Chapter One: Introduction

1.1   Introduction

This thesis explores the political significance of illegal water and electricity connections in post-apartheid South Africa. By focusing on service delivery I will be looking at one of the most contested issues in contemporary South Africa politics. Government's ability to provide services is seen as one of the key indicators of its legitimacy and success. The provision of water and electricity to all citizens is one of the major goals of the post-apartheid state. Its ability to provide this quantifiable improvement in the lives of the masses is also a test of its ability to make a major break with the exclusion and oppression practised by the apartheid regime. Cases where government has been perceived as failing in this area have led to much political turmoil, with the emergence of activist social movements and service delivery riots.

My aim is to look particularly at illegal water and electricity connections and to determine to what extent these 'popular illegalities' constitute a form of political resistance. The focus on electricity and water is significant for several reasons. Firstly, water and electricity are the two basic amenities of modern life, necessary for humans to both survive and flourish. But they have significance beyond the obvious material benefits which they provide. Symbolically the widespread provision of these services has come to stand as a powerful symbol of modernity itself. For example, in their discussion of urbanism, Graham and Marvin (2001:46) say that:

… the many uses of electricity, in particular, seemed to ensure a

brilliant future for civilization ... competition to have the largest, most

powerful and extensive electricity infrastructure along with the

brightest night-time cityscapes and streets, was intense ...

Standardising, extending and rolling out single, integrated electricity

grids, from the uneven patchworks inherited from initial processes of

entrepreneurialism, become a very metaphor for everything modern,

exciting and transformative.

Electricity has long been seen as more than a service: it has been regarded as

a sign of humanity's Promethean struggle to control nature. This heroic

metaphor transcended ideological boundaries: while the United States was

lighting up its cities, Lenin wrote that 'Communism equals Soviets plus

electricity' (cited in Tod and Wheeler, 1978: 135). In recent years, the

provision of basic services has, globally, become a site of political struggle

and resistance. The increasing commodification of basic urban services has

lead to the emergence of militant social movements which fight for better

access to water and electricity. The privatization of water and energy has also

led to so-called 'IMF riots' in many parts of the world, for example the 2000

Bolivian water riots, demonstrating that basic services are a focal point of

popular resistance. Environmental degradation is putting further strain on the

production and distribution of water and electrical services. In particular,

South Africa is threatened by water scarcity (*Mail and Guardian,* 31 October

2008). This makes the equitable provision of basic services more complex.

Anti-privatization activists push for a fundamental shift in the status of water and electricity away from commodities to being seen as public resources. The emergence of popular illegalities may already embody this shift and my thesis argues that rather than being acts of criminality, such activities represent a form of covert, popular development.

1.2   Research Aims and Objectives

The chief aim of this thesis is to explore the link between popular illegalities and political resistance. I aim to determine the reasons practitioners of popular illegalities give for their actions, but also look at the broader political significance of these illegalities. By exploring the motivations and implications of these illegalities, I hope to contribute to the literature on service delivery in South Africa. My aim throughout is to take illegalities seriously and to be attentive to the meaning practitioners themselves give for their engagement in illegalities. More than just a reaction to poverty, I argue that illegalities can be regarded as creative practices which may even point out new ways of delivering services equitably. While my focus is on South Africa, my research may also help improve understanding of popular illegalities in other parts of the world.

1.3   Methodology

I begin with a survey of the history of popular illegalities in post-apartheid South Africa. I then explore the literature on popular illegalities, looking not only at how these illegalities have been interpreted in South Africa, but also at more general discussions of popular illegalities. This literature discussion establishes a framework to understand the links between popular illegalities and political resistance. As the literature shows, illegalities have a latent revolutionary capacity which transcends their role as an everyday, practical technique of adaptation and survival.

I also aligned my research goals with my methods. Because I am committed to taking seriously the explanations practitioners of illegalities provide for their actions, it was necessary for me to conduct in-depth interviews with people who have illegal electricity and water connections. My interviews explored the motivations and implications of illegal connections and non-payment for services. My original intention was to conduct a qualitative survey, in the form of a questionnaire, of several households which either receive services illegally, or do not pay for legal services. However, the sensitive nature of my questions meant that I had to take a more informal approach when conducting interviews. I conducted door-to-door interviews in the communities studied. Often the line of questioning had to be altered from respondent to respondent due to factors such as trust and willingness to be interviewed. Respondents were especially circumspect in revealing how and who supplies them with illegal services. Out of respect for their privacy I

asked two basic sets of questions. I asked why they were engaged in illegalities and what benefits it provided for them. I then asked general questions about services and their feelings towards government. The second set of questions provoked lively responses. I also relied on interviews with community activists in order to establish the linkages between popular illegalities and political resistance.

In some cases, interviewees were willing to provide their names and have me use them. In others, interviewees preferred not to be identified. When the names of interviewees are given, it is with their permission.

1.4   Chapter Outline

This first chapter has briefly outlined the project undertaken in this thesis.
Chapter Two surveys the literature on popular illegalities. It begins by
defining the concept of popular illegalities before looking at the various
conceptual approaches to this phenomenon. Chapter Three outlines the nature
and extent of illegalities in South African service delivery. It provides figures
indicating the extent of illegal usage and non-payment, and provides a
description of the various sorts of illegalities and of the techniques favoured
by the government to ensure payment and prevent illegal access. Chapter
Four reports on the fieldwork I conducted in three different communities
around popular illegalities. Finally, in Chapter Five I discuss the significance
and some of the possible implications of popular illegalities.

Chapter Two: An Overview of the Literature

In this chapter I begin by providing a definition of popular illegalities. I then look at contemporary South African and African literature on this phenomenon. I also discuss some of the international literature on illegalities. While most of the literature discussed views illegalities in a positive light, I will conclude by looking at some of the arguments of those who regard it as a dangerous and destructive phenomenon.

2.1   Defining Popular Illegalities

Foucault first used the term 'popular illegalities' in *Discipline and Punish*, his analysis of the birth of the modern prison system (Foucault, 1979). Foucault was concerned with the creation of new forms of punishment which aimed at making the individual a self-regulating and productive member of society in line with the demands of the emergent capitalist society of the 19th century. Foucault defined popular illegalities in terms of the different kinds of behaviour which existed across social strata in pre-revolutionary France. These included:

> The refusal to pay taxes and rents or to comply with conscription, the violent confiscation of hoarded goods, the looting of shops and the forced selling of products at a fair price, confrontations with the representatives of power (Foucault, 1979: 274).

While these may have begun as localized practices they, gradually began to cohere and overlap with political struggle as 'the possible overthrow of power was not present in all of them … but a good many were able to turn themselves to account in overall political struggles and to sometimes even lead directly to them' (Foucault, 274). This latent revolutionary capacity meant that authorities began to take a new view of these activities. In the past they may have been tolerated by authorities who were unable or unwilling to enforce unpopular laws. However, the post-revolutionary establishment of a new regime of bourgeois landed property saw the re-inscription of illegalities as 'delinquencies' which had to be punished by the new prison regime. Intrinsic in this was the fear of a class of people who were thought to be criminal as a whole, 'a barbaric, immoral and outlaw class' (Foucault, 1979: 275).

The work of James Scott describes how widespread illegalities can provide the genesis for more organized political resistance. He argues that such activities belong to the category of what he calls 'infrapolitics' (Scott, 1990: 183). Infrapolitics function as the everyday practices of resistance by subaltern groups which are hidden from the authorities. They provide the underpinning of more visible political struggle and are a fundamental political force in their own right. As Scott notes:

> Poaching and Squatting on a large scale can restructure the control of property. Peasant tax evasion on a large scale has brought about crises of appropriation that threaten the state. Massive desertion by serf and

peasant conscripts has helped bring down more than one *ancien regime*. Under the appropriate conditions the accumulation of petty acts can, rather like snowflakes on a steep mountainside, set off an avalanche (Scott, 1990: 192).

An additional definitional proviso is provided by Janet Roitman (2006) in her work on widespread smuggling and other illegalities in the Chad River Basin. Roitman (2006: 249) makes a distinction between illegal and illicit behaviour:

> more than just an instrumentalist calculation, or a strategy to maximize economic gains or personal … [illegalities are] practices that while not lawful (hence illegal) are nonetheless not forbidden. Illegal activities are rendered licit practice.

In this thesis I use the term 'illegalities' as a broad term referring to common illegal practices which may have a latent political content. I focus particularly on illegal electricity and water connections and on non-payment for services. It should be noted that illegalities differ from community to community and what may be considered licit in one may very well be seen as shameful in another.

2.2   Popular Illegalities in South African History

Before exploring the literature regarding the popular illegalities in contemporary South Africa it is necessary to look at how apartheid illegalities have been interpreted in the literature. Rather than being a relatively unimportant epiphenomenon of organized protest, it has been argued that widespread evasion and non-payment of state rents and service charges played a fundamental role in precipitating many of the major revolts and rebellions in South African history. For example, massive non-payment of rents in the 19th century Transkei proved a major threat to the colonial authorities' attempts to institute 'hut taxes' (Beinart and Bundy, 1987). The 1906 Zulu rebellion also began as a widespread non-payment of the British poll tax (Guy, 2006). Another common tactic of mass illegality was the illegal occupation of land in defiance of anti-squatting laws which were designed to prevent black people from living in cities. The best known case of this was James Mpanza's establishment of Shantytown near Johannesburg in 1944 in direct violation of the law. As black political movements became increasingly radicalized after the election of the National Party in 1948, illegalities were embraced as a form of militant direct action. The most famous example of an organized mass illegality was the 1952 Defiance Campaign. This was organized around opposition to the implementation of apartheid legislation and involved boycotts, strikes and civil disobedience (South African History Online, The 1952 Defiance Campaign). Spearheaded by the ANC, the campaign included the burning of pass books as a form of non-violent resistance. Although the defiance campaign was a spectacular

example of popular illegalities, the increasing oppression of organized dissent by the apartheid government meant that such overt boycotts were harder to organize. As a result many of the illegalities of the period were hidden in order to avoid attracting the unwanted attention of the state. Displays of mass popular illegalities would suddenly flare up before seemingly disappearing. For example, in 1959 women in rural Natal destroyed cattle-dipping tanks and set fire to sugarcane fields due to popular anger about pass books and soil conservation laws (Giliomee and Mbenga, 2008: 330). Despite this spectacular flaring of popular dissent the perpetrators were caught.

As government repression made organized black political resistance increasingly difficult, it is possible that non-payment and evasion may have served as an everyday means of keeping resistance alive. In recent history the last major episode of organized community resistance and illegalities occurred in the township uprisings of the 1980s. Widespread non-payment of rates served the dual function of both ruining government revenue and undermining its control over townships. In this case the widespread practise of illegalities exposed the tenuous hold of the apartheid state; in spite of all its power it was unable to collect the most basic service fees in large parts of the country which must be considered a massive symbolic defeat. During the same period some civic movements encouraged illegal electrical connections as means of providing rudimentary services which were not dependent on the state, thus creating autonomous spaces of popular control (Freund, 2007). There are two further facets of South African history which need to be acknowledged. Firstly, the deliberate and insufficient provision of services to

black communities has left a space wherein many people have had to resort to illegalities as a means of survival. Secondly, a long history of government oppression which is still alive in common memory has left a legacy of mistrust and subversion of the law. As a result some forms of 'lawlessness [were], from that standpoint a weapon of the weak … in the absence of a protective or legitimate state, crime becomes a politics of defiance as much as a politics of survival' (Posel et al., 2008: 8).

2.3   Literature on Post-Apartheid Popular Illegalities

Popular illegalities are not a new phenomenon in South Africa. My focus here, however, is on the literature which deals with post-apartheid illegalities. There is a large body of literature produced by activists and academics associated with new social movements in which illegalities are regarded as being a legitimate response to the perceived failure of government service delivery. This literature regards illegalities as being a heroic form of survival for the poor who may be unable to afford water and electricity services. For example, Ashwin Desai (2002) argues that the continuation of non-payment and theft into the post-apartheid years is a direct result of government policies which are unfairly skewed against the poor who cannot afford services. He suggests that current policies actually force people into criminal behaviour:

Currently, large sections of the townships in Durban are being pushed into the popular illegalities of clandestine water reconnections….

What has been conspicuous by its absence from the (Durban) Council's response to the water crisis is the arrest on charges of malicious injury to property and/or theft of even one individual for an unauthorized reconnection. There is no shortage of incidents or evidence of reconnections. Struggle plumbers abound. Indeed, when *Manqele* [a court case] was argued, the [Durban] Metro Council submitted videotapes to the court showing people who it identified, reconnecting water. Instead, the Council's modus operandi is to send in small armies to re-disconnect, prompting, predictably a dis-re-disconnection as soon as the troops leave. The Durban Metro is thus creating mass lawlessness by the sheer scale of its acts of oppression, which are bound to breed resistance (Desai, 2002: 75).

In a later article Desai argues that these illegalities may form part of a long-term strategy for winning concessions from the state:

The metropolitan militant who does not pay for water and electricity, who squats and occupies and tries his luck, often succeeds in snatching income from the state and protects this income in collective struggle when the state or parastatals attempt to reclaim it. In certain rural areas, stock theft, squatting and slow, semi-legal land occupations under the guise of land tenancy, perform the same function (Desai, 2003).

The claim that these illegalities are a necessary survival strategy for the poor is also echoed in a study of the socio-economic conditions of the Bayview area in Durban (Pillay et al., 2005). According to the research, a high rate of disconnections for non-payment has resulted in a proliferation of illegal water and electricity connections, which the community no longer regards as being illegal.

