Review Article

The Rule of Rights:

Comparative Lessons from Twenty Years of South African Democracy

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Peter Alexander, Thapelo Lekgowa, Botsang Mmope, Luke Sinwell, and Bongani Xezwi, *Marikana: A View from the Mountain and a Case to Answer* (Athens: Ohio University Press, 2013).

Drucilla Cornell, *Law and Revolution in South Africa: Ubuntu, Dignity, and the Struggle for Constitutional Transformation* (New York: Fordham University Press, 2014).

Audie Klotz, *Migration and National Identity in South Africa, 1860–2010* (New York: Cambridge University Press, 2013).

Jens Meierhenrich, *The Legacies of Law: Long-Run Consequences of Legal Development in South Africa, 1650–2000* (New York: Cambridge University Press, 2008).

Audie Klotz begins her book on South Africa's xenophobic violence by quoting James Bryce who declared, "[South Africa] makes a noise and a stir in the world disproportionate to its small population."[1] Although Bryce wrote more than a century ago, his proclamation holds true today.[2] Why? With South Africa entering its third decade of democracy, now is an opportune moment to consider the eternal interest in "the beloved country" and reflect on the lessons that it provides for scholars of politics elsewhere.[3] I argue that we can understand South Africa's disproportionate "noise and stir in the world" by recognizing the revolutionary quality of its democratic transition, while also recognizing the transition's contradictory dynamics. However, doing so may force us to rethink how we study democratization, law, and rights generally by demanding increased scholarly attention to the meanings citizens themselves attach to democratic institutions and particularly the institutionalization of rights.

This review of four books about South Africa shows that meanings of the law shared by regime and opposition negotiators was a key element enabling South Africa's democratic transition, a transition that gave birth to a remarkable set of civil, political, and social rights after apartheid. In important ways, the rule of law in democratic South Africa is the rule of rights. That is, ordinary citizens have the ability to subordinate the state's institutions to their will by appealing to the expansive rights the country's constitution grants them and to rights existing internationally. Yet, even as South Africa's constitution was at the forefront of the late twentieth century's rights revolution,[4] ordinary citizens frequently challenge South Africa's rights guarantees—including what rights provide, who should receive them, and how they are institutionalized—by using the language of rights in ways that challenge their liberal origins. In some cases, this has progressive outcomes as ordinary citizens use the language of rights to demand greater social and economic inclusion if state institutions fail to live up to the revolutionary promises of the country's constitution.[5] At the same time, though, ordinary citizens have fought to restrict the scope of the country's rights regime by decrying the extension of rights to resident aliens or, as I have written about elsewhere, to suspected criminals.[6] In other words, rights are not only being restricted by the state, as much of our literature would predict. More unexpectedly, in some cases, rights are being restricted by South Africa's citizens. Moreover, this is happening with increasing violence, an outcome the new rights dispensation was designed to prevent.

South Africa's rights regime, therefore, has contradictory dynamics: while it has helped stabilize the country's democratic system, the different meanings citizens attach to these rights may also enable political disorder. On the one hand, this rights regime binds the country together as citizens use it to make demands for social justice and check state power. For instance, amidst rising concern over increasing corruption,[7] citizens have exercised their civil rights to stage protests and their political rights to vote for opposition parties in increasingly large numbers.[8] On the other hand, the rights regime pulls the country apart as its citizens violently contest how the benefits of rights are allocated and who their beneficiaries should be. For example, protestors who exercise their civil right to protest for better service provision but do so violently often understand their violence as a continuation of the violence that liberated the country from apartheid.[9] This is a more ambiguous outcome than our theories of democratization would predict given the relative strength of South Africa's judicial institutions.

Indeed, a focus on South Africa—a country whose democratic transition was intimately connected to the twentieth-century rights revolution and whose constitution is upheld as a model for other transitional democracies[10]—has implications for scholarly theories of democratization, law, and rights in general. As I discuss in greater detail below, much of the work on rights in political science takes a positive view of the power of expanding rights, suggesting that robust rights regimes form the foundation for high quality democracies. What the literature does not explain, however, is why citizens might challenge the extension of rights or use the language of expanding rights to justify

acts of violence, as the works discussed below show has been the case in post-apartheid South Africa.

I argue that we can explain these dynamics by paying greater attention to the often contradictory meanings ordinary citizens attach to rights, meanings that allow citizens to simultaneously demand rights for themselves and forcefully limit their extension to others. To support this argument, I advance a meaning-making approach to the study of rights, an approach that places the meanings local actors assign to political phenomena (in this case, rights) at the center of the analysis.[11] Such an analysis involves examining rights in their cultural and historical context rather than treating rights as an expression of democratic values, as a system of fixed incentives, or as the product of broad normative changes, as much of the literature in political science does. If we pay attention to the meanings citizens give to rights, we can understand why citizens appropriate or resist rights in ways that do not necessarily lead to liberal outcomes.

The goal in pointing out the contradictory desire for and the rejection of rights in the South African context is not to suggest that the country or its citizens are somehow ill-suited for a robust rights regime.[12] On the contrary, the works below show how ordinary citizens utilize robust rights protections to advance social justice in remarkable ways, even as some also use the language of rights to justify violence or limit freedom in other circumstances. Rather, the goal is to articulate a more general methodological point with global relevance: rights are political not only because of the incentives they create or the political aspirations they realize, but because those incentives and aspirations are themselves created by the meanings citizens attach to rights. By paying attention to the meanings of rights in context instead of viewing them as likely to lead to high quality democratic systems, we can understand how robust rights systems may, counterintuitively, enable political disorder.

To make these arguments, I review four works on South African politics, showing how attention to the meaning of law or rights advanced their analyses. Next, I outline how three currently dominant approaches to the study of democracy, law, and rights have difficulty accounting for the dynamics described in these books. I then ask what lessons the books have for a meaning-making approach to rights and how such an approach could help explain the contradictory politics we see in South Africa and potentially elsewhere.

A Revolution Shaped by Law

South Africa's transition to democracy was made possible by a violent insurrection from below,[13] but Jens Meierhenrich's study of South Africa's democratic transition shows it was made lasting by elites constrained by the habits and meanings emerging from a deeply entrenched legal culture.[14] South Africa's durable transition to democracy is something few predicted in the early 1990s. The country was in the midst of an insurrection against racist rule while the state, along with conservative forces in black and white society, violently tried to counter the emerging revolution. Even though this

violence forced both sides to the negotiating table, the prospects for a durable settlement were grim. Yet, a robust electoral democracy emerged. How?

