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## ‘From shack to the Constitutional Court’ The litigious disruption of governing global cities

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### 1. Introduction

On October 14<sup>th</sup> 2009, the South African Constitutional Court judged unconstitutional and so invalidated the so-called ‘Slums Act’; a provincial legislation of KwaZulu-Natal that was also supposed to be the blueprint for other provinces’ policies of eradicating informal settlements.<sup>1</sup> The decision signalled a major victory for the first applicant Abahlali baseMjondolo, the country’s largest shack dwellers’ movement that has been struggling for a dignified life in the cities since 2005. Beyond its relevance for the debates surrounding the justiciability of social and economic rights so famously included in the South African Constitution, when viewed from the perspective of the shack dwellers’ mobilization, the case appears to manifest contemporary technologies of power; the various practices that shape urban spaces and determine what kind of lives should inhabit them. Indeed, in rationalizing the municipal effort to eliminate shack settlements from urban centres with sanitary concerns and justifying evictions with the will to improve poor people’s living conditions, the ‘Slums Act’ reflects biopolitics in action. Accordingly, the Abahlali’s challenge to the legislation might be reminiscent of Michel Foucault’s claim that, as an unanticipated consequence of the inclusion of wo/men’s biological life into politics, modern political struggles tend to centre on this very aspect of human existence.<sup>2</sup> That is, at least for the Foucault of *The Will to Knowledge*, claims for the right to a dignified life or to adequate

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1 Case CCT 12/09 [2009] ZACC 31.

2 See M. Foucault, *The History of Sexuality, Volume I: An Introduction*, 1978, pp. 143–144.

housing are backlash effects of the emergence of biopower, and thus are correlated to technologies of power which, in turn, had weakened the role of law in governing populations.<sup>3</sup>

The asymmetric dynamics of power and resistance that this narrative entails depict great rights declarations of the modern age as masking and enabling more insidious and non-judicial technologies of rule (over both individual bodies and the population *en masse*) aimed at the well-being of all. Nevertheless, acknowledging the operation of biopower in the governmental conduct of modern lives need not lead one to view rights declarations as mere artefacts of disguise. Aiming to illustrate the contrary, this paper interprets the struggles of South African shack dwellers as emerging, for a large part, from the inscriptions of equality that such documents materialize. Thus, read through Jacques Rancière's conception of equality and the political that verifies it, Abahlali's engagement in litigation is here understood as being formative of the movement's political subjectivity and as eventually able to reverse biopolitical government. Furthermore, on the assumption that the struggles for access to urban life going on worldwide are paradigmatic of our present time, and following the Foucauldian call to study power at the points where it is contested, the paper takes a closer look at the biopolitical government of the urban and the place of juridico-legal technologies within it. It is suggested that, at least in the urban contexts, the police order which, as Foucault recounts, in the late eighteenth-early nineteenth century was largely superseded by the security apparatuses of the liberal technologies of governing through freedom today seems to be rather active.<sup>4</sup> Arguably, global cities' competition for capital within the globalized neoliberal economic order and the imperative of this order to actively produce the proper environment for competition pairs up conveniently with the detailed methods of regulating the early modern West. On the other hand, the self-limitation of governmental reason originating in the political economic criticism of the police state provides governance with the means of obligate impotence and guarantees that the subject of the police does not return along with its techniques. While certainly not demonstrating the same genealogy of power technologies as its occidental counterparts, continuities between apartheid-era and contemporary rationalities of governing the urban render the notion of the police relevant in the case of South African cities as well. Likewise, here too, the neoliberalism-police couple appears to be reinforced by a process that Rancière refers to as the 'factualization of law': by increasingly adapting legal rule to societal dynamics.<sup>5</sup> How far the political mobilization of socially and economically marginalized people can go in reversing these phenomena is the main question of the discussion to follow.

## 2. Policing the global city

Infamously, one of the major pillars of the apartheid regime in modern South Africa was 'influx control': a system of regulations that, except in specific and much restricted cases, forbade black people from living and/or working in urban areas.<sup>6</sup> That the white minority rule started to slowly crumble in the 1970s was largely due to the fact that influx control could never be total – black workers who lived in informal settlements that developed in the cities in spite of all restrictions

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3 For an elaborate assessment of Foucault's shifting conception of law in his work and for a grounded criticism of one-sided interpretations such as my remark above, see B. Golder & P. Fitzpatrick, *Foucault's Law*, 2009.

4 M. Foucault, *Security, territory, population: Lectures at the Collège de France, 1977-78*, 2007.

5 J. Rancière, *Dis-agreement: Politics and Philosophy*, 1999.

6 In Elaine Unterhalter's definition influx control is a '[s]ystem to control and direct labor, particularly used to prevent Africans living in the bantustans from living and working in the non-bantustan urban areas except under highly restrictive conditions'. E. Unterhalter, *Forced Removal: The Division, Segregation and Control of the People of South Africa*, 1987, p. 149.

and raids were an essential force in anti-apartheid struggles.<sup>7</sup> Of course, as already formulated in 1955 in the *Freedom Charter*, one of the main demands of these struggles was the free movement of all. It is rather unsettling, then, that a decade after the adoption of the South African Constitution (into which many of the *Freedom Charter*'s demands are integrated), with the 'KwaZulu-Natal Elimination and Prevention of Re-emergence of Slums Act, 2006', influx control seems to have re-entered jurisdiction. As discussed below, the legislation's obvious resonance with apartheid rule has specific significance for the contemporary mobilization of the urban poor in South Africa. Nevertheless, as resistant movements emerging on all continents of the globe demonstrate, the will to regulate poor peoples' access to the city evidences more than the stubborn persistence of racist oppression.

Groups fighting for the right to the city in metropolises worldwide draw attention to an apparent contradiction in the technologies of liberal governance: aiming, at least in declaration, to secure the well-being of the population with reliance on the supposedly self-adjusting dynamics of market processes entails place-making practices that systematically exclude the poorest segments of society. It seems that, due to a shift in urban governance triggered by the prevalence of neoliberalism and its effect of escalating processes of exclusion, the totalizing perspective of biopower adopted by the universalistic programmes of modern urbanization was fissured in recent decades. In turn, this fissure, which gains more and more visible shape in metropolitan topographies, is reinforced by and activates technologies of power presumed to be outmoded by the liberal conduct of conduct.<sup>8</sup> That is, security apparatuses – the vehicles of modern liberal governmentalities – operating the economic and social realms conceived of as natural by the main rule to let 'things follow their course', increasingly tend to fall back on disciplinary technologies which are characteristic of the police order.<sup>9</sup> Accordingly, the spatial practices of today's urban governance could hardly be interpreted as efforts to open up spaces to free circulation. Or, more exactly, while realms of free circulation exist and are nurtured, their condition of possibility seems to be their insulation from places and people incapable or potentially obstructive of favourable circulation. Thus, instead of being replaced by security apparatuses enabling the free flow of people and things, disciplinary technologies of demarcation and segmentation are widely mobilized in the government of contemporary cities.<sup>10</sup> In fact, Foucault's genealogy of governing the modern town explains the interaction of these two regimes of power.<sup>11</sup> On the one hand, there is an originary relationship between *Polizeiwissenschaft* and the biopolitics of the urban: according to Foucault, it was with the emergence of the early modern market town that sovereign power, conceiving of commerce as the primary source of the state's strength, first became concerned with the welfare of its people. Evolving into the essential space of production and exchange, the market town and its increased population confronted the ruler with novel problems: issues of health, crime, transportation, and the proper functioning of the market all had to be attended to if commerce was to fortify the state's power. On the other hand, whereas these ultimately urban objects called the police order into life, the mode of meticulously detailed regulation that this order developed in response became essential for the functioning of the urban: 'to police and to urbanize is the same thing'.<sup>12</sup>

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7 Cf. R. Pithouse, 'The Politics of the Poor: Shack Dwellers' Struggles in Durban', 2008 *Journal of Asian and African Studies* 43, no. 1, pp. 63–94.

