Moral Panic and the Superior Courts Bill
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In 1973 the sociologist, Stanley Cohen, published an influential book, *Folk Devils and Moral Panics*. Moral panic involves triggering acute public anxiety through the exaggerated and distorted claims about some event, individuals or groups who are socially constructed as ‘folk devils.’ The purveyors of ‘moral panic’—the ‘moral entrepreneurs’—are generally powerful social forces with privileged access to and control of the public sphere. The events or individuals that they attack are projected as threats to existing social order, moral rectitude, or social well-being and livelihood of those being revved into frenzy. The problem with moral entrepreneurs is not so much that they lie outright. The problem is that they are given to exaggerating and distorting the objects of their ‘moral outrage.’ They tap into residual “social anxieties, insecurities and fears” often in defence of interests that are not declared. Moral panic is corrosive of democracy; it degrades the public sphere. The antidote, Stan would have argued, is restoring proportionality to public debate.

The anxiety being provoked in Grahamstown with the distorted accounts of the impact of the Superior Courts Bill is a text-book case of moral panic. The responses to my intervention in what was until then a monologue have introduced strange new equations. I will address three aspects of the responses.

Selective Amnesia

It is important for the campaigners to remember their own arguments. The response of the Grahamstown High Court Action Committee (GHCAC) reflects a puzzling case of selective amnesia. First, it claims that “no-one suggests that judicial independence is necessarily undermined by physical proximity” (underline mine). This is strange, because that is its argument and of the Rhodes University ‘senior management,’ viz:

*Rhodes shares the view of the Grahamstown High Court Action Committee (GHCAC) expressed in their submission that ‘the spirit of judicial independence so fundamental to the Constitution is best ensured by physical separation... (and that) physical proximity may well undermine that independence.’ (page 3, Rhodes University Submission).*

The GHCAC will do well to read their own document! Once you discount for ‘necessarily’ and ‘may well’ undermine, the core claim is that the ‘physical proximity’ of the judiciary to the executive branch of government is a threat to the independence of the judiciary. Physical proximity here refers to having the seat of the new ECGD in Bhisho, the provincial capital. Remarkably, the GHCAC seem to forget that a judicial division seat (until 2009 called the Ciskei Division) existed all along in Bhisho. Moral panic relies on ignorance (if not idiocy) on the part of its audience for it to work. In case the campaigners miss the point in my original intervention, let me expatiate. In the UK, the Parliament, Buckingham Palace, 10 Downing Street, the Royal Court of Justice (High Court of Justice and the Court of Appeal), and the Supreme Court are all located within the ‘City of Westminster’, a tiny borough of London! Did this threaten the independence of the British judiciary? The same ‘physical proximity’ exists in virtually all other provinces in South Africa. The campaigners making this claim must have a low opinion of judges to assume that being in the same town as the members of the executive is compromise judges or undermine their independence. The exceptionalism being argued for the Eastern Cape has more to do with protection of inherited privileges than logic or precedent. Second, among the ‘economic arguments’ advanced by the campaigners against having the seat of the new Eastern Cape General Division in Bhisho is their claim that “R5m [was spent] upgrading the forensics unit at the Fort England Hospital.” Rather than engage with my position that this does nothing to advance their cause they resort to claiming that there is no “forensic laboratory” only a “forensic unit.” ‘Tomato’, ‘Tomayto’!

The Kettle and the Pot

Further, they argue that because Bhisho is a creation of Apartheid is it unsuitable to host the seat of the ECGD. How is this argument in favour of Grahamstown? Grahamstown is a product of settler-colonial dispossession and war crimes. It flourished as part of Apartheid’s grand design. Its history is one of institutionalised racism. So how is it a moral superior to Bhisho? If tainting by history is the argument then almost all of South Africa’s cities and major towns are tainted. Bhisho was chosen as
the provincial capital in 1994 more for its central location than anything else. What the Superior Courts Bill is designed to do is to take us beyond this tragic history into the promise of the 1996 Constitution and South Africa's new democracy—a non-racist, non-sexist society. If the journey seems to be painful and convoluted, it is in large part because every effort at transformation is hindered by moral panics such as the one we are experiencing. We saw it earlier over the effort at renaming of the town. Julia Wells continues to be the target of clearly uncivil verbal attacks in the local media over her role, as a local councillor, in the renaming exercise.

