THE D-WORD

PERSPECTIVES ON DEMOCRACY IN TUMULTUOUS TIMES

Edited by Christi van der Westhuizen,
Siphiwe Dube and Zwelethu Jolobe

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PREFACE

Christi van der Westhuizen, Siphiwe Dube and Zwelethu Jolobe

This collection engages global debates about the crisis of legitimacy facing democracy and confronts current challenges to democracy from a diversity of transdisciplinary and interdisciplinary perspectives. The interest is in both the *hardware* and *software* of democracy, with the hardware referring to institutional dimensions such as legislatures and courts, and the software to the normative dimensions of law, constitutionalism, and ideology. Given the proliferation of "crisis" literature on democracy, this volume finds its unique niche in presenting perspectives from the global margins that bridge disciplinary, sectoral, national and conceptual divides. Spanning socio-legal studies, political studies, sociology, philosophy, queer studies, gender studies, psychology, and public administration, insights from academics, activists, and activist-scholars are provided. Exchange is enabled across national and multilateral levels. The volume brings South Africans into conversation with scholars and activists from elsewhere in the Global South, including the Arab world and the rest of Africa, and from the European periphery. In their varied but concerted ways, the authors provide critical reflections on the fractures in democracy in South Africa and beyond, engaging with possible fixes and futures that have been proposed globally, both theoretically and practically.[1]

The volume challenges the reduction of democracy to liberal democracy by liberals and authoritarian nationalists alike, with several contributions bringing to the fore the necessity of democracy for marginalised and vulnerable individuals and communities. This includes four chapters addressing the impact of the Covid-19 pandemic on democratic governance and accountability. The volume also introduces concepts rooted in African contexts to further deepen the understanding of democracy in vernacular settings.

Our opening chapter interrogates the global democratic emergency, arguing that an opportunistic politics of populism capitalises on the socio-economic misery caused by neoliberal capitalism to roll back the advances made in representative and accountable democracy during the 20th century. Moving from Rancière's understanding of the *demos* as the "uncounted", we approach democracy not as an accomplishment of "consolidation", but as the ongoing struggle for social, political and economic inclusion that reflects and recognises existing human diversity. We argue that the common anti-democratic position that democracy fails when laws and constitutions do not deliver the democratic promise in its fullness is a relegation of democracy to a kind of *deus ex machina*. While these anti-democratic actors frequently present themselves as the custodians of authentic identities and accompanying politics, they personify the depoliticisation that liberal proceduralist and neoliberal versions of democracy have caused. Instead, we argue that politics must be brought back into ongoing struggles to avail, actualise, and deepen the democratic promise of and for an expanded *demos*.

The rest of the book is divided into four sections: Democracy, the Law and Accountability, Practices of Democracy and the Politics of Identities, Democracy, Political Culture and the Economy and, lastly, Democratic Futures. Samantha Waterhouse opens the section on Democracy, the Law and Accountability from an activist's vantage point, capturing the complexities of democratic representation of "the will of the people" with her analysis of the role of South Africa's democratic parliament. Its tasks of law-making and oversight over the executive to ensure accountability should create conduits for the expression of the popular will. But, measured against the imperatives of the Constitution, it falters in practice because "the people" remain outsiders to the institution. According to Waterhouse, the evident ineffectiveness of parliament to hold executive power in check, especially in ensuring the actualisation of social justice, is due to the dominance of party leadership structures in shaping the processes and outcomes of legislatures. Parliament recedes to a backseat role in the very moments when it should hold the executive to account. As the first of four chapters grappling with the effects of the Covid-19 pandemic on democracy, Waterhouse shows that the two-year national state of disaster reinforced the reduced role of the legislatures as mere rubber stamps of anti-poor policies and programmes at the heart of deepening inequality and poverty. Turning to the courts, the second chapter presents a significant example of "democracy in action" in South Africa. Danie Brand writes on the court challenge to the government's Covid-19 pandemic regulations, as had been adopted in terms of section 27(2) of the Disaster Management Act. In the case in question, *De Beer and Others v Minister of Cooperative Governance and Traditional Affairs*, Brand reads the initial High Court judgment as a vindication of the courts adopting a more expansive approach to litigation that serves the public good. While the Supreme Court of Appeal's overturning of the decision affirmed reasonable and fact-based decision-making and respect for institutions, it expressed a conventional approach to litigation that failed to accommodate democracy's messiness and hence did not live up to the full democratic imagination of the Constitution.