There has also been a fair amount of literature on the usage of illegal reconnections by movements such as the Soweto Electricity Crisis Committee (SECC), which encouraged illegal access with their Operation Khanyisa (meaning 'light') in which its activists reconnected houses which had been cut off for non-payment. It has been argued that these illegalities were part of a wider struggle against the privatization and commodification of resources. According to Ngwane and Veriva (2004:142), illegalities are a tactic which 'attempts to reverse the logic of neo-liberalism by limiting the power of the market over people's lives'. As Egan and Wafer (2006) point out, the SECC has argued that these reconnections are not criminal acts but rather legitimate resistance. These reconnections are primarily aimed at winning material benefits for Soweto residents who have had their services removed. Members articulate their concerns as 'immediate and material, related to their daily lives rather than abstract ideas about privatization and globalization' (Egan and Wafer, 2004: 18). The SECC put in place structures where residents could directly register for reconnection, and claimed that connectors could reconnect as many as 12 households in one day (Ndletyana, 2007: 100). Connectors would also remove pre-paid water meters so that

households could use water without being billed. The reconnections were done in plain view of the public and often took on a highly theatrical element or, as one reconnecter described it, 'you learn not to do it in the dark … everybody must see who was there ... Don't hide yourself' (Egan and Wafer, 2006: 100). This spectacular form of protest also took on other forms. In one case protesters forced their way into the house of Johannesburg mayor, Amos Masondo, cut off its electricity supply and threw litter all over the premise (Ndletyana, 2007: 100). This spectacular usage of illegalities was clearly meant as an inversion of the established order. Not only was the mayor forced to experience the inconvenience and deprivation of disconnection but it visibly challenged the state's monopoly on control of services, albeit in a highly theatrical and transitory manner. As argued above such spectacular flouting of the law through the embrace of illegalities has a long pedigree in South Africa. By using such provocative techniques the SECC was symbolically aligning themselves with these past struggles, giving their projects the same patina of moral legitimacy as, say, the anti-apartheid Defiance Campaign. These provocations and tactics were not popular with all Soweto residents, as more well-off residents who could afford to pay for services were afraid of trouble with the authorities or the inconvenience of the temporary power loss caused during reconnections.

The Western Cape Anti-Eviction Campaign (AEC) which was formed in 2000 has also used illegal reconnections. Miraftab argues that this is used alongside legal techniques, such as challenging munciapalities in court to prevent evictions:

While some AEC activities such as reconnections and resistance to evictions have a different redistributive goal, its work also aims at recognition of poor resident's plight, their histories, their struggles and their pleas for justice. The Campaign is conscious that the two sides of their struggle should be knit together (Miraftab, 2006: 200).

Miraftab further argues that in some cases illegally accessed services may be superior to legally ones, in that they may respond better to the immediate needs and realties of users. In recognition of this she argues that popular illegalities may serve an innovative role for the poor living under the urban stress of austerity: "when formal channels fail, they innovate alternative channels to assert their citizenship rights and achieve a just city" (Miraftab, 2009: 37).

At the same time it is likely that most illegalities have no connection to social movements. Nevertheless, affordable services for all are 'symbolic of what it means to have dispensed with apartheid' and so are intrinsically politicized (Egan and Wafer, 2004: 18). Thus, while most illegalities function without any linkages to social movements, this does not mean that they have no political significance: it has been suggested that they may been considered as possibly representing a form of silent boycott (Ruiters, 2006). Chance (2006) takes this further and argues that government focus on combating non-payment and illegal access ignores the legitimate grievances which underpin such practices. This serves to de-politicize illegalities: what was seen as a form of noble resistance to the state under apartheid is now perceived as a

threat which undermines the advances brought by democracy. In an argument that is similar to Foucault's (1979) she maintains that while illegalities were regarded as being a collective technique of struggle under apartheid they are now being treated by the democratically elected government as individual acts of delinquency. The usage of illegal access as a legitimate tactic has been deeply contested by government. For example, in Jeff Radebe's (2001) aforementioned speech about illegalities he presents them as being the work of opportunistic, anti-government forces, clearly referring to groups like the SECC. Through describing such tactics as inherently criminal, government denies the legitimacy of the SECC and other social movements who have encouraged illegal access. The relationship between government and the more militant, action-orientated community groups has been fraught with tension, with many activists accusing the state of using apartheid-style police brutality and intimidation to quell protest. Cock (2006: 220) suggests that what is at stake is not just the government's monopoly over service provision but its claim to be the arbiter of modernity: in the case of pre-paid water meters these are pitched as a 'modern, post-apartheid development enabling consumers to exercise choice'. In such a context illegalities could be regarded as an atavistic hangover from the struggle against apartheid. While legitimate and necessary in the chaotic 1980s, they now present a threat to attempts to create disciplined, modern citizens who comply with their payment obligations.

2.4   Illegalities as a Creative Force in Contemporary Africa

Illegalities are seen as an everyday part of life in many parts of modern urban Africa. Official service delivery in Africa is limited by two main factors: diminished government capacity and funding and massive, continual urbanization. In such environments people are forced to resort to radical forms of self-help, such as illegal connections as a means of securing access to water, electricity and other resources. In a study of inner-city Johannesburg, Abdou Maliq Simone (2006) argues that this leads citizens to invent new and innovative means of existing within cities. Illegalities do not just function as a survival technique but may 'give rise to unexpected ways of intervening in urban space' (Simone, 2006: 246). Illegalities may therefore be a blessing in disguise, a kind of rapid, informal urban development which provides entirely new ways of supplying and manipulating resources As Simone (2006: 246) adds:

> Whatever their legal nature, however fraudulent the intent, the remarkable proliferation of scams and schemes of all kinds across urban South Africa not only points to the desperation of people looking for employment and places to live but the capacity of residents to converge in all kinds of combinations and generate money on the basis of almost nothing. Though I am not encouraging the elaboration of such illegality per se, it does point to how generative other kinds of experimentations with minimal technological investment could be in converging different kinds of actors under a variety of circumstances.

Illegalities may also function in the long term as part of a process which Bayat (2000) calls 'quiet encroachment' in which the urban poor engage in various survival techniques at the expense of elites in order to gain a substantive material foothold in the city (see also Pieterse, 2005). As Bayat (2000: 24-25) describes this process making explicit reference to illegal connections:

> While quiet encroachment is basically a non-movement, it is distinct from survival strategies or 'everyday resistance'. First, the struggles and gains of people at the grassroots are not made at the expense of fellow poor or themselves, but off the state, the rich and the general public. For example in order to light their shelters, the urban poor tap electricity not from their neighbours, but from the municipality power pole … This kind of quiet activism challenges fundamental aspects of state prerogatives, including the meaning of 'order' and control of public space. But the most immediate consequence is the redistribution of social goods via the (unlawful and direct) acquisition of collective consumption (land, shelter, piped water, electricity); public space (streets, intersections, parking areas); and opportunities (favourable business conditions, locations and labels).

As Edgar Pieterse (2005: 162) notes, such activities exist in a space between direct action and grassroots development and function as a creative series of everyday practices for living in the city. Basile Ndjio (2006: 116) takes this creativity approach further by arguing that the everyday citizen who has to

use a mix of legal and illegal techniques to survive is a modern hero, a creative figure who by stratagems of resourcefulness, trickery and circumvention is able to invent new forms of urban life. While much of the focus on the mutational and transformative capacity of illegalities has focused on the city, Fantu Cheru (2005) makes the same claims for the illegalities practised in Africa's rural environments. In a study of the Ethiopian peasantry he argues that illegalities are often ingenious and reflective of latent peasant capacity to adjust to harsh material conditions (Cheru, 2005: 77). In the light of the state's inability to provide services to its citizenry he argues that such survival strategies are a positive force:

> Although the driving force for self-help and improvisation is survival, the millions of poor Africans operating outside of the official market are in fact providing vital services where governments have failed to carry out their responsibilities. Instead of castigating the poor and characterising their professions as 'criminal' or 'illegal' we should celebrate them for elevating the human spirit, for fighting to preserve their dignity (Cheru, 2005: 78).

This work has its spiritual ascendant in Frantz Fanon's *Wretched of the Earth* (2001[1961]). Fanon argued that rather than being passive victims of poverty, urban Africans are a revolutionary force in their inherent ability to generate new ways of being under adverse conditions and to overwhelm the power of the state. Writing against the backdrop of the fall of colonialism he wrote that:

The constitution of the lumpen-proletariat is a phenomenon which

obeys its own logic, and neither the brimming activity of the

missionaries nor the decrees of the central government can check its

growth. This lumpen- proletariat is like a horde of rats; you may kick

them and throw stones at them, but despite your efforts they'll go on

gnawing at the roots of the tree (Fanon, 2001: 103).

2.5 Literature on Historical Illegalities

There is a large body of generally Marxist historiography which deals with

popular illegalities as form of resistance to the establishment of modern

capitalism in Europe (see for example Hay et al., 1975; Hobsbawm, 1959;

Thompson, 1968; and Winslow, 1975). Thompson (1968) argues that rather

than just being acts of theft, illegalities were underpinned by a traditional

'moral economy' which was opposed to the enclosure of public lands and the

introduction of new rents. Furthermore, this moral economy was based on the

belief in a just price for goods and services for the poor. When these values

were threatened by the new commodity relations of emergent industrial

capitalism, large sections of the poor felt that they had the right to engage in

poaching, smuggling and other practices. Winslow (1975) observes that such

activities were tolerated because they created tangible material benefits for

poor communities with, for instance, smuggling allowing for the wider

availability of expensive goods such as tea and spirits. These illegalities were

successful because they were governed by social rules. As Hay (1975: 207-

208) point out in the case of poaching: 'the judicial definition of theft did not coincide, of course, with the popular definition … [Acceptable illegal] practices were rigidly defined by custom, and the goods involved were sharply distinguished from other property'.

The study of historical illegalities also shows how they can form the genesis for more organized forms of political resistance. Marx argued that the mass appropriation of forest goods by the German peasantry in the 1840s showed an adherence to communal feudal customs which were resistant to the introduction of a new property regime (Linebaugh, 1976). Thompson suggests that the machine-smashing antics of the Luddites preceded the establishment of more organized working class resistance such as the Charterists (Thompson, 1968). All this literature demonstrates how illegalities can serve as an important barometer of the issues around which later political resistance will mobilize. More recently, historians have focused on how the practise of illegalities can in itself serve as an alternative model of governance. In a study of medieval Europe, Silvia Federici (2004: 27) argues that illegalities were often

> conscious forms of social transgression … [which] constituted a powerful alternative not only to feudalism but to the capitalist order by which feudalism was replaced, demonstrating that another world was possible, and urging us to question why this was not realized.

Linebaugh and Rediker (2001) hold the same for many of the pirate ships of the Atlantic. These multiracial crews supported themselves through plunder and other illegal activities but they were often organized along deeply democratic lines which, it is suggested, may prove to be a compelling alternative model for contemporary societies. Such a view is supported by de Sousa Santos (2002) who argues that many modern marginalised communities, rather than living outside the law are governed by their own set of unofficial laws.

2.6 Popular Illegalities as Resistance, Local Knowledge and Development from Below

There is also a large body of work by developmental writers and anthropologists which celebrates illegalities as a form of both resistance and grassroots development by the poor. One of the key theorists in this is the aforementioned Scott, whose work has provided a thorough typology of everyday forms of resistance (1985; 1990 and 1998). In his book *Weapons of the Weak* (1985) he details the anonymous resistance practised by Malaysian peasants against landowners. These illegalities included destruction of farming equipment, petty theft and the killing of livestock. This served the dual role of both resistance and of gaining material benefits:

> We need assume no more than an understandable desire on the part of
> the peasant household to survive – to ensure its physical safety, to
> ensure its food supply, to ensure its necessary cash income – to

identify the source of resistance to the claims of press gangs, tax

collectors, landlords and employers … It is precisely the fusion of

self-interest and resistance that is the vital force animating the

resistance of peasants and proletarians. When a peasant hides part of

his crop to avoid paying taxes, he is both filling his stomach and

depriving the state of grain (Scott, 1985: 295).

Illegalities function as a direct form of self-help and the forms they take are dependent on the material conditions of the communities in which they are practised. Scott maintains that illegalities also have a symbolic component: by attacking a tractor peasants were also attacking an icon of the modernization which threatened their traditional way of life. These illegalities are successful as resistance precisely because they are performed anonymously and persistently. This allows the perpetrators to avoid direct confrontation with the authorities. As developed in his later concept of infrapolitics, widespread illegalities can ultimately thwart the ambitions of the state. These tactics of winning concessions through trickery and evasion are also represented in the world's folklore. Scott argues that trickster archetypes, such as Reynard the Fox of medieval France and Brer Rabbit of the North American slaves, celebrate the poor's ability to evade and undermine authorities through guile and ingenuity (Scott, 1990: 163). (Perhaps a pertinent archetype for illegal electrical connections would be the Greek Titan, Prometheus, who stole fire from the gods to help struggling humanity, only to be punished for his troubles). In his most recent work, *Seeing Like a State* (1998), Scott argues that development initiatives are

underpinned by a belief in 'authoritarian high modernism' which marginalizes the poor and their own local knowledge of their environment by regarding them as powerless subjects who need to be saved from their 'backwardness' through technological interventions. Illegalities may therefore be a technique of reasserting this local knowledge and techniques of self-development. For instance, the collectivist *Ujamaa* farm policies of Tanzania were undermined by 'foot dragging, by privatising work and land that had been appropriated by the state, by evasion, by flight and by raiding government programs' (Scott, 1985: 302-303). In such a scenario illegalities were used to both reassert traditional practices while undermining unpopular new ones.

Scott's themes have been developed by others. James Ferguson (1990) also argues that anonymous illegalities can function as a direct form of resistance to unpopular development initiatives. In the case of Lesotho, government woodlots development programs were derailed by problems such as the breaking of fences by local famers to allow their livestock to graze. He argues that these woodlot programs were unpopular because the land used was taken from its previous owners without compensation and deprived farmers of their traditional tenure rights. The destruction of the woodlots

> presented an easy target for those who wished to attack the government and the symbols of its presence in Thaba-Tseka ... the vandalization of the woodlots must be placed in the larger context of

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political resistance to the Government in general, and the 'development' intervention in particular (Ferguson, 1990: 247).

