PARTICIPATE OR BE PUNISHED

Administrative responses to protest

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Introduction

Over the course of the past three decades citizen participation in the formulation and implementation of state policy has been portrayed as integral to the notion of good governance, however amorphously defined this concept might be. The literature is replete with debates on the prospects for participatory and deliberative democracy and co-production as ways of strengthening the state–civil society interface (Fung and Wright 2003; Cornwall and Coelho 2007). By far the bulk of this writing has focused on the design of effective participatory systems and processes, on the dangers of elite capture, and on state co-optation amongst other issues (Hickey and Mohan 2009). Where attention has focused on forms of state–civil society engagement which fall outside of the participatory domain, namely protest action, this has been addressed in the extensive social movement literature which has examined the multiple ways in which different social groups mobilise to actualise their rights. However, despite the proliferation of protest, particularly, but not exclusively, in emerging democracies in the global South, little attention has been paid by public administration theorists to the ways in which states respond administratively to this form of engagement and whether state officials pay any heed to the demands put before them.

In recent years there has been considerable international focus on the mass-based protests which have brought about the downfall of ruling regimes in various parts of the world. Yet, leaving aside the revolutionary protest movements that led to the Arab Spring and to upheavals in Syria, Iraq, Ukraine, and elsewhere, other forms of protest which relate more to citizens’ demands for basic socio-economic rights than a desire to change the political order are both widespread and growing, especially in countries in the global South. Whether in Brazil, India, or South Africa protest action has increasingly become a common medium through which disempowered citizens engage with the state. Reflective of this, in an analysis of 843 protests occurring in 84 countries (comprising 90 per cent of the world’s population) during the period from 2006 to 2013, Ortiz et al. recorded a steady increase in the overall numbers of protests every year (Ortiz et al. 2013). The study found that in aggregate, the main reason why people around the world were protesting (58 per cent of total protests) was a perceived lack of economic justice (Ortiz et al. 2013: 14). The perceived lack of economic justice related to popular outrage
at policy failures, the lack of equitable development, the demand for jobs and better working and living conditions together with demands for public sector reforms amongst others (ibid.: 16) Significantly, the single most prevalent protest issue (26 per cent of all protests counted) related to the demand for ‘real democracy’, which was understood as a call for direct participation in decision making affecting the daily lives of the population and for access to the benefits promised by democracy. It was further found that protests for real democracy were not confined to any political regime or income group (ibid.: 22).

Although some studies link the recent upsurge in protest action to the austerity measures introduced following the 2008 global financial crash, Ortiz et al. assert that popular grievances extend well beyond the short term. “It is instead”, they maintain, “a measure of people’s growing awareness that policy making has not prioritised them – even when it has claimed to do so … Many of the world’s protest arise when the majority of people feel left out, and when neither the middle classes nor the poor find public services adequate for their needs” (Ortiz et al. 2013: 19). Such protests are invariably directed not towards the attainment of first-order democratic rights (such as the right to vote, to free association, or to freedom of speech) but rather towards the actualisation of rights already recognised in legislation and policy. In a seeming paradox, such protests also frequently occur in new democracies in a context where legislation and policy exist to facilitate citizen participation and, formally at least, to encourage their input in state decision making. In practice, as has been documented in the literature (Cooke and Kothari 2001; Cleaver 2001), it is frustration with the shortcomings of these very systems of participatory democracy and their failure to deliver positive outcomes for the poor which is giving rise to protest action.

There are, of course, multiple types of protest and equally numerous factors which give rise to these forms of collective action. A significant proportion inevitably comes about as a consequence of dissatisfaction with political leaders and the perceived failure of their policies. It is also certain that some of these protests are intended to supplant prevailing leadership structures and/or to bring about regime change. Such protests typically do not open themselves up to any form of negotiated settlement and some are intentionally confrontational and latently violent. It is equally certain, however, that there is a range of protest action which is not intended to be either disruptive or violent but which is genuinely seeking some form of engagement with and redress by the state. It is this form of protest, and the responses of state officials to it, that form the focus of this chapter.

