

Apart from filling certain functional points in the legal argument, each affidavit was also phrased to demonstrate particular forms of suffering. For example, to prove violations of dignity and the government’s failure to treat “poor and vulnerable households” with “compassion” (Mazibuko, Makoatsane, Replying affidavit, 2008, para. 57), the affidavits established the residents’ living conditions in great detail. As I elaborate below, this near-ethnographic quality of the affidavits was in part a product of the logic through which the constitutional challenge operated.

The primary applicant, Lindiwe Mazibuko, had been a prominent activist in the protests against the installation of the meters. In Lindiwe’s affidavit, establishing her identity required naming and detailing her suffering in precise terms. In her statement, Lindiwe was asked to give a detailed account of her living circumstances, her “facts of life.” She listed the expenses of the household, including medical and school fees. She documented the size of her “household,” the 20 persons living on her stand and their ages and the relations between them. She detailed the illnesses some of them endured, the income derived solely from child grants and a pension, as all members of the household were unemployed. Her life was laid bare. In turn, her affidavit presented her household’s poverty as part of a wider condition: “The people of Phiri are very poor. They are all black. There are many people who live in households with even more people than I do. Many of them are women who take care of children, elderly members of their family, or other members of the community who are ill. Many of the people in my community are HIV positive or have AIDS” (Mazibuko, Founding affidavit, 2007, para. 77). The founding affidavit thus established Lindiwe as exemplary of a wider condition of poverty, identified with race, gender, and HIV status. Similarly, many of the affidavits were defined by a focus on bodily existence. Grace Munyai, for example, detailed how her niece’s worsening AIDS had led to her continuous “soiling of the bed,” such that more water was required to wash her and to clean clothes and blankets. The installation of prepaid water meters had thus dramatically affected her life and that of her niece, who passed away before the case came to court. In Jennifer Makoatsane’s affidavit, the exposed body and its needs were similarly essential to the narrative:

I feel that my rights to water and human dignity have been violated. Sometimes I share a bath with my niece and nephew to save water. This becomes even more inconvenient when I menstruate. During this time, I have to flush the toilet without having to at least wait for the second person to use it in order to save water. Otherwise I would feel very embarrassed should a
male person (even my brother for that matter) use an unflushed toilet behind me. [Mazibuko, Makoatsane, Affidavit, 2007, para. 18]

Via such narratives of suffering, a specific notion of dignity was produced that hinged on minimalist conceptions of bodily injury and shame. Human dignity thus came to be defined inversely by showing it “in breach.” Rather than liberal subjects able to transcend and keep their bodies private, Phiri’s residents—women, in particular—were shown as vulnerable beings and particular subjects of needs. At stake was the production of what Lynn Festa has called a “sentimental humanity,” that is, a humanity not defined by a Kantian focus on reason and autonomy but, rather, a humanity in “minimal form, carrying with it no prerogative, except to suffer” (2010:13). Indeed, a member of the legal team later suggested to me that, in her estimation, part of the reason the legal challenge was ultimately unsuccessful was because Soweto, given its status as a formal township, did not comport with the justices’ “romantic notion of poverty,” that is, the common association of poverty with the externally visible destitution of informal settlements. From this perspective, then, the justices were not merely a legal audience but also a sentimental one, whose empathy needed to be mobilized by emphasizing particular forms of injury.

This privileging of experiences of suffering is in part the answer to Sophia’s puzzlement about why she had been chosen to be an applicant in the court case. She was asked to testify not because of her knowledge, eloquence, or activist commitment (each of which she did in fact possess) but because she was emblematic of a particular type of injury, which she had experienced firsthand. Thus, this moral–legal politics had to mobilize Phiri residents as vulnerable, needy beings, in contrast to other popularly available forms of representing and claiming injustice, such as the figure of the wronged citizen who performatively hands over a memorandum of demands to public officials at the end of a demonstration, or of the angry resident toyi-toying and chanting outside local government offices. As will become clear below, outside the courts, these modalities of representing discontents and attendant modes of political subjectification often blurred.