In the following chapter, Svetluša Surová also addresses government measures aimed at combating the Covid-19 pandemic and provides a powerful comparative example by shifting the lens to the Eastern European state of Slovakia, a relatively new entrant to the European Union. Surová demonstrates how the Roma in that country not only bore

the brunt of the health and economic effects of the pandemic but were also subjected to militarised quarantining. She finds that measures during the first wave of the pandemic lacked a legal basis, while measures in both the first and second waves targeted these marginalised communities in arbitrary ways that violated their rights without authorities acting transparently or providing proper legal justifications. Extending the inquiry into how the law may impact vulnerable groups for better or for worse, Richard Levin and Mnqobi Ngubane, in their chapter, home in on labour tenants on white-owned South African farms. These tenants were "subjects without citizenship rights" during the colonial and apartheid periods – a condition that continues into the democratic era. Government failure in implementing post-apartheid legislation has resulted in land rights applications of labour tenants not being processed, or even being lost. Levin and Ngubane provide an analytical account of the Constitutional Court decision that led to the appointment of a Special Master of Labour Tenants to assist in the implementation of the law, a step that holds the promise of actualising such tenants' land rights.

The section is rounded off with a return to insights from an advocacy position. Zukiswa Kota's chapter addresses corruption in public procurement as the government failing its constitutional mandate. Her study of the Giyani bulk water project in Limpopo, one of South Africa's poorest provinces, demonstrates the disastrous consequences of the grandscale form of corruption known as state capture for poor people – in this case, the violation of the right to water. Corruption places additional pressure on public financial management systems and hampers oversight. Kota argues that, as with the Covid-19 procurement irregularities, the Giyani case also shows how emergency legislation and procurement can be used to circumvent tender procedures and avoid oversight. Importantly, for Kota, remedial action may be enabled by the National Treasury's Draft Public Procurement Bill, which should promote inclusion and equity.

The second section on Practices of Democracy and the Politics of Identities foregrounds politics from the ground up, with an emphasis on accountability. Adopting a conversational tone, the section opens with a chapter that again destabilises the separation of activist and scholarly thinking. The focus is on confronting the possibilities for queering democracy, with an emphasis on the African continent. Scholar-activists Melanie Judge and Peace Kiguwa engage with activists Monica Tabengwa and Liberty Matthyse on queer democratic struggles as sites of social and political change towards dismantling structures of domination. Lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) people's struggles to upend normative hierarchies also illuminate other prevalent forms of exclusion. Consequently, LGBTQI+ identities, politics, and activism are critical to expanding the democratic imaginary, including contributing to more democratic forms of rule and radicalising democracy to expand and deepen justice. In this sense, as a form of bottom-up politics, the chapter examines what LGBTQI+ activism in Africa might bring to democracy and decolonisation, and how democracy can be enabled and re-imagined through an intersectional approach.

Building on the themes of accountability and politics from the ground up, including questions about decolonising and re-theorising democracy, the next chapter by Hlengiwe Ndlovu discusses democracy's meanings from the margins. To understand the repertoires and

strategies that marginal communities employ in their everyday claims on the state, one needs to pay attention to how and why South African democracy has been repurposed in problematic ways in the post-apartheid era. Residents of a local community in the Eastern Cape use *inkululeko*, loosely translatable from isiXhosa as "freedom", to make sense of their struggles against apartheid and their hopes for a better life under democracy. Ndlovu's analysis of narratives about corruption explores how patronage politics and clientelism become embedded in everyday attempts to make democracy work from below. Turning the lens onto another African setting, Ivan Mugulusi's chapter on Uganda extends the theme of postcolonial bottom-up approaches to democracy by centring mwananchism, or citizenship, as a key concept. *Mwananchi* is a Swahili word for an ordinary citizen, a member of the public. Mugulusi examines the ways opposition groups in Uganda nudge people out of docility and into action, helping them construct new political identities as citizens who are empowered to act. These newly animated civic roles stand in stark contrast to the Ugandan government's continued drive to cow citizens into silent subjects. Drawing on research interviews, the chapter shows how Ugandans find ways to participate that reject the rulers' version of "good citizenship".