Arturo Escobar (1995) takes a similar anti-developmental line to Scott in arguing that development initiatives often ignore local knowledge which leads to illegalities which are aimed at protecting livelihoods and cultural values. Through these illegalities, people seek to sustain a 'livelihood economy' which is concerned with the satisfaction of qualitative needs rather than commodity production. Illegalities may serve to create a 'black economy' of clandestine exchanges which serves the dual function of meeting basic needs while 'seeking to counteract the imposition of commodity production on customary ways' (Escobar, 1995:168). Rather than being an atavistic reaction to development, such illegalities may be a means of preserving economic and cultural values within the constraints of the modern world.

2.7   Illegalities and the Global Economy

Although governments worldwide are now moving away from uncritical adoption of neoliberal service delivery polices, it has been argued that the dominance of market-orientated thinking over the last few decades has lead to a significant rise in global illegalities. As Graham and Marvin (2001) argue, neoliberalism has lead to an international pattern of 'splintering urbanism', a dual process where services become increasingly expensive concurrent with less spending on public services. This leads the wealthy to

rely on privatized services while poor people are increasingly forced to pay higher charges for services (Caldeira, 2000; Davis, 1990). This problem is compounded by the largest wave of urbanization in human history with millions of people moving into cities which already have terminally overstretched infrastructure (UN Habitat, 2003; Davis, 2006). Reliable electricity and water service provision is also threatened by global warming and ecological degradation. In such conditions increasing numbers of illegal connections to water and electricity are to be expected. At the same time the very techniques which are used to ensure payment may ironically also lead to more attempts at illegal access. Mark Drakeford (1998: 295) suggests that in the case of pre-paid water meters which are intended to ensure payment, the opposite obtains as users who cannot pay self-disconnect. In such cases, users may tamper with devices in order to renew services.

It has also been argued that an increasing reliance on market-based policies may also contribute towards illegalities. British sociologists have argued that the use of marketized incentives in shaping citizens behaviour may be based upon flawed assumptions of human behaviour. Taylor-Gooby (2000:13) suggests that an 'intrinsic shift in the direction of market mechanisms may weaken altruism, stifle intrinsic motivations and exhaust citizenship, with the result that public services decline in efficiency'. Such an erosion of public service may also erode citizens' willingness to meet their payment requirements and may encourage a hostile attitude towards the state. Furthermore, this erosion of public goods may lead to a nihilistic attitude of attempting to gain as many free material benefits as possible, which could

serve to justify pilferage and non-payment (Gray, 1998; Sennet, 1998). The writer Eduardo Galeano (2000) takes this critique further and maintains that under criminally acquisitive capitalism illegal behaviour is replicated through all strata of society, making the control and censure of illegalities almost impossible.

Manuel Castells (1998: 162) argues further that widespread illegality is encouraged by the creation of 'black holes of informational capitalism' – deprived areas which are surplus to the needs of global capital such as squatter camps and inner city slums. Because such areas are excluded they become linked to criminal economies. Castells focuses on organized crime, like drugs and prostitution, but it is apparent that in such 'black holes' the lack of official infrastructure may make illegalities common practice.

Furthermore, it is difficult to distinguish between legal and illegal economic activities. The interlinked nature of a globalized economy means that illicit practices in one part of the world may be an important component of licit activity in another. For example, it has been argued that the global increase in copper theft from municipal infrastructures is being fuelled by the demand for building materials in the fast- industrialising economies of Brazil, India and China (Edemariam, 2008). Describing the difficulty in drawing clear lines between legal and illegal activities, Carolyn Nordstrom (2007: 89) says:

> Business is done in the flow of il/legalities. They are so basic to
> commerce that only the smallest percentage is captured by law … the

unregulated is intrinsically interwoven into formal business in a way that judicial systems can't easily separate. Even determining where the lines of il/licit can or should be drawn is a judicial challenge. To attack certain fonts of unregulated trade would be to attack some fronts of the economy in general.

2.8   Illegalities and the Subversion of Urban Space

There is a large body of European literature which looks at the tactics citizens use to win control over urban space. While much of this does not focus on illegalities per se, this work employs several useful concepts which may add to an understanding of the motivations and potential consequences of popular illegalities. A key concept is Lefebvre's 'right to the city' which entails the right to 'urban life, to renewed centrality, to places of encounter and exchange, to life rhythms and time uses, enabling the full and complete usage of … moments and places' (Lefebvre, 1996: 158). He imagined this as a radical rewriting of how urban space is used, in which the practical actions of everyday life would ultimately transfer control of the city from capital and the state to the inhabitants (Gandy, 2006: 257). It is possible to regard illegalities as one means of winning this control through providing direct links to resources which may otherwise be out of the reach of some citizens. A similar approach is taken in Castells' work on the composition and aims of urban social movements (Castells, 1978; 1983). Castells argues that these movements have a particular focus on issues of collective consumption such as access to public service. The primary political focus is on provision and

access to services and on ensuring access for all urban citizens (Tonkiss, 2005). This particular focus on winning substantive material accesses, as opposed to just political representation, may go some way in explaining why post-apartheid social movements have used illegalities as a form of direct action. The work of Michel De Certeau looks at how the anonymous practices of everyday city life allow citizens to reassert their dominance of urban space through 'tactics' which allow for a sense of individuality in the over determined modern city. Such innocuous practices as taking ones own routes through the city even though they may not be the quickest or most 'rational' embody the potential of the 'prosaic practitioner of urban space' to defeat the city's' control of individual time and movement (De Certeau, 1984: 31). These everyday practices allow for control of one's time and surroundings which De Certeau sees as an everyday weapon of the weak. This entails the potential for the collective 'process of appropriation of the topographical system' in which urban dwellers slowly carve out their own space of control over their environments.

This provides an interesting perspective with which to look at illegal connections which are often hidden as a matter of necessity. Is it possible that these connections are not only giving users control over their environments but are also slowly enacting a new urban regime and creating a covert form of service delivery which is hidden from the authorities? In fact the exponential usage of illegalities can actually reconfigure urban space in a far more overt way as authorities are forced into recognising them as legitimate practice. The American journalist Robert Neuwirth (2004) observed this

process at work in the Brazilian *favela* (slum), Rochina, where the widespread use of illegal connections was ultimately formalized by the state:

> As the community devolved, the residents were emboldened by their numbers they seized services the same way they seized land. *Gatos* – which literally means cats but is Brazilian argot for people who pirate public services – run wires to tap into the electric grid. For years, Rocinha was festooned with curving strands of lamp wire bringing a feeble current to each house. Today the power company has recognised that Rochina is not 150 000 thieves but 150 000 potential customers, and has embarked on a plan to provide legal electricity in the *favela*, provided residents agree to install a meter ... Today there's only one throwback to the days of the *Gatos*: almost every streetlight or electric pole in Rochina still has illegal wires tapping into it (Neuwirth, 2004: 41).

This exponential quality of illegalities, their latent tendency to overthrow and disrupt the accepted order and logic of commodity exchange has also been celebrated by several anti-capitalist groups as being a direct form of resistance. The underlying idea is that widespread use of illegalities stealthily chips away at the edifices of the capitalist state and exposes the transitory nature of the commodity economy. In the 1960s, the French Situationist International (SI) encouraged such illegal activities as work sabotage and stoppages, outright theft and wildcat strikes as a means of challenging capitalist control of workers space and time (Juno and Vale, 1987; Home

1996). The Italian Autonomists of the 1970s also encouraged mass illegalities; indeed, practices such as the unilateral reduction of bills and workplace sabotage, appear to have been widespread at the time (Power, 2008: 52). Such activity is reminiscent of Thompson's (1968) concept of a moral economy and the belief that there is nothing wrong in paying only what one can afford for service if one pays at all.

While the idea that such illegalities could hasten the end of capitalism may seem naively utopian, recent history has shown that mass illegalities can in fact reconfigure accepted ideas of economic change. I am thinking here of the mass practice of internet piracy of films, music, TV shows and computer games. The ubiquity of this practice over the last decade has undermined the traditional entertainment industry and has forced it to make radical concessions in the way it conducts business. Many people now feel no obligation to pay for much of the entertainment they consume. It has been suggested that such a process could have far larger implications and could even reinvigorate public service through encouraging the belief that utilities should be free:

> Learning to get something for nothing (even if it's not anything, in the
> end, for now) is exactly the mentality that we'd be best served to
> foster. The web makes it easy, but perhaps it might best be visualized
> as what they called a "gateway drug" when I was a kid. (I don't know
> if the phrase is still current - but the idea was that the true danger of
> pot, in its happy non-dangerousness, was that it readied kids to try

more dangerous, destructive "hard" drugs). It's not a long leap from

free and well-designed email to free and smoothly working public

wifi. And from public wifi, it's a longer leap, though not all that long,

to nationalized health care. A bit further yet to media, housing stock,

and all the rest. After all, who today would pay for an email account?

(*Adswithoutproducts.com*, 11 August 2008)

2.9 The Dangers of Popular Illegalities

The literature discussed so far has been sympathetic to the practice of popular

illegalities. However, illegalities have also been regarded as a malignant

criminal threat to the stability of the state and to public order in general.

Thomas Smith (2004: 2067) writes that the theft of electrical services is an

international problem which results in 'lost earnings, shortage of funds for

investment in power system capacity and improvement and a necessity to

expand generating capacity to cope with the power losses. Some power

systems in worst affected countries are near bankrupt'. The biggest threat is

that if such practices become institutionalized they can lead to a degradation

of infrastructure, unreliable delivery and increased electricity charges. Smith

also notes that such pilferage often takes place with the collusion of

government employees and is reflective of high levels of graft and corruption

in these organizations. If systematized, such practices could help to bring

about state collapse. The close linkage between failed power systems and

failed states has been explored by Nigerian writers. Olukoju (2002) argues

that electricity theft is endemic is his home country, but blames this more on

the corruption and incompetence of the National Electric Power Authority (NEPA) than on delinquent consumers. However, he notes that NEPA's incomopetence is further compounded by the widespread theft of cables and other equipment, which may also be the work of corrupt officials (Olukoju, 2002: 56). As a result, Nigerians are constantly plagued by blackouts which often result in violent confrontations with NEPA workers. Osaghae (1999) argues that the widespread corruption and inefficiency of the Nigerian government has pushed many citizens to exit into parallel economic networks to meet their needs. He defines this survival strategy as a form of 'exit from the polity' which entails

> bypassing or avoiding the organized civil order without necessarily disconnecting from the state. Such qualified exit which is more prevalent among the ordinary people, for whom exit is a matter of survival, results from the fact that however much they try to avoid the state those organizing the parallel systems continually need the state in one way or another (Osaghae, 1999: 83).

For example, people may still need the collusion of officials to establish illegal access to services. Osaghae (1999:84) distinguishes this socio-economic exit from 'exit from the state', a more explicitly political practice which may entail secession and violent confrontation with the state. Nonetheless exit from the polity has its own dangers as it can undermine the state's ability to collect revenue and paralyses service delivery. At the same time the state may tolerate this kind of exit as it provides services which the

state cannot: 'the activities of such exit groups have helped to mitigate the shortcomings of the state and prevent the deepening of its legitimacy crisis and consequently a cycle of confrontation within it' (Osaghae, 1999: 96). Treating illegalities with benign neglect may help to prolong the survival of inefficient and corrupt regimes.

When looking at examples of states which have faced infrastructure collapse due to massive theft it is instructive to note that this may be due to factors other than small-scale popular illegalities. In many cases it may be due to the illegal behaviour of the elite. For example, post-communist Russia saw the privatization of its formerly state-owned energy sector. This process was marred by corruption in which state officials, businessmen and criminal gangs colluded to seize the energy sector for their own gain (Volkov, 2002). This had disastrous consequences for the Russian people: in the city of Vladivostok electricity distribution almost came to a halt due to massive corruption and pillaging by state officials working with gangs (Satter, 2003). Russia has also seen wide-scale illegal connections by officials and business executives, with one official saying: 'electricity theft is quite widespread across the country. *The poorest people steal electricity for obvious reasons* while the wealthy do it because their multi-storey villa with obvious gadgets eat up a lot power' (*The Moscow Times*, 30 April 2008, my emphasis). In post-war Iraq entire provinces have disconnected from the national grid as they claim that they are unable to meet their regional electricity needs (*The Seattle Times*, 5 August 2007). While post-war looting of infrastructure has contributed to these shortages, this is merely part of the problem. More

significant factors include sanctions under the rule of Saddam Hussein, bombing during the war and the general failure of the American-led post-war reconstruction (Danner, 2004; Herring and Rangwala, 2006; Miller, 2006). It is an additional point of interest that the occupation's failure to restore water and lights in the post-invasion period caused massive resentment amongst the Iraqi people and helped to fuel the nascent insurgency (Shadid, 2006).

Perhaps the most spectacular example of wide-scale criminality undermining electrical distribution was Enron's role in the California power crisis of 2000/2001. In an attempt to force the state to deregulate its power sector the now-defunct corporation, with the tacit approval of the Bush administration, deliberately turned off some of its power stations with the aim of exacerbating the rolling blackouts the state was undergoing at the time (*Guardian*, 5 February 2005). What these examples show is that it is often the illegal actions of the elite which destroys infrastructure. Small-scale popular illegalities affect the state's ability to collect revenue but it seems doubtful than in or of themselves they have the potential to collapse entire infrastructural networks, or governments, for that matter.

2.10   Conclusion

This survey of literature on historical and contemporary popular illegalities reveals that scholars have generally viewed the practise as a positive phenomenon. This appears to be for two key reasons. Firstly they serve as an expression of popular discontent. In the case of oppressive political regimes where organised resistance is limited, wide scale illegalities may in fact serve as one of the major pivots of resistance. Secondly the material benefits of illegalities are seen as empowering for the poor and marginalised. While this practise directly benefits those who are engaged in it, the inherent subversion of private property, state power and urban order may also have significant ramifications for society as a whole. Rather than viewing illegalities as a problem of policing, much of the literature reviewed sees illegal access as a legitimate, even heroic practise. In order to provide a contrast to such literature, I also reviewed literature which views popular illegalities as a dangerous phenomenon which undermines the ability of the state to fund and deliver services. However, it appears that where the state is undermined, this is often the consequence of elite corruption and delinquency rather than of the kinds of illegal access practiced by the poor.