If the performance of indignity became a device to articulate and document the legal problem at hand, its resolution required a positive definition of dignity to establish how much water would be required to enable a dignified existence. This, in turn, necessitated a different form of evidence and a different epistemology, one that would make dignity measurable.

Legal epistemology 2: Metrologies of dignity

As Bruno Latour (2010) has argued, the mundane materiality of files is central to the ways in which the law is produced and judgments are reached. The law is crucially dependent on particular modes of authorization that frame certain statements as relevant and others as irrelevant to the judicial gaze (see Valverde and Levi 2008:818). Thus, certain documents become legal knowledge via a process of authorization. In Mazibuko, this mode of authorization was a central advantage for the city. Able to fund and access expertise and data on any aspect of the case, the city responded to the legal application with piles of studies, expert testimonies, and other evidence. This mass of documentation proved to be an enormous logistical obstacle for the much less funded legal NGO working on the case and took its staff months to work through. Indeed, one member of the legal team described the city’s response to me as a form of “deliberate sabotage.” The applicants’ replying affidavit itself suggested only slightly less explicitly that the city and Johannesburg Water had “attempted to frustrate our application simply by flooding us with reams of unnecessary paper which would make it difficult for us to respond” (Mazibuko, Makoatsane, Replying affidavit, 2008, para. 4–5). Yet it was in part these reams of paper that would authorize and render stable the legal argument. Beyond the simple logistical obstacle posed by the mass of files, the case would also ultimately come to hinge on the authority of research reports and statements from experts, pitting international versus local standards, one set of numbers against another set of numbers, and, most importantly, one measure against another measure of dignity.

The residents’ affidavits were supported by a number of expert statements, including one by Peter Gleick, an internationally recognized expert on water policy and head of a large NGO in the United States. Gleick began his statement by outlining the international legal context of the right to water and calculations of water needs by international organizations such as the WHO. Given a situation of competing fiscal demands in Johannesburg, the important question would be to determine how much water would be necessary to satisfy basic needs. Gleick argued that, “based on substantial international comparative research,” the minimum requirement for the fulfillment of human water needs would be 50 liters per person per day, the amount demanded by the legal challenge (Mazibuko, Gleick affidavit, 2008, para. 18). He then proceeded to outline in more detail how his global framework would relate to the specific case at hand:

In the hot, dry, climate of Soweto, a 70-kilogram human will sweat between four and six liters per day, meaning a minimum drinking water requirement of 5 lpcd. A basic requirement for sanitation of 20 lpcd would be the minimum to ensure healthy living conditions in a densely populated area like Phiri. If the houses are connected with inefficient conventional sewerage systems such as is common in South African townships, the
minimum water requirement for sanitation increases to more than 75 lpcd. [Mazibuko, Gleick affidavit, 2008, para. 22.1–4]

While Gleick focused much of his affidavit on such calculations, he did not explicitly address the question of “dignity”; he was primarily concerned with understanding and computing “basic needs.”

In its response, the city rejected Gleick’s argument and responded with its own expert witness drawn from the Palmer Development Group, a well-funded local consultancy known for its neoliberal bent. On the basis of extensive research that he had compiled in a report, Ian Palmer himself provided the statement supporting the city’s larger claim that Operation Gcin’amanzi had been “reasonable” given practical and fiscal constraints. He argued that Gleick’s affidavit was a “theoretical piece” with little or no bearing on the situation in South Africa. Given Gleick’s lack of familiarity with the specific situation in South Africa, Palmer argued, he “completely misunderstands the water use patterns of Soweto residents [and] Phiri in particular” (Mazibuko, Palmer affidavit, 2008, para. 9–12.3). Thus, for Palmer, the authority of Gleick’s expert status was undermined by a lack of contextual detail and local knowledge; what was missing, in other words, was thick description. For example, Palmer suggested, calculating water on the basis of individual usage was “unreasonable,” since research had shown that water usage within households was often communal rather than individual. Unlike individual forms of water consumption, such as drinking water, practices like washing clothes or watering a garden were shared forms of consumption and, hence, would only increase slightly or not at all with larger household size. To demonstrate this calculation, Palmer had produced an extensive research report, which was attached to his affidavit alongside transcripts of focus groups, survey results, and other research-related documents. Here, a particular form of local knowledge—of residents’ habits, consumption practices, and intrahousehold relations—was of central epistemological value and was deployed against Gleick, thus extinguishing the research report on which Palmer drew. Palmer suggested that Gleick had wildly overestimated the water needs of Phiri residents and had not mustered any evidence for his numbers. The figure of 75 liters per day for sanitation, he suggested, “implies 7 to 8 flushes per day per person which is both grossly wasteful and almost impossible practically.” Indeed, flushing the toilet, he argued, was largely a “question of aesthetics” that “relates strongly to personal habits. It is in fact only essential to flush after defecation which takes place once for a healthy adult … A full flush after each urinating event may be quite commonly practiced, but is wasteful and does not promote improved health” (Mazibuko, Palmer affidavit, 2008, para. 8.13.6). Thus, drawing on his research in Soweto, he proposed that “1.5 flushes per day is a reasonable provision.”