Notwithstanding the fact that protest, and particularly peaceful protest, has become a commonplace in state–civil society interactions in countries throughout the world, there is little evidence that it is recognised by state officials as a legitimate form of engagement or that the concerns raised through this process are taken into consideration or addressed. This is despite the fact that the right to freedom of association and to peaceful protest is enshrined in the constitutions of most, if not all, democratic states. Implicit in the right to protest is the understanding that citizens are entitled to express their dissent and to hold the state to account.

The consensual model of participation

Whilst the essentially adversarial nature of multi-party politics is seen as integral to the workings of democratic systems and is formally accommodated in the practices of state legislatures, no such latent tensions are recognised in state–civil society relations which tend to be viewed in an idealised a-political way. This is because participatory democracy, along with the participatory processes which are assumed to emanate from this concept, is premised on the belief that the relations between citizens and the state should be essentially harmonious. In terms of this
consensual model, the parties involved are expected to accept and apply the same rules of engagement notwithstanding the fact that these typically have never been mutually negotiated nor are they the outcome of contestation through which the parameters for interaction have been agreed to in some form of compact. These rules of engagement, consequently, are seldom, if ever, based on equal power relations. Beyond the rhetoric of policy, the practicalities of engagement are shaped by state officials who set out the parameters for state–civil society interaction and prescribe under what conditions they should take place. In this context, the consensual model makes little provision for dissenting views and the balance of power is always vested in the state. Whether or not, as some critics maintain, this power asymmetry is inherent in neo-liberal governance systems and forms part of their hegemonic design, the net effect is official intolerance of any citizen interaction that falls outside these parameters.

Whilst participatory policies invariably include prescriptions on how the views of citizens must be heard and taken into consideration, this provision appears not to extend to citizens who take part in protest action. This disconnect between rights formalised in constitutions and their exercise in protest activity appears to be missed by state officials and the police in particular. In large part this is due to the fact that protest action, whilst tacitly recognised as a legitimate form of social/political mobilisation, is not recognised as a valid form of interaction between the state and civil society. Protesters, as a matter of course, cease to be rights-bearing citizens and instead are viewed as adversaries. In that respect, the official notion of participation denies the latent tension which exists in the relationship between the state and its citizens. In part, this might be ascribed to an unwillingness on the part of officials to engage with citizens on anything other than their own terms. Those who step outside of the formally created spaces for participation (Cornwall 2009), and create their own platforms for engagement with the state, stand to lose their legitimacy. However, as indicated, numerous studies have pointed to the fact that this form of engagement with the state is the product of frustration and anger at the repeated failure of formal participatory structures to deliver favourable outcomes. It is also evident that protest action is only one of several modes of interaction adopted by protestors, and it is often a last resort once other measures have been exhausted.

States characteristically display little reflexivity and seldom systematically assess the factors which might have led to protest action and, instead, resort to shorthand caricatures of the motives of those so engaged. Labelling a protest as ‘politically motivated’ is a typical conceit intended to de-legitimise the concerns raised by protesters and to suggest that their demands fall outside accepted ways of holding the state to account. Yet state–civil society interactions are, by their nature, decidedly political and whilst it would be naïve to ignore the fact that political parties and movements contesting for power do, in certain circumstances, mobilise their supporters to confront the state, it is also true that many local protest organisers shun party politics precisely because it can divert attention from their core grievances.

