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### **Governing street trading in post-apartheid Cape Town.**

#### **Neo-colonial or neo-liberal order?**

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#### **Abstract**

This article addresses the issue of the temporalities of public action in the city of Cape Town (South Africa), using the example of the government of street trade since the early 20<sup>th</sup> century. The main point consists in an understanding of the continuities and breaks in public action via an approach interested in the instruments of control and using the Foucauldian genealogical method. Our main argument lies in a discussion of the current understanding of the government of street trade in Cape Town as a neoliberal regime merely reproducing the colonial order and its political violence towards the traders. We show that although the instruments of control may remain the same (identification of traders, limitation of permits, and spatial zoning), their political meaning has changed throughout time, reflecting the shifting place of the informal in metropolitan economic planning. The means of governing street trade have also shifted, from

mere coercion to governmentality, shedding light on how neo-liberalisation actually operates through a transformation of state practices.

**Keywords**

Street trade; neoliberalisation; neocolonial; temporalities; governmentality; Cape Town; public space.

## Introduction

In 2007, J-P Smith, a Cape Town councillor known for his conservative views and security fetish, defended a controversial municipal bylaw on 'nuisance' and 'prohibited behaviours' in public space, stating that 'if the amendments were not passed, the city would use existing bylaws to achieve its aim'<sup>1</sup>. This provocative yet controlled reference to colonial bylaws reflects the ambiguous relationship the post-apartheid metropolitan government of the City of Cape Town (CoCT) has with these legacies, and especially that of the technical tools inherited from earlier periods. In order to govern street trading<sup>2</sup>, the CoCT relies on tools designed in the 19th century (registration; licences and permits; spatial zoning) and still resorts to restrictive municipal bylaws, suggesting the reality of a 'colonial present' (Miraftab 2012) in the Mother City. Meanwhile, backlashes against street trading similar to those observed in Cape Town are taking place globally, sometimes far from postcolonial contexts. They are overwhelmingly read as the outcome of a global neoliberal disciplining (Brown 2006; Bhowmik & Sharit 2010, Graaff and Noa, 2015; Evers and Seale 2015). In Cape Town, the fact that the backlash historically coincides with the launching of a strong-arm urban regeneration process in the city centre supports the idea of a 2000s neoliberal turn (Miraftab 2007, Samara 2011, AUTHOR et al. 2012, Pirie 2007). Yet, how can colonial and apartheid legacies fit into this theoretical reading? Obviously, the temporalities framing this interpretation is problematic: which reading characterizes best the 'post-apartheid' moment and contemporary governing practices in Cape Town? Can we reconcile the idea of a 'neo-colonial spatial order' and the advent of 'a neoliberal reordering of space' (Steck et al. 2013)?

This paper addresses this thorny issue of the temporalities of public action in post-apartheid Cape Town. It echoes an academic controversy about the nature of today's South African

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<sup>1</sup> Interview, 2009.

<sup>2</sup> In this article, we understand street trading as the variety of uses (fixed or mobile) of public space for commercial purposes.

political project and the relevance of the concept of neo-liberalisation to capture the post-apartheid trajectory (Parnell and Robinson 2012). One of the problems, considering neo-liberalisation was framed by European and North American Neo-Marxist political economy and urban geography, sits with the disruptive dimension of how neo-liberalisation is understood in these contexts. This reading does not consider potential (dis)continuities of public action understood in a longer timeframe but narrows down the scrutiny of the political transformation to a 1980-1990s 'roll back-roll out' chronological sequence (Peck and Tickell 2002). While this reading might be operative for the American case, it circumvents the issue of potential colonial legacies in postcolonial contexts. We argue that it is imperative to integrate this issue into the critical apparatus of neo-liberalisation to render it fully effective as a theory of change and of the transformation of capitalism, everywhere yet in a situated way<sup>3</sup>.

To do so, we rely on a genealogical analysis of the government of street trading in Cape Town since the late 19th century. This methodological approach borrowed from Michel Foucault consists in analysing the continuities and variations in local public action over time, so as to shed light on the political sense of the regime of power they contribute to build in present-day Cape Town. By continuities, we mean the replication or permanency - particularly of technical tools - that nevertheless make room for a shift in the political meaning of these tools, as opposed to notion of inertia that would suggest an uninterrupted longevity or mere reproduction of state practices. Focussing on technical tools of government, we document why they have been crafted in the first place, how they have been honed, appropriated, and implemented by public authorities, and we scrutinise the changes of their political meaning over time. This genealogical approach thus allows for a dynamic reading of continuities, beyond the hypothesis of a mere continuation of the colonial (or apartheid) state. Our analysis stands at the crossroads

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<sup>3</sup> More specifically in South Africa, it appears crucial to unpack the specificity of what has been referred to as a 'post' moment (Freund 2010; Houssay-Holzschuch and Sanjuan 2018).

between 3 neo-Foucauldian theoretical strands of literature. Firstly, borrowing from political philosophy and from the debate on the governmentalisation of the state, we conceptualise neo-liberalisation as a political rationality, enshrined in values, practices and norms (Dardot and Laval 2009). In order to grasp this rationality, we draw from institutionalist approaches and the sociology of instruments (Lascoumes and Le Galès 2005). These authors invite us to appraise the political effects of instruments of government and the rationality they bear, instead of focusing on more classical readings of governance and actors. Finally, we rely on recent works in political sciences that empirically document the continuities of state practices throughout history and scrutinise the progress of neo-liberalisation through mundane bureaucratic practices (Hibou 2012).