The swimming pool, perennial metonym for white privilege and apartheid-era inequalities, functioned to give Palmer’s statement an ethical obviousness and logical simplicity not borne out by what followed. It was precisely because it was unclear where one should draw the line between the social and the economic, the necessary and the unnecessary, that the court looked to Palmer as an expert witness.

Palmer’s affidavit explicitly raised the difficulties of measuring human dignity and translating it into numbers. Indeed, a subheading of his affidavit—“Quantifying the amount of water needed for health (and human dignity)”—heralded the elision that marked the rest of his statement. As Palmer put it,

The health benefits associated with access to water are clearly important. But what of “human dignity”? This is a very difficult concept to define … Perhaps it can be used in relation to having one’s clothes and dwelling clean, although there are some health benefits to these conditions as well. Beyond this, it is difficult to define how the use of water can contribute to “human dignity”? I assume that a person who has enough water to drink, to prepare food, wash themselves, wash their clothes, and keep their dwelling clean has sufficient for health and human dignity. [Mazibuko, Palmer affidavit, 2008, para. 8.3.4]

Thus, Palmer conflated health and human dignity under the rubric of “basic needs.” Again, the ethnographic summoning of Phiri residents’ daily habits and practices was central to the argument and the research report on which it drew. Palmer suggested that Gleick had wildly overestimated the water needs of Phiri residents and had not mustered any evidence for his numbers. The figure of 75 liters per day for sanitation, he suggested, “implies 7 to 8 flushes per day per person which is both grossly wasteful and almost impossible practically.” Indeed, flushing the toilet, he argued, was largely a “question of aesthetics” that “relates strongly to personal habits. It is in fact only essential to flush after defecation which takes place once for a healthy adult … A full flush after each urinating event may be quite commonly practiced, but is wasteful and does not promote improved health” (Mazibuko, Palmer affidavit, 2008, para. 8.13.6). Thus, drawing on his research in Soweto, he proposed that “1.5 flushes per day is a reasonable provision.”

Such statements brought to the fore with exceptional clarity how the case came to rely on the quantification of bodily needs, in the process conjuring particular notions of humanity. Such calculations and the research through
which they were authorized ultimately became a central axis of the legal battle, setting the residents’ experts against the city’s experts and one set of numbers against another set of numbers. Indeed, the Supreme Court of Appeal, ruling on an appeal by the city, made the question of quantification central to its judgment, which relied heavily on the two expert statements.

While the Supreme Court upheld the High Court judgment, it did so on different grounds. In sober language, the court rejected the claim by the Phiri residents that Palmer had mistakenly conflated public and private benefit with the questions of needs and dignity:

It is clear from his evidence that [Palmer] realised that what he had to determine was the quantity of water required for dignified human existence and that that was what he attempted to do. His quantification is specifically done under the heading “Quantifying the amount of water needed for health (and human dignity)” . . . . The only real difference between the evidence of Gleick and Palmer is that Palmer is of the opinion that 15 litres of water would suffice for waterborne sanitation whereas Gleick is of the opinion that 20 litres are required. There is no basis upon which the evidence of Gleick can on the papers be preferred to that of Palmer. . . . For these reasons I am of the view, on the evidence presented, that 42 litres water per person per day would constitute sufficient water. [Mazibuko, Supreme Court of Appeal judgment, 2009, para. 23–24]

Thus, over the course of the case, “human dignity” was gradually conflated with a notion of basic needs. In the process, the case narrowed down to a contest between two different forms of needs calculation. By extension, the judges’ decision came to hinge on which of the expert testimonies they found more authoritative.