Much has been written to explain how the country got to the negotiating table,[15] to describe what was said there,[16] and to criticize the compromises made at it.[17] Less has been said, however, about why these negotiations proved durable, which is where Meierhenrich's powerful book steps in. In explaining why the negotiated settlement lasted, Meierhenrich highlights an important lacuna in the literature on democratization. That is, while we have much theory on what might initiate a democratic transition and much literature on what consolidates democracy, we know surprisingly little about why commitments to implementing democratic elections would remain credible during moments of transition before they are made durable through long-term institutional or attitudinal change.

Rather surprisingly, it turns out that one of the central features of the apartheid state's oppressive rule enabled the electoral pact formed during the democratic negotiations to last: the law.[18] It is well documented that the apartheid regime, whatever else it was, was a regime of laws.[19] To be sure, the legal system was hardly fair. Drawing on Ernst Fraenkel's classic study of the "dual state" in Nazi Germany,[20] Meierhenrich shows that apartheid law blended formally rational and substantively irrational elements.[21] That is, even as laws were rationally made according to formal parliamentary procedures, implemented by bureaucratic security institutions, and enforced by rule-bound judges, the regime violated their substance by using emergency law, massacring protesting civilians, and extra-judicially executing opponents to perpetuate racial rule.[22] Thus, there was a fundamentally dual character to apartheid law, giving it a contradictory mix of despotic power and formal constraints on its despotism.

This dual law was not only central to perpetuating apartheid, however; the law was also important for combating apartheid. The formally rational side of the state's legal system enabled that fight. Lawyers opposed to apartheid regularly went to the courts to defend opponents of the regime and challenge its laws.[23] Because the accused were in a courtroom where rules of evidence held, leniency or acquittal were real (though certainly infrequent) possibilities.[24] Nelson Mandela himself would later write that while the legal system as a whole was pitifully biased against people of color, the courts were "perhaps the only place in South Africa where an African could possibly receive a fair hearing and where the rule of law might still apply."[25] In this sense, under apartheid the law was both "sword *and* shield," which was consistent with the country's long-running and deeply engrained legal culture.[26] The negotiations which led to South Africa's democratic revolution, it turns out, were structured by the habits emerging from this legal culture.

Indeed, culture is the watchword here. Meierhenrich shows how this strong legal culture (i.e., the legal habits and practices through which the law gives and is given meaning) was a precondition for the trust which enabled apartheid's architects to negotiate with apartheid's adversaries during apartheid's endgame.[27] The negotiations were conducted by rational actors on both sides, but their choices were made in a

meaningful legal context that enabled trust between the negotiators. [28] As Meierhenrich argues, "the legality of law," by which he means the habits and expectations that come with acting in rule bound ways, "can 'lock-in' stakes for those who stand to lose from democratization. It can facilitate the gradual construction of trust among adversaries, thus accelerating regime formation and government formation."[29] To be sure, in a place where the state liberally used emergency law, it seems strange that the law might engender trust among those opposed to the regime, much less form the basis for a durable political settlement. Yet, as Mandela argued, the legal system did allow for occasional victories, reinforcing faith in the system's formal rationality and ramifying expectations for legally constrained behavior. The fact that two lawyers—Nelson Mandela and Oliver Tambo—led the African National Congress as apartheid collapsed only heightened the importance of the "legality of law" during apartheid's endgame.

Thus, as much as it might be a set of codified rules that structures behavioral incentives, Meierhenrich argues that South African law was "a meaningful activity" that constituted cultural or habitual value.[30] Through these shared legal habits, actors on both sides of the political divide could reliably orient themselves towards their ideological opponents because they shared common assumptions about how to act through legal procedures.[31] These shared meanings of law, in other words, allowed rational actors on both sides of the negotiating table to bridge their communication gap, develop enough trust to produce a settlement, and form a stable democratic pact. More analytically, Meierhenrich's focus on shared meanings of the law in context allowed him to open up the black box of how actors understood what was rational in the first place.

A Legal Revolution

While Meierhenrich illustrates how meanings of the law among elites were central to the durability of South Africa's democratic pact, the law has also formed the basis of the post-apartheid political order. Specifically, the transfer of political power to the country's formerly oppressed majority was reflected in a changing spirit of the laws that, substantively, gave all citizens equal access to the legal system for the first time through some of the world's most expansive civil, political, and social rights.[32] In a sense, with the democratic transition, riots were abandoned for rights.[33] Unfortunately, this political settlement came at the expense of fundamental economic transformation, like the wholesale redistribution of white-owned land, and, some argue, this fact may prevent transformation in the future.[34] For many observers of South African politics, this negotiated outcome (or capitulation, depending on the forcefulness of one's position) was a failure of South Africa's revolutionary struggle.[35] For legal theorist Drucilla Cornell, by contrast, South Africa's transition was revolutionary, at least if one thinks about revolution as being more than political or economic change. If one thinks legally, then the effects of South Africa's post-apartheid constitutions are revolutionary indeed.[36]

In making the argument that South African law is revolutionary, Cornell intervenes in a contentious debate about the nature of South Africa's transition. For many scholars, writing either approvingly or skeptically, South Africa's transition was made possible by the moderation that leaders demonstrated during the negotiations—moderation that represented a narrowing of revolutionary possibility. Cornell, by contrast, argues, over the course of ten chapters addressing topics as varied as court cases on transitional justice and cultural group rights, that changes in the nature of the law during South Africa's transition made the country's democratic transition a revolutionary achievement. Because South Africa's legal transition was not merely procedural, but also substantive, the transition brought revolutionary changes in how the law was practiced and what law would allow politically.[37]

Thus, the meaning of the law shifted with the adoption of the country's 1993 interim and 1996 final Constitution. Specifically, Cornell argues, one should regard South Africa's constitutions as attempts to recouple law with radical changes in the social and political order sought by the country's insurgents during the struggle against apartheid.[38] Indeed, this shift in meaning has been crucial to post-apartheid politics as social movements and citizens have been able to go to the courts for the first time to seek civil, political, and social justice.[39]