These debates are presented in the first section of the paper. The section explains why continuities are problematic when talking of neo-liberalisation and how the combination of these three approaches unlocks a certain number of these problems. We then look successively at the three tools that have structured the government of street trading in Cape Town since colonisation: individual biometric records; licences and permits; spatial zoning. These tools have tended to shape the ‘problem’ of street trading along three lines operating as the guideline for our analysis: the government of individuals, of numbers and of space. In the final discussion, we return to the possibility of qualifying as neoliberal the regime of power that contemporary uses of these tools contribute to construct.

We draw on the archives of the municipality located in the City Clerk’s office (between 1900 and 1948) in order to analyse the evolution of technical tools and of rationalities of government. These archives constitute a rich source of information on the daily debates, the small and big problems faced by municipal officials, the incremental setting up of a regulatory and legal framework, as well as the power relations, particularly between the municipality and the province. For the apartheid period (1948-1991), the analysis of an extensive press review and

Tabé's PhD thesis (2014) complement this work. The contemporary period is documented through semi-structured interviews conducted between 2009 and 2018 and a parallel analysis of grey literature.

This resolutely variegated method documenting a century of public practices allows us to understand and reflect on potential links between different historically situated case studies, in an as yet unpublished fashion. Street trading indeed became a 'problem of government' at the interface between many actors (police, municipal services, provincial administration, chamber of commerce, white farmers, fruit and vegetable wholesalers, ratepayer associations...) at a particular time: that of the discussions on the creation of the South African Union (1910), and that of the rise of municipal autonomy and progressive expansion of the municipal territory. The Cape Town's city centre is where the most acute problems of traffic, cleanliness and image arose, as early as the end of the 19th century, and the norms of public action for the whole metropolis were elaborated with reference to this particular urban space. Its prominence across time in the definition of the problem of trading (and the solutions as well) also guides the analysis in this article.

### **Governing street trading in South Africa: making sense of continuities and permanencies**

Street trading and the place this activity occupies in the colonial and post-colonial city has generated massive literature in African studies. In South Africa, these questions have been addressed in several disciplinary fields, the scientific debate remaining compartmentalised. While urban studies focus on the post-apartheid moment and pay little attention to colonial continuities, urban history renders continuities visible yet without discussing their political significance for the contemporary moment. It appears urgent to bring these literatures into dialogue in order to integrate the question of continuities into the critical apparatus of neo-liberalisation and make it fully effective as a theory of change.

### *Old questions, compartmentalised debates*

Street trading seems to be almost a constitutive part of urbanisation in Africa. Everywhere it developed rapidly, following the pace of urban growth, and everywhere it was perceived as problematic by the local authorities in the so-called European parts of the city (Coquery-Vidrovitch 1991, Le Pape 1997). Research in urban, social and political history has questioned the place of these activities in African cities, as well as that of the political mobilisation and collective agency of street traders (Fourchard 2006). In South Africa, a large body of work has informed our understanding of the place of small-scale street traders in colonial society. This work favours a racial, community or ethnic reading of local political dynamics, particularly around the Indian traders of Durban (Tomaselli 1986; Vahed 1999). The apartheid period is less documented, due to the decline of street trading in the city centres and a shift in focus for urban historians. The study of Great Apartheid is prominent, and documents its contrasting local effects in terms of segregation and racial zoning, as well as the local implementation of national housing policies in the 1950s and 1960s.

The government of street trading became an issue again for urban scholars during the political transition of the 1980s. The gradual lifting of racial zoning and mobility bans, combined with rising unemployment, reactivated these activities in all South African cities. In a context of economic liberalisation and democratic transition, progressive researchers relayed international debates on the developmental role of what was becoming referred to as ‘the informal sector’ (Dewar and Watson 1981; Preston-Whyte and Rogerson, 1991). The academic debate was reformulated around issues of socio-economic reparation, desegregation, access to public space and freedom of movement. Municipal authorities however remained very intolerant towards these activities and local public action was scrutinised vigilantly by critical observers. They commented the contrasting political paths followed by local authorities that had gained greater political autonomy, trying to identify good practices as far as the government of street trading



was concerned (Dewar 2005, Jonathan 2018). Cape Town's local government was first described as particularly intolerant toward informality (Skinner 2000), but Johannesburg (Bénit-Gbaffou 2016) and Durban (Roever 2016) soon organised massive eviction campaigns that contrasted with their previously inclusive policy discourses. The inconsistencies of the post-apartheid local state thus became a hot topic. In Johannesburg, these inconsistencies are blamed on the existence of a dual agenda - entrepreneurial and post-apartheid (Pezzano 2016), or on scalar tensions between local and national governments (Rogerson 2016). Other researchers question the alleged ungovernability of street trading and the ambiguity of local legal environments that give considerable latitude to public authorities (Bénit-Gbaffou 2018). Faced with the resurgence of state violence, a literature inspired by the theories of agency emphasises the resistance of vendors (Tawodsera 2019) and their capacity for collective organisation (Bénit-Gbaffou 2016), in line with Lindell's earlier work (Lindell 2010). Finally, these analyses situate the South African case within a massive international body of work, alongside other case studies emblematic of a global neo-hygienic turn in the governance of street trading (Devey 2005). In South Africa, these discussions interrogate the substance of public policy (Devey et al. 2006) and the economic and spatial functioning of the 'informal sector' (Charman and Govender 2016).