While the residents’ legal team had explicitly tried to forego a narrowly construed legal argument and had included a much broader set of ethical and political questions in the original affidavits, these larger questions were not ultimately considered within the circumscribed nature of the case. Instead, the Supreme Court’s focus was on the facts produced by experts such as Gleick and Palmer. The line separating a dignified from an undignified life thus was drawn at 42 liters. Here, “lawfare” came to be resolved by a legal techno-politics in which a multiplicity of complaints and disagreements were rearticulated as questions of basic needs to be delimited by competing forms of expertise.

Rather than grounding the law, then, specific notions of human dignity were produced in the course of the case via the mobilization of two epistemologies: an ethnographic depiction of Soweto residents as embodying dignity “in breach” and expert testimonies that numerically demarcated a dignified from an undignified life. Legally mediated, “human dignity” could not exist as a singular, immeasurable value; instead, it became a quantifiable condition and central to a particular mode of comparative accounting. Thus, here, human dignity emerges neither as a prepolitical given nor as, by definition, hollow but, rather, as always already shaped by the ethico-political conjunctures within which it is deployed, always dependent on particular modes of authorization and the summoning of particular publics and political subjects.

The ambivalences of human dignity

Many scholars have observed the aporetic situation of subaltern litigants, who are “given voice” to make claims on the state yet have to do so in a juridical language that shapes the grammars in which their demands can be expressed (Brown and Halley 2002; Povinelli 2002). In this sense, the law is also performative, conjuring specific modalities of humanity and justice that, in turn, “help to shape political actors” (Asad 2003:140; Esmeir 2005). To speak the legal language of human rights effectively, the residents’ affidavits had to express injustice in terms of basic needs that, in turn, hinged on a particular mediation of dignity and indignity. This need to render residents’ complaints legible to the court and, more so, the way in which they were selectively taken up by the court could not always capture the multiplicity of discontents that residents had with the water project. Judicially mediated, the language of human dignity tended to recode and overwrite the residents’ diverse objections and also produced new languages of justice. This ambivalence became apparent when activists took up the language of dignity outside the courtroom, in an act of double translation, in which the legal battle came to be translated back into activist practice. Here, the multiple publics addressed by activists (the judges, the media, fellow Soweto residents, utility officials, or city council politicians) and the specific modalities of addressing them (affidavits, meter bypasses, protests, leaflets, banners, or memoranda) at times blurred.

Shortly before the Supreme Court of Appeal heard the case in February 2009, a group of about sixty women marched through downtown Johannesburg in support of the legal challenge. The protest was organized as part of the Coalition Against Water Privatisation’s “Women and Water Campaign” launched to support and raise awareness about the case. Women of all ages had gathered, some wearing T-shirts reading “I am sick and tired of being sick and tired.” Another read “Stop the War on Women’s Bodies.” A banner suggested more elliptically, “SANITATION = WATER IS DIGNITY FOR WOMEN.” Most symbolically charged, many of the women wore soiled and red-stained underwear on top of their trousers and skirts, which they proceeded to drop at the feet of the riot police who stood outside the local government building. When interviewed by reporters, one of the women suggested, “We are marching because we are
dirty." The coordinator of the campaign, Petunia Nkhasi, responded more elaborately, "Women without water and sanitation are as good as dead and have no dignity. With the prepaid meters our ability to access water will be denied and inability to access water denies human beings the right to life and more with women the right to dignity" (Maleke and Mbabela 2009). Despite the somberness of such statements, most of the women laughed as they took off their mock underwear, giving the protest a carnivalesque air.