It is also certain that the very process of mobilising for protest serves a multiplicity of objectives, particularly for the disempowered and voiceless. Over and above the fact that it provides a platform for the public airing of grievances, it also serves to establish forms of solidarity and collective identity (Corrigall-Brown 2012) that are not possible in participatory processes. This, as the literature reveals, is because participatory systems often serve to exclude the more marginalised segments of society. In this context, the refusal of permission to protest is viewed as confrontational both because it is dismissive of what are perceived to be legitimate grievances and because it is decidedly disempowering. In that regard, official responses to collective action are generally out of touch with the socio-cultural and socio-political realities of the times and the changing nature of state–civil society relations. As a consequence, their anticipation of and response to protest are frequently slow and ill informed.
The actions of the state, thus, are frequently both the cause and the effect of the escalation of protest activity. People protest in the first instance as a consequence of dissatisfaction with the performance of the state and its lack of accountability. Thereafter, they protest further when the state fails to take seriously the demands that they have raised or to respond in a satisfactory manner. This occurs especially, as indicated, in cases where protest is reduced to a law and order issue devoid of any social or political legitimacy. However, as experiences from many parts of the world have illustrated, the involvement of police in protests invariably leads to confrontation and violence (Global Justice Clinic 2012; Arriola 2013). As Mitra points out in the context of popular mobilisation in rural India, “One of the critical determinants of the form and intensity of protest is state responsiveness … the more unyielding the state, the more radicalised collective protest gets, whereas through the accommodation of some strategic demands, the state can enhance its legitimacy and take the wind out of the sail of revolution” (Mitra 2002: 213).

The section which follows looks at state, and particular local state, responses to protest action in post-Apartheid South Africa where, in a seeming paradox, there has been an escalation of social mobilisation notwithstanding the existence of a comprehensive legislative framework and a plethora of policies which compel all tiers of government to ensure effective citizen involvement in official decision making.

The paradox of participation and protest: a case study from Cape Town, South Africa

With the advent of democracy in 1994, the incoming African National Congress government placed considerable emphasis on the need for citizen participation and especially at the local level where legislation explicitly instructs municipalities to “establish appropriate mechanisms, processes and procedures to enable the local community to participate in the affairs of the municipality” (Republic of South Africa 2000: section 17.2). However, despite these measures over the course of the past decade there has been an unprecedented upsurge in social mobilisation at the local level in what have come to be known as service delivery protests. According to a report by the South African Police Service, during the year 2012/13 the police had to respond to a total of 13,575 ‘crowd-related’ incidents, 14 per cent of which were violent and 86 per cent were peaceful, an average of 32 ‘peaceful’ and five ‘violent’ incidents a day (South African Police Service 2013: 26; Burger 2014). Significantly, however, while peaceful incidents increased by 47 per cent in the three years from 2009/10 (7,913 incidents), incidence of violent protests increased by 92 per cent (994) in the same period (Burger 2014).

There is agreement in the literature that while frustration with the slow pace of service delivery and job creation are the proximate stimuli for protest actions, a variety of reinforcing factors has given rise to this state of affairs and serves to inhibit the substantive participation of the poor in democratic institutions and processes (Bond 2000; Daniel et al. 2005; Tapscott 2008). Faced with the reality that the state has been slow in responding to demands raised through formal institutional channels, disaffected citizens and the organizations that represent them have increasingly sought alternative means to express their grievances. The majority of these protests have been directed against local governments. The triggers for protest are multiple and context specific; nevertheless, a number of trends are discernible. The most often reported reason relates to concerns that municipalities are failing to provide such basic services as public housing, water and sanitation to poor communities. A second relates to an inability on the part of dissatisfied citizens to determine whom they might hold to account for the failings of the state. In the context of a complex system of inter-governmental relations where responsibilities for the delivery of services are shared concurrently by all three tiers of government (national,
provincial, and local) ordinary citizens are often unsure where ultimate responsibility for administrative shortcomings is to be located. A third reason relates to the failure of the participatory structures in place to bring about any meaningful change in the lives of poor people.

The City of Cape Town, which has also experienced repeated protest action, has in place a formalised system for the promotion of public participation in municipal decision making. This includes a public engagement policy, which sets out the principles for public participation in the development and amendment of by-laws and policies and in the preparation of Integrated Development Plans (IDP), and a Public Participation Unit, which facilitates these processes. The stated purpose of the engagement policy is “to help people to understand and encourage them to contribute to the decision-making processes of the Municipality”, and to that end, it is asserted that “(e)veryone will have the opportunity to influence how the Council functions through effective and meaningful public engagement processes, leading to more relevant policies in the governance of the City” (City of Cape Town 2009). However, the vast majority of the participation exercises embarked upon by the Public Participation Unit deal with uncontentious issues (such as street naming and parking regulations), which are unlikely to raise the ire of the poor or the public in general nor are they likely to lead to protest action.