For Cornell, the new legal order did not emerge *sui generis*; it came out of a concrete historical context that connected local idioms of justice and ethical living to legal language circulating internationally. Specifically, Cornell argues the keyword for the legal revolution has been *ubuntu*, an isiZulu word often translated as the quality of humanness. When interpreted in a legal context, *ubuntu* is a guide for ethical living rooted in an ongoing struggle to constantly realize more human relationships.[40] For Cornell, that the spirit of *ubuntu* undergirds much post-apartheid jurisprudential thinking helps make South Africa's legal revolution substantive (even if the word does not appear in the 1996 Constitution's final text).[41] This can be seen in the fact that demands for economic redistribution are now often a legal process, with social movements regularly going to court to demand, and often win, public goods like water, housing, and health care, which are promised in the Constitution—a set of victories made possible by the post-apartheid legal context in which legal victories are expected to have collective effects.[42] As the eminent anthropologists Jean and John Comaroff have argued, class warfare in South Africa has been transformed into class "lawfare."[43] The effect of this ethical change in the law and its utilization by litigants is that *ubuntu* is not just an abstract value; it is a justiciable principle cited in court cases dealing with everything from the Truth and Reconciliation Commission through the murder trial of celebrity athlete Oscar Pistorius. (Coincidentally, Pistorius' attorney cited one of Cornell's earlier books, *Ubuntu and the Law*, during a sentencing hearing.[44])

Even if the decidedly local concept of *ubuntu* may undergird South African jurisprudence, demands to realize the promises of *ubuntu* are usually articulated through a much more globally recognizable language: the language of rights. This is the language, as it happens, that social movements use most often to lodge their claims for the advancement of socio-economic goals, suggesting that Cornell's emphasis on the

pervasiveness of *ubuntu* in South African jurisprudence may be somewhat overstated.[45] Importantly, though, Cornell uses these limits to highlight a tension in the use of rights claims to demand communal goods promised by the Constitution. That is, rights-talk typically indexes notions of individual autonomy associated with liberalism, while *ubuntu* refers to decidedly more communitarian ideals. The consequence is that as social movements use the legalistic language of rights to affect communal socio-economic advances, there is an inbuilt tension (if not outright contradiction) in their efforts when their communally-oriented demands run against the oft-individualizing language of the Constitution.[46]

This tension in the multiple meanings of rights is not merely a theoretical problem; it has political effects. Even if *ubuntu* has been a guiding legal principle for much South African jurisprudence, the reality of *ubuntu* has been realized unevenly in governing practice, in part because *ubuntu* is often claimed through the legal language of rights and can therefore hit roadblocks in courts.[47] As demands for the substantive realization of *ubuntu* have stalled, social movements have changed their tactics and pursued extra-legal means for realizing human dignity. For example, they have connected residents to water and electricity, which they could not otherwise afford. Although such acts are illegal, groups who provide these services, like the Soweto Electricity Crisis Committee, refer to their workers as "*Ubuntu* Electricians." Using this moniker allows the group to criticize the property rights laws that legally constrain their work; private property, it is implied, runs contrary to the spirit of *ubuntu*.[48] Although technically illegal, tying such practices to local ethical idioms through the language of *ubuntu* challenges what the law and rights should provide. In this way, the legal revolution is being waged on multiple fronts at once, both formally through the creation of laws codified by a rights-based constitution and informally through the extra-legal actions of community groups working to see the ideal of *ubuntu* realized in practice.

The effect of this tension between the language of rights and *ubuntu* is that we see how crucial meaning-making is to the effect of the law. Here, the language of law partially shapes how people and movements conceive of problems as best solved through legal remedies (for example, by pushing actors to launch their claims in the language of rights). Practices of meaning-making also shape how justiciable principles themselves are created. The emergence of *ubuntu* as a justiciable principle, after all, resulted from left-leaning elites rewriting the country's legal codes during the transition such that they would be connected to an idea of "African-ness" (however idealized). Therefore, this shift in legal meaning-making practices, Cornell shows, has been nothing short of revolutionary in ideal, even as it remains contradictory in practice.

Rights Undone from Above

Even as South Africa has undergone a legal revolution, the promises of this revolution have not been fulfilled.[49] Moreover, popular struggles to achieve these promises outside of legal processes are becoming increasingly violent and increasingly subject to violent

reprisal by the state. That, at least, is one key message from the first major study of the Marikana Massacre, written by South African sociologists Peter Alexander, Thapelo Lekgowa, Botsang Mmope, Luke Sinwell, and Bongani Xezwi.[50]

The Marikana Massacre has arguably become, along with the 2008 xenophobic riots (discussed below), the signal event of the post-apartheid order. On August 16, 2012, a multiracial police battalion armed with assault rifles fired live rounds into a crowd of striking mineworkers, killing thirty-four and injuring seventy-eight others. The miners were participating in a wildcat strike over pay and living conditions at the Lonmin-owned platinum mine at Marikana in Northwest Province. The killings, which had followed earlier violence between rival unions and the police that resulted in ten people being killed, immediately conjured comparisons to massacres committed by the apartheid state, not least because at least fourteen of the workers were apparently shot from behind. The difference, of course, was that this massacre was committed by a multiracial police force serving a democratic state.

In the wake of the killings, the state formed a Commission of Inquiry into the events that brought forth evidence at its public hearings about the alleged involvement of senior African National Congress (ANC) officials in the policing of the event. In particular, Cyril Ramaphosa, the deputy president of the ANC and, at the time, a major shareholder and board member in Lonmin, was accused of pressuring senior police officials into intervening, having called for "concomitant action" against the "dastardly criminals" on strike in emails to Lonmin officials in the days leading up to the Massacre.[51]

Although the Commission of Inquiry ultimately cleared Ramaphosa of responsibility,[52] Alexander et al. draw on such evidence to argue that both the initial mobilization by the miners and the violent response by the state resulted from long-standing class conflicts between capital (represented by Lonmin) and the proletariat (represented by the mineworkers). The workers' choice to mobilize, according to Alexander et al.'s account, was "the unfettered praxis of the working class" and "a story of ordinary people who had previously been relegated to the margins of society."[53] Conversely, the authors are categorical in their condemnation of South Africa's political and economic elites, arguing that the massacre "was not just a human tragedy, but rather a sober undertaking by powerful agents of the state and capital who consciously organized to kill workers who had temporarily stopped going underground in order to extract the world's most precious metal—platinum."[54]

While Alexander et al. claim that their main aim is to explain what happened on the day of the strike and offer proximate explanations, the Commission of Inquiry ultimately supplied more evidence about what happened leading up to the Massacre than these authors could have been reasonably asked to provide, as they were writing in the immediate wake of the massacre. Given that Marikana will be subject to academic and political debates long into the future, the real value of Alexander et al.'s account lies in its transcription of speeches following the massacre and over thirty interviews with strike leaders and mineworkers.