### ***Continuities, inertia and breaks: a problem of interpretation***

As far as street trading is concerned, reference to the long term is rare. When it happens, it is usually allusive: Rogerson and Beavon (1985), for example, talk of a 'tradition of repression' of street trading in South Africa, that is rooted, according to Skinner (2008: 9), in a 'persistence of colonial approach to urban planning', but this statement is usually left at that. At best, the neo-colonial aspect of current practices is ascribed to political 'amnesia' (Ernsten 2018: 63). Perhaps more accurately, the very continuity of technical tools used throughout time from colonisation, to apartheid and post-apartheid obscures the possible variations of the political meaning they

carry with them and the possible changes in the political rationalities that they foster. The propensity to not question contemporary political reinterpretations of old tools is reinforced by the scarcity of technical innovation in this field over a century and a half. As proof of colonial continuity, Freund (2012) for example notes that in South Africa 'street trade is still dealt with through planning ordinances, decrees and bylaws'. However, he does not question the longevity of these tools that interestingly go largely uncontested today. The apparent stuttering of political and policy debates on street trading and the apparently unchanged regulatory landscape do not lead to a questioning of political breaks: regardless of the successive political moments and regimes of control (Tab. 1), the same debates have always been put forward in the public agenda and the same ambiguity remains as to the developmental potential of street trading coexisting with the social stigma attached to street traders as undesirable social figures.

Furthermore, scholars who work on the contemporary government of street trading in South Africa do not frame their analysis primarily in terms of neo-liberalisation. While street trading is directly impacted by entrepreneurial agendas of urban regeneration, the management of street trading itself remains a public prerogative and is not central in 'neoliberal urban experiments' (Brenner and Theodore, 2002: 368). At best, some work deals with municipal markets and land speculation (Maharaj 2020). For similar reasons, the literature on neo-liberalisation in South Africa focuses on topics more relevant to its demonstration such as urban services, housing or security. From a neo-Marxist perspective, neo-liberalisation simply reshapes the old racial capitalist order of colonialism and apartheid, yet this interpretation leaves unaddressed the question of the analytical status of continuities between the colonial, the apartheid, and the post-apartheid orders. This lack of attention to colonial and apartheid legacies makes room for contradicting postcolonial understandings of urban entrepreneurship, all of which downplay the role of neo-liberalisation. The entrepreneurial turn, or urban regeneration itself, are seen as mere political strategy aimed at masking an anti-African modernist ideology. This neo-modernist

agenda said to target the perceived backwardness of Africa and its very African-ness (Simone 2004) is roughly associated with colonisation and apartheid and their old ideals of the modern capital city (Linehan 2007, Lewinson 2003). Although they are powerful because they emphasise the continuity of the colonial/apartheid state, these analyses tend to minimise the importance of political transformations since the end of apartheid, whether we label them neo-liberal or not, and they bypass a discussion on the nature of the contemporary regime of power.

*[Table 1 near here]*

***The political meaning of shifts and continuities: the contribution of Foucault and his followers***

In order to take the issue of continuities seriously and to analyse breaks and permanencies in a comprehensive and dynamic manner, we rely on three bodies of literature inspired by the work of Michel Foucault. Firstly, to nurture the contemporary debate on neo-liberalisation, Dardot and Laval (2009), inspired by Foucault's *Collège de France* lectures, invite us to shift from a neo-Marxist conception of neo-liberalisation as an ideological project or a breach in the politico-economic Keynesian compromise, and to envision neo-liberalisation as an incremental and never-ending process of realigning and recalibrating of public action along entrepreneurial lines. With this shift, the State becomes an active supporter of market construction, and all state actions veer towards this cardinal imperative. In post-apartheid South Africa, this definition of neo-liberalism meets the idea of the re-building of the legitimacy of State intervention in political economy, after decades of authoritarian and totalitarian regimes. This reading appears compatible with the post-apartheid development agenda that includes a restorative dimension achieved through an expected trickle-down effect of economic growth towards the poor.

This analytical perspective can be combined, when it comes to the tools used to implement this agenda, with the sociology of instruments (Lascoumes and Le Galès 2005). In contrast to classical works in the sociology of public action that unpack governance patterns or the crafting

of public policies, the sociology of instruments examines the political effects that technical instruments and governmental devices produce (procedures, legal texts, public policy documents, etc.). It does not deal directly with neo-liberalisation, nor with temporalities, but its usefulness lies in the fact that it debunks the illusion of the neutrality of technical tools and thus politicises their analysis. In the Cape Town context, where technical innovation with regards street trading remains limited, it is a highly valuable theoretical inspiration for conceptualising change notwithstanding the continuity of the legal and regulatory environment.

Finally, we resort to literature engaging more directly the discussion on neo-liberalisation. This literature scrutinises the 'neoliberal reprogramming' of instruments of government under neoliberal rule. Prominent here is the work of Hibou (Hibou 2012) on Tunisia and Morocco, and the bureaucratisation of state practices, with a focus on everyday practices and processes. Understanding government as a set of practices, sometimes uncertain and fuzzy, helps break from classical historicised descriptions of political regimes (such as apartheid and post-apartheid), which do not help to understand the (dis)continuities of public action (Hibou and Tozy 2020): as mentioned earlier, the strong compartmentalisation of the history of South African political regimes and its effect on our understanding of policy shifts would benefit from a similar approach.