**Appeal to Poverty and Unemployment**

A few Sundays ago the claim was that the Bill will result in the loss of 400 jobs. Rhodes ‘management’ claimed the loss of “at least 200 secondary jobs from businesses that service the Court” (page 4). In its response to my article, the GHCAC claimed in that I “failed to deal with the consequences to Grahamstown of even 20 professionals selling up and relocating.” Then we are told that “over and above [the] immediate structural relocations... is the yet more significant reduction in the number of attorneys and advocates in town.” Who will feed the “dependents of the secretaries and messengers retrenched” or “the domestic servants laid off by relocating attorneys and advocates”?

Moral panic does not get better than this. The claim of retrenched office and domestic workers was made in the newspaper article but not in the letter that the GHCAC sent to me, speaks to this. It is about provoking panic, an exercise that needs its ‘folk devils,’ in this case the government and the Minister of Justice. Either the campaigners actually believe these claims or they assume that the rest of us are too dumb to know any different.

First, there is still no mathematical model to support these claims of job loss, beyond panic-provoking thumb-sucking? Second, the claim that attorneys and advocates will relocate is shocking in its assumption that the rest of us are too dumb to know otherwise. It assumes that attorneys and advocates can only practice law—in this case appearing in court for clients—in the towns where their offices are based. This is simply not true. ‘Elementary’ Sherlock Holmes might have said. Grahamstown attorneys and advocates regularly travel all over the country to represent clients in courts: from the magistrate courts to the Constitutional Court. Attorneys and advocates in other parts of the country come to Grahamstown to represent clients in the local courts: from the magistrate courts to the High Court. Why would the seat of the new ECGD being in Bhisho lead to an exodus? As the GHCAC admit, legal practices thrive in East London and Port Elizabeth. Neither was ever the seat of a division.

Again, it bears repeating that the Bill specifically provides for a high court in Grahamstown. The lower courts are also not going to suddenly disappear!

Second, where does the Bill speak of retrenchment of workers in the High Court? Where is the evidence that any previous effort to implement provisions of Schedule 6 of the Constitution led to such retrenchment? If the intention is not about provoking moral panic, then what is it? The hand may appear to be that of Esau but the voice is clearly that of Jacob. The GHCAC sought to make a dig at me by comparing my ‘reasoning’ with that of a first year student. Snide remarks aside, they still have not told us the way (any way) in the Superior Courts Bill threatens that many economic advantages of Grahamstown and the money spinners for the local businesses—from the National Arts Festival to the university and colleges. Insult is no substitute for logic and evidence-based moral panic.

The issue of the cost of ‘relocating’ the seat of the ECGD to Bhisho as an argument against the relevant provisions of the Superior Courts Bill is surprising for two reasons. First the seat of the ‘Ciskei’Division was in Bhisho until 2009, when the renaming took place—much the same way that Mthatha was the seat of the Transkei Division and Grahamstown was the seat of the old White South Africa’s Eastern Cape. The “Eastern Cape High Court, Bhisho” is still in the town. Let us assume, for a minute that the location of the seat of the new ECGD in Bhisho will involve undisclosed millions in refurbishment why is it okay to spend million refurbishing facilities in Grahamstown but not in Bhisho?

Second, the tendency to bring up cost every time that effort is made to undo the Apartheid and settler-colonial landscape betrays a common historical trend: the beneficiaries of the system under review will deploy market arguments to hamper change. On the basis of such argument, OR Tambo International Airport will still be ‘Jan Smuts Airport’ and we would never have the Freedom Park—among a myriad of efforts to give substance to the new South Africa. From Washington DC, to Abuja, Brasilia (in the United States, Nigeria, and Brazil, respectively) countries have pursued the nation-building project by creating new national capitals in entirely virgin lands. The cities have flourished.
They would recognize claims of ‘wasteful expenditure’ for what they are: efforts by those with privilege to block change. **We are not even dealing with such case here. Bhisho is the existing capital of the Eastern Cape Province. It hosts the provincial parliament and the executive, and the Eastern Cape High Court, Bhisho.**

It is relevant to draw attention to what is conveniently neglected in the ‘cost’ argument. Much like social spending on education, health, housing, infrastructure, social grants, and so on, the spending associated with a nation-building project (including undoing the legacy of Apartheid judicial architecture and restoring the dignity of its former victims) is not gratuitous. Such public spending has multiplier effect in the economy: leverage economic activities and create jobs. If the employers pay decent wages, we reduce poverty.