8 M. Foucault, *Security, territory, population: Lectures at the Collège de France, 1977-78*, 2007.

9 *Ibid.*, p. 49.

10 For an opposition of the distinct spatial strategies of the two regimes of power, see S. Elden, 'Governmentality, Calculation, Territory', 2007 *Environment and Planning D: Society and Space* 25, no. 4, p. 565.

11 M. Foucault, *Security, territory, population: Lectures at the Collège de France, 1977-78*, 2007.

12 *Ibid.*, p. 337.

Apparently, this equivalence has been reinforced throughout recent decades, as the totalizing biopolitical gaze targeted on the population of the nation state as a largely autonomous political and economic unit has been readjusted and the state–city relationship reconfigured. In tracing the reasons for such a reconfiguration, two major and interrelated trends could be identified. Trivially, one of them is intensifying economic globalization and the consequently increasing mobility of capital. Complementing the effects of these trends (e.g. the drive for constructing spatial fixes to counter excessive capital mobility), neoliberalism, gaining predominance after the financial crises of the 1970s, put competition at the absolute centre of economic government. As a result, in the 'developed world' where these were characteristic of the post-war era, 'homogenizing spatial practices' of nation states gave way to the competition of cities.<sup>13</sup> Arriving at a similar scheme on a different trajectory (mostly via the conditionalities of international financial institutions), centralized developmentalist programmes of countries in the Global South were undermined thus re-inscribing the uneven developmental patterns of the colonial era. Hence, almost independently of their location, in aspiring to form major nodal points in the transnational flow of capital, 'global cities' today emerge as entrepreneurial localities and engage in large-scale redevelopment projects.<sup>14</sup> As Neil Brenner argues – in opposition to canonized views about the demise of the nation state – paralleling the emergence of competing global cities, globalization entails the rescaling of the state.<sup>15</sup> That is, in response to the globalization of capital and the increasing interdependence of economies, the nation state has gone through a process of institutional restructuring and, in order to promote its regions and cities 'as favourable territorial locations for transnational capital investment', it became directly involved in the enhancement of their productive forces.<sup>16</sup> Arguably, akin to the era of the police when commerce was conceived of as the main source of the state's strength, and unlike the Fordist-Keynesian age when '[r]egions and cities were viewed as mere sub-units of national economic space', cities again became the prime drivers of economic vitality.<sup>17</sup> Consequently, in line with Foucault's claim that neoliberalism differs from liberalism mostly in its unquestionable commitment to competition,<sup>18</sup> and driven by the neoliberal conviction that the market and competition do not emerge naturally but have to be created and nurtured,<sup>19</sup> the early modern interdependence of the urban and the police order came back to the fore, and interventionist regulation was reconstructed as a legitimate form of urban governance.

Doubtless, policing the city as the space of circulation was in effect already in the liberal urban governmentalities of earlier periods, which aimed primarily at enabling the smooth functioning of 'natural' market forces. That is, even when the ultimate aim of governing the urban was to provide the ideal space for the benevolent dynamics of economic flows, there remained a distinction between 'good' and 'bad' circulation and, with it, the necessity to regulate the latter.<sup>20</sup> In turn, exactly such necessities reveal the principle of self-limitation at the core of

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13 N. Brenner, 'Between Fixity and Motion: Accumulation, Territorial Organization and the Historical Geography of Spatial Scales', 1998 *Environment and Planning D: Society and Space* 16, no. 4, p. 476.

14 S. Graham & S. Marvin, *Splintering Urbanism: Networked Infrastructures, Technological Mobilities and the Urban Condition*, 2001; C. McFarlane, 'Infrastructure, Interruption, and Inequality: Urban Life in the Global South', in S. Graham (ed.), *Disrupted Cities: When Infrastructure Fails*, 2010, pp. 131-144.

15 N. Brenner, 'Global Cities, Glocal States: Global City Formation and State Territorial Restructuring in Contemporary Europe', 1998 *Review of International Political Economy* 5, no. 1, pp. 1–37.

16 *Ibid.*, p. 16.

17 *Ibid.*, p. 17.

18 M. Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978-79*, 2008.

19 M. Lazzarato, 'Neoliberalism in Action: Inequality, Insecurity and the Reconstitution of the Social', 2009 *Theory, Culture & Society* 26, no. 6, pp. 109–133.

20 Cf. M. Foucault, *Security, territory, population: Lectures at the Collège de France, 1977-78*, 2007, p. 18.

liberal governmental reason and its vacillation between governing too much and too little. Although the construction of the dynamics of economy as naturally contingent exposes governmental rule as incapable of complete control, fostering the natural self-regulation necessitates a certain amount of intervention.<sup>21</sup> Indeed, enabling the beneficial circulation of people and goods in the early modern town increased the need for regulation, as opening up the urban space to their flows implied exposing it to unwanted traffic. Therefore, it seems, controlling influx has always been an inherent element of modern urban governance and, accordingly, sets of regulations such as the ‘anti-homeless laws’ studied by Don Mitchell have been a constant governmental tool.<sup>22</sup> On the other hand, the neoliberal ‘uncoupling of market economy and laissez-faire policies’ entailed by the primacy of competition was accompanied by the uncoupling of the economic and the social fields of intervention, with fundamental effects on the government of urban life.<sup>23</sup> Again, whereas liberal biopolitics turned upon homogenizing practices and involved measures to compensate for the destructive effects of competition, for neoliberal governmentality ‘there is only one true and fundamental social policy: economic growth’.<sup>24</sup> Radically transforming urban governance, this idea eventually materialized in discarding the welfarist ideal of universal service provision (that used to be backed up by the late modern notion of mass technological progress) and reconstructing public services as marketable, so complementing the above-mentioned conception of the competitive city. Shaking the (hidden) bases of the ideal of modern (Western) urbanity, the consequently increasing liberalization and privatization of infrastructural networks gradually led to what Graham and Marvin call ‘splintering urbanism’, that is, to the processes of infrastructural networks’ unbundling that ‘help sustain the fragmentation of the social and material fabric of cities’.<sup>25</sup> Having a direct effect on the living conditions of urban dwellers, these ‘spatially selective’ modes of urban governance engage in ‘constructing experimental models of urban planning and infrastructure provision for building local microgeographies within strategically significant regions whilst withdrawing policies geared to mass integration and redistribution’.<sup>26</sup> This, in turn, means practically neglecting less valuable places associated with less valuable groups of people, and when this neglect is equivalent to withdrawing or denying basic infrastructure such as water or electricity, we are faced with nothing less than the materialization of the power to disallow life in the form of the emerging spaces of biopolitical abandonment.<sup>27</sup> That is, dethroning the ideal of universal provision and removing the redistributive measures of its regulation implies cutting off non-competitive areas from the flows of prime urban circulation.<sup>28</sup> At best (and mostly in the Global North), in less marketable areas this means retaining the original and monopolistic provider often with higher tariffs and fewer options; at

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21 As will be argued towards the end of the next section, although transformed, the principle of self-limitation is vigorously active in contemporary rationalities of government.