The combination of these approaches unblocks some of the analytical problems mentioned above. Concentrating on the political uses of technical tools allows to overcome the analytical fascination produced by their very continuity. It allows to look beyond the apparent continuity of problems of government and to consider how issues have been reformulated politically and have evolved over time. The same tool may have been used to foster contrasting rationalities depending on the period we consider. Moreover, it invites us to consider the possible overlaps between the neo-colonial, neo-apartheid or neo-liberal rationalities fostered by these tools. Indeed, the combination of these theoretical contributions is very useful to demonstrate how

neo-liberalisation concretely operates, beyond notions of political intent. It forces us to critically question the very roots of public action, in terms of its profound rationality, even when it is benevolent and progressive in its intentions, a rationality which may be veiled and obscure to those who implement them, or simply naturalised, as it has been shown in Cape Town (Watson 2002, Winkler 2011). This approach makes it possible to understand neo-liberalisation as a process and not as a political project, and to get rid altogether of the moralising dimension that often goes with the critiques of capitalism, and focus on the rationalities that support it and that we contribute to actualise and reproduce in everyday life.

In order to understand this shift in political meaning, we must replace classical chronological readings of the government of street trading with a genealogical approach, such as the one that Michel Foucault used to account for the governmentalisation of the modern State. The archives of the municipality of Cape Town show how 'problems' of government emerged and how their outlines evolved over time. The emergence, crafting and hewing of social and political orders helps break from an interpretation of the static origin of things and sheds light on the contingent nature of historical processes. Genealogical approaches do not seek to trace back the mythical (and non-existent) origin of things. It does not seek to demonstrate that the past is still secretly alive in the present (Foucault 2001). It strives to follow a maze-like path, made of accidents, hesitations and reversals that have given rise to what exists and makes sense to us in the present-time. In the case of street trading, genealogy reveals how this complex set of very diverse activities has become a 'problem of government' in Cape Town and how the handling of this problem has evolved over time, all the way to its contemporary and alleged neo-liberal management.

This problem of government and its attached social and political tensions crystallised as early as the turn of the 20<sup>th</sup> century around three debates: biometric identification versus individual freedom (the government of individuals); commercial freedom versus restriction of the number

of licences (the government of numbers); freedom of movement versus the logic of spatial zoning (the government of space).

### **Biometrics: Governing individuals**

Biometric registration represents the first tool that was largely used in Cape Town since the early 20<sup>th</sup> century to control street trading. It is an area of expertise developed in South Africa since colonisation, and it was perfected under apartheid (Breckenridge 2014). Biometric registration was introduced for reasons of police control. It triggered a political controversy in this deeply divided and racialised urban society, regarding the political inclusion of street traders in the local constituency. Today, biometrics have been abandoned but the logics of identification and record-keeping is perpetuated through an online self-registration system that contributes to shape the social figure of the ‘informal trader’ as skilled entrepreneur, breaking from decades of political debates around issues of citizenship and political rights.

### ***Identifying, policing and punishing***

In Cape Town, biometric registration of street traders was introduced at the end of the Victorian period in 1906<sup>4</sup>. Individual criminal records were systematically checked by the police that delivered certificates of good character to the people who wanted to apply for a Municipal Hawker Licence. Anthropometry and the emerging technology of fingerprinting were used, and files of criminals and traders methodically cross-checked. Traders had to wear a badge on their left breasts. These technologies, designed to strengthen and facilitate police control over individuals, were ultimately geared towards protecting White society and its urban territories in a context of dramatic urban change. At the dawn of the Union (1910), the small colonial town, a periphery of the Empire, was indeed on the way to becoming a cosmopolitan imperial

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<sup>4</sup> Hawker’s Licences Tariffs Act 35. The term ‘hawker’ was historically used to designate a specific type of street traders.

city of 170,000 inhabitants and the legislative capital of the dominion. The harbour had become an important hub for food imports. Industrial growth was supported by the needs of the British army and after 1910, by Union protectionism, and population grew with the influx of Anglo-Boer war refugees as well as migrants from all around the world.

This ambition of control stumbled upon the complexity of trading practices, not yet characterised as informal: traders relied on numerous unregistered assistants; licences were shared between members of the same family; it was not unusual for children to work... However, the effectiveness of the control of individuals mattered less than its actual effects on the regulation of society. Biometric identification produced political effects of categorisation, recognition and discrimination between the good and the bad racialised subjects. It corresponded to the emergence of the social figure of the Coloured man, idle and potentially criminal, as opposed to that of the 'registered vendor'. Coloured traders in particular were suspected of taking advantage of their profession to break into homes and commit theft<sup>5</sup>; fingerprinting was expected to 'raise the character and moral standard of those engaged in this trade' and keep away 'unsuitable applicants'<sup>6</sup>.

This profoundly racialised debate on the respectability of vendors reflected the state of power relations and social hierarchies in an urban society still very colonial in its mentalities and highly preoccupied by what was perceived as 'the problem' of Coloured criminality. A major political controversy arose with fingerprinting, especially among the Indian community, who considered themselves fully-fledged citizens of the British Empire. What was at stake was the issue of political (in)equality of distinct subjects of rights, and therefore political citizenship, in a city where the Electoral Franchise remained for Coloureds and Indians. In 1919, fingerprinting was abandoned, but a system of individual identification continued under

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<sup>5</sup> Deputy commissioner Gray, South African Police, letter to the Town Clerk, 18th April 1916.

<sup>6</sup> Ibid.

apartheid for Coloureds and Indians by means of attaching a compulsory photograph and individual signature to the badge.