The interviews provide a description of the underlying economic conditions leading up to the massacre and are an important counterbalance to the Commission's focus on discrete events and individual responsibility. Dehumanizing economic conditions dominate the interviews. It becomes abundantly clear through the interview data that the work of rock drill operators—the workers whose grievances touched off the strike—is brutal. It involves rising well before dawn, making a long trip to the mine, and plunging on a chairlift deep below the earth's surface only to crouch all day in suffocating air while forcing an industrial grade drill against a rock wall. Management confronts them with contradictory instructions: telling them to follow safety rules, but chastising them if following those rules slows production.[55] It is taxing work whose stress only increases the likelihood of accidents.[56] Summing up the brutal conditions, one of the mineworkers tells the interviewers, "I am not going to lie to you, this is the most difficult job anyone can ever do. . . ."[57] Yet, for that dirty, dangerous labor, drill operators were compensated with just enough money to allow them to live in a squalid shack settlement on the edge of the mine.[58] Marx may or may not have known what a rock drill operator was when writing his *Economic and Philosophic Manuscripts of 1844*, but his account of the dehumanizing power of the capitalist mode of production lives beneath the ground of Marikana.

The interview data reveal more than just brutal labor conditions, though. Specifically, the language used by workers to describe their struggle and the meanings embedded within their descriptions suggest a need to go beyond Alexander et al.'s largely economic argument. The transcripts illustrate that while legal theorists might use the language of *ubuntu*, the dominant language of the miners is that of rights. When the miners use the language of rights, however, they do not mean rights in the sense of individual protections for personal liberty from the state. Rather, they mean something closer to the attainment of dignity—an understanding of rights that is also embedded in the country's constitution. As one strike leader told a crowd in the days following the massacre:

> We don't want to be prevented from expressing ourselves, we didn't steal anything from anyone, we were only demonstrating for one reason only [that is] to have decent wages and what they did is they responded by firing guns at us. . .Why must we die? All we were doing is fight[ing] for our rights and we did not kill anyone. Why then must we be killed?[59]

Importantly, he articulates his demands for decent wages and the self-worth they provide through the language of rights. This suggests that the meaning given to rights in the Constitution, which articulates the connection between socioeconomic conditions and human dignity, shaped how the workers conceived their political goals. In other words, the meaning of rights structures the terms through which they wage their economic struggle. Analytically, therefore, attention to meaning-making shows that the grievances of the miners are not only or essentially economic; they are bound up in the dignified life that the language of the Constitution and the language of rights in South Africa indexes.

The interviews made apparent the notion that issues of political economy are issues of human dignity and that, for the workers, socioeconomic rights should allow self-worth. For instance, workers recount how they would have to humiliate themselves and bribe current mine employees in order to just get job interviews.[60] One worker, after saying that his only dream was to get married and build a home for his family, immediately connected the lack of economic means to achieve this basic social reproduction to the democratic order: "South Africa is a democratic country," he explained, "but we as mineworkers are excluded from this democracy. For one, a white person here in the mines gets a better pay than a black person and they are more eligible for promotion and that oppress[es] us black people more."[61] Here the promises of democratic rights remain a constant source of (racialized) humiliation as they go unfulfilled.[62]

Rights Undone from Above and Below

As in Alexander et al.'s account of Marikana, the meaning of rights is central to the second signal event in South Africa's post-apartheid order: an unprecedented spate of xenophobic violence that swept much of the country in 2008.[63] During two weeks of intense violence in May of that year, over sixty people were killed, 700 were wounded, and 100,000 were displaced, while foreign-owned shops and homes were burnt down.[64] Most victims were Africans from outside of South Africa, although some were South Africans married to foreigners or South Africans who refused to participate in the violence.[65] Thus, in contrast to the Marikana event, in which citizens looked to expand rights, the 2008 violence achieved the opposite: the limiting of rights for others. The irony, Audie Klotz shows in her study of the violence, was that this limitation of rights was not only achieved by the state above but also, surprisingly, by ordinary citizens below.

That citizens would limit rights, Klotz argues, stems from a fundamental problem bound up in the idea of citizenship. That is, the inclusiveness of citizenship and the rights it provides are inherently premised on the exclusion of non-national others. Strikingly, South Africa's constitution guarantees key rights to all people living in the country, which the courts have interpreted as extending rights to residents that are not citizens. However, in an electoral context that incentivizes government-propagated economic nationalism, pro-immigrant legal decisions create a political tinderbox, along with contradictory policy responses from the state. Klotz shows that the country's xenophobic violence emerged at this confluence of the politicization of justice and the judicialization of politics.[66]

Concerns over rights being extended to non-South Africans, which partially fueled the 2008 violence, were in no way new. Instead, these anxieties were bound up in the creation of a racially exclusive regime during the first years of the South African Union and heightened by the growing labor needs of South Africa's emerging mining industry.[67] Rapidly developing as the country's economic lifeblood in the late-nineteenth and early-twentieth centuries, the mines on the rand had a voracious appetite for human labor power. To feed this hunger, they employed Africans both from their immediate hinterlands, but also from as far away as Mozambique and Nyasaland (today

Malawi). As a result, movement and migration—both internal and external—became key policy problems and raised citizenship questions for the white state because as African men moved into urban areas seeking work, they put down roots in South Africa's burgeoning cities.[68]

Although such migration was an economic necessity for the state, it brought concerns for state officials. Officials viewed urbanized Africans as a security threat, both because of their alleged criminality and their possible political mobilization, an especially prominent concern as Africans increasingly saw the political rights that were exclusively possessed by whites.[69] To solve this dilemma, the state separated questions of nationality and citizenship, with the effect that non-whites had fewer citizenship rights than whites.[70] For example, the regime claimed Africans from within South Africa were natives of various ethnic "homelands," not the urban areas where they may have settled. If Africans wanted additional rights, the apartheid state pronounced, they should seek them from the government of their "homeland" since the apartheid state did not consider them South Africans in the first place.[71] By contrast, the apartheid state considered Africans whose lineage stretched outside of South Africa to be permanent foreigners, and therefore similarly not due rights of South African citizenship.[72]

This heightened interest in nationality as a mechanism for limiting rights was hardly a strong foundation for inclusiveness as South Africa transitioned to democracy. Even though the 1996 Constitution guaranteed that the new constitutional rights would apply equally to all people who lived in South Africa regardless of national origin,[73] the political compact was based on redistributive terms that redefined the South African nation economically, not in ethnic or racial terms, as had been the case with the apartheid state. Specifically, the rights regime contained the means for distributing resources down the class ladder, even as it preserved rights to land and property secured under apartheid to enable the democratic compact. However, this compact also created conditions for new economic competition among groups that faced severe race-based economic limitations under apartheid.