22 D. Mitchell, ‘The Annihilation of Space by Law: The Roots and Implications of Anti-homeless Laws in the United States, 1997 *Antipode* 29, no. 3, pp. 303–335; D. Mitchell, ‘People Like Hicks: The Supreme Court Announces the Antiurban City, in M. Davis & D. Bertrand Monk (eds.), *Evil Paradises: Dreamworlds of Neoliberalism*, 2007, pp. 207–218. Cf. P. Joyce, *The Rule of Freedom: Liberalism and the Modern City*, 2003, e.g. p. 85.

23 M. Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978-79*, 2008, p. 131.

24 *Ibid.*, p. 144.

25 S. Graham & S. Marvin, *Splintering Urbanism: Networked Infrastructures, Technological Mobilities and the Urban Condition*, 2001, p. 33.

26 M. Jones, ‘Spatial Selectivity of the State? The Regulationist Enigma and Local Struggles over Economic Governance’, 1997 *Environment and Planning A* 29, no. 5, p. 852.

27 See Foucault’s quasi-definition of biopolitics/biopower: ‘One might say that the ancient right to *take* life or *let* live was replaced by a power to *foster* life or *disallow* it to the point of death’. M. Foucault, *The History of Sexuality, Volume I: An Introduction*, 1978, p. 138; original emphasis.

28 S. Graham & S. Marvin, *Splintering Urbanism: Networked Infrastructures, Technological Mobilities and the Urban Condition*, 2001.

worse (and mostly in the Global South), gaps remain or newly emerge in services, casting non-serviced groups of people into inhuman living conditions and eventually leading to their death.

Arriving at some of the most important targets of currently ongoing struggles for a dignified urban life, let us see how the current government of 'bad circulation' builds up from the revival of the police within liberal apparatuses of security. On the one hand, as the dismantling of equalizing policies reinforce differences between potential entrepreneurial subjects and the reformulating category of 'the poor',<sup>29</sup> these patterns are increasingly ossified by the deployment of disciplinary spatial practices originally characteristic of the police order. Consequently, technologies of surveillance responsible for diminishing bad circulation are complemented with an essential object of early modern conceptions of urban government: 'the elimination, or at any rate control of the poor'.<sup>30</sup> By implication and in line with the neoliberal imperative to actively produce the ideal environment of competition, juridico-legal techniques of the same mode of government are also revisited. On the other hand, 'the control, or at any rate elimination of the poor' seems to be a more appropriate characterization of the way global cities function at present: beyond the secured realm of prime circulation, disciplinary biopolitics is less and less frequently deployed. That splintering urbanism reconstructs the developed-undeveloped divide within the global city and thus those capable and incapable of competition are visibly separated does not generally activate the stigmatizing but in their intention ameliorative technologies of discipline deployed in earlier regimes of urban governance. With the ideal of social justice largely eliminated from governing the urban habitat, neoliberal governmentality produces ways of governing 'the poor' that are distinct from either the disciplinary institutions of the police or the redistributive measures of welfare liberalism. Although programmes to carve out the entrepreneurial subject in marginal spaces occasionally occur,<sup>31</sup> the withdrawal or denial of basic services manifests an essentially non-productive mode of biopower and, with it, a new form of influx control. As will be shown in the next section, these developments profoundly affect the potential scope and subject of the political.

### **3. Influx control by other means**

Formulated in reaction to the eThekweni (Metropolitan Durban) Municipality's policy to completely prohibit the electrification of informal settlements and the living conditions that this policy implies, Abahlali baseMjondolo's (February 15, 2008) press statement provides a vivid expression of the way post-apartheid governance of the city shapes access to urban life:

'Many of us believe that by leaving us to be killed by diarrhoea and fire and rats while they waste millions on casinos, the theme park, stadium and the A1 Grand Prix the Municipality is trying to force us to leave our homes and to accept "relocation" (which is really "ruralisation") by forcing us choose [sic] between living with fires and rats and plastic bags

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29 As Foucault shows, the intention of purifying economic government of the idea of social justice brought along the reintroduction of the 'poor' and 'poverty', while 'giving up the idea that society as a whole owes services like health and education to each of its members'. M. Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978-79*, 2008, pp. 201-202.

30 M. Foucault, *Security, territory, population: Lectures at the Collège de France, 1977-78*, 2007, p. 334.

31 E.g. NGOs promoting projects of self-built infrastructure or the government-backed installment of prepaid water meters in informal settlements.

for toilets in the city or without fires and rats and plastic bags for toilets in the relocation sites.<sup>32</sup>

Indeed, complementing the phenomenon of governing the poor out of the city through what Mitchell calls the ‘elimination of space by law’, that is, the legal obstruction of homeless people’s presence in prime urban spaces,<sup>33</sup> the withdrawal of basic infrastructure is a widely deployed means of neoliberal governmentality. As such, and since the city is a privileged site of biopolitics, it testifies to a novel politics of governing life; a redefinition of the kind of life to be fostered and the scope of people eligible to live it. Having outlined above the major shifts in the rationalities and practices that shape this novel urban biopolitics, and in order to see these shifts’ implications for the potential emergence of political subjects, this section takes a look at the more proximate context of a paradigmatic urban struggle: the government of the South African city. To be sure, the racist rule of apartheid is not exactly exemplary of twentieth century urban governance. Nevertheless, the trajectory from there to the most recent Slums Act challenged by Abahlali can function as a *mise-en-abyme* of biopolitics that reflects the transforming interplay between the notion of circulation and conceptions of the economy, infrastructure provision and influx control.<sup>34</sup>

Certainly, the perverted system of laws and regulations that made up the segregationist white minority rule cannot be properly addressed in a few paragraphs. However, in light of the present discussion, it is important to consider the co-articulation of state racism and economic calculation. Serving as a perfect illustration for Foucault’s conceptualization of racism as the phenomenon that equips modern political power with the right to kill, pieces of apartheid legislation such as the Native Land Act of 1913<sup>35</sup> or the Bantu Resettlement Act of 1954<sup>36</sup> were instruments of a regime fostering the life of one part of the population under its rule through disallowing the life of other parts.<sup>37</sup> Indeed, forcibly removing masses of black people to distant rural areas with no arable land or proper infrastructure could hardly be read as anything but disallowing their life. However, economic considerations surrounded most legislative efforts of the racist rule, with white landowners or mine owners often challenging (or even defying) apartheid rules of ‘native peoples’ residence and employment. Unterhalter perfectly summarizes how the fundamentally biopolitical technology of influx control can be and was deployed with varying rationalities:

‘[Apartheid laws of influx control] have been used to protect whites’ access to jobs, to maintain a migrant labour system, to undermine African urban political activism, both to prevent and to create the establishment of an unemployed army of labour in the cities

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32 Abahlali baseMjondolo, ‘Mass Disconnections from Electricity at Gun Point in the Kennedy Road Settlement’, 15 February 2008, <<http://abahlali.org/node/3342>> (last visited 8 December 2010).