Following on from the focus on institutions and identities in the first two sections, the third section addresses Democracy, Political Culture, and the Economy. Siphiwe Dube and Rachid Boutayeb, respectively, interrogate the uses and abuses of culture and religion in the African and Arab worlds. In the same section, Lucas Nkosana Sibuyi engages the fraught question of capitalism in relation to democracy. Dube's chapter sets the tone by mapping the often-ignored phenomenon of black conservatism, aimed at maintaining racial capitalism under the guise of freedom. Tracing this form of politics back to the apartheid-era, Dube shows how traditional leadership institutions combine with Pentecostal religious institutions to create a specifically black South African form of conservatism. The positions of key players in the conservative black public sphere in South Africa, such as Mangosuthu Buthelezi, Herman Mashaba, and Sihle Ngobese, are investigated using critical discourse analysis. A key observation is that black conservatism demonstrates that South African politics is fertile ground for reinvented political orientations that undermine democracy. Turning to the Arab world, including North Africa, Boutayeb argues that the politics of the past and of identity have not been taken on board sufficiently in understanding the Arab malaise of the absence of democracy. The three major Arab political currents of authoritarianism, sectarianism, and Salafism pursue the restoration of ideologically interpreted, ahistorical versions of the past. Analysing images emblazoned on postage stamps from Libya, South Africa, Iraq, and Germany, Boutayeb illuminates an "enchanted relationship" with the past, created through imagined authenticity and sacrifice of both the individual and of the present, respectively in favour of the collective and of propping up an illusion of the past. He challenges analyses that attribute the Arab democratic deficit to "traditions" and religion, instead arguing that traditionalism – the appropriation of the past for political ends – is the problem. Boutayeb concludes that there can be no transition to democracy in Arab contexts without a politico-cultural transition that enables the free expression of ideas. Moving to the question of the economy, Sibuyi's chapter tackles the post-apartheid government's political failure to fulfil constitutional and policy demands. He addresses the question of accountability to the constitutional democratic mandate. Sibuyi historicises the shift from import-substitution

industrialisation to neoliberal capitalism in South Africa and reminds the reader that economic growth cannot simply be achieved by decree. In contrast to the economic reforms of the apartheid state, the post-apartheid state needs to take account of its own complicity in the glaring deficiencies in policy implementation and overall state administration.

The fourth and last section on Democratic Futures shifts the focus to horizons of possibility. As concerned about the macroeconomic framework as Sibuyi, Isaac Khambule foregrounds the state's constitutional calling to advance development. He dares to imagine what a South African constitutional developmental state would look like. Khambule demonstrates that the Constitution already provides the platform for a developmental democratic framework by affording the government a direct role in the economy to improve socio-economic realities. The Constitution provides the critical ideological and structural drivers for a constitutional democratic developmental state. That this vision has not come to fruition serves as an invitation to seek greater accountability for its realisation. Khambule offers ways to seek this accountability, which can be read along with the other chapters' concerns with enabling accountability in more concrete terms. His rethinking of a developmental democracy links into the book's last chapter, which proposes approaching democracy in an aesthetic-legal mode, with a view to opening up fresh imaginaries. In this final chapter, Karin van Marle provides an aesthetic reading of the shift from parliamentary sovereignty to constitutional democracy in South Africa. Following feminist scholarship on the domestic realm as a site of resistance, Van Marle argues the city can do the same for democracy: not "the city" in reality but as artwork and metaphor. Her concern with the inclusion of women and marginalised others "who seek to live wayward lives" links with several chapters in the volume. With the idea of the city as the being together of strangers, Van Marle allows us to reflect more openly and freely about the conditions of possibility for living together that South Africa's constitutional democracy provides for. This returns us to a slower pace and gives us space to engage with the complexity of democracy rather than simply its programmatic aspects. In a national and global context where practice and practicality dominate, the invitation to reflect and re-imagine is an antidote to the pessimism that might be evoked by findings on state failures and state capture, as highlighted by many of the chapters here. In a gesture to the Frankfurt School's notion of aesthetic theory as concerned with "the unwavering determination of art – through its autonomous impulse – to speak beyond both its constrictive and constitutive elements" (Dube, 2022:99), Van Marle invites us to reclaim and hold on to democracy as an idea that offers radical possibilities against tyranny.