**Democracy and the Corrosive Power of Moral Panic**

The GHAC argued that “Ministers of our present government have no infallibility and are not above criticism” (underline mine); neither are those waging the campaign against the Bill. The difference, however, is that the ‘present government’ is a democratically elected government, implementing the provisions of a Constitution, using constitutionally mandated procedure. The tabling of the Bill for public comments is an aspect of such constitutionally driven public policymaking. This is a constitutional democracy. Democracy needs robust public engagement to flourish. What democracy cannot survive, however, is the corrosive nature of moral panic and exaggerated and largely unfounded claims.

**Beyond Gestural Politics**

Let me end on this note: poverty and unemployment in our region is historical and contemporary. The crisis is in part a result of the economic policies adopted since 1994, but it is also in a large part due to the subsisting economic and social power relations of an ignominious past. If one may ask:

- Where were the campaigners using ‘poverty and unemployment’ argument today when farm workers and their families were being thrown off the land in our part of the Eastern Cape? Those ejected have gone on to swell the ranks of the poor and the unemployed in our midst.
- Where were they when NGOs in Grahamstown and farm workers were crying out on our streets against appalling working conditions on the many farms in our district municipality?
- When establishments in our town hang on their doors notices that say that they reserve the right of admission, where are they? The targets of such notices are first Black people (especially poor Blacks) and poor Whites!
- Where were the campaigners when black street kids were beaten to pulp on our streets?
- When unremitting acts of racism abound in our town and university, where were their banners?
- When a few years ago the same usual suspects waged the same vitriolic campaign to have a private hospital in Grahamstown, where were they? And who were the campaigners trying to keep out? The rich or the poor and the unemployed? It took the decency and commitment of men and women like Dr Fred Oosthuizen to have the present arrangement that has seen improvements in the conditions of the ‘Settlers’ Hospital.
- Since many of those leading the campaign are top decision makers in Rhodes University, we should ask: How many of the multi-million rand contracts awarded by Rhodes University since 1994 have gone to black businesses in the town? What portion of the scores of millions went to people in Joza? If the response is about BEE, again what about BEEE? What efforts have been made to develop the local people into production cooperatives that will access part of the multi-million rand in expenditure? Surely this would generate employment and reduce poverty in Joza, won’t it? Or is it someone else’s problem, again?

Those who claim a commitment to the poor when berating the Bill ought to live out the injunctions of Father Leonardo Buff: that we may do out of justice, what we have formerly done of charity. RH Tawney would insist that it starts with an ethical commitment to equality and justice. ‘Human welfare’, Richard Titmuss noted, ‘is an ethical concept’ not invoking the poor and the unemployed to defend inherited settler-colonial interest, regardless of the voices and faces deployed to make the arguments. The hand may pretend to be that of Esau, the voice is doubtlessly that of Jacob.

Those campaigning against the Bill have argued that having the seat of the new ECGD (not relocation) in Bhisho will “disrupt the processes of transformation of the legal profession in Grahamstown.” Essentially this argues goes like this: “we have refused to engage in any meaningful
transformation in the last 16 years. But if you reward us with the seat of the new ECGD it will be an incentive for us to transform!" The GHCAC ridiculed the idea of transformation when I argued that the campaign against the Bill is using "disinformation to subvert transformation." Now it deploys the language of 'transformation'... well, except now it is to protect settler-colonial privileges. Sleight of logic does not get better than this.

Genuine transformation involves an intrinsic commitment by the beneficiaries of an unjust system to equality. It does not require external compulsion or gratification. It is a moral imperative because in the words of Ousmane Sembene, we recognise that we are all "God's bits of wood."

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