33 D. Mitchell, ‘The Annihilation of Space by Law: The Roots and Implications of Anti-homeless Laws in the United States’, 1997 *Antipode* 29, no. 3, pp. 303–335.

34 *Mise-en-abyme* refers to a technique of self-reflection in art. ‘In the theories of structuralism and discourse, the technique of “bottomless” reduplication, as when an image contains a smaller version of itself, which contains an even smaller version, and so on endlessly. Literally “to put into the abyss”’. Source: MediaDictionary.com <<http://www.mediadictionary.com/definition/mise-en-abyme.html>> (last visited 10 March 2011).

35 The Native Land Act severely limited the landownership of black people.

36 ‘Provided for the removal of Africans from Johannesburg’. E. Unterhalter, *Forced Removal: The Division, Segregation and Control of the People of South Africa*, 1987, p. 153.

37 M. Foucault, *The society must be defended’: Lectures at the Collège de France, 1975–76*, 2003.

outside of the bantustans, and to meet the needs of manufacturing industry for more flexible access to labour.'<sup>38</sup>

Nevertheless, even though this pragmatist aspect lends it certain continuity, there appears to have been a significant shift in the rationality and practice of segregation around the mid-1970s. At this time, white academics and policymakers started to reassess the apartheid system and pointed at specific reasons why it was not working. Without attempting to question the legitimacy of white minority rule, they introduced a new perspective into its conceptualization: that of economic reason. The 'technocrats', as this group of experts was commonly referred to, criticized the system of influx control for two main reasons: for its fiscal costs ('Influx control and removals are economic nonsense' – reads a *Cape Times* editorial of the day);<sup>39</sup> and for triggering the political mobilization of black people. Their answer to both problems was decentralization and regulation by 'market forces'. As a statement typical of the technocrats' approach illustrates, this was still racist oppression, but by (somewhat) other means: 'Economic decentralization will play a pivotal role in influx control. Control of movement will come to rest less on coercion and more on economic incentives'.<sup>40</sup>

As the decade following the implementation of decentralizing policies (and the consequent relaxation of some of the most aggressive laws and practices of segregation) showed, the political activism of black people (whether in urban or rural areas) could not be prevented. Decades of anti-apartheid struggles finally succeeded in the early nineties, and with the African National Congress (ANC) partnering the incumbent government in the negotiated transition, in 1994 apartheid officially ended. Famously and as mentioned above, the Mandela-led ANC government codified its promise to provide 'a better life for all' when it incorporated into the Constitution (adopted in 1996) the Bill of Rights, which, in turn, included many of the Freedom Charter's demands, and so a wide range of economic and social rights were integrated into the Republic's fundamental law. With the *Reconstruction and Development Programme* serving as the according policy framework, the new government set out to realize a universalistic welfare project with plans of providing low-cost housing and free basic services. However, as Patrick Bond recounts, simultaneously with drafting the Constitution, that is, already two years into the democratic governance, the ambitious but not unfeasible goals articulated in the RDP were discarded giving way to hardcore neoliberal policies.<sup>41</sup> In a surprisingly short time span, thanks to the effective role of international financial institutions as 'knowledge banks',<sup>42</sup> South Africa began to be showcased as the role model of prudent fiscal and economic governance and thus programmes of providing universal and free infrastructure gradually lost their vigour. In their stead came the instalment of prepaid water meters in shack settlements in Johannesburg and the prohibition of shack settlements' electrification in Durban. Moreover, less than a decade after adopting the Constitution, and despite the legal instruments serving to aid its implementation, shack-dwellers in valuable urban areas began to experience evictions, the 'democratic' versions of forced

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38 E. Unterhalter, *Forced Removal: The Division, Segregation and Control of the People of South Africa*, 1987, p. 43.

39 Quoted in E. Unterhalter, *ibid.*, p. 123.

40 Brand quoted in E. Unterhalter, *ibid.*, p. 133.

41 For a detailed discussion of the trajectory from liberation and the RDP to the endorsement of neoliberalism, see P. Bond, *Elite transition: From Apartheid to Neoliberalism in South Africa*, 2000. It has to be noted, however, that despite the clearly perceptible shift from the RDP to more austere neoliberal policies, as (with reference to Marie Huchzermeyer's important work on housing policies in South Africa) Richard Pithouse notes, 'the housing compromise' that shaped the neo-apartheid policies in effect today had happened already in 1993. Personal correspondence, 14 April 2011.

42 Cf. P. Bond, *Elite transition: From Apartheid to Neoliberalism in South Africa*, 2000.



removal.<sup>43</sup> Cutting this already schematic narrative short, due to the shifts in the government's economic rationality, the conditions of possibility for the 'KwaZulu-Natal Elimination and Prevention of Re-emergence of Slums Act, 2006' gradually emerged. This time around, as the Preamble to the Act testifies, the provincial government speaks as an agent of the Republic celebrated for its progressive constitution and as observant of the directives of the appropriate UN organizations: to create slum-free cities.<sup>44</sup> Nevertheless, as Richard Pithouse had already noted about the province's housing policies before the announcement of the 'Slums Act', it is hard not to recognize two sets of continuities with the apartheid era:

'The first is that there is a clear attempt to regulate the flow of poor African people into the city. In practice there is not an absolute barrier because new shacks are erected and because people who find work or develop livelihoods from a first base in a shack often move out of their shacks and rent them to new arrivals. But the policy intention is clearly to restrict the influx of poor people moving in to the city. Secondly, while houses are being built in the areas to which people are relocated they are mostly being built, in the manner of colonial and apartheid era townships, away from the city.'<sup>45</sup>

Indeed, one of the municipalities' roles defined in the 'Slums Act' is to 'encourage and promote housing and economic development in rural areas within its area of jurisdiction so as to avoid the undue influx of persons to urban areas and the resultant development of slums'.<sup>46</sup> As Abahlali's statement quoted at the beginning of this section illustrates, codified in municipal policies that prohibit service provision, 'ruralisation' takes other forms too – forms that, through casting poor people into horrific living conditions, recall the apartheid practices of disallowing life.