Chapter Three: Popular Illegalities in Post-Apartheid South Africa

The theft and non-payment of municipal services is a widespread problem in post-apartheid South Africa. As local authorities rely on utility fees to finance their operations, reduced revenue collection may have a negative effect on their ability to deliver affordable water and electricity.

3.1   The Scale of Popular Illegalities in the Electricity Sector

Electricity in South Africa is provided by Eskom, a state-owned utility, or by municipal providers who buy electricity from Eskom. There are three main types of electricity theft in South Africa: non-payment by legally connected users; illegal connections to the grid, in particular illegal connections directly to service cables; and finally, the theft and destruction of electrical infrastructure, which is often related to cable theft for copper wiring.

There have been several attempts to determine exactly how much revenue is lost through non-payment and illegal connections, but technical and administrative factors make it difficult to determine accurate figures. Rens Bindeman, an engineer from SARPA (South African Revenue Protection Association), explains that determining the actual revenue losses from theft and non-payment is difficult because there are so many service providers in the country, many of whom do not keep systematic records of revenue loss (Bindeman, 2008). The National Electricity Regulator attempted to create a

national record, but this failed because many service providers failed to supply figures. The distribution crisis which affected Eskom in 2008 has also put illegal access under the spotlight, as it has been seen as a significant contributing factor to the utility's problems. Independent electrical engineer Chris Yelland (2008) has been vocal in blaming illegal connections for Eskom's distribution problems, estimating that together Eskom and municipal distributors lose around 12 934 GWh of electricity per annum. He further estimates that electricity lost as a result of theft, fraud, the bypassing of meters and the stealing of infrastructure amounts to lost revenue of R5.34 billion per annum. It must be stressed that all these figures are informed estimates and are open to challenge.

3.2   The Extent of Popular Illegalities in the Water Sector

Water distribution in South Africa is organized in three different tiers. The Department of Water Affairs and Forestry (DWAF) sets policy, Water Boards are responsible for providing bulk water, and municipalities administer the distribution and billing of water services. Service providers recognize two major forms of theft in the water sector. This includes the non-payment of bills by authorized consumers, and illegal connections to residential taps or public standpipes.

As with electricity, determining the amount of water revenue loss is difficult. This is compounded by natural factors such as evaporation. Again there have been attempts to systematically work out how much water revenue is lost

through non-payment and illegal connections. According to a government estimate annual national water revenue loss is approximately 30% of the total average demand (National Assembly, Internal Question Paper 14 June 2002). This estimate includes physical water loss as well as billing and meter losses and water theft through illegal and unrecorded connections. It is practically impossible to achieve 0% unaccounted for water due to natural factors like evaporation, so a widely used benchmark for an acceptable level of loss is 15%. The remaining 15% can then, in theory, be recovered through reducing the level of unbilled access. According to DWAF over 600 billion litres a year is lost as a result of leaks, inaccurate meters, non-payment and theft (News24, 15 February 2007). Based on this figure the total cost of non-revenue water annually is R3.259 billion a year.

It should be stressed that in both the water and electricity sectors it is impossible to work out exactly how much water and electricity is lost due to illegal connections. It may be possible that in some cases figures are exaggerated by government to justify harsh punitive measures against people engaged in illegalities. It also provides an easy target for blame when there are distribution problems. Yelland (2008), for example, claims that illegal access is a major factor in Eskom's recent distribution problems, but pays little attention to the effects of wasteful usage by industry and wealthy users. As a result the extent of the losses claimed by government, municipalities and other commentators is always open to question.

3.3   Historical Context

Under the apartheid-era National Party government, electricity and water distribution was radically skewed, as cheap, subsidized services were provided to white residential areas and business, while African, Indian and coloured areas were deliberately undeveloped. White industry particularly benefited from this subsidization, with service charges for industry being among the cheapest in the world at the time. This has left a legacy of infrastructural underdevelopment, as for many years millions of South Africans were denied basic water and electricity services (Terreblanche, 2002). This radical inequality made municipal services a target for resistance to the apartheid state. Rent and service boycotts were used by groups such as the United Democratic Front (UDF) as a way of protesting against both government oppression and the local authorities and councillors who represented the state (Seekings, 1999). Millions of South Africans stopped paying for services and rates during these rent boycotts. These boycotts were a major fiscal worry for the apartheid government: an estimate from 1988 holds that the rent boycott in Soweto alone lost the government $400m in revenue in a 20-month period (New York Times, 22 February 1988). Despite these boycotts, the state often continued to provide services in an attempt to quell the political fallout from cut-offs, which as David McDonald notes, resulted in 'a de facto subsidization of township services' (McDonald, 2002: 20). These boycotts were intended to directly undermine the government through making large parts of the country ungovernable. However, it has also been argued that they have created a culture of non-payment in which

residential users do not feel that they should have to pay for services (Johnson, 1999).

3.4 The Post-Apartheid Government and Cost Recovery

When the first democratically elected government took office in 1994, they were thus confronted with a legacy of inadequate service delivery, in which millions of South African had little or greatly restricted access to basic services such as water and electricity. This was compounded by the problem of widespread non-payment of services. Government's service delivery policies have been greatly influenced by the international adoption of neoliberal economic policies which aim at reduced government expenditure and an expanded role for the private sector. This global policy shift was precipitated by the collapse of the Soviet Union, which undermined notions of state ownership and central planning (Greenberg, 2006: 162). The increasing integration of the global economy also influenced the decision to adopt neoliberal economic policies, as it was hoped that such policies would help attract foreign capital investment which could be used to support the reconstruction of South Africa (Koelble, 1998). Although government argued that these policies were necessary to ensure economic stability and attract foreign investment, these polices have been harshly criticized by the left. Many commentators have seen this policy decision as a betrayal of government's promises of redistribution and have argued that neoliberal economic policies have further disenfranchised the poor, effectively replacing racial with class apartheid (Bond, 2004; 2005; Gumede, 2005).

While it is not within the remit of the thesis to engage extensively with these criticisms, in this section I will briefly elucidate how some of these arguments have been applied to the provision of services.

In terms of service delivery, South Africa's economic framework has led to the adoption of cost recovery methods which entail the 'practice of charging consumers the full (or nearly full) cost of providing services such as water and electricity' (McDonald, 2002: 18). McDonald (2002: 18) further argues that for services which can be measured in volumetric terms such as water and electricity:

> Cost recovery is achieved by charging end-users the (full) short-run marginal cost of production plus a portion of long-term operating and maintenance costs. To illustrate, if a person wanted to have electricity provided to their home, they would be expected to pay the cost of connecting the household to the electricity grid, a portion of the amortized operating and maintenance cost of the bulk infrastructure required to generate and distribute electricity, and a volumetric rate for the marginal cost of every kilowatt hour of electricity consumed.

Cost recovery measures are aimed at recouping costs so that municipal service providers can balance their finances to avoid deficits and stabilize their finances for further delivery. The revenue obtained from cost recovery can be used to finance further service upgrades and expansions. It can also be used as a means of managing demand for scarce resources such as power and water by penalizing over-users or non-payers. Cost recovery also entails a

greater role for the private sector in providing services, for instance in installing and upgrading meters.

Cost recovery measures have been adopted as policy on the national level. For example, the Municipal Services Act of 2000, which deals with municipal services throughout the country, includes the provision that services should be 'cost reflective' (DPLG, 2000: 74.2.d). Cost recovery has also been included in the policies which apply specifically to electricity and water services. The White Paper on Energy Policy states that 'government policy is to ... encourage energy prices to be as cost reflective as possible' (DME, 1998: 7). In the water sector, the White Paper on Water and Sanitation states that 'government may subsidize the cost of the construction of basic minimum services but not the operating, maintenance or replacement costs' (RSA, 1994: 19). The subsequent White Paper on Water Policy (1997) took the cost recovery approach further by proposing that 'to promote the efficient use of water, the policy will be to charge users for the full financial costs of providing access to water, including infrastructure development and catchment management activities'(RSA, 1997: 4). Legislation has also made it necessary for municipalities to implement cost recovery, through reducing the funding they receive from national government and by putting a cap on the taxes that they may levy. For example, the Draft Local Government Property Rates Bill (2000) states that government can 'set a limit on the amount of the rate that municipalities may levy on property, or the percentage by which a rate of property may be increased annually' (RSA,

2000: Chapter Two, Section Five). This encourages municipalities to push for greater cost recovery as a means of financing their operations.

While the adoption of cost recovery policies seems to undermine promises of redistribution, some aspects of government policy on water and electricity do take into account the long history of inequality in South Africa, by paying attention to questions of equitable service distribution. The Bill of Rights in the constitution, which was ratified in 1996, clearly states that 'everyone has the right to have access to sufficient food and water' (RSA, 1996: Chapter Two, Section 27). As a result, the White Paper on Water acknowledges that while cost recovery is an integral part of policy this has to also include provisions that 'some or all of these charges [may] be waived' (RSA, 1997: 4). The National Water Act (1998) also states that government should take an assertive role in ensuring water equity:

> The Minster may from time to time, after public consultation, establish a pricing strategy which may differentiate among geographical areas, categories of water users or individual water users. *The achievement of social equity is one of the considerations in setting differentiated charges* (RSA, 1998: Section 5.1, my italics).

The legal status of the right to access electricity is harder to ascertain. For example, the constitution does not include access to electricity in the Bill of Rights. However, the Draft White Paper on the Energy Policy of the Republic of South Africa states that:

The state must establish a national energy policy which will ensure that the national energy resources shall be adequately tapped and developed to cater for the needs of the nation. Energy should therefore be available to all citizens at an affordable cost. Energy production and distribution should not only be sustainable, but should also lead to an improvement of the standard of living for all the country's citizens (DME, 1998: 7).

The government has achieved some major successes in its attempts to roll out basic water and electricity infrastructure. For example, the 2007 Community Survey conducted by Statistics South Africa, which provides a socio-economic audit of municipal statistics, indicates that access to electricity by household has risen from 69.7% in 2001 to 80% in 2007, with almost all households (94%) being electrified in the Western Cape (StatsSA, 2007: 4). At the same time, 88.6% of the population had access to piped water by 2007. This is a success which must be attributed to government service policies. Although the government has adopted cost recovery measures, it has still taken an interventionist role in poverty alleviation through spending on welfare and service delivery. Despite the controversies over its economic policies, the government has maintained an emphasis on redistribution seen in the large amounts of social spending, with even a critical view describing South Africa 'as more of a welfare state than any other country in its category of per capita income' (Lootvoet and Freund, 2006: 256). This has also meant that the state has adopted policies such as indigence clauses, progressive block tariffs and free services to mitigate the effect of the cost for those who are not able to pay for services due to poverty.

Nevertheless, the government's adoption of cost recovery measures has been bedevilled by controversy. The most persistent problem has been that of high debts and service arrears. For example, in 2001 Eskom reported that debts in the greater Soweto area amounted to more than R1.1 billion (Eskom, 2001). In the same year, residents of Khayelitsha owed the City of Cape Town more than R231 million in arrears for rates, water, sewerage, sundries and refuse removal (*Cape Argus*, 20 February 2002). It has often been argued that these debts are not principally the result of an unwillingness to pay but because costs were too high for most users. In the case of Soweto, Maj Fiil-Flynn writes that residents 'repeatedly stated that they are willing to pay for (good quality) services but are simply unable to pay the full amount of their bills with low or unstable incomes' (Fiil-Flynn, 2001: 16). On a national level, the non-payment of services rose to R40 billion in 2005, which is a third of the total revenue of all municipalities (Ruiters, 2006: 134). This inability to pay for rates has frustrated attempts to achieve cost recovery and has often forced municipalities to initiate wide-scale debt write-offs.

Cost recovery measures have also been perceived as being unfair in that poor customers may pay higher rates than the well-off. As McDonald (*Mail and Guardian*, 26 May 2003) points out in the case of Soweto:

> The price of electricity went up by as much as 400% as the pricing system moved from 'flat rates' to 'tariff structures' (the more you use, the more you pay). Worse yet, new tariff structures are often regressive, with residents in townships and former homeland areas sometimes paying more per kilowatt hour of electricity than suburban residents and industry. In 2001 rural South

Africans were paying as much as 48 cents a kilowatt hour while industry

paid as little as 3 cents (the cheapest industrial rates in the world).

3.5   Government Responses to Illegalities

Cost recovery policies have had a direct bearing on the methods which

government uses to deal with non-payment and theft, as illegalities obviously

undermine effective revenue collection. Accordingly, government has

launched various programs to deal with the problems of widespread non-

payment and theft. Chief amongst these has been the initiative Operation

Masakhane ('Let's Build Together') which was launched in 1995 with the

aim of ending the so-called 'culture of non-payment'. In his speech at the

launch of the campaign, then State President Nelson Mandela (1995) argued

that while non-payment had been an important tool in the fight against

apartheid, it was no longer necessary under a democratically elected, multi-

racial government. Mandela further argued that payment of services is an

expression of responsible citizenship: 'with freedom comes responsibility,

the responsibility of participation ... We all have the responsibility to pay for

what we use, or else the investment will dry up and the projects come to an

end'. Mandela suggests here that government is concerned with inculcating a

culture of service payment, in order to fund further development. The

developmental necessity of payment has been consistently emphasized by

government officials.

At the same time, government has viewed post-apartheid illegalities as criminal actions, which should be actively penalized. In a 2001 speech Jeff Radebe, then Minister of Public Enterprises, argued that illegal connections were encouraged by anti-government elements who aimed to capitalize on the problems government had experienced with service delivery: 'our collective failure to respond has allowed an opportunistic element to hijack the situation for its own political and criminal agenda' (Radebe, 2001). This was echoed by Ronnie Kasrils (2003), then Minister of Water Affairs and Forestry, who argued that illegalities are a direct threat to social development:

> … we will take action against people who abuse the system and steal water through illegal connections and tampering with meters. This is necessary to ensure that our systems continue to function, to preserve law and order, and to make sure that we are able to continue to provide free basic water to those whose need is so terribly great.