Amongst the varied reasons why the City’s participation process is failing in its intent to satisfactorily involve the public is the fact that the reach of existing systems is extremely limited and the proactive measures taken to contact citizens reach only a fraction of the population in any one year. This is evident in the process of drawing up an IDP which the municipality is mandated to produce in consultation with its citizens. Consultation in the drawing up of the 2012–2017 IDP was proclaimed to have involved “the most extensive public participation process undertaken by the city … (whereby) (c)itizens across the metro were canvassed through numerous mediums, from public meetings, to newspaper inserts, to information brochures, to websites and to social media” (City of Cape Town 2012: 9). The singular ineffectiveness of this process, however, is apparent in the fact that 91 per cent of those interviewed in the City’s 2011 Customer Satisfaction Survey had never heard of the IDP (City of Cape Town 2011: 57).

In contrast to the range of mechanisms in place to promote citizen participation, limited or no provision is made to accommodate opinions advanced by the population outside of these formalised structures, and particularly those raised through protest action. Despite the assertion in the Constitution that “Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions” as well as the right to freedom of association (Republic of South Africa 1996: sections 17 and 18), municipalities have no formal mechanisms for dealing with protest action, and other than in ensuring that law and order is maintained.

Peaceful protest action is permitted in municipal and provincial legislation but this is a highly formalised process which generally serves to disempower those taking part. Groups wishing to demonstrate must formally apply to the municipality, which may set stringent conditions or refuse permission. In the case of the latter, this measure is seen as disrespectful and highly confrontational. Mass protest was a key instrument deployed in the struggle against Apartheid, and it remains strong in collective memory as a means to bring about change in state policy and practice. To that extent it has both symbolic and practical content in that it serves as a means for mobilising communities towards collective action. Most problematically, however, there appears to be little interest on the part of municipal officials to understand the reasons why a segment of the population has mobilised, to assess the validity of the demands being made, or to determine what ameliorative measures might be introduced to alleviate further action. In contrast to participation, which has a dedicated unit and an array of formal support systems, protest has no such structures and is typically referred to the disaster management unit and the police.
A failure to address minor protest inevitably fuels frustration and over time this gives rise to more violent forms of interaction with the state. To that extent, state responses to protest action become self-fulfilling. Following this sequence, legitimate protest action is either ignored or is dispersed by the police, protesters become angry and sometimes violent and this reinforces state stereotypes of their behaviour. However, recognition of the fact that the resolution of protest action should be addressed at an administrative level rather than as a law and order issue is evident in a report of the South African Police Service itself, which states that in order “to mitigate the proliferation of public incidents, it is critical for the parties involved in wage disputes and service delivery complaints to establish means to resolve matters in order for the aggrieved parties to avoid escalating their dissatisfaction to the streets and encountering the police” (South African Police Service 2013: 26).

Evidence of the self-fulfilling nature of citizen confrontation of the state can be seen in the case of people living in the Joe Slovo informal settlement in the township of Langa, who were scheduled to be moved to the periphery of Cape Town to make way for the construction of a formal housing development; this was despite the fact that some residents had lived in the area for more than a decade and had some entitlement to be there (Tapscott 2011). Following an initial series of removals the residents of Joe Slovo resolved to fight any further evictions. This resistance in the first instance entailed approaching the municipal ward councillor to assist them in securing access to low cost housing in the area. When this proved unsuccessful, they delivered a memorandum to the Provincial Minister for Housing, requesting his assistance. Despite vague promises this intervention also amounted to nothing. This was followed with a march on parliament, wherein the community’s leaders delivered a strongly worded memorandum to the national Minister of Housing demanding that they be consulted on the future development of their informal settlement. Over and above the demand for genuine participation in planning processes that affected their lives, the memorandum expressed the community’s anger that they were being forcibly removed from the area. When the Minister refused to meet the marchers and sent an assistant to receive their memorandum, a decision was taken to escalate the protest and shortly thereafter the community blockaded the N2 arterial highway to Cape Town International airport. The police were called and, in a stand-off, rubber bullets were fired, people were injured, and others were arrested.