Clearly, the Slums Act reveals a discrepancy between the constitutionalised promise of 'a better life for all' and the municipal government of urban space. As will be discussed below, the localization of this discrepancy is crucial for the political mobilization of those pushed beyond the realm of prime circulation. Here, however, it is important to address its condition of possibility, that is, the appearance of the subject of government corresponding to the previously outlined technologies and rationalities of power. On the one hand, we have seen that with the tendency of neoliberal urban governance to intervene, in a regulatory manner, into the social and economic milieu of aspiring global cities in order to enhance their competitive capacities, techniques of policing the early modern market town recur. Nevertheless, what does not return with them, or at least to a much lesser extent, is the subject of the police. As we have also seen, although it frequently relies on the old toolkit, modern liberal governmentality is defined against the interventionist rule of the police and entails a completely different conception of the relation between governor and the governed. Whereas the reason of the police state still implied the sovereign rule over subjects of right, due to its political economic criticism and the consequent redefinition of the objective of government as securing the operation of social and economic processes conceived of as natural, economics occupies the space of sovereign jurisdiction.<sup>47</sup>

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43 The most important among such legal instruments are the Housing Act (No. 107 of 1997) and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act of 1998, known as the PIE Act.

44 As Marie Huchzermeyer shows, this is a completely distorted and harmful interpretation of the UN HABITAT's objectives. M. Huchzermeyer, 'Comment on KwaZulu-Natal Elimination and Prevention of Re-emergence of Slums Bill', 13 May 2007, <<http://abahlali.org/node/1320>> (last visited 10 March 2011).

45 R. Pithouse, 'Mhlengi Khumalo is Gone', *Sunday Tribune*, October 2005, <<http://abahlali.org/node/857>> (last visited 10 March 2011).

46 KwaZuluNatal Elimination and Prevention of Reemergence of Slums Act, 6 of 2007, p. 10.

47 M. Foucault, *Security, territory, population: Lectures at the Collège de France, 1977-78*, 2007.

'Economics steals away from the juridical form of the sovereign exercising sovereignty within a state precisely that which is emerging as the essential element of a society's life, namely economic processes'.<sup>48</sup> As Foucault shows, since the natural processes of the market are full of accidents and uncertainties, this shift results in the significant limitation of the sovereign's power: the sovereign cannot possibly predict how economic dynamics will play out, and as these dynamics strive for harmony when left alone, intervention can only be harmful. The self-limitation of the governmental reason so formulated is complemented by the transformation of the subject entailed by governmentality: the subject of right is replaced by the subject of interest. Universalized through the notion of the population, this subject reinforces the ignorance of the sovereign:

'You must not, because I have rights and you must not touch them. This is what the man of right, *homo juridicus*, says to the sovereign (...) *Homo oeconomicus* does not say this. He also tells the sovereign: You must not. But why must he not? You must not because you cannot. (...) You cannot because you don't know, and you don't know because you cannot know.'<sup>49</sup>

What we so end up with is a paradox and mobile set of capacities and limitations that, as Jacques Rancière argues, ultimately determine the conditions of the political.<sup>50</sup> On the one hand, with governance being reduced to the management of market forces, we get to the declared impotence of the 'modest state'. 'The state legitimizes itself by declaring that politics is impossible. And this demonstration of impossibility works through a demonstration of its own impotence'.<sup>51</sup> On the other hand, the necessities of market forces require the proliferation of a legal activism aiming to adapt to 'the endless movements of the economy and of society, lifestyles, and attitudes'.<sup>52</sup> Arguably, then, we are back to the paradox inferred from Foucault's argument: the power that places human life as a biological existence at its centre and thus gives ground to struggles for the conditions of this existence, ends up displacing both the target and the claimant of such struggles.<sup>53</sup> Thus, in the context of the South African case and from the perspective of governmental reason, the objects of the Slums Act are not effectively equivalent to the subjects of the Constitution. As argued in the next section, the re-establishment of this equivalence is the backbone of the shack dwellers' resistance.

#### **4. 'So, with that knowledge, which, we think, is power, we will stand strong (...)'**

There is no doubt that the fall of apartheid was the event of a long-due political liberation for the majority of South Africans. Accordingly genuine were the intentions of the first Mandela-led democratic government to mitigate the incredible differences in the living conditions of the white minority and the previously oppressed black people. As the above discussion aimed to show and as the intensification of political mobilization signifies, the mode of economic governance that

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48 M. Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978-79*, 2008, p. 282.

49 *Ibid.*, p. 283.

50 As Rancière perfectly elucidates this paradox character: 'The absolute identification of politics with the management of capital is no longer the shameful secret hidden behind the "forms" of democracy; it is the openly declared truth by which our governments acquire legitimacy. In this process of legitimization, any demonstration of capability needs to be based on a demonstration of powerlessness.' J. Rancière, *Disagreement: Politics and Philosophy*, 1999, p. 113.

51 *Ibid.*, p. 110.

52 *Ibid.*, p. 107.

53 M. Foucault, *The History of Sexuality, Volume I: An Introduction*, 1978.

the first ANC government already endorsed and the subsequent ones retained fell short of delivering the better life it promised. In fact, the past sixteen years have seen inequality increasing within South African society. In parallel, claims of equality documented in the Freedom Charter and now integrated into the country's legal system re-emerged from a different angle and were again put into the centre of struggles against societal injustice, among them the limitations to accessing urban ways of life. In the context of the previous discussion about the biopolitical evacuation of politics, such struggles gain major significance. Whereas above we assessed the mutual interaction of juridical regulation and governmental rationalities and the ways in which this interaction works to impede the emergence of political subjects, this section focuses on a particular political struggle and, through that, on the fact that political subjectification does nevertheless occur. Although the struggles of Abahlali baseMjondolo (literally: 'the people who live in the shacks') for a dignified urban life are manifold and would deserve a much more detailed account, in what follows I will mostly focus on one of the crucial aspects of their political subjectification: their relation to the law, or more specifically, to the Constitution.<sup>54</sup> Thus by turning to the ways poor people desperate to live in the city in order to access employment, education, and medical services challenge a 'world class city's' efforts to cleanse its landscape of the unaesthetic spaces of poverty from within the juridico-legal realm, we get to see how legal norms may still be constitutive of militant politics. Against the backdrop of the biopolitical displacement of the subject of right and the parallel phenomena that Rancière refers to as the factualization of law, the following discussion of the Abahlali's litigious politics aims to demonstrate how victories of previous struggles inscribed as rights give rise to a collective political subject that is thus able to reverse the power practices of contemporary urban government. How, then, life 'formulated through affirmations concerning rights' is 'turned back against the system that was bent on controlling it' twice over.<sup>55</sup>

For such an inquiry, Rancière's conception of rights provides an appropriate point of departure. Based on a criticism of Hannah Arendt's claims on the 'perplexities of the Rights of Man',<sup>56</sup> Rancière reformulates the answer to 'Who is the subject of the Rights of Man?'.<sup>57</sup> Showing that Arendt's thesis that the Rights of the Man are 'the rights of those who have no rights' is either a void or a tautology,<sup>58</sup> he provides a third option: 'the Rights of Man are the rights of those who have not the rights that they have and have the rights that they have not'.<sup>59</sup> The resolution of this cryptic statement lies in the process of political subjectification, through which rights' two forms of existence are bridged. Or, to take one step further back, it lies in Rancière's aesthetic conception of politics (as more generally referred to in radical/poststructural political theory: *the political*) as distinct from the police order.<sup>60</sup> For Rancière, *police* is an order that allocates spaces and times to parts of the community based on their shares from what is common. As such, it also defines what is to be visible or invisible, audible or inaudible, and what counts as political. *Politics*, in turn, is a process whereby this distribution of spaces and times is

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54 Beyond Abahlali's press statements and the writings of activists and/or academics working close to the movement the discussion to follow draws on field research with Abahlali baseMjondolo that I conducted in two phases (April–July 2009 and late-September/early-November 2010).