While the formal legal submission implicitly defined indignity as subjection to the urgency and shame of bodily needs, here, activists mobilized this notion outside the courtroom. In performing themselves as needy, embodied, and sexed (and not only gendered) beings, the women dramatically reduced themselves to bare life, albeit in a decidedly ironic, Rabelaisian way. The protest was thus reminiscent of previous activist mobilizations that had resignified and politicized "bare life" (Comaroff 2007), but it also brought to the fore some of the ambivalences of political subjectivation as modes of subordination were at once subverted and repeated. In this instance, the residents' performance of "indignity" appeared not merely as a display of opposition against the water project but also as an ironic commentary on the legal application; it was an explicit if ambivalent dramatization of the legal argument before the court.

In my conversations with the applicants, most of whom I had known for a few years before they became part of the litigation, some of these ambivalences became apparent. While the activists—unlike many ordinary Phiri residents—at times adopted a language of dignity to make their case, in conversation, it became clear that their notions of dignity frequently differed from those produced in court. They often identified dignity with relational notions, such as respect or obligation, rather than with intrinsic values or basic needs. Jennifer Makoatsane, the applicant I had known for a few years before they became part of the particular circumscribed community. As Jennifer's own affidavit had put it, her claim was made on behalf of a particular disadvantaged "class of people"—"the poor" (Mzibuko, Makoatsane, Replying affidavit, 2008, para. 138). In referencing the WHO, Jennifer partly stepped back into her role as an applicant in the case. And yet, in suggesting that it was "not for them to tell us" and "they don't know our extra needs," Jennifer implicitly challenged the very basis of the case—that is, the possibility of objectively adjudicating "basic needs." Similarly, the example of an unforeseeable event such as a funeral suggested a logic outside the calculable predictability the case sought to establish, rendering "need" unpredictable. And yet, crucially, this was not an objection to calculation per se—residents were used to having to calculate limited budgets on a regular basis, and Soweto activists regularly mobilized numbers and calculations in arguments against Operation Gcin'amanzi. Instead, this was an objection to who did these calculations and how. In other words, for many residents, such calculations were not merely an administrative matter but were bound up with ethical and political questions.

Indeed, Jennifer raises what in Phiri regularly appeared as one of the main complaints against Operation Gcin’amanzi: the pervasive feeling of being treated as objects by the state, of feeling managed, of being subjected to what Judge Tsoka would later describe as the "patronizing" attitude of the city. She expressed this more explicitly when I asked her what dignity meant to her.

Dignity means how we are able to carry on with our culture. And how we are supposed to show respect and do our rituals in a right way, without having to think. … [H]aving to go and expose ourselves and say, "yes, we are indigent." We hate that. What's that? [Even] the apartheid regime didn't say that all those who are poor have to come in front and tell the whole world that we are poor.

While Jennifer's reference to being "able to carry on with our culture" was part of the affidavit in which she detailed how the ritual events and hosting of relatives during her father's funeral had been difficult because of the limited water supply, most of the other opinions she expressed in the course of our conversation were not part of the formal legal argument. Again, dignity is here construed as the ability to live life "without having to think," that is, without the constant pressure to compute water supplies to avoid being automatically disconnected by the meter. Similarly, Jennifer's objections are directed against having to expose herself as "indigent" or as a "special case." Throughout my conversations with Phiri residents, this was a recurrent complaint. Yet it is precisely this issue that the case did not, and, indeed, could not, address. On the contrary, the case ultimately required the residents to present themselves as a particular circumscribed community. As Jennifer's own affidavit had put it, her claim was made on behalf of a particular disadvantaged "class of people"—"the poor" (Mzibuko, Makoatsane, Replying affidavit, 2008, para. 138). In
This allowance, however, was specifically targeted toward “indigent” households. To be eligible for the increase, residents were required to file an application with the city to be officially categorized as “indigent,” something that, city officials acknowledged, relatively few people had done in the past, in part because of the attached stigma. Thus, they were officially reaffirmed as “indigent” subjects in relation with the state.