The Department of Housing laid the blame for this confrontation squarely on the Joe Slovo leadership and its outright rejection of their demands was also accompanied by explicit threats against those seeking to resist relocation, including their removal from the municipal housing waiting list: “The police and National Prosecuting Authority have been encouraged to maintain law and order by bringing charges against the perpetrators. Government will use all legal instruments at its disposal to ensure the development of Joe Slovo proceeds without further hindrance” (Department of Housing 2007). Shortly thereafter a court order was issued to forcibly evict the residents of Joe Slovo. In response, with the assistance of the Legal Resources Centre (LRC) at the University of Cape Town, which offered its services as a Friend of the Court, responding papers were prepared and the matter was referred to the Constitutional Court on the grounds that the eviction contravened elements of the Bill of Rights and other legal provisions. Although the Constitutional Court ruled against the Joe Slovo community and authorised their removal from Langa, the political momentum and public sympathy with their cause was such that the government ultimately acceded to their demands to remain.

The case study of the Joe Slovo informal settlement provides an example of the progression of citizen engagement with the state from peaceful lobbying of the local, provincial, and national political representatives, to protest marches and, subsequently, to disruption of public order and confrontation with the police. It is clear that the path of confrontation which they
ultimately adopted was precipitated by the fact that they believed that they had exhausted all formal channels for expressing their grievances and that more direct action was the only option open to them.

**Conclusion**

The determinants of the protest actions that have swept the globe in recent decades, as intimated, are varied and complex, and they are shaped by local, national, and international factors. Whilst a significant proportion of these are addressed to political leaders and poor governance, it is also evident that the way in which state officials, and particularly those of the local state, interact with citizens is a contributory factor. In the first instance, as discussed, the failure of formal participatory structures either to engage with citizens in an effective manner or to deliver favourable welfare outcomes has prompted people to seek more direct forms of engagement with the state. The failure of these formal spaces for participation is aggravated by the fact that disgruntled citizens are unsure whom in the government hierarchy to hold to account and to whom to direct their concerns. It is further evident that when protests do take place state officials do not see them as a legitimate form of citizen engagement and they are either ignored or suppressed. In this context the potential for more violent forms of protest increases significantly. At a broader level, however, the protest may be viewed as part of a process of actualising rights and of deepening of democracy both in established and newly democratised states.

Whilst the form and extent of protest action might be contextually determined, there are similar patterns in the way in which states respond to the demands raised by their citizenry. What this suggests is that there are similar official understandings of protest actions in countries across the globe and these generally fail to recognise the legitimacy of this form of state–civil society interaction. This in contrast to the provision which is made for citizen engagement in formalised participatory structures. These are supported by legislation and policy and, in many instances, by designated officials and systems and processes specifically designed to facilitate citizen participation. The response to protest, as indicated, is invariably adversarial. There are no specialist units in place to assess the legitimacy of protesters’ demands and to assess whether they might feasibly be met, and no formalised channels to engage with the protest leaders in an attempt to resolve contentious issues. The response is to reduce what might be legitimate grievances to a law and order issue. Whilst this approach serves to diffuse the immediate threat of disorder, it generally does little to address the root causes of citizen dissatisfaction and can lead to an escalating spiral of confrontation and potentially violent social unrest.

What appears to be called for is a wider recognition, both in the literature and in official understandings, of the reality that peaceful protest is no longer an aberration, that it has become a well-established form of citizen participation, and that it needs to be addressed in both a more interactive and pro-active fashion. This also suggests the need for more formalised state structures, particularly at the local level, to examine the legitimacy of protesters’ demands and the manner in which they might be addressed. It also calls for the training of officials both to understand the factors that are giving rise to protest, and to mediate their influence should they occur.

**Note**

1 Whilst the study of protest events is not without critics (both on grounds of definition and in terms of the manner in which events are recorded) the findings of Ortiz et al. reflect similar trends to those recorded by the International Labour Organisation (2013), Economist Intelligence Unit (2012) and others.
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References

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