Officials have also asserted that citizens should view electricity and water as commodities which require payment, and not as natural rights. For instance the South African Revenue Protection Agency's Annual Report in 1998 states that 'electricity is a commodity just like any other energy sources ... people do not expect to walk out of a shop without paying for any of these commodities, why then is electricity any different?' (Mkwanazi, 1998).

In order to ensure payment for services, and correspondingly control illegal access, government has employed a variety of different tactics. Generally,

municipalities will employ a range of these different responses to ensure payment. It is possible to identify several responses based upon the different approaches which are used to deal with widespread non-payment. The first approach entails the use of punitive methods, such as cut-offs, which aim at punishing non-payment. The second is the technological approach of using pre-payment meters to prevent non-payment. The final approach entails negotiating with users to ensure payment.

3.5.1   Disconnections, Cut-offs and Evictions

The most coercive method that has been used to achieve cost recovery is that of service disconnections for non-payment. Cut-offs and disconnections refer to the deliberate termination of electricity or water services for reasons of non-payment. Cut-offs are performed by the state or private companies with the assistance of the police or hired security. Service cut-offs are not a post-apartheid era innovation. Historically, white councillors, farmers or mine supervisors would cut off water as a means of punishing black communities and tenants (Greenberg, 2004). The apartheid government also used disconnections as a means of both punishing and recovering costs from townships which were involved in rate boycotts (Chance, 2006). Since 1994, water and electricity service cut-offs for non-payment have become a major enforcement method which has been implemented by municipalities throughout South Africa (McDonald, 2002: 169-70). In the case of electricity, disconnection entails being removed from electrical service due to unpaid arrears. When arrears are paid or debts are written off, users may be

reconnected by Eskom or municipal providers. In the case of water, cut-offs affect both piped tap water which is inside a dwelling and on site (so-called yard taps). Cut-offs may also affect communal or standpipe public tap water. Again, service is restored when arrears are paid or written off. In both the electricity and water sectors, supplies may be restored on the condition that users install a pre-paid meter device in order to prevent further debt accumulation.

The extent to which disconnections and cut-offs have occurred has been a matter of some controversy. According to McDonald (2002: 170) by 2001, 3.5 million people had their water cut off for non-payment, while 3.25 million had their electricity disconnected. These figures can be further extrapolated to include the number of people in households affected by cut-offs. McDonald argues that the total number of people affected by water cut-offs in this period is just under 10 million, with a similar number being affected by electricity cut-offs. These figures have been widely used, but have been contested by DWAF officials who argue that the direct questions used in the survey (e.g. 'Have you had your water/electricity cut off for non-payment in the last year?') invite affirmative answers (Hemson and Owusu-Ampomah, 2005). Respondents who replied affirmatively, could have been indicating that they had experienced interruptions for other reasons, such as technical faults, which may have led them to believe that they had been cut off for non-payment. Even if this is taken into account, the number of cut-offs for non-payment of electricity alone could be as high as 4 to 5 million users in the decade since 1994.

Municipalities have also taken measures against users who are illegally connected to services. These measures include the destruction of illegal infrastructure, through tearing out cables and piping to prevent further reconnections. Municipalities have also performed surprise raids on communities which are suspected of having a large number of illegal connections. Finally, municipalities have in some cases instituted legal actions and seized the property and buildings of non-payers in an attempt to recover some costs (Fjeldstad, 2004). These methods have been perceived as draconian and have in some communities been met with widespread resistance (Harvey, 2005; McKinley and Veriava, 2005). Resistance to the disconnections and evictions has been a mobilizing pivot for new social movements: both the Gauteng-based Soweto Electricity Crisis Committee (SECC) and the Western Cape based Anti-Eviction Campaign (AEC) were founded on community mobilization around these issues.

3.5.2   Pre-Paid Meters

The technology most widely used to ensure payment for water and electricity is pre-paid metering devices (PPMs). PPMs require the user to buy credit to input in the meter in order to receive services. This system has several benefits for municipalities and utilities. With PPMs users must pay before they use electricity or water. This guarantees a revenue stream and prevents the accumulation of arrears. It also allows service providers to avoid dealing with the problems of debt collection and disconnections. Pre-paid meters

require that customers purchase units and charge the meter. Users who cannot afford the upfront payment of units effectively disconnect themselves from the service. As Harvey points out this avoids the problem of 'politically explosive' service cut-offs, because self-disconnections occur within the homes of users (Harvey, 2005: 121). Pre-paid water meters work much like pre-paid cell phones. In the case of water, users buy an electronic card with credit corresponding to a certain amount of water. The card is then inserted into a machine which is attached either to a household water meter or a public standpipe. Water can then be accessed until the credits run out, at which point the service will automatically disconnect. Pre-paid water meters are often used in conjunction with flow restrictor or trickler devices which provide a very restricted supply of water. In the case of electricity, units are bought at a vendor or can be purchased via a cell phone using an SMS ('short message service' or text message). Again, once the household units are used up, the electricity supply will automatically stop. This system is designed to prevent arrears, but there have been cases where meters have been tampered with to provide free services or to alter the billing amount. However, improved metering design has meant that tampering can result in automatic disconnection and prosecution by the service provider.

PPMs are now widely used in South Africa. By 2006, over 2 million electricity pre-paid meters had been installed nationally (StatsSA, 2006). They have also been widely used in the water sector. One of the largest projects of this kind is Johannesburg City's Operation *Gcin'amanzi* (isiZulu for 'save water') which by 2007 has installed over 78 000 meters (Barradas,

2007). PPM technology has also proved to be controversial especially with regards to its use in water delivery. It has been argued that restrictor devices pose a major health risk and discriminate against the poor. This argument was supported by a 2008 Johannesburg High Court ruling which ruled that PPM water devices are 'unconstitutional and unlawful' (*allafrica.com*, 6 May 2008). Although the city is appealing the judgement, the ruling shows that at the very least, PPMs are a highly controversial technology.

3.5.3 Provision of Free Basic Services

Government has also used several incentives to encouragement payment for services. The main mechanism for mitigating the effects of cost recovery for the poor has been the introduction of free basic services. The free basic water policy entails the provision of an amount of water that should be provided free to poor households to meet basic needs, with an amount currently set at 6kl per month per household within 200 meters per dwelling. Free basic electricity is based upon the same principle with an amount currently set at 50 kWh per month per household (RSA, 2003; 4). Access to these free basic services requires users to register in terms of the Indigent Grant Policy, which is being implemented by municipalities. Once the free monthly 'lifeline' services are used up, users have to pay for services. As a result many municipalities include the provision that households which receive free basic service install pre-paid meters to ensure payment. For example the indigent policy of Mogale City includes the conditions that households can only qualify for free basic services once they have a meter installed (Mogale

City, 4 July 2006) . This is to ensure that free services are cross-subsidized by payment once users have finished the lifeline service. Activists have argued that the free basic policy does not provide substantive access and is merely a way for government to meet its minimum requirements at the lowest possible cost (Bond and Dugard, 2008). There have also been bureaucratic problems around the implementation of the indigent grants with beneficiaries not being informed of their status and delays in implementation.

3.5.4   Debt Write-Offs

The inability of many poor users to pay off high arrears has resulted in municipalities offering the incentive of debt write-offs. In some cases this has taken the form of wide-scale write-offs for communities that have accrued high arrears. For example, in 2007 the City of Cape Town decided to write-off R1.5 billion of service debts that had accumulated before September 2003 (Cape Town Unicity, 2007). This write-off is not an act of charity and is clearly intended to ensure future payment, as it comes with the provision that non-payers or those who did not register for the indigent policy could expect to face legal action. While this is an example of a blanket debt 'amnesty,' other municipalities allow individual users to negotiate debt payment. In the case of Mogale City, households can make an arrangement where a large portion of their outstanding debt is written off after registering their debt and making alternative payment arrangements with the metro (Mogale City, 4 July 2006) These write-offs may be understood as a reprieve which is

intended to ensure that users begin to meet their payment obligations in the future.

3.5.5   Media and Education Campaigns

Utilities and municipalities have also embarked upon media campaigns which are aimed at both encouraging payment and discouraging illegal access to services. Eskom in particular has launched several campaigns against illegal electricity connections. The most prominent of these has been the *Izinyoka* ('snakes' in isiZulu) campaign which is aimed at encouraging the public to report cable theft and which depicted those who connect illegally as being 'snakes'. The media campaign for this included adverts in print, radio and television. These campaigns have included a particular focus on the dangers of illegal connections, such as their potential for causing fires through low-lying cables. Increasingly, illegal access is being pointed to as a major contributor to the country's power shortages (SARPA, 2008). Eskom and several municipalities have opened hotlines where people can report incidents of illegal access. In some cases, whistleblowers have been financially rewarded for reporting illegal access (Cape Town Unicity, 2007).

3.6   Conclusion

While it is difficult to ascertain exact figures, illegalities are clearly a serious fiscal worry for water and electricity utilities. Non-payment and theft have severe consequences, such as less money for the maintenance and

implementation of infrastructure and higher costs for paying users. Government has identified this as a serious problem and has initiated several measures to ensure payment for services. This is underpinned by a moral argument that citizens should pay for the services they receive. However, it has also been argued that illegalities are a result of poverty and a concomitant inability to pay.

Chapter Four: Field Work Findings

I have three primary aims in this chapter. Firstly, I look at the manner in which illegal access is encouraged as both a direct means of gaining services and as a form of civil disobedience. Secondly, I explore the reasons which underlie the decision to illegally connect. I aim to identify some of the basic factors which lead to the creation of 'unruly citizens'. Finally, I look at the extent to which popular illegalities are motivated by popular dissatisfaction with government service delivery. Are illegalities purely a reaction to material conditions or do they also function on some level as a kind of silent protest? With this in mind I aim to show at least some of the reasons why illegalities are still prevalent in the post-apartheid era despite government interventions such as free basic services. I use three case studies: an unserviced, informal settlement called Kennedy Road, in the eThekwini municipality; a serviced semi-formal township, the Harare section of Khayelitsha, Cape Town; and Extension Nine, a fully serviced township in Grahamstown. The three case studies are very different, and were thus able to provide me with a useful cross-section of different experiences regarding water and electricity services in South Africa.

4.1   Kennedy Road, Durban

Kennedy Road is a shack settlement of about 7 000 people which sits on the periphery of the middle class suburb of Clare Estate. The settlement sprawls between the Umgeni Road six-lane highway and the Bisasar Road landfill (one of the largest dumps in the southern hemisphere). Just below the

Kennedy Road settlement there is a World Bank sponsored methane conversion plant. Unlike the nearby settlement, the plant is extensively provisioned with electrical infrastructure. In 2001 the municipality took the decision to end its electrification programme in the shacks, based on the perception that the programme was too expensive and would encourage the spread of slums. This has turned Kennedy Road into a zone of illegality, as all new electrical connections are now illegal. While some residents still have legal meters which were installed prior to the de-electrification programme, most are connected illegally. Residents who want a connection will get in touch with contractors who appear to be municipal workers, or at least people with access to legal meters. Some users will pay directly to these contractors to install meters. Alternatively, people will pay to have lines installed to these meters which will than be run to their shacks for a monthly stipend. There are also cases in which people attempt to connect wires directly to power outlets. This is a far more dangerous practice as it runs the risk of causing shocks and electrical fires.

There is a visible proliferation of illegal connections in the settlement indicating how commonplace it has become. Official water provision is equally dire with five public standpipes which service the community. This has seen the creation of an illegal water infrastructure with users paying to run piping directly from the taps to their homes.

<u>4.1.1   Abahlali baseMjondolo and Popular Illegalities in Kennedy Road</u>

Kennedy Road has attracted much media and academic attention in the past few years as it is the home of Abahlali baseMjondolo (isiZulu for 'people who live in the shacks') a social movement which since 2005 has agitated for better service delivery as well as opposing attempts to move shack dwellers out of urban areas in accordance with the KwaZulu-Natal government's Eradication of Slums Act. The movement grew out of the previous residents committee. Abahlali was founded from an act of spectacular protest in early 2005. After being denied permission for a legal demonstration, residents barricaded the nearby Quarry arterial road with burning tyres and mattresses to highlight their frustration with lack of services. This provided the spark for the nascent movement. Since 2005 its branches have grown at a rapid pace, with members in 36 shack settlements (primarily in KwaZulu-Natal, but there is now also a branch in the QQ section of Khayelitsha). Although the movement has grown geographically its head offices are still based in Kennedy Road, and I used these headquarters as a platform from which to conduct my research and interviews. Abahlali has been the site of much academic interest (see for example Patel, 2005 and Pithouse, 2005). To avoid simply echoing this literature, I focus my discussion of Abahlali on their relationship to popular illegalities.

As with the SECC, Abahlali has used illegal access as both a form of civil disobedience and as direct action. Although illegal connections were already prevalent before the founding of Abahlali, the movement has capitalised on

these already existing illegalities. It has attempted to make illegal

connections safer for the community through using trained electricians from

the community who then teach others how to connect safely at no cost.

Abahlali has encouraged connections in defiance of government initiatives to

end such activities. After a large-scale series of disconnections by the

municipality in March, the movement launched, in another echo of SECC

practice, its own 'Operation Khanyisa' which aimed to reconnect residents

who had been cut off. S'bu Zikode, Abahlali's president explains that:

> Operation Khanyisa is of course connection of electricity by force,
>
> which is said to be illegal. All we say is that we do not need
>
> electricity but that it is needed for our lives. And this has proven itself
>
> in how at risk the lives of shack dwellers are without electricity. For
>
> example on the 14 July 2008 Kennedy Rd settlement was on fire and
>
> more than six hundred people were left homeless. On the 1 August
>
> again 22 people were left homeless after another shack fire broke out
>
> … it will be very stupid for shack dwellers to abide by laws which do
>
> not protect them from death. Most shack fires are caused by explosive
>
> paraffin stoves and stoves so the demand to install electricity becomes
>
> even more demanding and necessary. Especially as people who went
>
> to apply to buy electricity were chased out from eThekwini Electricity
>
> Dept. because of the policy that was passed in 2001 which made it a
>
> crime for shack dwellers to have electricity. So it is correct the shack
>
> dwellers were left with no other choice in order to survive but to be
>
> safe (email correspondence with S'bu Zikode, 18 August 2008).