### ***From biometric records to governmentality***

In the late 1980s, the apartheid regime was under threat and a major national debate was launched on business deregulation. It led to the adoption of the National Business Act in 1991, which abolished licences and registration. The figure of the respectable informal trader emerged in the liberal press regularly featuring portraits of deserving Black and Coloured traders. However, during this period of transition, street trading also remained associated with images of disorder, fuelled by the fear of accelerated urban and social change (Popke and Ballard, 2004). In Cape Town, the municipality had launched an ambitious programme to pedestrianise the city centre, in partnership with the Chamber of Commerce. In a *Retail study* (1987), the latter coined the expression 'pavement activities' to connect distinct problems and criminalise them as a whole: 'street crime, vagrancy, informal trade, prostitution, littering, street children and related pavement activities'. The early 2000s were marked by hesitations about the place of vendors in revitalised central public spaces, in a climate of institutional uncertainty surrounding the creation of the CoCT. Under a short ANC mandate (2003-2006), a progressive informal trading policy was adopted (2004). However, when the DA won the city back two years later, a very restrictive by-law was voted and municipal permits were reintroduced (2009). Cape Town was at that time preparing to host the FIFA World Cup and urban regeneration accelerated. Identity checks (through ID books or residence permits) were reinstated as well as the certification of the applicant's good character by consultation of their criminal record. Today, personal information on sellers is collected in a centralised database.

However, biometric registration was eventually abandoned and registration is no longer run and operated by the police. It consists in an online self-registration device run by the CoCT. People who wish to apply for a permit must navigate a geo-referenced system where vacant trading



bays are displayed in real-time. As if playing a game of monopoly, they are encouraged to grab the best spots on a first come, first served basis and to conform to the logic of inter-individual competition. This GIS is only accessible to Cape Town taxpayers, identified by their 'business partner number', which is found on their municipal account bill. To access the online registration, one must have a computer (smartphones and tablets do not support the interface) and an email address, thus demonstrating a reasonable degree of insertion into the digital economy. The traders' encounter with the state takes place through this digital interface, which euphemises the violence of control and reformulates citizenship in terms of access to economic (and not political) rights, contingent on the scarcity of the resource. Citizenship no longer relies on political rights and belonging to a local political community, in stark contrast to the debates of the colonial era with regards Coloured and Indian traders.

The 'deserving hawker' of the colonial and Union eras has become the law-abiding informal trader, a small entrepreneur, unemployed but economically responsible for himself, eager to integrate into capitalism. This social archetype is spelled out in tautological formulas: 'in order to qualify for a permit, the applicant must be an informal trader'; 'the permit-holder is an informal trader who has been granted a permit by the City to conduct informal trading' (2009 By-Law)<sup>7</sup>. In a classic developmental rhetoric that assimilates the Capetonian situation to that of a Third World city, informality refers to activities carried out by the unemployed, which are not taxed but are registered with the CoCT. The informal economy is not supposed to unfold freely on the margins of state control, but refers to a set of activities and people who are to be included into capitalism, in accordance with the precepts of the ILO: 'The informal economy is essential in ensuring that those not able to access formal work or entrepreneurial opportunities

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6. <https://www.capetown.gov.za/City-Connect/Apply/Licences-and-permits/Business-and-trade/Apply-for-an-informal-trading-permit>

are able to access and participate in markets as business owners, workers and consumers' (CoCT 2020, 65).

The obligation to conform to a certain idea of the 'good' trader is achieved not so much through the quieting of dissent as through the construction of internalised behaviours, which are more powerful than the compulsory wearing of a badge. This shift corresponds to the introduction of participatory techniques to govern informal trading, which can be related to neoliberal forms of government by political subjectivities (Wafer 2011; AUTHOR 2015 and 2016; Lindell et al. 2019). The political controversy over citizenship building, biometric records and police control under colonisation and apartheid has been replaced by a discourse on the social inclusion of 'informality' through good economic behaviour.

### **Permits and licences: governing the statistical population of vendors**

The delivery of licences/permits allowing applicants to trade in public space constitutes a second major technique of government used since the early 20<sup>th</sup> century in Cape Town. Throughout the colonial and apartheid periods, the province and the municipality regularly clashed over this issue. Licences were issued by the Province and they were meant to tax commercial activities, not to manage the growing number of vendors. Conversely, the municipality, adverse to this liberal argument, pushed for their limitation in the name of good spatial planning. The end of apartheid put a provisional end to this conflict when the Business Act abolished licences altogether. But in the 2000s, when economic development fell within the authority of the newly constituted metropolitan government, the CoCT reintroduced a small quota of permits restricting the number of street traders in the city centre. This move was justified by the need to build a flourishing local informal economy.

### ***The quota controversy and the debate on 'overtrading'***

In the colonial society, the problem of street trading was constructed in tension between economic stakes and spatial planning issues, two contradicting logics supported by different levels of government. Provincial authorities, responsible for economic issues, defended free trade. They fought against monopolies in order to guarantee fair prices and to support the regional economy. They considered traders as suppliers of the city with fresh produce from the surrounding farms, effectively linking producer and customer. Car ownership was still low in the Middle class and the first suburban markets only appeared in the 1920s. Moreover, street trading offered a solution to the problem of under-employment of lumpen classes, especially young Coloured men (Bickford-Smith et al., 1999), victims of Colour Bar laws and excluded from industrial work reserved for the cheap labour of women and Blacks. The Colony of the Cape of Good Hope, and later the Province of the Cape of Good Hope, therefore issued hawker's licences, the price of which seemed sufficiently high to protect the general dealer from the unfair competition of hawkers who had lower fixed costs.