Conclusion

In several ways, Mazibuko demonstrates some of the paradoxes of using the law to make claims on the state. Much like the image of the woman sitting on an exposed toilet mobilized during the “toilet election,” with which I began this article, throughout the case, the “impaired” humanity of Phiri residents became the constitutive outside to the aspirational economy of postapartheid citizenship. In turn, the bodies of Phiri residents came to exemplify a particular notion of suffering and a corresponding form of redress identified as the satisfaction of basic needs. Here, human dignity and the legal techno-politics through which it was adjudicated and filled with content enabled a specific accounting of injuries and calculus of provisioning, in the process producing particular notions of justice, humanity, and the political.

As a mode of narrativizing a disagreement over state obligations, then, Mazibuko enables a wider exploration of how citizenship and its entitlements are understood in contemporary South Africa. Here, social citizenship is not simply given up, as many critics of neoliberalism have argued; rather, state obligations are rationalized in different terms and calculated and administered via different sociotechnical forms. Unlike modernist techniques of social citizenship that were based on universalist logics of solidarity and interdependence, rights-based forms of articulating state obligation provided the grounds for a rethinking of social provisions in individualized and targeted terms, primarily designed to satisfy a minimum of “basic needs” required for a “dignified existence.” Thus, while socioeconomic rights provided a repertoire of arguments against neoliberal reforms, they also proved to be eminently compatible with neoliberal modes of rethinking social provisions and subjects of need. And yet, despite the strong influence of neoliberal reform prescriptions in the early 2000s, when Operation Gcin’amanzi was conceived, multiple, at times competing, modalities and traditions of social provisioning continue to be at work in South Africa, vitiating any short-hand conclusions and demonstrating the ways in which reforms always already take shape in relation to existing formations.

If appeals to human dignity gain performative power precisely because they appear to reference universal, prepolitical values, ethnographically following specific
mediations of dignity and the diverse publics they interpellate enables a more complex picture of the performative force that languages of humanity compel. Whether in the legal techno-politics in the courts or in the performances of indignity outside government offices, languages of citizenship and humanity now often coincide in a multiplicity of ways, thus reshaping a political terrain previously primarily defined by older modernist traditions.

The specific South African context also illuminates conceptual questions with a longer historical arc in relation to the distinction between “man” and “citizen.” If modernist notions of citizenship have often provided a normative foil for the critique of human rights and humanitarianism, their stability is today increasingly in question, with important consequences for the political terrain and the activist imagination it affords. Indeed, the shift toward moral discourses of suffering and indignity also affects the conditions of intelligibility of political claims: how claims on the state can be expressed, what claims are “heard” by the state, and what kinds of political actors they shape. Of course, languages of the human are not the only way to express discontents in contemporary South Africa; indeed, the dramatic rise in so-called service delivery protests over the past decade is only the most visible testimony to the diversity of forms that claims on the state can take. As the media spectacle surrounding the “toilet election” showed, however, while certain forms of political expression become legible or, indeed, hypervisible, others are rendered illegible and often illegitimate.

While Soweto activists politicized “bare life” and, indeed, thrived on its carnivalesque performance, they also, and often in the same moment, identified the ambivalences of this postapartheid political terrain, which simultaneously affords and frames novel languages of opposition. The judicialization of politics, then, is also symptomatic of a present in which modernist futures and hopes, and the political terrain shaped by them, have been significantly revised. Indeed, if the hegemony of moral–political languages of humanity—and what Jürgen Habermas (2010) termed the “realistic utopia” of human rights—signals the end of the modernist telos and romantic temporality of “total revolution,” Mazibuko and the debates and protests surrounding it showed both the promise and the limits of this emergent politics of “man and citizen.”