This new legal regime also emerged during a moment in which the nascent democratic order witnessed dramatic increases in unemployment and inequality.[74] We saw in both Cornell's study of *ubuntu* and Alexander et al.'s examination of the Marikana Massacre that in a country where unemployment and economic inequality loom large, social rights mean more than just access to public goods; they mean access to dignity. Yet, in a country whose constitution guarantees that its rights would apply to all people who live in it, the promises of economic nationalism create the conditions for a xenophobic tinderbox if citizens see foreigners as enjoying access to economic or housing goods not enjoyed by all South Africans.[75] Indeed, one repeated claim among disgruntled South Africans is that foreigners are "stealing 'our freedom.'"[76] Therefore, even though the constitution provides expansive socioeconomic rights, because they are unevenly fulfilled in practice and provided for immigrants who some citizens see as not rightly due the benefits of citizenship, the likelihood of that tinderbox catching fire increased.

When combined with ambivalence among political leaders towards foreigners and electoral incentives to demonize them, the likelihood that the state would intervene to stamp out xenophobic violence decreased.[77] Given the unpopularity of rights for foreigners, some government ministers went so far as to suggest that angry citizens "justifiably expected the government to secure their constitutional rights against illegal aliens taking jobs at lower wages"[78]—jobs that were increasingly found in the country's poorly paid service economy with the declining availability of mining and industrial employment. To many citizens, rights in this context came to mean privileges that they should strip from foreign-nationals, contributing to an explosion of violence to "reclaim" rights. In other words, the meaning of rights and who they should rightly protect were at the center of the South Africa's xenophobic violence.

A Meaning-Making Approach to Law and Rights: A View from South Africa

In reading the foregoing works, one might think that democratic transitions, massive legal reforms, labor strife, police violence, and xenophobia are found in many places and wonder about the particular value of studying South Africa. It is precisely these similarities to other places that make South Africa so useful to study, as the dramatic nature of the country's political transition and its hard-fought institutional transformations put into stark relief the political processes that occur elsewhere. There is no process which South Africa puts into sharper relief, I have suggested, than the revolutionary changes in its legal institutions and the ways in which a particularly robust rights regime undergirds those institutions. Thus, the legal changes that accompanied democratization in South Africa are not only politically important for the country, they are theoretically and methodologically important for how political scientists study democracy, law, and rights generally. To understand these changes, political scientists need to understand the meanings citizens attach to rights, a focus that complicates dominant research approaches.

In reflecting on the light these works cast on the South African case, I suggest that three approaches to the study of rights, law, and democracy bear some reconsideration.[79] The first perspective sees elective affinities between rights, the rule of law, and a high quality democracy.[80] For scholars writing in this tradition, a well-functioning legal system creates institutional space that protects rights and nurtures democratic freedom, especially when the legal system is autonomous from other state institutions, judicial institutions have bureaucratic capacity,[81] and citizens develop legalistic values.[82] Through this legal independence, citizens can subordinate state officials to the law and create a space for freedom to flourish. As Carothers writes, "The rule of law makes possible individual rights, which are at the core of democracy."[83]

A second approach has a family resemblance to the first perspective but reverses the relationship between rights, law, and democracy. Instead of a legal system being the precondition for flourishing rights, scholars writing in this tradition argue that citizens' access to rights forces the legal system to work well. Here, rights are an instrument for

exercising political power to hold leaders to account and, thereby, strengthen democratic governance. Rights facilitate vertical accountability[84] because citizens can mobilize the legal system to ensure that officials uphold their political duties.[85] Rights also ensure horizontal accountability[86] among state institutions by pressuring officials to do their jobs lest a future regime take over and prosecute the sins of the old guard.[87] Rights are therefore the lynchpin in the legal system which ensures political accountability as part of the "chain of responsiveness" that characterizes high quality democracies.[88]

A third perspective focuses on the relationship between rights and changing norms.[89] In this view, the number of people receiving rights has a tendency to expand over time as groups deprived of rights see them granted to others and then demand similar rights for themselves. For example, members of a minority group might see the right to vote granted to another group and subsequently claim that no one should be denied the right to vote. Thus, this literature argues, the diffusion of ideas underlying rights creates a rights cascade, spreads political power throughout society, and promotes broader access to justice.[90]

Taken as a whole, scholars working in these traditions see rights as the foundation of robust democracy because they foster stable political and legal systems,[91] reduce violence,[92] and lessen inequality.[93] To be sure, these scholars are cognizant of the possibility for tension between the rule of law, rights, and a flourishing democracy. However, their overall tendency is to view them as mutually beneficial.[94] Less apparent from these perspectives is how to explain the dynamics in South Africa described in the works above: citizens violently resisting the extension of rights even as they seek their promises.

An understanding of rights that focuses on their meaning may better explain these dynamics. When read together, the works reviewed here suggest four key lessons for how to make sense of such dynamics and offer an outline of how an alternative approach to rights focused on meaning-making could be pursued. First, the works collectively show that placing the meanings of rights at the center of our analyses can shed light on why citizens might resist rights. As much as rights establish entitlements for citizens and limit government power, they also create meaning for political life. Taking such meanings seriously would involve studying rights not just as abstract rules or legal institutions that shape incentives (though it could involve such things). Rather, political scientists would explore how people create meaning through rights in relation to the material realities of their lives and broader systems of political and social signification,[95] what I refer to as a meaning-making approach to the study of rights.

The works reviewed here do this in a number of ways. Cornell's book most obviously explores the relationship between systems of meaning and rights given its focus on local idioms of *ubuntu* and how the courts have used the language of *ubuntu* to advance causes of social justice. Meierhenrich's book shows some of the surprising ways in which attention to meaning can be productively used in positivist studies. Although Meierhenrich is primarily concerned with explaining the logic behind the choices of rational actors, the power of his account comes from his ability to show how

the meaning of the law shaped what actors on both sides of the negotiating table during the collapse of apartheid conceived of as a rational risk in the first place. In taking the meaning of the law seriously, in other words, he opens a black box to productively show how adversaries could see overcoming their divisions as rational in context.

To study the meaning of rights, however, requires putting them into historical time and not studying them ahistorically as, for example, a set of institutional incentives—a second lesson suggested by the works reviewed here. One approach for accomplishing this, suggested most explicitly by Klotz, is to treat law as having a path dependent nature, which shapes the meanings of rights. The historical quality of this path dependence is clear: the ways in which a legal system is initially established sets subsequent habits and expectations for how the law will function, how actors will orient themselves to the law, and the meanings of rights generated as a result. Thus, the establishment of a legal system can have remarkably long-run consequences and provide stability during moments of political uncertainty like South Africa's transition to democracy, a path dependence also highlighted by Meierhenrich.[96] However, as Klotz shows, rights can also create the conditions for future instability by structuring identities and shaping ideals of citizenship, which can have unintended social effects as they are projected forward into the future. In other words, while the legal traditions of dead generations can set the stage for a legal revolution, they can also weigh like a nightmare on the brains of the living.