All the members I spoke to agreed that illegal connections were necessary for survival in the shacks. Until they are offered legal access, illegal connections will continue to be used. They also blamed the municipality for criminalizing the entire community. The denial of services 'is creating *Izinyoka* [illegal users, literally 'snakes']. People know that electricity is a basic right, and people need it' (Interview with Zama Ndlovu, 26 March 2008). While Abahlali clearly encourages illegal access it is by no means the primary 'service provider' in the settlement.

4.1.2   Interviews with Abahlali Members

I conducted interviews with Abahlali members on their perspectives on illegalities. This proved particularly useful because they were able to offer explanations based on their perspectives both as activists and as residents of Kennedy Road. Zama Ndlovu argued that the nature of illegalities is hard to define in the settlement. Some people connect themselves or are connected by other community members at no cost. However others are aided by officials and pay fee to have a predpaid meter installed., The state would see this as both contrary to its policy to not provide electricity to shacks and, also, as corruption. But people who have paid state officials to install a meter often consider their connections to be legitimate. The line between licit and illicit practise therefore becomes blurred. As a result illegal connections are regarded as a legitimate form of service delivery: 'I pay for electricity so who can say that I am illegal?' (Interview, 26 March 2008). She maintained that

shack dwellers were being stigmatised as criminals who erode electricity supply through theft. On the contrary illegal connections power very little – 'only basic appliances'. Because shack dwellers are seen as anti-social and as born criminals they are preyed upon by corrupt elements within the municipality. In her own case her computer had been confiscated by the police who claimed that it must be stolen if it belongs to a shack dweller. In other cases police officers would 'collect' cellular phones and other electronic equipment from residents and then charge them a fee to retrieve their property. She said that this was both blatant corruption and a form of psychological abuse which aimed to erode squatters' rights to such commodities.

Fanuel Nsingo, another young member, elaborated on many of the points Zama had raised. He argued that the extent and danger posed by popular illegalities to the state's ability to provide electricity is deliberately exaggerated:

> The people in shacks in the whole of South Africa can't take up the full 4 000 MW of electricity that is needed for the whole of the country. If you look at the mines when there was the whole load shedding thing and power rationing thing the mines were the most affected, so you can prove the mines take up most of the electricity, not shack dwellers. If you talk to shack dwellers and disconnections, [illegal users] are using just one line. Just imagine that they are just sharing what is passing through. They are not taking it from the main

switch they are just using passing electricity. It is just passing current that is being taken (Interview with Fanuel Nsingo, 29 April 2008).

Therefore, Abahlali activists believe that shack dwellers are unfairly blamed by the media and municipality in an attempt to assign blame for South Africa's electricity woes. He went on to say:

> The municipality took photo snaps of that one electrical pole which had illegal connections. Than the one pole represented all the shacks in South Africa to mean that electricity is being stolen in this way but now they have to prove that it is being stolen from these shacks. They go to one pole in Kennedy Road or Jadhu Place [another Abahlali-affiliated settlement] and say that the pole represents all the illegal connections. They don't even mention where they picked the pole from but now it's representing all the illegal connections in shack dwellings in whole of South Africa.

Nsingo continued that connections are prevalent because of material needs and not an inherent resistance to payment:

> There are many problems without electricity. We have kids, guys, and it is not safe for them. We have come out of the apartheid system, but now they are colonizing the children. They have to do their homework in the dark. They are reading books in the dark, or maybe just using candles. Maybe the family can just afford a candle per day,

now you need extra packets for candles for the homework … the industries I am going to work at, I am given a meagre salary or wages, whatever, so that small salary is taken away from me by thieves because there is no lighting where I pass when I go back to work or come back. Even during the weekend I can't loiter around here seeing my friends and relatives so it is very dangerous.

He saw the de-electrification policy as an officially mandated attack on the poor which is a disaster for the poor:

Because we are denied electricity what are we supposed to do but get illegal connections. As I put it previously shack dwellers are not baboons or monkeys, we are people too we need to be listened to … Just imagine this highway, the N1 from here to Beitbridge Bridge [a major bridge on the border of South Africa and Zimbabwe in Limpopo Province] with no electricity, there is no floodlights at any given point of the N1 and cars just get like this … smashing and piling, smashing and piling. But now they want to cause this smashing and piling on us. Look at the [methane conversion] station there: I don't know if it's a bio-station or what. It has more than ten. Ten floodlights! But just imagine how many square metres it is. Very, very small place that one … but in Kennedy Road we are saying that if we just had ten floodlights just imagine how colourful it would be.

I also conducted two interviews with S'bu Zikode. Zikode said that there is no mystery behind illegal connections:

> Why do people connect? Because electricity is a basic human right. It is needed for survival. Without electricity it is life-threatening in the shacks. This is because of such things as fires. Electricity gives power to the people. We have the saying in South Africa 'amandla' which means power. Electricity is amandla. It gives power (Interview with S'bu Zikode, 29 April 2008).

He regards the struggles around service delivery as being primarily a moral issue:

> The refusal of the city to provide services is a moral issue. We in the shacks are even worse off than people in the townships. At least they have access to water and electricity. They say Durban is a world class city. It will only be a world class city when people are treated decently. They have this high level of technology but people are denied access to it … If you look at this Slums Act it is a move back to apartheid-era laws like the Group Areas Act. If you cannot afford to live in the city you are driven out. Look at the laws they now have in the city against street traders. They are criminalizing people, criminalizing poor people (Interview with S'bu Zikode, 26 March 2008).

This is seen in the techniques the city uses to deal with illegal connections. A few weeks prior the police had launched an operation to cut off connections on one side of Kennedy Road:

It was an attack on the dwellers. People who have had electricity for years have been cut off. There was the SAPS with a private security company. They rolled up cords and cut connections. They came when they knew people would be away at work. The first to come were officials, who were followed by the police. They even brought the dog unit. There were about twenty vehicles cordoning off the area. They turned it into a no-go area for a few hours. Some residents even had physical confrontations with the police (Interview with S'bu Zikode, 26 March 2008).

Zikode maintained that illegal connections provide an important survival function for residents and are not regarded as an illegal activity by many of the community:

Electricity is cheaper than paraffin. Paraffin is linked to the petrol price, to the oil price and is always going up. It [electricity] is also a lot safer than paraffin which causes fires … before 2001 people could buy their electricity legally. But now they are denied the right to access. So the Council legally installed boxes and issued cards but now they say people are stealing. But then how do you tell who is stealing and who is not? Who is actually stealing? And if we are

stealing why is the municipality accepting my money (Interview with

S'bu Zikode, 30 April 2008).

Zikode concluded by saying that Abahlali was not opposed to the

government but was trying to use civil disobedience and direct action as a

means of winning a more interventionist role from the state:

> They must act rather than react to disasters like fires. They must take
>
> an initiative role. People are born in the shacks and they will die in
>
> the shacks. These are people's houses because it is all they can afford.
>
> If you look at all the national protests and riots it is not just about
>
> service delivery. Service delivery is not the main issue; the main issue
>
> is human dignity. People want to be regarded as human beings. They
>
> want alternatives and not just more lies. We want housing which is
>
> safe and creates a safe environment where people can live with
>
> dignity. And they want to be consulted by government … government
>
> calls this 'service delivery protest' because they always assume they
>
> know what people want. Democracy is not about loyalty to the party
>
> and just receiving orders. It is about listening to people. It is about
>
> giving a voice to the marginalised.

4.1.3   Interviews with Other Kennedy Road Residents

I also conducted several interviews with residents who are illegally

connected, but who are not necessarily linked to Abahlali. Because of the

highly sensitive nature of my questions (some residents thought that I was working for the municipality) the interviews were very informal and I was not able to use a voice recorder. The respondents also asked to remain anonymous. I spoke both to residents who were illegally connected as well as people who had had their supply cut off in the disconnections. Residents who were illegally connected told me that it was a matter of necessity: 'we need it for ironing and getting the kids ready for school. I need to able to do ironing because the children need to be smartly dressed for school. As a parent it is my job'. At the same time illegal connections carry their own financial burden: 'Often at the end of the month, I can't pay for the connection. So we change back to paraffin. But paraffin is too expensive. The connection costs R150 a month which is also too expensive. Even though it is expensive we still pay because we need electricity'.

Residents who had been cut off found that their quality of life had greatly declined with their sudden lack of access. One man told me that 'I can't use my fridge and my iron. I can't watch DVDs or watch the news on TV. It's unfortunate that the television doesn't come with batteries'. Another woman found that she could no longer use her sewing machine which she relied on as an extra source of income. But despite the heavy-handed tactics of the municipality she was unbowed: 'I wasn't around when they came to do the disconnections. I would still love to reconnect. It will cost me R100 to reconnect. I will ask my neighbour and they will negotiate for me to get a connection'. Residents were also angry at the municipality's handling of the

disconnections, which they felt was an attack on their right to survive and live within the city:

> We can't use paraffin stoves because they are not safe. They burst easily. They are expensive so people have started buying cheap stoves which are not SABS approved … the police came here and ripped up all the wires. There's nothing we can do about it. They say illegal connections are not safe but that's not true. It is very safe with electricity. The underground wires are safe. It is the Council who are causing these fires. It takes three hours for a fire engine to come when you call them.

He concluded that attempts to push shack dwellers out of cities were futile: 'I live here because it is very close to where I work. I am not going to move to government houses. They are too far away and taxis from there are too expensive.'

Illegalities seemed to serve a dual role in Kennedy Road. The municipality had deemed the residents and the settlement illegal and so refused to provide services. In this space the residents had carved out a complex illegal infrastructure to meet their service needs. This functions as a kind of shadow state, as residents still pay to receive access. This is symptomatic of Bayat's 'quiet encroachment' in which the poor use everyday practices of survival to win a place in the urban environment (Bayat, 2000, 24, Pieterse, 2005). At the same time the existence of Abahlali showed that this is not just a case of

development from below in which the poor evade the state to focus on their own localized practices (Scott, 1998). Instead there seemed to be a great desire for positive government intervention. While residents illegally connect as a matter of necessity, they still look to the state for substantive material improvements in their community.

4.2   Harare Section, Khayelitsha

Khayelitsha, which means 'New Home' in isiXhosa, is one of the largest townships in South Africa. Situated on the Cape Flats it was founded by the apartheid government in 1985 as a way of keeping a burgeoning black population out of the city after the end of formal influx control laws (Worden et al, 1998). To this day it remains a sprawling mix of both formal houses and informal shacks. Khayelitsha has received a large amount of infrastructural investment from the Cape Town Unicity with the construction of a large CBD. The township (which should really itself be regarded as a city, in terms of its size and population), has been described as a perennial debt headache for the Unicity. In 2002 it was claimed that residents owed over R231.6 million in unpaid service rates (*Cape Argus*, 20 February 2002). The city has instituted various measures to ensure payment. After a court ruling in 2005 the municipality has stopped installing pre-paid water devices but has instituted trickler devices.

I conducted interviews with Senza Kula, a community activist, and with an anoymous Harare resident who is in chronic debt with the municipality. Kula

is the president of Ilitha Lomso, a youth-based community organization which focuses on environmental and water rights. Kula says that high rates of non-payment and illegal access in the township are not the product of a culture of non-payment but a combination of lack of infrastructure and chronic poverty and unemployment:

> There is very undeveloped infrastructure here such as poor piping which leads to leaks which then leads to high bills. The city writes off debts but after the debts are cleared they will start again. The write-offs also mean that people are obliged to pay in the future. It is a forced commitment. This is a short-sighted approach. We want them to take a holistic approach … It is an issue of revenue versus people, of water prices versus people. Under Helen Zille the water disconnections have stopped. But in the Cape Flats there are still electricity cut-offs. In terms of debt they target people in months like December, when people are using a lot of water and electricity. That's when the pink slips are rolled out (Interview with Senza Kula, 4 April, 2008).

He argues that certain initiatives may actually perpetuate non-payment while not meeting users' needs:

> As Ilitha Lomso we want the provision of 50 kl of water as per the World Health Organisation agreement. As it is now, the policy is based on the assumption that there are four people in every household

which does not take into account the actual number of people living in each house. Another problem is that the city does not communicate how pricing actually works. This perpetuates debt. I would say that only 5% of residents actually understand how the bills work.

Government initiatives to end illegal connections also appeared to have failed. Residents from the informal settlements which surround the legal housing will pay residents for connections to their meters. These connections are visible all over Harare section as the wires run under roads directly to houses. Kula added that: 'The Izinyoka campaign has failed. People now steal from poles in the day. It is commonly accepted'.

I also interviewed a resident who lives on shack stand which abuts the N2 Freeway. She shares a trickler standpipe with several of her neighbours. Because of the meagre stream of water which this receives, taps are kept on all the time in order to collect water in buckets. As a result people from the informal QQ section, which is across the road, will apparently come and steal water at night. Despite being on the trickler system she still receives invoices from the city. She is unemployed, has two daughters and is currently R18 000 in debt. She seemed resigned to poor treatment from the municipality:

> The toilets here are not working. They can't be locked. They are broken but the municipality does not fix them. The people from the municipality come and use them … The rich do not have to pay like

we do. They can afford to pay. Everything is too expensive these days.

As with Kennedy Road, illegal connections in Khayelitsha seem to be a form of silent encroachment, in that residents are connecting in the absence of substantive official provision. The major difference is one of scale: the township is growing at an exponential rate and it appears as if government does not have the capacity to meet the constantly growing demand for services. This problem is compounded by poverty, which means that people are unable to meet payment demands. Rather than unwillingness to pay, the situation appears one of inability to pay. The case of the resident is instructive in this regard. Although she is in chronic debt she still keeps all her bills which is hardly the behaviour of someone who is trying to cheat and avoid the state.