Notes

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1. Such claims are expressed in multiple forms in South Africa, from demonstrations to violent protests or a nonpublic politics of infrastructure (von Schnitzler 2013).
2. Talal Asad (2000) uses the phrase “what human rights do” to point to the performative effects of languages of rights in relation to politics.
3. And yet, Arendt’s institutionalist vision of the political blinded her to the possibilities of a politics outside state structures and led her to relegate the “merely human” to the status of the prepolitical (cf. Rancière 2004).
4. While there had been several important socioeconomic rights cases before, Mazibuko was the first to mobilize the right to water. For a discussion of the legal details of Mazibuko, see Bond and Dugard 2008, Danchin 2010, and Dugard 2010.
5. This article draws on over 18 months of ethnographic and archival research carried out over a number of years, beginning in 2004 when Operation Gcin’amanzi was first implemented. Most of the research for this particular article was carried out during research stays in 2007 and 2011. For a more detailed analysis of Operation Gcin’amanzi and the protests that surrounded it, see von Schnitzler 2008.
6. For a discussion of “minimum core,” see Young 2008.
7. Gösta Esping-Anderson and Walter Korpi distinguish between marginalist forms of welfare based on a notion of “collective solidarity” and institutionalist forms that are targeted toward the “human residual that is incapable of self-help” (1987:40). If the poor laws were defined by their disaggregation of the poor from citizenship, today’s measures, though clearly not fully outside citizenship, still produce a particular form of what Seyla Benhabib (2005) calls “disaggregated citizenship.” For an analysis of social citizenship and wage labor in South Africa, see Barchiesi 2011.
8. A good example is the UN’s recognition of the right to water in 2011.
9. First recognized in the UN Declaration of Human Rights, it was only with the establishment of the Committee on Economic, Social and Cultural Rights in 1989 that economic and social rights became a focus within international human rights law.
10. This move resonates with the larger shift in development thinking since the mid-1970s from utopian ideals of modernization theory or socialist-inspired development toward a focus on “basic needs” and “poverty alleviation.” This form of development seeks to ameliorate misery but gives up on the idea of its complete supersession.
11. Thus, the constitution (as part of a post–Cold War liberal consensus) helped suture otherwise often incommensurable positions of antiapartheid rights activists and neoliberal reformers on the basis of a shared stance against state authoritarianism (cf. Klug 2000).
12. “In the kingdom of ends everything has either a price or a dignity. If it has a price, something else can be put in its place as an equivalent; if it is exalted above all price and so admits of no equivalent, then it has a dignity” (Kant 1964:102; see also Asad 2003:137 n.). Former Constitutional Court justice Albie Sachs (2005) draws on such a conception in his distinction between the utilitarian concerns of government and the more qualitative concerns invoked by human dignity.
13. In his genealogy of witnessing, Didier Fassin points to the increasing focus on witnessing as a representation of experience over forms of witnessing as third-person observation. It is this authority of “the subjective truth of experience” that was at stake here (Fassin 2008:539).

14. The term household, used by the city, was problematic, as most infrastructure connections de facto service several households, usually one formal building and one or two backyard shacks. Later, the city revised its terminology to refer to “consumer units.” Indeed, Mazibuko was praised by legal commentators as being “remarkable for the detailed analysis of the lived realities of poor communities in South Africa” (Liebenberg 2008).

15. As has been observed by many scholars, a secular preoccupation with bodily suffering and integrity often runs through humanitarian narratives (Laqueur 1989; see also Asad 2003).


17. It is here that the particular modes of legal authorization mattered. Importantly, it is no longer obvious that “universal” knowledge automatically trumps “local” knowledge. While ethnographic, contextual data used to be the primary mode of argument by subaltern or poor litigants, today such local knowledge has become a central resource of those who have historically often spoken in the name of universality (Choy 2011; Riles 2006).

18. See also Robins 2009 on the mobilization of standards and facts by South African AIDS activists.

19. Both “indigents” and “special cases” are official terms for populations targeted in policies of social assistance in South Africa. See Prishani Naidoo’s (2007) analysis of the “indigent” category.

20. While the residents had argued that the metering project was unlawful and procedurally unfair, in part because the city had not provided for appropriate public consultation, this claim was dismissed by the Constitutional Court on the ground that the decision to install prepaid meters was based on executive powers, rather than an administrative action, and that consultation had been sufficient (Mazibuko, Constitutional Court ruling, para. 131–134).

21. Many of these arguments are convincingly advanced by activists (cf. Dugard 2010).

22. Indeed, neoliberal modes of “reprogramming” often encounter various modernist obstacles, at times reinforcing and at other times running up against them, foremost among them the intransigence of apartheid infrastructures (cf. Collier 2011). See Ferguson 2007 and Hart 2008 for a discussion on the usefulness of the concept of “neoliberalism” in South Africa.


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