Endnotes

1   See also "The State We're In: Democracy's Fractures, Features and Futures". International interdisciplinary conference (online). 7-10 September 2021. Nelson Mandela University, South Africa. https://bit.ly/3QZ7ZwP

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Chapter 1

Beyond Democracy's Travails Towards Just Inclusion: Re-membering the *Demos*

Christi van der Westhuizen, Siphiwe Dube and Zwelethu Jolobe

Worldwide, democracy has come under intensifying pressure as authoritarianism surges through populist permutations last seen in the lead-up to World War II. There are now noticeable and dangerous similarities between the previous rise in authoritarianism and the present. Comparable to the laissez-faire capitalism of the 1920s, today's deregulated capitalism in its globalised neoliberal form has deepened socio-economic inequality since the 1970s. In a country like South Africa, neoliberal capitalism has compounded continuities from settler colonialism (Reddy, 2015). Emergent political entrepreneurs have taken advantage of inequality and are exploiting the worsening economic conditions through divisive discourses, with the effect of polarising fragile societies (Van der Westhuizen, 2023b; Levy, 2022; Mondon & Winter, 2020). Human diversity has been weaponised in order to create or exacerbate social cleavages through versions of politics likened to fascism (Van der Westhuizen, 2023a; Hyslop, 2020; Suvin, 2017; Mammone, 2015). These negative mobilisations, driven through discourses of race, ethnicity, nationality, religion, gender, and sexuality, deepen polarisation and feed anti-democratic politics. This has become evident in countries as varied as Brazil, Britain, El Salvador, Hungary, India, Italy, Nigeria, Tunisia, South Africa, Sweden, and the USA, and in the rhetoric surrounding Russia's invasion of Ukraine in 2022. The concomitant rise of the radical right and transnational strengthening

of the white right hold detrimental consequences for democracies across the global South and global North (Pinheiro-Machado & Vargas Maia, 2023; Thobani, 2021; Mattheis, 2021; Mammone, 2009). These dynamics are also observable in South Africa on the advent of its seventh democratic election due to take place in 2024 – a year in which democracy will be thoroughly tested, with 4 billion people going to the polls in 60 countries. Apartheid, as an extended and intensified system of colonial domination, was officially ended with a transition to constitutionalism in 1994 – but only after extensive anti-colonial and pro-democracy struggles.

The contemporary moment is marked by a rising public discourse actively delegitimising democracy and thereby seeking to foreclose its hard-won actualities and possibilities. Politics and related communications have become riddled with misinformation, half-truths and outright lies, aided and abetted by the rise in right-wing populism. Misattribution necessarily follows from this, as it becomes difficult for people to correctly identify the sources of the social ills under which they struggle. Research shows that the economic fallout from neoliberal globalisation finds expression in culture and identity through increased support for right-wing populist parties (Rodrik, 2021). Analysing the 2016 US presidential election that Donald Trump won, Rodrik identifies four "causal pathways" that link "globalisation shocks to political outcomes":

> (a) a direct demand-side effect from economic dislocation to demands for anti-elite, redistributive policies; (b) an indirect demand-side effect through the amplification of cultural and identity divisions; (c) a supply-side effect through the adoption by political candidates of more populist platforms in response to economic shocks; and (d) another supply-side effect through the adoption by political candidates of platforms that deliberately inflame cultural and identity tensions in order to shift voters' attention away from economic issues (ibid.:135).

Voters may, therefore, vote against their own interests (Glynos, 2014; Lakoff, 2008). In a comparative analysis of South Africa and the US, Brian Levy points to the role of "ideational political entrepreneurs" (Levy, 2022:8) to explain an interactive relationship between economic inequality and social polarisation. In both these countries, polarisation is driven by "divisive political entrepreneurs" who exploit inequality (ibid.:14). According to Levy, polarisation is driven through three ideational channels:

> … [c]hanging ideas among citizens (including, but not only, non-elites) as to how the world works and their place in it, with an increased sense of being beleaguered and a corresponding shift from inclusive to us-versus-them identities. Changing ideas among economic and political elites as to the appropriate balance between self-seeking and cooperation, with a retreat from rules and policies that foster inclusion. An increasing propensity among influence-seeking ideational political entrepreneurs to foster anger rather than hope and narrow rather than inclusive identities (ibid.:36-37).

Political entrepreneurship driving polarisation has a negative impact on democracy (Svolik, 2019, Van Beek & De Jager, 2017; see LeBas, 2018 for exceptions). Bermeo's (2003) study shows democratic breakdown across the global South and global North in the 20th century to be driven by polarising elite behaviour rather than by "ordinary people". As the equitable distribution of resources is a primary determining factor of democratic longevity (Boix,