4.3 Extension Nine, Grahamstown

My final field work site is Extension Nine, a fully-serviced RDP township which is part of Grahamstown East. Extension Nine is a relatively new development as it was only established in 1999 (Moller, 2001). I visited Extension Nine several times throughout the year. While this was a valuable experience I found it hard to concentrate exclusively on popular illegalities. Whenever I visited and did door-to-door interviews people thought that I was a journalist, coming to report on their housing conditions. When I asked questions about illegal access or non-payment people would often become

obtuse and tell me that they did not know about anything about this. Alternately they would mention that they had heard about people in their neighbourhood who were illegally accessing electricity but that they did not know them personally. Generally I would be told that such behaviour was anathema and that as residents they frowned upon this as representing a dubious, even immoral means of acting. On the other hand people were generally forthcoming about the problems that they experienced as paying service receivers.

Interviews with Extension Nine residents reveal the dissatisfaction people feel towards the municipality, but also their opposition to illegal connections. People felt that the electricity provided by the municipality was expensive and inadequate. For example, the amount of electricity provided is often insufficient to power several appliances at once. One resident showed me how his electricity supply was inadequate for the running of a cooker and a CD-player simultaneously. The purchasing of pre-paid vouchers was also considered annoying and inconvenient.

One of my interviews was with a women resident who lives with her family in a government built house and who asked to remain anonymous. She has a pre-paid electrical meter installed but, like other residents, is unhappy with the amount of current provided as it does not meet her daily needs. Generally, she is dissatisfied with the level of service delivery due to a lack of communication from the municipality: 'They will turn off without telling us because of load-shedding. Sometimes it will be off the whole day. It turns off

when I need to get ready for cooking. I can survive without electricity but not the children as I can't make food'. However, she was opposed to illegal connections:

> If you can't pay you don't buy. It is not good to steal because you will get in a lot of trouble. Also if you try to play with the meter it will go black and turn off. The municipality can see if you have tampered when they open the board. People think that they are clever and cannot pay but if you are caught you will be in trouble. You will have to pay money to get re-installed. People don't do that around here because they know that they will get in trouble.

On the other hand she had not paid for water for some time: 'I have not paid since 2000. They send me the accounts once a year. But they have never tried to cut me off. So now I am not paying but I still get water. The amount of water that I get now is fine because I can do everything I need to with it.' She was worried that she may be punished for not paying at some point:

> I am not happy because I don't know when the debts will stop. I am worried that they will come when I am out and cut me off. If you are not in your house they can come into your garden and cut off and you can do nothing to stop it. I can't stop the municipality if they want to cut me off because it is their work. What can I do though because you can't survive without water.

I was assisted in this research by Vuyo Booi, who is a community activist and resident of Extension Nine himself. I interviewed him about illegalities in the area as he has lived in Grahamstown East for most of his life. He told me that there was an amount of cable theft in the township as people would steal electrical cable to sell to a local scrap shop. He personally felt that these illegalities are dangerous:

> They put people in danger. Families lose out when these materials are stolen. They can't use their fridges and television because they get fucked up by the theft … when the wires get cut at night everything is affected and stops working. It also takes forever for the cable to get repaid, replaced by Eskom. It takes months.

I moved away from copper theft and asked about illegal connections.

> People connect themselves. Because the transmission is weak people can open the switch box, the meter box, and connect themselves. The meter box still reads but people don't go and buy credits.

Booi is opposed to this theft as he sees it as contributing to the national electrical shortage:

> People do it out of ignorance because if they get caught they will be in a lot of trouble. They will have to pay a lot of money which they can barely afford to Eskom. So people need to go with the pre-paid

system. I know people are struggling to pay but they must abide by the rules. If you break them you are causing yourself unnecessary trouble. Also if lots of people start doing it will start affecting the whole community. I believe that people in the township aren't happy with people stealing electricity.

In Extension Nine itself electrical theft is not such a problem but there have been cases where young people try to manipulate the meters without their parent's knowledge: 'They say it's because they can't afford to waste money on electricity bills. They have this thing called the viva system. They call it viva as it's something that goes on forever.' However he felt that this was not necessarily a form of political resistance:

> It could be a problem because people will be happy just with free services. People are facing a lot of poverty, a lot of unemployment. Government grants are not enough. Now we even have this food crisis. Because of this a lot more people may start doing this. So people want to reduce costs. This could lead the whole of society to think that they should stop paying, that they should go with this viva system. But personally, like I said, I feel that it's wrong because it's illegal. It undermines the law of the country. I know it's hard for people but they shouldn't just do this. They should learn about what's going on in the world, about living in a capitalist society. They should remember what they were fighting for under apartheid. They should find ways to struggle for things like electricity. They should thing

about how they can get it. They should find out why the things they

want in the world aren't happening. It not a solution to steal

electricity or copper because it's not a revolution yet. So they are

disturbing their community, they are disturbing the whole of society.

He felt that such a strategy would only have validity in the case of widespread cut-offs such as those which precipitated the emergence of the SECC. At the same time he admitted that it's likely that 'such things are not creating most of this power crisis. I'm sure that if you did some research you would find that lots of big companies, even small companies, are doing the same thing'. The situation is also complex because there is widespread non-payment of water as evidenced by the earlier interview:

Most people don't pay water. I'm one of them. People are

unemployed or they are on the grant so at the end of the month they

can't afford to pay. Where are people supposed to get the money?

People should do their thing until they come to cut them off. When

they come they should ask the municipality how they expect them to

live without water.

Interviews with Extension Nine residents reveal that many South Africans are ambivalent about illegal connections and non-payment. While many interviewees are strongly opposed to illegal electricity connections, they consider non-payment of water bills an acceptable practice. Furthermore, dissatisfaction with service provision does not necessarily entail condoning

of illegal connections. In communities like Kennedy Road, illegal connections have become normal practice, but in other communities, particularly more formalised communities like Extension Nine, illegal connections are less widely accepted. Also, non-payment of water and non-payment of electricity are not necessarily viewed in the same light.

4.4   Conclusion

The three sites reviewed all had local factors which lead to widespread popular illegalities. However there are also are also significant similarities. In all three communities, popular illegalities were caused by inability to pay and lack of access to services rather than a refusal to meet payment obligations. Because these illegalities are primarily driven by material needs they should be viewed as an explicitly anti-government strategy. However, the widespread dissatisfaction recorded in these findings suggests that many government service delivery initiatives are deeply unpopular with the citizenry.

Chapter Five: Conclusion

5.1   Introduction

The aim of this thesis has been to explore the political significance of popular illegalities in post-apartheid South Africa. My fieldwork suggests that illegalities are primarily a material practice which provides benefits for the poor by providing access to basic services. I will argue that while illegalities are primarily motivated by a desire to improve material conditions, these practices have political significance as they provide for substantive popular access to resources for the poor as well as creating autonomous spaces of service delivery outside of official control.

In this concluding chapter I begin by discussing some of the conceptual issues around popular illegalities and provide a working definition for its status in contemporary South Africa. After discussing its current ramifications, I raise some speculative points about its possible future significance. I conclude by arguing for its status as a significant political phenomenon which merits further study. In among the discussion I will also attempt to add to this by raising some questions which may be relevant for later academic study. Rather than trying to provide absolute answers to this my interest is in highlighting alternative ways of looking at popular illegalities.

5.2   What do Popular Illegalities Mean?

Illegalities are inherently political. They are not just a reaction to poverty. However, in terms of post-apartheid South Africa, the political status of illegalities is ambiguous. Much of the literature which has emerged on social movements' usage of illegalities suggests that these initiatives are an anti-government tactic. At the same time this is reflected in much of the government rhetoric on mass illegality, which presents it as a series of criminal activities which are practised by nebulous, criminal elements which aim at destabilizing the country. Certainly, many of the social movements, including Abahlali baseMjondolo, subscribe to a critique of government policy and aim at building democratic institutions outside of the state apparatus. This has led to something of a conceptual confusion as some writers have been quick to see illegal access as representing the emergence of a popular vanguard against neo-liberalism (see for example Desai, 2003). This suggests confusion between the social movements who encourage illegal access and the everyday practise which flourishes even without any encouragement from them. My research suggests that illegalities are primarily the result of material factors rather than typically being an explicit attack on the state. They exist as an everyday survival technique aimed at winning concessions for the poor. Obviously those who connect illegally run the risk of confrontation with the authorities, but the decision to illegally connect or not to pay for services is not necessarily underpinned by anti-state feeling. People obtain illegal connections because they cannot afford or are denied access to services. They do not pay their bills because they cannot

afford to. Even where those committing these illegalities do feel resentful towards authorities, much of this resentment is aimed at municipalities and other local authorities rather than at national government. To put it another way, people who run illegal cables into their houses are not doing it to defy the World Bank or the other architects of global neo-liberal policies. They are doing it to bring heat and light to themselves. The anger I witnessed was typically directed at local authorities, at corrupt or disinterested police and municipal workers, and not at, for example, national macro-economic policy.

In making this argument I do not, however, want to run the risk of depoliticizing illegalities or denying that they have a significance which goes beyond the concerns of day to day survival (see Chance, 2006). While I have criticised the assertion that popular illegalities should unproblematically be interpreted as political resistance, I am sympathetic to the idea that such illegalities embody a spirit of resistance. Even if this resistance is not clearly aimed at specific power structures and institutions it is still a reaction to the initiatives of these bodies. Without necessarily being aware of it, people who illegally access services are finding a way of subverting the practical consequences of neo-liberalism such as disproportionate service charges.

This interpretation is supported by the historical study of illegalities. For example, while poachers in 18th Century Britain stole game chiefly to feed themselves, this practice was supported by ethical beliefs which were opposed to the emergent order of capitalism (Hay, 1975). An exclusive focus on the survivalist nature of illegalities may lead to the mistaken conclusion

that poor people uncritically accept lack of services and happily retreat into parallel economic structures. However, it is difficult to gauge the full significance of illegalities for the people who practise them, which may lead to the contrary mistake of assuming that it is reflective of a latent oppositional culture. Because illegalities are hidden as a matter of necessity, their full significance is often only gauged when they coalesce with more overt, organized political resistance. Illegalities are an evolutionary process, the practice of which changes over time as the conditions and nature of service delivery and access changes. Because they are clandestine and mutable, their significance is diffuse. But, as my research has shown, there is a general feeling of disappointment and anger with certain government initiatives, even if not explicitly with government itself, within the communities where illegalities are practised. If these concerns are not addressed what are now chiefly survival initiatives could indeed become part of an oppositional, even revolutionary force.

5.3   Illegalities as Practice and Politics

I therefore argue that popular illegalities are a common practice which ought not to be interpreted as nothing more than a survival technique, but which is also not necessarily part of a strategy of resistance to government. These illegalities provide several substantive benefits which perhaps cannot be achieved through legal means. At the same this, everyday practices such as these have a significance which transcends the everyday benefits provided (Bayat, 2000). They have the potential to defy official policy and to

reconfigure urban space in a way which provides the poor with an autonomy which eludes the controlling power of the authorities. In this following section I will assess the main material benefits which are provided by illegalities based on my fieldwork findings. I will then argue that these material benefits have significant political ramifications.

5.3.1   The Material Benefits of Popular Illegalities

All the illegalities described herein involve attempts to provide otherwise unobtainable material benefits. The nature of these material benefits differs from community to community, but there are three basic needs which underlie illegal access. Firstly, it can be used as a means of ensuring actual physical survival under harsh conditions. This was especially apparent in Kennedy Road. Due to the constant risk of shack fires, which is compounded by the active denial of legal access to residents, illegal connections are a matter of necessity. Without electricity, residents are forced to rely on paraffin stoves and candles which are a significant fire risk. Quite literally, electricity is a matter of life or death.

But the material benefits provided by illegal connections transcend mere survival. Illegal connections are also used as a means of saving income for other basic needs. While residents in Kennedy Road still pay for their connections, access to electricity saves them money on paraffin and other natural gases which are becoming increasingly expensive. In Extension Nine people who use the 'Viva' system do so as a means of stretching income, by

circumventing payment for a basic service. While several of my respondents saw this as an anti-social abrogation of payment obligations, it appeared to also be underpinned by a rational calculus. Because of the inadequate transmission provided to paying residents, they find themselves spending extra income on paraffin for cooking and heating purposes which undermines the reason for having legal services in the first place. Under such duress, tampering with the meter to receive free transmission seems a practical solution. Inherent in illegal access is an inversion of official attempts to create responsible paying consumers who calculate their usage of services with their income. 'Illegals' have already inculcated this cost-benefit ethos with the difference being that they consider illicit access to be the most rational way to make ends meet. There may thus be another way of looking at this. It may be argued that rather than a reaction to neo-liberalism widespread illegalities are in facts are its necessary outcome. If, as John Gray (1998) argues, neo-liberalism is a form of piratical capitalism, then illegal connectors are at the forefront of entrepreneurship. They have inculcated the ethos of achieving benefits even if these are illegal. As in the heady dreams of some neo-liberal apologists, they are the entrepreneurial poor who have pulled themselves up by their bootstraps and gained services without relying on the government. I would tend not to support this argument, as it does seem that popular illegalities undermine many of the key tenets of neo-liberalism. But this still leaves a significant question: how can government expect ethical, responsible payment from its citizens in a social and economic milieu which encourages the pursuit of absolute self-interest.

Finally, illegal connections provide substantive access to various consumer goods which may otherwise be unobtainable. For instance, in Kennedy Road residents can enjoy the use of computers, televisions, fridges and irons, despite the grinding deprivation of their surroundings. There is a desire on the part of the urban poor to have access to these modern goods as this access helps them transcend their material conditions and provides a sense of dignity, of having the use of the benefits of a contemporary urban citizen. As Bayat (2000:549) writes, the poor want to be modern but on their own terms:

> Modernity is a costly affair; not everyone can afford to be modern. Since it requires the capacity to conform to the types of behaviour and mode of life (adherence to strict disciplines of time, space, contracts and so on) which most vulnerable people simply cannot afford. So, while the disenfranchised wish to watch colour television, enjoy clean tap water and possess security of tenure, they are weary of paying their taxes, bills or reporting to work at specified times.