Municipal prerogatives were limited to controlling the conditions of street trading, in terms of traffic, public order and management of public space. This narrow conception of local public action was far from the municipal ambitions which were then emerging around issues of planning, proto city branding and economic development. Street trading contradicted a certain conception of urban modernity and the municipality denounced 'overtrading'. In 1932, this tension turned into a 'quota controversy', which ended in the reaffirmation by provincial authorities that the regulation of the economy was not a local affair. The hardening of the racialised division of labour, the rise of precarious day labour that dominated the docks or the fisheries and general mechanisation had made self-employment more difficult. Migration continued, particularly of Coloured and Black migrants from the countryside. In the context of the world economic crisis, the number of vendors in the city centre almost doubled between 1928 and 1932.

With the advent of apartheid and the implementation of racial and functionalist zoning, the tug of war turned to the municipality's advantage. In 1953, the Province endorsed the ban on Black entrepreneurship in the city centre and in 1948 approved a municipal ordinance that made the CBD a 'closed area', where traders were not allowed to work (Tabe 2014). Moreover, no matter how much the Province capped or reduced the amount of licences and fines, trading declined in the city centre. The implementation of the Group Areas Act in 1966 (Western 1996) which led to the demolition of District 6 relegated the traders as well as part of their clientele to distant townships. They abandoned the city centre, already in decline due to suburbanisation. Only about sixty traders remained in the CBD on the eve of the democratic transition (Urban Problems Research Unit, 1987).

***From overtrading to over-regulation: the end of licences***

In the mid-1980s, the tension between economic liberalism and spatial control was reactivated by rising unemployment, as well as the need for commercial services in the townships deprived of economic activities (and therefore of tax revenues) during apartheid. Trade liberalisation was seen as a response to the economic recession, against a background of extreme political violence in the townships. The years 1989-91 were marked by passionate liberal statements about the rebirth of 'truly free enterprise'<sup>8</sup>. In Cape Town, the liberal press largely drew on the opposition between political and economic liberalism and bureaucratic dirigisme<sup>9</sup>. On display here was the cliché of the opposition between the British liberalism of the Cape Colony and the Afrikaner authoritarianism of the apartheid regime. A fantasy of the Cape's liberal tradition and its picturesque colonial markets consolidated, and this image obscured the reality of municipal intolerance since the colonial period.

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<sup>8</sup> *The Star*, 17<sup>th</sup> April 1989.

<sup>9</sup> *Cape Times*, 8<sup>th</sup> April 1989.

With the end of apartheid, a discussion was launched within the President's Council on the development of small businesses, deregulation and de-racialisation of the economy (Urban Foundation 1985). The debate on overtrading was replaced by one on municipal over-regulation. The Business Act of 1991 was born out of these negotiations. The Act abolished licences, prohibited the confiscation of vendors' goods and the limitation of the number of assistants, invited municipalities to consult with vendors and to exercise great restraint in prohibiting trading in public space or in forcing relocation. In Cape Town, City planners played a major role in denouncing the old bylaws and engineering a more inclusive approach to street trading via urban planning (Dewar et al. 1990). As the first municipal elections of April 1996 approached, street trading was increasing again. Several thousand traders were said to operate in the inner city.

### ***The introduction of permits: local authorities building the informal***

The transition's emerging metropolitan power was caught between the national injunction to tolerate informality and the imperative of Local Economic Development and urban regeneration that fostered neo-hygienist visions for the city centre. Pending a new municipal by-law that should solve this tension, a temporary system of 'informal trading permits' was introduced that became permanent after the creation of the metropolitan government in 2000. For the first time, the regulation of economic activities had shifted to the local level and the CoCT could restrict the number of traders.

The current permit grants a right to use public space, subject to the availability of a site, the number of which is limited by the CoCT. There were only 1,400 street traders/permits in the CBD in 2009, even though the city had a population of over 3.5 million. The low price of permits (around 450 rands per month in the 2010s) indicates that the function of spatial control takes precedence over fiscal issues. The permit bears limitations as to the nature of the goods sold and prohibits the holding of more than one permit concurrently. In dire contradiction with

the liberal principles promoted by the Business Act, the old discourse on overtrading has remerged. Counterproductive unregulated competition between too many street traders is targeted here and these restrictions are justified by the need to build a viable informal economy. The old question of commercial freedom, posed since the 1920s-30s, has been reformulated through the paradigm of informality, embraced in South Africa some 20 years after ILO had conceptualised it. In line with the national informal sector policy formulated in the 2000s, the permit system in Cape Town was initially supposed to foster the gradual integration of street traders (the 'second economy') into the so-called 'first economy'. The 2008 crisis saw a shift to more classical measures of formalisation and supervision to help the 'small informal sector' grow, in conjunction with the formal sector (CoCT, 2020). However, unexpectedly, regulating the number of street traders still appears an appropriate way to nurture the 'informal sector'.

### **Zoning and trading plans: governing space?**

The recurring debate on the number of permits met the city's desire to control urban space, particularly public space. This planning and modernist obsession never faded away since the colonial period and old spatial zoning tools control are partly reactivated today through the crafting of *ad hoc* local trading plans. However, in the colonial city these tools aimed at managing flows and the debate took a very technical tone. These tools were reworked during apartheid in a functionalist and racial perspective, to promote a coercive logic of spatial zoning. Today, trading plans are meant to allow for more territorialised public action. Making room for street trading happens in a highly controlled manner, in order to reconcile local economic development and the national macro-economic positive understanding of the 'informal sector'.