Of course, this is not to suggest that rights or their consequences are unchanging. Quite to the contrary, part of the power of these works is to show how rights along with the law more generally can change, a third key lesson. If institutional path dependency is a way history structures the meanings of the law, events are a way in which history changes those meanings.[97] Tragically, in South Africa such events are often massacres. For example, in his "Speech from the Dock," when he was on trial for treason, Mandela famously cited the 1960 Sharpeville Massacre as the event which transformed him so that he no longer saw non-violence as a plausible way to rid the country of apartheid.[98] In other words, for apartheid's opponents, the massacre shifted the meanings of state repression, opening up new possibilities for confronting the apartheid state.

Since the end of apartheid, the two signal events have been the 2012 Marikana Massacre and the 2008 xenophobic violence. Their effects are still too recent to fully understand—particularly the xenophobic rioting, as violence continues against foreigners, both as a quotidian reality and during a second deadly wave of xenophobic attacks in early 2015.[99] Despite their ambiguity, however, these events are having profound consequences for the political and economic claims South Africans are making on their state and on one another. This is particularly the case with Marikana. In the wake of the massacre, a massive wave of wildcat strikes gripped the country that pulled apart South Africa's labor movement and caused a breakdown in a long-running pact between unions and the ruling African National Congress. Marikana was a key touchstone for this unruliness, having become a "byword for militant resistance."[100] In other words, Marikana ushered in a new meaning of worker militancy, which may reshape the political landscape in ways not seen since the collapse of apartheid.

But how can politics be restructured outside of a transformative event? Klotz shows that consistent political pressure by social movements and interest groups can push states off an equilibrium path set by institutional rules. A set of unruly social movements, for which Cornell advocates, shows a similar ability to reshape the ways in which jurists interpret seemingly static legal statutes. Put abstractly, there is agency in shaping rights and the law both during moments of political transition and in the ongoing work of lawyers who utilize the courts to constantly push for new interpretations of legal statutes to expand the boundaries of freedom. This suggests a final lesson: even if the emergence of rights discourse coincided with the decline of utopian thinking,[101] revolutionary political change still can happen. However, revolutions are made by human actions and with all the contradictions they bring.

Conclusion

During its political transition, South Africa became a beacon to devotees of democracy in large part because of the emphasis that its future democratic rulers placed on rights as the foundation of a robust legal system and democratic political order. Its constitution was lauded for its elegant design. Its courts were acclaimed because of the institutional power they displayed. Its police transformation became a model for transitional states elsewhere. And at the heart of all of this was the country's celebration of rights. The remarkably wide-ranging political, social, and civil rights that all people living in South Africa were afforded for the first time solidified South Africa's place as the leading light for other countries democratizing in the late twentieth century. If the rights revolution was predicted to revolutionize the new world order, South Africa would be at the forefront of the change.

However, the books reviewed here show that the post-apartheid rights regime has had a value beyond its symbolism. It has been a concrete source of stability enabling the country's transition out of revolution and into a stable democracy. Yet, the same rights regime has, at times, enabled violence and instability as state officials and citizens have fought over what rights should provide and who their beneficiaries should be. Even as South Africa's stable legal institutions, which were embedded in a new rights dispensation, enabled the political transition, they have also been consistently challenged both by state leaders from above and by citizens from below. That is, the country's legal regime has found itself in the contradictory place of being celebrated by the world outside, while being challenged from within. When read together, the books under review show that even while the country's rights regime helps to bind democratic South Africa together, it is being used by some political forces to pull the country apart. This dynamic—and the difficulties it suggests for democratic states elsewhere—makes South Africa a crucial case for political scientists to understand because the country simultaneously displays our best hopes for a more democratic future governed by universal human rights and shows the contradictions of even the most expansive rights regime as it is put into political practice.

NOTES

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1. Quoted in Audie Klotz, *Migration and National Identity in South Africa, 1860–2010* (New York: Cambridge University Press, 2013), 1.

2. Suggesting the outsize influence South Africa has within the study of Africa, a search in JSTOR found South Africa (n=3926) mentioned in more than twice the number of articles as Africa's second most studied Anglophone country, Nigeria (n=1819), and Africa's most studied Francophone country, Congo (n=1636). The search was performed on September 3, 2014 on political science journals for items published between April 27, 2004 and April 27, 2014, ten and twenty years after South Africa's first democratic elections, respectively.

3. Alan Paton, *Cry, The Beloved Country* (New York: Scribner, 2003).

4. Heinz Klug, *Constituting Democracy: Law, Globalism, and South Africa's Political Reconstruction* (Cambridge: Cambridge University Press, 2000).

5. Drucilla Cornell, *Law and Revolution in South Africa: uBuntu, Dignity, and the Struggle for Constitutional Transformation* (New York: Fordham University Press, 2014).

6. See, for instance, Klotz; Nicholas Rush Smith, "Rejecting Rights: Vigilantism and Violence in Post-Apartheid South Africa," *African Affairs*, 114 (July 2015), 341–60.

7. Tom Lodge, "Neo-Patrimonial Politics in the ANC," *African Affairs*, 113 (January 2014), 1–23.

8. Marcel Paret, "Contested ANC Hegemony in the Urban Townships: Evidence from the 2014 South African Election," *African Affairs*, 115 (July 2016), 419–42.

9. Marcel Paret, "Violence and Democracy in South Africa's Community Protests," *Review of African Political Economy*, 42 (January 2015), 107–23.

10. See, for example, Klug.

11. On meaning-making approaches to politics generally, see Lisa Wedeen, "Conceptualizing Culture: Possibilities for Political Science," *American Political Science Review*, 96 (December 2002), 713–28.

12. For a discussion of such arguments made by South Africans themselves, see Smith.

13. Elisabeth Jean Wood, *Forging Democracy from Below: Insurgent Transitions in South Africa and El Salvador* (Cambridge: Cambridge University Press, 2000).

14. Jens Meierhenrich, *The Legacies of Law: Long-Run Consequences of Legal Development in South Africa, 1650–2000* (New York: Cambridge University Press, 2008).

15. See, for instance, Wood.

16. See, for instance, Courtney Jung and Ian Shapiro, "South Africa's Negotiated Transition: Democracy, Opposition, and the New Constitutional Order," *Politics & Society*, 23 (September 1995), 269–308.