The idea that the poor wish to participate selectively in modernity seems to be borne out in the case of illegal connections in South Africa. Illegal connections often involve the modification and adaptation, even democratization of technology. This ability to adapt technology to suit communities' needs also reveals an important site of tension in South African service delivery. Government has adopted various technological and bureaucratic measures, such as pre-paid meters, to both deliver services and to ensure payment. However, this technology is often viewed as inconvenient

or even oppressive by users. This opposition should not be seen as a rejection of modernity. Illegal connections are clearly a means of gaining access to modern amenities. It is modern techniques of social control and management which are being rejected, not technology itself. Popular illegalities show an adoption of modern technology which is aimed at meeting popular needs, not the state's need to ensure revenue and monitor its citizenry. What is at stake here is not an atavistic refusal to pay for services, and to adapt to the rigour of modern citizenry. Instead, illegalities offer a counter-modernity. This is not the modernity of responsible consumers, but rather a modernity of public spaces and public goods.

Finally, illegal connections provide a sense of safety and allow for the usage of small conveniences which soften the blows of living in a harsh environment. At the same time they provide a sense of linkage, even parity, with the outside world. By using their illegal connections people are also staking their claim as modern citizens who have as much right to technology as any legal users. The material benefits of illegalities become something more than just a way to survive. They reinforce a sense of human dignity against the duress and degradation of daily shack life. More than just an economics of survival, illegal access also allows for an economy of consolation.

5.3.2   The Practical Politics of Popular Illegalities

Popular illegalities have significant political effects within the communities which practise them on a wide scale. This political significance is bound up with their material consequences. While they may not be intentionally performed as acts of dissent and resistance, they nonetheless subvert and undermine the capacity of the state to enact social control. In this section I will define what I consider to be the main consequences of this.

5.3.2.1 Subversion and Alteration of Urban Space

The creation of clandestine service infrastructure undermines official control of urban space. Squatter communities are inherently tenuous in that they are threatened by the efforts of governments and private developers to drive them out of cities. This puts them under a constant risk as residents' security of tenure is always under threat. Squatters resist this process by encroaching on legal services in order to create their own spaces. Illegal access to water and electricity is a key component of this attempt to create a right to the city. By establishing semi-permanent infrastructure, squatters try to turn their communities into permanent urban homes. This functions as a kind of guerrilla warfare. They use the weak spots of the state, such as corrupt (or, perhaps, sympathetic) officials and unguarded electrical poles to their own benefit. Even when the state destroys illegal infrastructure, the wires and illegal connections will quickly spring up again. This undermines attempts to control, manage and ultimately erase their 'delinquent' communities from the

urban landscape. It also provides squatters with a significant foothold in the city, which, as they are 'illegal', they may not be able to establish through official channels. This gives a significant degree of power to the most vulnerable of urban dwellers.

Previously I noted how popular illegalities also subvert the technology which the state uses to ensure social control. At the risk of needless repetition it is important to observe how this may put power in the hands of the poor. For example, PPMs are designed to ensure payment before the service is accessed. The practice of inserting wires and paper into the machines to receive free services completely reconfigures this purpose. A technology which may seem oppressive and impractical is mastered by citizens for their own ends, based on what they perceive to be their service requirements. It saves income and asserts autonomy through flagrantly bypassing the intended purpose of the technology. Along with denying a steady revenue stream to the authorities, it also forces them and their private contractors to develop new techniques of surveillance and control. However, tenacious or desperate citizens will always find a means of bypassing this and so this low-level 'arms race' continues.

5.3.2.2 Spaces of Autonomy and Development from Below

Contrary to official stigmatization, it seems that many popular illegalities are not the work of anti-social bandits – atomized *izinyoka* who prey on the services of honest communities. Instead they are the result of complex social

practices and networks. The installation of illegal infrastructure entails

negotiation and bargaining with municipal officials and residents with legal

access. It also requires constant collective maintenance and repair of

connections. In the case of Kennedy Road, illegal connections are designed

to maximize safety and to ensure their continued status as a collective good.

This highlights communities' ability to autonomously and successfully self-

manage their illicit service delivery. In the presence of inadequate and

unpopular government intervention this creates autonomous spaces of

community control in which citizens take the improvement of their material

conditions into their own hands. While this is illegal, it is not necessarily

opposed to the state, as it may in fact be doing the authorities a favour by

doing the jobs of legal service providers. An instructive case is that of

Khayelitsha. Every year thousands of people move to the township from

improvised rural and peri-urban areas in an attempt to make their way in the

city. Diminished state capacity, high prices and chronic bureaucratic

backlogs make it highly improbable that the authorities will be able to

provide lights and water for this growing population. By illegally connecting

themselves, residents are evolving their own service provision. Because this

is performed by residents it may even be superior to official delivery as it is

designed to meet everyday needs without having to focus on the proper

procedures or on maximizing cost recovery. In future it may happen that the

existence of this infrastructure may force the state to recognize its legitimacy

as a means of providing services, as seen in the case of Brazil discussed

earlier (see Neuwirth, 2004). Ironically this may in fact cohere with the

initiatives of cost recovery – municipalities do not have to incur the high cost

of establishing the infrastructure and administering the (marginal) cost recovery, while at the same time their government imposed imperative to provide subsidized electricity for the poor is being met. However if this is kept within a level of community control it may still fulfil its original status as community-controlled service delivery.

5.3.2.3 The Moral Economy of the Poor and a Culture of Resistance

The prevalence of popular illegalities is also underpinned by a set of moral values which views services as collective goods which should be available for all. Rather than being subject to market forces or the demands of capital, electricity and water are seen as subject to a moral economy in which their price should be determined by ability and capacity to pay. This in itself offers a radical challenge to the commodification of services. It also suggests a fundamental factor of South African culture which policymakers would be foolish to ignore. Attempts to create 'responsible' neoliberal citizens are opposed to intrinsic cultural and moral beliefs and are thus likely to be met with some form of resistance.

The persistence of popular illegalities into the post-apartheid period is also suggestive of a latent culture of resistance among the poor. Communities have a long historical record of mobilizing to resist government, and while this may lay dormant for a while, it can quickly be reactivated under oppressive conditions. This closely intersects with the practice of illegalities. In many ways, social movements like Abahlali are the political culmination

of years of quiet encroachment and mass appropriation of urban resources. Marginalized communities rely on existing organizational skills and social structures, such as the installation of clandestine infrastructure, to successfully form social movements. It is also possible that the psychological experience of illegal access nurtures a spirit of resistance. As illegal access becomes normalized people appreciate that they can improve their own lives outside of the official mechanisms of the state. The same holds for many social movements. Due to frustration with the official channels people find means of creating their own alternative structures to express grievances. Rather than waiting for official interventions they create their own, and in so doing assert their autonomy.

It would be a mistake to assume that this resistance is simply an attempt to secure basic material improvements. Abhalali does not aim at achieving better service delivery alone, but at ensuring that squatters become substantive urban citizens with the right to determine their own future in the city. This offers an alternative form of modernity which is based not on authoritarian development initiatives but on community control. Illegal connections may have a radical role to play in this process. Through collectivizing their use, they become a direct means of claiming control of the commons and stand as a successful example of an alternative to commodified services.

5. 4   Popular Illegalities and the Future of South Africa

Although it is difficult, if not impossible, to clearly ascertain the scale and nature of popular illegalities, my research suggests that they are a widespread activity. Although the types of illegalities will differ from community to community, the proliferation of informal settlements and the existence of widespread poverty in South Africa make it reasonable to assume that these illegalities are significant part of everyday life on a national level. Certainly it is prudent for government to worry about this, as at first glance it may appear a challenge not only to cost recovery initiatives but to its very ability to govern the country. This thesis has shown that popular illegalities are not the result of social breakdown but are representative of communities taking delivery into their own hands, which is often indicative of flaws and incapacities in official provisions. Rather than viewing this as a purely oppositional force, government should negotiate with communities. Repressive techniques of ensuring payment are counter-productive as they lead to resentment on the part of the citizenry.

However, I do not want to run the risk of making the neoliberal self-help argument that the poor are tenacious and adaptable enough to be left to their own devices by the state. As my work has shown there is a great desire for *more* government intervention, not benign neglect. Now that people have won their legal status as citizens they want substantive material rights which include adequate, quality services. For these citizens access to services is not just a material right but a proof of citizenship and indeed of participation in

modernity itself. If government wants to stop delinquency on the part of citizens they may do best by paying attention to how illegalities actually improve people's lives rather than viewing them as purely antisocial acts.

It seems likely that popular illegalities will continue to play a significant role in South African politics. The international recession will have a direct impact on the scale of illegal access. With less money available for official development people will continue to utilize clandestine infrastructure. Legal customers may be tempted into seeking illegal access as a way of preserving increasingly meagre incomes. It is also likely that popular resistance to cost recovery initiatives will become even more overt. Under desperate conditions of austerity, citizens may refuse efforts to pay increasingly costly service charges, and will find new ways to subvert government initiatives.

This is compounded by the fracturing of the ruling ANC. Factional fighting has undermined municipal delivery and contributed greatly to the crisis state of service delivery. This is further exacerbated by the emergence of new opposition parties which directly challenge the power of the ruling party. While the ANC will remain the dominant party in the foreseeable future, this new political landscape will have a direct bearing on service delivery. One possible option is that government may attempt to initiate populist service initiatives as a means of shoring up support, but this may be limited by the diminishing of government revenue in a climate of economic slow down or even recession. Whatever the case may be, it is clear that service delivery policies have fuelled general dissatisfaction with the ANC. This suggests a

latent oppositional force in South African politics: the legitimacy of the ANC's history of struggle will count for little when people are unable to access adequate basic services.

As a result social movements which offer alternative politics (and utilize popular illegalities) will continue to be significant players, as they offer alternative political spaces where official channels of protest are inadequate. Although much recent political commentary has focused on the individual power struggles within the ANC which have led to the split in the alliance, more important factors appear to be class and generational struggles. The study of popular illegalities allows us to view harbingers of future struggles. Rather than leading to state collapse, illegalities are the product of the dangerous rift between the rich and poor which presents the biggest threat to the future of South Africa. Popular illegalities are social fissures which we can study as a means of predicting and preventing this collapse before existing inequalities result in immutable chasms. Illegalities will continue to be a site of scholarly interest. They reveal the politics of everyday life and provide insights into possible future political developments. The reasons why people illegally connect are self-evident: what is important is what this practice can teach us. Embedded within such commonplace activities are entire new vistas of living in a fragmented, challenging world. The politics of illegalities may be the politics of the 21st century.

5.5   Conclusion

The seeming dual nature of illegalities, their ability to create autonomous spaces while also revealing a belief in a more active, redistributive government has an important future significance which does not just confine itself to South Africa. The way in which illegalities function as an adaptive means of gaining access to resources may presage the way service delivery is achieved in the future, and not just for the poor. Rapid urbanisation is running up against two major factors: a declining government capacity is occurring in conjunction with environmental degradation, which threatens the very ability to provide water and electricity. Under such circumstances it is no feat of the imagination to envision that illegal access may soon be the way that the majority of humanity receives services. However, as argued earlier, this may not necessarily result in a Hobbesian fight for resources but may in fact entail new more equitable means of distributing resources.

As Scott (1998) argues, places like slums are 'illegible' to the authorities as they are constantly changing and shifting over time, which makes it hard to impose systematic control over them. Castells (1998) argues that places like slums are representative of the black holes of globalization: places that are ignored by governments (except for rent-seeking and other extractive purposes) because they are seen as irrelevant to the global economy. But because they are not clearly mapped out, and are ignored by the powerful, it is possible that such places are important social laboratories where new ways of coping and thriving under harsh conditions are enacted and imagined. At

the same time the ambiguous nature of illegalities means that they may also not represent a symptom of the collapse of the state, but rather a change in the manner in which citizens deal with it. The desire for more state interventions runs up alongside a belief in a moral economy which views water and electricity as a shared good, not as an individualized commodity. Among those who illegal connect, there seems to be a basic desire for a just, redistributive system of government. Although calls for this kind of government have been drowned out by the triumphalism of market propagandists in the last few decades, the seemingly permanent crisis state of the global economy suggests that there may soon be a global shift to egalitarian, even socialist ideals. And if people start viewing services as something which should be based on a just price, if indeed paid for at all, who is to say what they may start demanding for free next? It may be simplistic to view illegalities as an anti-capitalist strategy, for as I have shown they also function as a form of commodity exchange, but they certainly suggest nascent ways of distributing resources which have significance far above just localized practices.

Popular illegalities should be studied in terms of this creative potential. This brings us back to the trickster archetype discussed in Chapter Two. The prevalence of this myth in human history has a direct bearing on modern illegalities. Symbolically it suggests that subaltern groups have always celebrated evasion and low-level theft as a means of subverting the powerful, as they are unable to confront the authorities directly. The trickster chips away at the edifices of power. This not only forces short terms concessions,

by may have the ability to irrevocably alter the status quo. Stephen Belcher (2005: 74) writes:

> [Tricksters] add an element of disorder and unpredictability to the world: features which we all know by experience are present in our lives. Because the trickster can see past (or through) the rules, the trickster is also creative. The trickster is rarely intentionally so; the benefits of the tricksters are usually accidental afterthoughts. But they remain real.

The description is also apt when thinking of the significance of popular illegalities. Without necessarily intending to do so, people engaged in such practices may in fact be reconfiguring the means in which resources are governed and distributed. At the very least, the practices of the communities I have described call into question the often arbitrary distinctions between legality and illegality, between licit and illicit practices. The potential consequences of popular illegalities have the capacity to transcend the local. As discussed earlier the widespread practice of internet piracy is what can only be described as a mass appropriation of intellectual property. This has forever reconfigured the manner in which people receive such services and has posed a serious threat to entertainment's value as a saleable commodity. This illegality of the 'better-off' has been shown to have a revolutionary capacity. Surely it is possible that the illegal usage of water and electricity by the poor has the same latent ability to change the way in which services are valued and delivered. What may seem at first glance to be a criminal act is

something else entirely: the product of human cunning and courage which can flourish under the most adverse conditions.

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