### ***From management of flows to racial and functional zoning***

From the early 20<sup>th</sup> century, the issues of traffic, public health and cleanliness were brought together around a public obsession with 'nuisance' and 'filth'. This sanitisation of public debates

was formulated in terms of flows and congestion, against the backdrop of the rise of the networked city and of automobile traffic. The control of public space was debated in terms of circulation and clogging of pavements and streets. As a result, traders were early on confined to a restricted area, on the outskirts of the CBD, next to the central station. This proto and very pragmatic zoning appeared as the solution to empty the nearby streets of the city centre. Street traders also had to comply from the mid-1920s with 'move-on laws': they had to move every 5 minutes and could only stop their carts for the duration of a sale. 'Genuine hawkers'<sup>10</sup> (i.e. respectful of these constraints) were opposed to 'pirates', a divide framed along the mobility/fixity line in the early 20<sup>th</sup> century that persisted under apartheid.

In the 1930-40s though, in the city centre, mobile trading started to be associated with unruly and unmanageable activities, as opposed to the respectability of permanent stall holders selling flowers, fruit and vegetables or newspapers to a local and international white clientele. A broader debate emerged during apartheid on the possibility to erect more stalls in order to maintain the commercial vitality of the CBD, where traders were totally forbidden to trade. But running public stalls meant managing leases, waiting lists, investing in infrastructure and maintaining them. In the late 1970s, the municipality considered building a market, as part of the modernisation of the city centre, but it was never built. The commercial decline of the centre from the 1970s onwards brought these debates to a close. By the end of apartheid, functional and racial zoning was ruling, in conjunction with the principle of spatial fixation for street trading in a very limited number of stalls.

### ***Democratic transition, deregulation and the battle for space***

The liberalisation of street trading led to the return of traders to the city centre. In Cape Town, it was accompanied by the creation, in 1986, of 4 free trading areas, open to all racial groups,

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<sup>10</sup> Memorandum of the Medical officer of Health to the Town Clerk, 21<sup>st</sup> September 1926.

including the CBD. St Georges mall was re-modeled to accommodate kiosks and barrows, as well as a flea market. Street trading was celebrated in the local liberal press as one of the tools for the 'renaissance' of the city centre. The image of the liberal British colonial city with its lively squares and public spaces was revived, as was the idea of Cape Town's 'continental' charm. But the implementation of the Business Act was throughout the country the subject of difficult negotiations, and old colonial municipal by-laws were reactivated that allowed to evict traders, seize their goods, or arrest them for obstructing public space. In 1991, Mosdell rightly pointed out that these bylaws had actually never been repealed after apartheid was abolished, and that they could easily be reinstated (Mosdell 1991). This political blockage and the mobilisation of formal trading lobbies against deregulation led to amend the Business Act: in 1993, the government of street trading was transferred from the provincial administrator to local governments, provided the latter had designed zoning plans and made them approved by the Province.

In Cape Town, trading plans were crafted very early to define trading bays and trading-prohibited areas. Zoning was seen as a way to put an end to colonial bylaws, while addressing local concerns about the control of space. After a brief decade of post-apartheid transition devoted to deregulation, in 1992 St Georges Mall was declared a 'hawker-prohibited area', in the name of its 'upmarket shopping precinct' character. The municipality drove out nearly 140 traders; only 60 were allowed to stay. The liberal press talked of 'old-style regulation'<sup>11</sup> and of a renunciation to the spirit of the Business Act. After the first municipal elections in 1996, the Province authorised a municipal by-law that allowed the municipal government to systematise such zoning provisions. The city centre had been the testing ground for the implementation of trading plans in the entire metropolitan area.

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<sup>11</sup> *Financial Mail*, 4<sup>th</sup> December 1992.



### ***Trading plans, local economic development and the territorialisation of public action***

According to the current CBD trading plan, street trading can only take place in the CBD on trading bays operated by the municipality, in a way similar to that of the 1930s and of apartheid. However, zoning is no longer racially-based. Moreover, it is not meant to address traffic and hygiene issues but aimed at protecting the economic potential the CBD, in the name of economic redistribution and of its alleged trickle-down effect. Public discourses are saturated by the fear of losing economic competitiveness and the massive public investment that were made in the 2000s to sustain it. The CBD has always been considered a very specific place driving the urban economy. Local economic development is a longstanding issue in Cape Town, however, economic issues now fall within the authority of the CoCT, in accordance with the three-tier system of government. The old unsolvable question (how to protect the city centre without endangering the local economy and employment?) has become a local problem, that of the metropolitan government.

A major reform of municipal services with regards economic issues was thus bound to happen. In 2001, the Business Area Management Branch (BAM) was formed to promote an integrated vision of street trading, breaking with the previous silo approach and with the idea of spatial containment and restriction. The BAM, and today's Department of Economic Development, seek to foster a spatial compromise where street trading activities can be accommodated in certain parts of the city, without endangering metropolitan economic growth. The generous idea of introducing 'standard regulations regardless of where you are', in the name of a form of spatial justice and the reintegration of formerly separate territories (Policy 2004) was eventually abandoned and a differentiated treatment of street trading favoured, on a locational basis. Trading remains tolerated in townships and residential areas, except in 'immune zones'. In commercial and business districts, trading plans confine vendors to pedestrian malls, trading areas and designated trading bays. Over the past 10 years, these have spread to middle-class or

affluent suburbs (Goodwood and Tokai for example), as well as to former townships (Langa, Nyanga or Khayelitsha). Trading plans are supposedly designed to produce 'properly' planned spaces, according to 'local circumstances', 'particularly in areas where there is a significant overlap between formal and informal trading'<sup>12</sup>. The aim is to make spatial restriction compatible with the promise of social and economic inclusion of the 'informal sector'. The recent return to restrictive and top-down zoning reveals the power of the local planning imagination, but it can also be interpreted as an attempt to integrate previously marginalised peripheries into the logic of metropolitan economic growth, through a territorial differentiation of public action.