55 M. Foucault, *The History of Sexuality, Volume I: An Introduction*, 1978, p. 145.

56 H. Arendt, *The Origins of Totalitarianism*, 1976.

57 J. Rancière, 'Who is the Subject of the Rights of Man?', in J. Rancière, *Dissensus: On Politics and Aesthetics*, 2010, pp. 62-75.

58 '[Arendt] makes them a quandary, which can be put as follows: either the rights of the citizen are the rights of man – but the rights of man are the rights of the unpoliticized person; they are the rights of those who have no rights, which amounts to nothing – or the rights of man are the rights of the citizen, the rights attached to the fact of being a citizen of such or such constitutional state. This means that they are the rights of those who have rights, which amounts to a tautology'. J. Rancière, *ibid.*, p. 302.

59 *Ibid.*, p. 302.

60 See J. Rancière, *Dis-agreement: Politics and Philosophy*, 1999.

disrupted by a surplus subject, by a part of the community that is in excess to the account of the police order and which, for this reason, is able to re-distribute the sensible order. In line with this aesthetic conception of politics, then, written rights have a materiality and, as such, are part of the sensible order.

'[R]ights are inscriptions, a writing of the community as free and equal (...) [T]hey are not merely an abstract ideal, situated far from the givens of the situation. Instead, they are part of the configuration of the given, which does not only consist in a situation of inequality, but also contains an inscription that gives equality a form of visibility.'<sup>61</sup>

Equality, thus, as also formulated in Rancière's concept of *literariness*, has a materiality: 'it exists somewhere'.<sup>62</sup> Literariness – a concept related to the basic presumption of the equality of every speaking being – centres on the notion of the mute letter that '[endows] anyone at all with the power of speaking'.<sup>63</sup> Therefore, in remaining part of the sensible configuration, a 'word has all the power originally given to it'.<sup>64</sup> Hence, the first form of rights' existence. As to the second, rights are of those who decide to make 'something out of that inscription' through staging its verification. In other terms, rights are of those who, through the event of political subjectification and thus filling the empty name of 'the people', bridge the worlds of politics and the police order: the basic equality of everyone and the contingent hierarchy of every social order.<sup>65</sup>

Arguably, driven by their anger over a decision of the local municipality, through their formation Abahlali enacted the division between their inclusion into the democratic South Africa as 'vote banks' and their exclusion from the benefits promised by the post-apartheid order.<sup>66</sup> The eventness of their subjectification is reflected in their history: instead of first formulating an organization and then engaging in political mobilization, the movement was born in early 2005 out of a spontaneous road blockade near the Clare Estate settlement in Durban, as a reaction to the rumours about the eThekweni (Metropolitan Durban) Municipality selling a piece of land to a brick factory, that same piece of land having been promised to the shack dwellers just a few weeks earlier.<sup>67</sup> Functioning as the last straw, this experience of betrayal mobilized the community: 'The movement grew out of a spontaneous blockade, of our radical anger and frustration. It was not preceded by intellectual work, but afterwards the movement was formed because we realized that we are not on our own'.<sup>68</sup> To be sure, it was not merely (or primarily) this municipal decision that made the dwellers of one of Durban's biggest informal settlements (with over 7,000 inhabitants) feel left behind. As is often recalled, they feel betrayed as the people who fought for freedom and a decent life – the better life that the victorious democratic government promised to them:

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61 J. Rancière, 'Who is the Subject of the Rights of Man?', in J. Rancière, *Dissensus: On Politics and Aesthetics*, 2010, p. 68.

62 J. Rancière, *On the Shores of Politics*, 2007, p. 47.

63 J. Rancière, 'The Politics of Literature', in J. Rancière, *Dissensus: On Politics and Aesthetics*, 2010, p. 156.

64 J. Rancière, *On the Shores of Politics*, 2007, p. 47.

65 J. Rancière, *Dis-agreement: Politics and Philosophy*, 1999.

66 Abahlali reject being treated as 'vote banks' through their 'No land, no house, no vote' campaign, that is, by abstaining from voting in elections. See N. Gibson & R. Patel, 'Democracy's Everyday Death: South Africa's Silent Coup', *Pambazuka News*, 8 October 2009, <<http://www.pambazuka.org/en/category/features/59322>> (last visited 10 March 2011). 'So we, as the shack dwellers are treated as five-year specialists, which are election specialists because during elections everybody takes care of us, everybody comes to us, everybody promises us heaven and earth. Everybody respects us, everybody calls us comrades. But after elections, no one cares, no one acts, you see. So that is why we launched the "no house, no vote" campaign. Because we were tired of always being the voting materials at all the times'. Mnikelo Ndabankulu, interview, 29 June 2009.

67 Cf. R. Pithouse, 'Mhlangi Khumalo is Gone', *Sunday Tribune*, October 2005, <<http://abahlali.org/node/857>> (last visited 10 March 2011).

68 S'bu Zikode, author's notes, 6 May 2009.

‘We fought, died, and voted for this government and so that we can be free in our country and have decent lives, houses and jobs – but this government doesn’t treat us as people who can speak and think for themselves and who have the freedom to do so.’<sup>69</sup>

Almost all the important aspects of the Abahlali’s subjectification are summed up in this sentence: it is exactly through actively rejecting the role of the ignorant poor and the depictions of the shantytown as the space of voiceless suffering that the shack dwellers’ political subjectivity is born. Further, it is exactly through rejecting their automatic inclusion in the order of post-apartheid democracy as the guaranteed electorate of the ANC, that they enact the promise of freedom and equality as inscribed into the fundamental texts of this order:

‘I was born into the ANC and I have voted for the party in every election except for the last one when Abahlali decided on the “No Land. No House. No Vote” campaign. When we formed Abahlali many of us were doing so as unsatisfied members of the ANC (...) it was about fighting for the practicalities of the theory in the Freedom Charter and the Constitution. (...) The ANC has lobbied support for elections and when we remind them of the promises they made, when we quote them, they get angry with us.’<sup>70</sup>

Through Abahlali’s articulating their pain and locating the wrong done to them in the form of the suffering that the living conditions of a shantytown entail, a gap emerges between the mandate of the democratic government and its practice, and along this division, the shack dwellers’ political subjectivity gains shape:

‘For a number of years we have voted but not seen any change. In 2006 Abahlali realised that we have power. We had always been asked to shout “Amandla! Awethu!” [Power to the People!] but refraining from voting was a way of showing that Amandla is ours. Basically we had decided not to give our power away. It has a simple message – that we had no confidence in politicians and that we believed that we could empower ourselves – that we really do believe that the people shall govern.’<sup>71</sup>

This imperative (‘The people shall govern!’) cited by the chairman of Abahlali above is, famously, one of the most emphatic demands of the Freedom Charter adopted by the Congress of the People in Kliptown (near Johannesburg) in 1955.<sup>72</sup> Together with the Constitution that declares its continuity with the Charter by way of incorporating the Bill of Rights, these texts function in Abahlali’s struggles as inscriptions of equality – in the sense of Rancière’s conceptualization. To recall, according to Rancière ‘a word has all the power originally given to it’,<sup>73</sup> and

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69 Abahlali baseMjondolo, ‘Meeting to Build a Coalition Against the Slums Bill’, 13 July 2007, <<http://abahlali.org/node/1708>> (last visited 8 December 2010).

