

*Contradictions of Democracy: Vigilantism and Rights in Post-Apartheid South Africa.* By Nicholas Rush Smith. Oxford: Oxford University Press, 2019. 264 pp. \$31.95 paperback

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For the past generation, United Nations agencies and Secretaries General have earmarked billions of dollars annually to programs designed to help countries out of civil war or authoritarian rule. These programs aim to promote democracy and implement the rule of law. Their efforts are predicated on the hope that a democratic transition is a country's best bet to realizing the core values of international law, including human rights, security, equality, peace, and justice. *Contradictions of Democracy* uncovers, distressingly to readers who believe in these goals, the real and practical challenges of democratization.

To make this argument about the untoward features of democratization, Nicholas Rush Smith draws on research on crime and vigilante activity in post-apartheid South Africa. In particular, Smith examines contemporary South African law and society through the eyes of young men living in poverty.

Smith finds that new rights in criminal law that came with South Africa's transition to democracy—specifically, procedural guarantees in courts that protect criminal suspects and defendants from the arbitrary reach of state officials—also created uncertainty among citizens whom the state was actually trying to support. This uncertainty, in turn, created unease that democratic governments were making it easy for criminals to get away with crimes, rather than helping survivors recover from those crimes (82).

In other words, some people see the rights of criminal defendants as a threat to the communities where those defendants would return if they were released on bail or on technical or procedural grounds. The result is that democratization brings more—not less—mistrust in the legal system, leading to a lack of faith in law enforcement, in the national constitution, and in the state itself (87). This lack of confidence in the state leads some people to take the law into their own hands, to catch those criminals that they feel the state cannot catch. Upwards of 800 South Africans die each year as a result of this vigilante violence (3).

Smith conducted more than 20 months of archival research and ethnographic fieldwork, primarily in and around two South African townships. He collected primary data during five separate research trips across a decade (2008–2017). His work is part of the growing field of comparative ethnography that

systematically explores the complexities and particularities of legal and political life across temporal or geographic cases (see, e.g., Simmons and Smith 2019). Smith adopts an ethnographic sensibility to the archival materials that he accessed, to the people whom he met and their stories, and to the unstable processes of democratization that he witnessed. The result is a book that transitions effortlessly between localized events, national stories, democratization theory, and criminal law. Smith's decade of research, and this book, move with facility between multiple scales and registers. This is no small feat, and it is as a fine example of engaged sociolegal scholarship.

The growth and establishment of a modern, democratic state creates remarkable and unusual inconsistencies, especially when viewed from the perspective of citizens at the grassroots—those whom democracy is most meant to support—as they experience the state's power and its claims to authority. What are these contradictions of democracy that they experience, and how do they emerge? Generally, they come about through people's hopes that are destroyed by fear, their longing for security amidst a reality of insecurity, their experience of disorder that is generated by the state's attempts to create order, and the setbacks of international rule-of-law programs that are supposed to be corrected by the rule of law that those programs try to implement.

More specifically, Smith argues, the expanded rights of criminal defendants in South Africa has led to vigilante violence against them, where people commit crimes to fight crimes (145) and commit violence to decrease violence (146). Their feelings of disempowerment inside the state empowers them to act outside the state (108). The result, Smith tells us, is that the implementation of rights enables rather than thwarts insecurity (211).

While state officials have spoken out against violent forms of popular justice, some of them nevertheless have tacitly support it. In the stark words of South Africa's then-Minister for Safety and Security, Nathi Mthethwa, officials like him have grown "tired of...nice documents like the constitution" and the country's criminal procedure protections (202). Increased transparency in courts has fueled rumors, suspicions, and underworlds about who and where the criminals are. Citizens meant to feel protected by the police instead feel victimized by them. In one distressing example, Smith describes feeling "uncomfortable in the place I was calling home," after the cops showed up in his neighborhood, asking his friends about his research (207). Ultimately, South Africa's dense civic networks and disillusionment with its democratic state formation together have fueled mistrust, despair and, at the extreme, vigilantism (5).

South Africa's history also has its own share of contradictions. It was a fidelity to law under the white supremacist apartheid

regime that paradoxically facilitated fealty to democratic constitutionalism among elites after apartheid (Meierhenrich 2008). Smith contrasts apartheid's "capricious legal apparatus" with the post-apartheid democracy's "procedure-less" treatment of survivors under the guise of neutrality toward criminal defendants (5, 79). As Smith observes, to many of South Africa's poor, the democratic nation's "modernist bureaucratic apparatuses" lack "neutral substance" (211). Rather than bringing peace, the democratic transition cemented certain aspects of apartheid's structural violence.

The sheer quantity and social saturation of the legal and political contradictions that this book documents leaves the reader wrestling with discomfort. Smith's empirical findings show how democratic governance may create the very problems that democracy ought to be solving. Summarizing his findings, Smith writes that "state violence is not exceptional to democratic governance...It is essential to democratic governance" (214–215). This pronouncement may not surprise migrants, the urban poor, racial and ethnic minorities, and those who face the barrels of other people's guns. But Smith pushes further. Democratic states—here, Smith throws down his gauntlet—"have an authoritarian core to how they rule" (215). This conclusion—and this book—is bracing and important, for South Africans, for international lawyers who promote democracy, and for scholars who seek to understand how rights can fail.

## References

- Meierhenrich, Jens. 2008. *The Legacies of Law: Long-Run Consequences of Legal Development in South Africa, 1652-2000*. Cambridge: Cambridge Univ. Press.
- Simmons, Erica S. and Nicholas Rush Smith. 2019. "The Case for Comparative Ethnography." *Comparative Politics* 51: 341-59.

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*Beyond Abortion: Roe v. Wade and the Battle for Privacy*. By Mary Ziegler. Cambridge: Harvard University Press, 2018. 400 pp. \$46.50 hardcover

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*Roe v. Wade* is perhaps the most famous case in the history of the US Supreme Court. It has been used as a litmus test for candidates for judicial office, and it has served as a lightning rod for