### **Final discussion**

In this paper we have emphasised the colonial and apartheid continuities in the government of street trading in Cape Town, in contrast with the narrow focus on the entrepreneurial turn that dominates neo-Marxist accounts of neo-liberalisation and of the current disciplining of public space in the Mother city. Our goal was to integrate the issue of continuity into the critical apparatus of neo-liberalisation in order to enhance its effectiveness as a theory of change. We have focused on the intriguing continuity of technical tools and instruments. Databases, permits and trading plans seem to simply reactivate biometric records, licences and spatial zoning, while municipal bylaws draw from colonial texts (for example the term 'nuisance' is taken directly from the 1930s). These tools largely go uncontested, despite their obvious colonial connotation. Nevertheless, technical continuity does not reflect a replication or a permanency of the colonial time in the present because these tools are now used within the framework of a different rationality of government. As suggested by the sociology of instruments, focusing on this

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<sup>12</sup> *Informal Trading Policy* 2004: 7.

process of 'reprogramming', avoids us to fall into the trap of an apolitical debate on (the lack of) technical innovation.

A major political shift took place in the late 1980s, during the negotiations that led to the end of apartheid. In the face of rising political violence and the explosion of urban unemployment, the long recognised socio-economic function of street trading was reformulated around the concept of informality. This change of term is not cosmetic. It signals an evolution in the way these activities are viewed by both national and local states. Moreover, in the 2000s, the 3 dimensions of the 'problem' of street trading (the control of individuals, of the number of traders, and of space) fell under the responsibility of the CoCT, a newly created powerful metropolitan authority. For the first time, the city could regulate the number of vendors in the name of a territorialised and metropolitan agenda of economic growth and local economic development, and not only restrict their activities for reasons of public order, traffic or hygiene. The Indian or Coloured citizen seeking recognition and political inclusion in the colonial society and who rebelled against biometric registration, has been replaced by a new political subject, still partly racialised, an entrepreneur of him/herself, invited to conform to the political ideal of the 'good' informal trader, respectful of the spatial restrictions imposed on him/her in the name of metropolitan growth. Social and spatial self-conformation as well as support for this project of territorial regulation are fostered through governmentality techniques. This neoliberal rationality is rooted in a new moral economy. The restrictions on street trading are justified by inter-urban competition and the alleged trickle-down effect expected from economic growth. Individual identification, so contested in the 1910s, is justified by a sense of social justice (against illegitimate applicants), in a context where the number of permits is limited for the sake of enhanced spatial control. This limitation, so criticised by liberal proponents until the 1940s, is now presented as a means of ensuring the prosperity of informal traders.

Yet, in Cape Town, street trading is not totally freed from the colonial and apartheid repressive and coercive logics of control. The occasional raid by traffic officers still happens. They control the identity of permit holders, fining contraveners to the by-law or assistants who operate without a permit. Moreover, the restriction of the number of permits serves the economic goal of building an economically striving informal market but it is also cherished by City planners who continue to embrace the old ideal of spatial control. Furthermore, spatial zoning is still used to protect the city core and foster a neo-hygienist agenda, despite the turn toward territorialised forms of regulation that strive to carve out a space for the informal sector within the city. Finally, the racial dimension of the problem remains intact, although it is euphemised today: 'historically disadvantaged individuals' are given priority for obtaining permits, which gives full relevance to a post-apartheid and post-colonial reading of the contemporary government of street trading. It is nevertheless partly being recast along xenophobic lines towards African migrants massively engaging in these activities. Contrasting political rationalities and regimes of control therefore coexist in the present, entangled in complex ways. This is reminder that neo-liberalisation is better grasped through fine-grained empirical accounts of the uncertain transformations of the rationalities of public *practices* than through the idea of a radical and very visible shift in public *policies*. The government of street trading exemplifies the subtleties of these transformations, and the fact that neo-liberalisation does not necessarily rely on the invention of new instruments nor in governance reforms to operate.

This neo-Foucauldian reading of neo-liberalisation invites us to focus on the possible neo-liberal use of tools designed under colonisation and apartheid, moving away from a critique that seeks to denounce the reinforcement, by neo-liberalisation, of old forms of spatial exclusion. In this insightful light, neo-liberalisation appears to be neither an amplification nor a mere reactivation of colonial or apartheid prohibitions. These 2 readings indeed appear as a critical impasse for radical scholars because it invariably leads to a disturbing question: was the colonial

or the apartheid city more unjust than the neo-liberal city (AUTHOR and al. 2014)? Envisioned through a Foucauldian lens, neo-liberalisation appears to be linked to a profound change in political violence, rooted in the enrolment of the poor themselves in their own dispossession and nurtured by inclusive discourses on the value of the informal sector. The analytical gain of this approach is commensurate with the critical ambition of the concept of neo-liberalisation as it invites us to unpack less visible and far-reaching forms of transformation of the political rationality that drives urban government and individual conducts.

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