17. Critical accounts of the economic and social consequences of the negotiations include Hein Marais, *South Africa: Limits to Change: The Political Economy of Transition* (Cape Town: University of Cape Town Press, 1998); Adam Habib and Vishnu Padayachee, "Economic Policy and Power Relations in South Africa's Transition to Democracy," *World Development*, 28 (February 2000), 245–63.

18. Meierhenrich.

19. Stephen Ellmann, *In a Time of Trouble: Law and Liberty in South Africa's State of Emergency* (Oxford: Clarendon Press, 1992); Richard L. Abel, *Politics by Other Means: Law in the Struggle Against Apartheid, 1980–94* (New York: Routledge, 1995); Michael Lobban, *White Man's Justice: South African Political Trials in the Black Consciousness Era* (Oxford: Clarendon Press, 1996).

20. Ernst Fraenkel, *The Dual State: A Contribution to the Theory of Dictatorship* (New York: Oxford University Press, 1941).

21. Meierhenrich, 15–23.

22. Ibid., 113–29.

23. For a powerful memoir of such legal work, see Peter Harris, *In a Different Time: The Inside Story of the Delmas Four* (Roggebaai: Umuzi, 2008).

24. Lobban, 8–9.

25. Nelson Mandela, *Long Walk to Freedom: The Autobiography of Nelson Mandela* (New York: Little, Brown, 2008), 249.
26. Meierhenrich, 129, emphasis in original.
27. Meierhenrich.
28. Ibid., 25–41.
29. Ibid., 55.
30. Ibid., 79.
31. Ibid., 59–61.
32. Indeed, much of the recent comparative writing on South Africa has been either on its rights regime or the Constitutional Court's role in shaping it. See, for example, Daniel Bonilla Maldonado, ed., *Constitutionalism of the Global South: The Activist Tribunals of India, South Africa, and Colombia* (New York: Cambridge University Press, 2013).
33. Steven L. Robins, *From Revolution to Rights in South Africa: Social Movements, NGOs & Popular Politics after Apartheid* (Pietermaritzburg: University of KwaZulu-Natal Press, 2008).
34. See, for example, Ran Hirschl, *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism* (Cambridge: Harvard University Press, 2004).
35. See, for example, Martin J. Murray, *Revolution Deferred: The Painful Birth of Post-Apartheid South Africa* (London: Verso, 1994).
36. Cornell, 9–10.
37. Ibid., 11.
38. The association of revolution with fundamental economic transformation is historically contingent, tied to a particular vision of Marxist-Leninism which emerged in the early 20th century. De Sousa Santos cited in ibid., 10.
39. There is debate, however, about how effective such claims have been thus far. For an overview of this debate, see the essays collected in Malcolm Langford, Ben Cousins, Jackie Dugard, and Madlingozi Tshepo, eds., *Socio-Economic Rights in South Africa: Symbols or Substance?* (New York: Cambridge University Press, 2013).
40. Cornell, 40.
41. Although the word *ubuntu* appeared in the 1993 interim Constitution and became the basis for several landmark decisions, it did not appear in the final 1996 Constitution. I thank Stephen Ellmann for pointing this out.
42. Daniel M. Brinks and Varun Gauri, "The Law's Majestic Equality? The Distributive Impact of Judicializing Social and Economic Rights," *Perspectives on Politics*, 12 (June 2014), 375–93.
43. Jean Comaroff and John L. Comaroff, "Law and Disorder in the Postcolony: An Introduction," in Jean Comaroff and John L. Comaroff, eds., *Law and Disorder in the Postcolony* (Chicago: University of Chicago Press, 2006), 26–31.
44. Drucilla Cornell and Nyoko Muvangua, *Ubuntu and the Law: African Ideals and Postapartheid Jurisprudence* (New York: Fordham University Press, 2012). See David Smith, "Oscar Pistorius Should Be Sentenced to 10 Years in Prison, Says Prosecution," *The Guardian*, Oct. 17, 2014, http://www.theguardian.com/world/2014/oct/17/oscar-pistorius-should-be-sentenced-prison-10-years-prosecution.
45. Robins; Lauren Paremoer and Courtney Jung, "The Role of Social and Economic Rights in Supporting Opposition in Postapartheid South Africa," in Ian Shapiro and Kahreen Tebeau, eds., *After Apartheid: Reinventing South Africa?* (Charlottesville: University of Virginia Press, 2011), 199–230.
46. Robins, 4–5.
47. One manifestation of these unevenly realized rights is mass action through ongoing service delivery protests. Peter Alexander, "Rebellion of the Poor: South Africa's Service Delivery Protests—a Preliminary Analysis," *Review of African Political Economy*, 37 (March 2010), 25–40.
48. Cornell, 40–41.
49. Jeremy Seekings and Nicoli Nattrass, *Class, Race, and Inequality in South Africa* (New Haven: Yale University Press, 2005).
50. Peter Alexander, Thapelo Lekgowa, Botsang Mmope, Luke Sinwell, and Bongani Xezwi, *Marikana: A View from the Mountain and a Case to Answer* (Athens: Ohio University Press, 2013). Although the authors are sociologists, I include the volume because it was the first academic text on the Massacre and deals extensively with the workers themselves.
51. Greg Marinovich and Greg Nicolson, "Marikana Massacre: SAPS, Lonmin, Ramaphosa & Time for Blood. Miners' Blood," *Daily Maverick*, Oct. 24, 2013, http://www.dailymaverick.co.za/article/2013-10-24-marikana-massacre-saps-lonmin-ramaphosa-time-for-blood-miners-blood#.Um_BdxA4n-I; Jonisayi Maromo,

"Marikana Violence 'Dastardly Criminal,'" *IOL News*, Aug. 11, 2014, http://www.iol.co.za/news/south-africa/gauteng/marikana-violence-dastardly-criminal-1.1733492#.U-31U2PCeSo.

52. Mike Cohen, "Ramaphosa's Star Is Rising after Being Cleared by Judge Farlam," *IOL*, Jun. 29, 2015, http://sbeta.iol.co.za/business/news/ramaphosas-star-is-rising-after-being-cleared-by-judge-farlam-1877439.

53. Alexander et al., 22.

54. Ibid., 21.

55. Ibid., 60.

56. Ibid., 62.

57. Ibid., 62.

58. Workers repeatedly reference their meager wages (R4000 a month or approximately $400 at the time) as a reason they held to a firm demand for pay of R12500 a month. Alexander et al., 102.