70 Mnikelo Ndabankulu quoted in N. Tolsi, ‘Mzansi Voters: Mnikelo Ndabankulu’, *Mail & Guardian*, 16 April 2009.

71 S’bu Zikode quoted in R. Pithouse, ‘“To Resist All Degradations and Divisions”: Interview with S’bu Zikode’. *Interface* 1, no. 2, <<http://interfacejournal.nuim.ie/wordpress/wp-content/uploads/2010/11/Interface-1-2-pp22-47-Zikode.pdf>> (last visited 10 March 2011).

72 The Charter that was compiled based on the ‘freedom demands’ of the oppressed black and coloured peoples of apartheid South Africa (collected by fifty thousand volunteers) recently became an inscription per se: as part of a historical tourist site (a very interesting instance of city-branding...) constructed on the original location of the People’s Congress, its text is engraved into the Freedom Charter Monument. On the development of the ‘theme park’, see N. Klein, *The Shock Doctrine: The Rise of Disaster Capitalism*, 2007, pp. 213-215. (Although the point cannot be pursued here, it has to be noted that Klein’s depiction of the ANC elite and, in particular, then president Thabo Mbeki as uncritical and incapable agents of the international financial institutions should be challenged. R. Pithouse, personal correspondence, 14 April 2011.)

73 J. Rancière, *On the Shores of Politics*, 2007, p. 47.

as the Abahlali show throughout their struggles, this power (Amandla!) can readily be appropriated:

'We could take what is true and not contentious from existing documents like the Freedom Charter and the "Breaking New Ground" policy and put these into effect – which would have the opposite effect to what the current Bill [the "Slums Act"] will do when it is put into practice. The good parts of these existing documents and policies, and also parts of our Constitution, are full of Abahlalism<sup>74</sup> because "these policies somehow prioritize the need to improve the quality of life of the poor" (Mnikelo) – but they are not put into practice. In this way, we are reminding them [the government], not surprising them because these things were promised to us.'<sup>75</sup>

As we will shortly see, the Abahlali's litigation against the 'Slums Act' is a perfect case of appropriating the power of the word in the manner of the quote above, that is, through enacting the community's shared capacity to understand and to speak. Nevertheless, as it is telling of how the police order defines what is visible and audible, how the distribution of the sensible allocates the capacities to speak, the movement's earlier litigation is also worth looking at. The Abahlali's earliest and still major success was halting illegal evictions in eThekweni through a number of court cases, most of which (when aided by pro bono legal advice) they have won, as in most of the cases the municipality violated the terms of the PIE Act.<sup>76</sup> Whereas these victories doubtlessly reinforced the movement's political agency and contributed to increasing the number of settlements affiliated with it, the point to be made here is about the interaction or, in fact, the contemporaneity of litigation and political subjectification.<sup>77</sup> Politics, in Rancière's sense, occurs in the event of initiating these cases, that is, when shack dwellers on the verge of homelessness appropriate the legal definition of lawful evictions and thus disrupt the order that accommodates the municipal practice of illegal evictions based on the assumption that shack dwellers are unaware of their rights.

Whereas the practice of litigation by resistant movements is nothing new,<sup>78</sup> the fact that the role of becoming aware of their rights is mentioned in all the interviews I conducted with Abahlali reflects its importance for the members' political emancipation and the movement's (iterative) subjectification.<sup>79</sup> As, for instance, Mazwi Nzimande, the chairperson of the youth league, recalls:

'So, when they came for the second time to threaten us, it was too late for them because we knew that no, they can't evict us in such a short notice, so we start resisting and then they did not return. (...) But they did not come because they know now those people know

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74 Abahlalism is the way members sometimes refer to their own politics that is most often called 'living politics'.

75 Abahlali baseMjondolo, 'Meeting to Build a Coalition Against the Slums Bill', 13 July 2007, <<http://abahlali.org/node/1708>> (last visited 8 December 2010).

76 That is, they did not have a valid court order for the eviction and/or they did not notify the affected people within the time frame defined in the act, and/or they did not provide alternative accommodation for the evictees. Not to mention the destruction and brutality with which the evictions were carried out.

77 On the history of Abahlali's litigation, see R. Pithouse & M. Butler, *Lessons from eThekweni: Pariahs Hold Their Ground Against a State that is Both Criminal and Democratic*, 2007, <<http://abahlali.org/node/984>> (last visited 10 March 2011).

78 In relation to poor people's movements, see F. F. Piven & R. Cloward, *Poor People's Movements: How they succeed and why they fail*, 1977.

79 '[A] struggle for equality (...) can never be merely a demand upon the other, nor a pressure put upon him, but always simultaneously a proof given to oneself. This is what "emancipation" means' (J. Rancière, *On the Shores of Politics*, 2007, p. 48).



something, unlike before, you know. Before when they said anything, we should just do it, just like that, but now, we know that we also have rights!’<sup>80</sup>

Furthermore, Abahlali’s litigation highlights the contradiction between the supposedly uneven distribution of knowledge and the equality of every speaking being that characterizes the extremely unequal social order of the democratic South Africa. Aware of this contradiction, one of Abahlali baseMjondolo’s main goals is to ‘encourage people to know their rights’. As cited in the title of this section: ‘with that knowledge, which, we think, is power, we will stand strong (...)’.<sup>81</sup>

Indeed, the Abahlali’s Constitutional Court victory in their case against the ‘Slums Act’ has shown the movement in its full strength. Their long journey ‘from shack to Constitutional Court’ certainly mobilized ‘an obligation to hear’.<sup>82</sup> Again, the pre-history of the case reflects the order that this obligation disrupts. Although the eThekweni Municipality failed to properly announce the codification of the ‘Slums Bill’, it later staged so-called Public Participation Exercises in the affected areas to fulfil the formal requirements of participatory legislation.<sup>83</sup> As a report of the exercise describes, after reading out a summary of the Bill, representatives of the provincial legislature took questions from the public. However, faced with inquiries about the situation of housing and services in the settlements, they soon started to complain that the questions were not related to the Bill under discussion and

‘(...) imposed a rule that no one could speak at the microphone unless they first could cite a section of the Bill about which they intended to make a comment. When subsequent speakers could not first cite a section of the Bill, they were asked to refrain from further comment and to be seated.’<sup>84</sup>

Rejecting such attempts to silence the shack dwellers, following the exercise Abahlali formulated the Slums Bill Elimination Task Team, organized a common reading of the proposed legislation and invited everyone who wished to comment on it to a subsequent public meeting.<sup>85</sup> Once more, the sensible distribution of (legal) knowledge and proper speech has been disrupted:

‘The Premier of KZN [KwaZulu-Natal] has rubbished us in public saying we are ignorant and haven’t read his Bill – well, we will turn the tide and show him when we meet in court if this Bill becomes a law. If our challenge comes to court, we will mobilise in our numbers

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80 Mazwi Nzimande, interview, 8 July 2009.