59. Tholakele "Bhele" Dlunga quoted in ibid., 66.

60. Ibid., 110.

61. Ibid., 99.

62. For an account of the relationship between the "sting" of the ANC's unfulfilled promises and protest, see Jeffrey W. Paller, "Political Struggle to Political Sting: A Theory of Democratic Disillusionment," *Polity*, 45 (October 2013), 580–603.

63. Klotz.

64. Loren B. Landau, "Loving the Alien? Citizenship, Law and the Future in South Africa's Demonic Society," *African Affairs*, 109 (February 2010), 213–14.

65. Ibid.

66. Klotz, 7.

67. Ibid., 122–36.

68. Ibid., 147–48.

69. Ibid., 152–53.

70. Ibid., 122.

71. Ibid., 156.

72. Prior to the 1950s, legal loopholes created a different set of migration regulations for foreign-born Africans, although these were eventually closed. Ibid., 164.

73. Ibid., 171.

74. Ibid., 218.

75. Ibid., 171.

76. Ibid., 213.

77. Ibid., 171.

78. Ibid., 211.

79. Although I present these perspectives as distinct, the distinctions are primarily analytical. In practice, scholars frequently write across multiple schools at once.

80. For example, see many of the essays collected in Larry Jay Diamond and Leonardo Morlino, eds., *Assessing the Quality of Democracy* (Baltimore: Johns Hopkins University Press, 2005); and Guillermo O'Donnell, Jorge Vargas Cullell, and Osvaldo Miguel Iazzetta, eds., *The Quality of Democracy: Theory and Applications* (South Bend: University of Notre Dame Press, 2004).

81. Wade M. Cole, "Mind the Gap: State Capacity and the Implementation of Human Rights Treaties," *International Organization*, 69 (February 2015), 405–41; Wade M. Cole, "Managing to Mitigate Abuse: Bureaucracy, Democracy, and Human Rights, 1984 to 2010," *International Journal of Comparative Sociology*, 57 (April 2016), 69–97.

82. Gianluigi Palombella, "The Rule of Law as an Institutional Ideal," in Leonardo Morlino and Gianluigi Palombella, eds., *Rule of Law and Democracy: Inquiries into Internal and External Issues* (Leiden: Brill, 2010), 1–38.

83. Thomas Carothers, *Promoting the Rule of Law Abroad: In Search of Knowledge* (Washington, DC: Carnegie Endowment for International Peace, 2006), 4.

84. By vertical accountability, following O'Donnell, I mean the ability of citizens in a representative democracy to directly hold their leaders to account under threat of sanction or removal from office. Guillermo A. O'Donnell, "Delegative Democracy," in Guillermo A. O'Donnell, *Counterpoints: Selected Essays on Authoritarianism and Democratization* (Notre Dame: University of Notre Dame Press, 1999), 165–66.

85. Guillermo O'Donnell, "Why the Rule of Law Matters," *Journal of Democracy*, 15 (October 2004), 32–46.

86. By horizontal accountability, following O'Donnell, I mean the ability of actors within government itself to hold one another accountable via threat of sanction. O'Donnell, 1999, 165–166.

87. Tiberiu Dragu and Mattias Polborn, "The Administrative Foundation of the Rule of Law," *The Journal of Politics*, 75 (October 2013), 1038–50. For a review of such arguments from a variety of methodological perspectives as it relates to transitional justice, see Melissa Nobles, "The Prosecution of Human Rights Violations," *Annual Review of Political Science*, 13 (2010), 165–82.

88. G. Bingham Powell, "The Chain of Responsiveness," *Journal of Democracy*, 15 (October 2004), 91–105.

89. Much of this literature owes a debt of one form or another to T. H. Marshall, "Citizenship and Social Class," in *Class, Citizenship, and Social Development: Essays by T.H. Marshall*, [1st. ed. in the U.S.A.] (Garden City: Doubleday, 1964). For a review of literature in this tradition, see Margaret R. Somers and Christopher N.J. Roberts, "Toward a New Sociology of Rights: A Genealogy of 'Buried Bodies' of Citizenship and Human Rights," *Annual Review of Law and Social Science*, 4 (2008), 385–425.

90. Lynn Hunt, *Inventing Human Rights: A History* (New York: W. W. Norton & Company, 2008). Such diffusion need not only happen domestically; it also occurs internationally as citizens of one country see rights expanding across borders and demand similar rights—and the justice they bring—back at home. Thomas Risse-Kappen, Stephen C. Ropp, and Kathryn Sikkink, eds., *The Power of Human Rights: International Norms and Domestic Change* (New York: Cambridge University Press, 1999); Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (New York: W. W. Norton & Company, 2011); Kathryn Sikkink and Hun Joon Kim, "The Justice Cascade: The Origins and Effectiveness of Prosecutions of Human Rights Violations," *Annual Review of Law and Social Science*, 9 (2013), 269–85.

91. Diamond and Morlino; O'Donnell, Vargas Cullell, and Iazzetta.

92. Hunt, ch. 2; Steven Pinker, *The Better Angels of Our Nature: Why Violence Has Declined* (New York: Penguin, 2011), ch. 7.

93. Juan E. Mendez, Guillermo O'Donnell, and Paulo Sergio Pinheiro, *The (Un) Rule of Law and the Underprivileged in Latin America* (Notre Dame: University of Notre Dame Press, 1999); O'Donnell, 2004. Though he focuses less directly on rights than other works, Gowder also points to the equalizing effects of the rule of law. See Paul Gowder, *The Rule of Law in the Real World* (New York: Cambridge University Press, 2016).

94. As Morlino and Palombella write, "The rule of law generates contestations especially when it has to be squared with democracy, the social or welfare state, fundamental rights, and even when it is appealed to outside the national State. At the same time, however, it is very often considered as a necessary premise for these objectives to be achieved." Leonardo Morlino and Gianluigi Palombella, "Introduction," in Leonardo Morlino and Gianluigi Palombella, eds., *Rule of Law and Democracy: Inquiries into Internal and External Issues* (Leiden: Brill, 2010), ix.

95. Wedeen, 719.

96. Meierhenrich, 52.

97. William H. Sewell, "Historical Events as Transformations of Structures: Inventing Revolution at the Bastille," *Theory and Society*, 25 (December 1996), 841–81.

98. Nelson Mandela, "Speech from the Dock," in Clifton Crais and Thomas V. McClendon, eds., *The South Africa Reader: History, Culture, Politics* (Durham: Duke University Press, 2014), 345–55.

99. For a compelling outline of the dilemmas that will continue to haunt policy makers, see Landau.

100. Peter Alexander, "Marikana, Turning Point in South African History," *Review of African Political Economy*, 40 (December 2013), 610.

101. Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge: Harvard University Press, 2010).