81 S’bu Zikode, interview, 2 June 2009.

82 J. Rancière, *On the Shores of Politics*, 2007, p. 86.

83 As Pithouse recounts, ‘(...) at this “public participation” exercise there was a huge and quite militarised police presence – with a helicopter flying low over the settlement etc. The atmosphere was very intimidatory and there was a clear although implicit threat of state violence in the way it was all staged’. Personal correspondence, 14 April 2011.

84 K. Chance, ‘Report on Public Participation Exercises For: “The Elimination and Prevention of Re-emergence of Slums Bill”’, 4 May 2007, <<http://abahlali.org/node/2036>> (last visited: 10 March 2011).

85 ‘This has taken the form of line by line readings and discussions. Everyone’s input has been taken into serious account. The second step has been to call a meeting of everyone opposed to the Bill’. Abahlali baseMjondolo, ‘Meeting to Discuss Legal & Political Strategies to Oppose the Slums Bill’, 11 July 2007, <<http://abahlali.org/node/1700>> (last visited 10 March 2011). Cf. Rancière on the 1986 student strike in Paris: ‘Copies of the proposed legislation were massively distributed throughout the universities (...) something took place which created total disarray in the ranks of the government and the majority: the students evaluated the law and pronounced it a bad law’. J. Rancière, *On the Shores of Politics*, 2007, p. 57.

to fill the courts and *create what they call 'chaos' but which is actually the disciplined, democratic power of the people.*<sup>86</sup>

Taken as far as the Constitutional Court, so practising the democratic power of the people succeeded in invalidating the 'Slums Act' and thus impeded the nationwide codification of aggressive slum eradication. If the above interpretation is correct, just as throughout their previous cases of litigation, throughout the Constitutional Court case too, Abahlali enacted the equality granted to them by the Constitution. That is, in their fight against a law which aimed to codify denying access to the city to the poorest of the poor, they reconstructed the subject of right. In this way, arguably, they proved that politics occurs even if the gaps from which it can emerge are more and more effaced by the equalization of law and fact that neoliberal urban governance implies.<sup>87</sup>

## 5. Conclusion

Approaching the limits of this paper, it seems that there are more questions that arise from the previous discussion than what could be answered. The role of violence in governing the urban poor – effective not only in the recent attack on Abahlali but also in the earlier practice of illegal evictions – is among the most important problems to address.<sup>88</sup> What is more, even the 'Slums Act' case is full of unexplored questions: beyond the power of words of equality that the shack dwellers appropriate throughout their political subjectification, they are sensitive to and challenge the power of the words of inequality: of legal norms and policies referring to their homes as slums, or the temporariness implied by the term 'informal settlement'. By way of such discursive practices, the Abahlali problematise the kind of life the governmental redefinition of the urban implies for them. As the urban is increasingly and globally at the centre of (bio-)political struggles, addressing this *problematique* is essential.

As a small step in this direction, this paper, taking its cue from the worldwide proliferation of fighting for access to cities, has aimed, on the one hand, at assessing the impact of globalized neoliberalism on the juridico-legal techniques of contemporary urban governmentalities and, on the other, at thinking of ways in which such techniques can be resisted. It was suggested that the prevalence of neoliberalism, through promoting the primacy of competition, has major effects on cities and the lives they accommodate. Most importantly – at least from the perspective of mobilizing the urban poor – taking its effect on the governance of urban infrastructure through the rejection of the idea of universal service provision and the equalizing distribution of costs and

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86 Abahlali baseMjondolo, 'Meeting to Build a Coalition Against the Slums Bill', 13 July 2007, <<http://abahlali.org/node/1708>> (last visited 8 December 2010; emphasis added).

87 Although it would be reassuring to conclude with such optimism, and although many of the victories of the movement remain, it has to be added that two weeks before the announcement of the Constitutional Court's judgment, on 26 September 2009, the Kennedy Road settlement – from which the movement emerged and where it used to have its national office – was violently attacked by an armed militia allegedly backed by the local ANC. After the attack that left two people dead, leaders of the movement (threatened with death) went into hiding and the organization was forced to operate underground. Although in March 2010 they resumed their public activities, it remains to be seen what the effects of this shock – bearing the traces of apartheid oppression – will be on the disruptive capacities of Abahlali baseMjondolo. On a more hopeful note, not independently of the judgment, '(...) the state is no longer talking about eradication in the same way and has promised to upgrade 400,000 shacks to homes in the cities'. R. Pithouse, personal correspondence, 14 April 2011.

88 On the role of violence in governing/oppressing the urban poor in Gauteng and Durban, respectively, see J. Sacks, *Investigation into Politically Motivated Violence in eTswatwa (Gauteng) and other Landless People's Movement Affiliated Settlements during May 2010*, <<http://abahlali.org/node/7148>> (last visited 10 March 2011) and K. Chance, 'The Work of Violence: A Timeline of Armed Attacks at Kennedy Road. University of KwaZulu-Natal', 2010 *School of Development Studies Research Report* No. 83, <<http://abahlali.org/node/7265>> (last visited 10 March 2011).



fees, the primacy of competition ended up significantly fragmenting access to basic services, thus ultimately producing spaces of biopolitical abandonment. Furthermore, the global competition into which cities are driven by transnational capital's increased mobility gives rise to large-scale beautification projects that imply the elimination of those supposedly unable to participate in the endless circulation of goods. As discussed above, these tendencies manifest themselves in characteristic ways of deploying juridical techniques. Importantly, neoliberal governmentality's compatibility with interventionist regulation results in the partial return of technologies characterizing the early modern police state of the West. Furthermore, with the liberal self-limitation of governmental reason practically evicting juridical sovereignty and placing the management of the economy at the centre of governmental activity, law increasingly aims to adapt to and anticipate social and economic processes. Added together, these tendencies lead to the phenomenon that Rancière refers to as the factualization of law – a phenomenon that, with effacing the gaps between legal inscriptions and social realities, largely impedes the occurrence of political subjectification.

However, although 'politics, in its specificity, is rare'; it is not altogether impossible.<sup>89</sup> And rights, inasmuch as their inscription is part of the sensible order and as mute letters their power might be appropriated, are potentially constitutive of political subjects. In fact, the South African shack dwellers' mobilization proves that the subject of interest, eventually, might not be the only limitation to governmental reason. To be sure: 'How some new politics could break the circle of cheerful consensuality and denial of humanity is scarcely foreseeable or decidable right now'.<sup>90</sup> Accordingly, whether Abahlali and their allies countrywide will succeed in reinvigorating the promises of a dignified life as inscribed in the fundamental texts of the new South Africa, or they will fall victim to sheer violence and its consequences is, at the present moment, difficult to predict. This, however, does not diminish the imperative to inquire into the often fatal and always depoliticizing practices of biopolitics – quite to the contrary.

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89 J. Rancière, *Dis-agreement: Politics and Philosophy*, 1999, p. 139.

90 *Ibid.*, pp. 139-140.