Regulating credit: tackling the redistributiveness of neoliberalism

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South Africa found itself on the front pages of the world's press in 2012 when police shot and killed 34 miners during a strike by rock-drillers at the Marikana platinum mine. Horror was expressed at the authorities' use of lethal force and at how this echoed earlier killings in the apartheid era – most notably those at Sharpeville. But underpinning the episode was an opposition rather different from the earlier one, in which the politically disenfranchised were faced down by officers of an authoritarian state. Attempting to identify the character of this opposition, the initial condemnation was followed by a spate of analyses. Among these was the revelation by several newspaper reports that the miners, not necessarily in the lowest pay bracket, had unsustainable levels of debt. An additional feature making this doubly burdensome, indeed intolerable, was the manner in which their numerous creditors were ensuring repayments. In what has become a characteristically South African phenomenon, miner's pay, automatically transferred into their bank accounts at month end, was being transferred out of these again with equal ease by those to whom they owed money. Shortly after payday, many of them simply had nothing left to live on. The Marikana killings, then, were at least partly about economic rather than political disenfranchisement.

Affecting many others in South African society, and over a much longer timespan than this particular episode suggests, the problem of indebtedness has tended to be framed in terms that individualize, isolate and call people to account as 'consumers', rather than uniting and leading them to group action, labour organisation or solidarity as 'citizens'. This suggests that there is something characteristically neoliberal about the phenomenon of indebtedness as manifest here and now. But, as the eventual worker activism demonstrates, it ended up translating into terms that were solidaristic, confrontational, and ultimately political. There were in fact strongly political aspects about the way the 'debt problem' was framed from the start: albeit one embedded in a sphere in which the market had begun to hold sway.

The poorly or under-trained police officers were criticized for having shot to kill, and their superiors lambasted for failing to teach their underlings more appropriate forms of crowd control. One line of argument might have it however that, by using lethal force, they unashamedly embodied the violence of the state: that agency which, says Graeber, backs up the financial system and underpins the distorted arrangements that have turned debt, originally a matter of Maussian reciprocity, into one of unequal power and of enduring hierarchy in the modern world (2011). Other authors, taking a less ambitious and somewhat more culturally relativist perspective, have made arguments that are nonetheless equally telling. They talk about the mismatch between how creditors (with the backing of states and global finance) and powerless debtors (often but not only rural dwellers in poor countries) are evaluated in seemingly 'moral' terms (Shipton 2011:232-3).

But trenchant criticisms of creditors and financialised lending have not been lacking among those who hold office in South Africa's ANC government. The Minister of Trade and Industry, Rob Davies, spoke at a press briefing soon after the shooting, about credit providers' 'outright preying on the vulnerabilities of low income and working people', and undertook to implement more controls in order to check such activities. Such a statement might sound opportunist: as though too little – in response to general outrage – was being done too late. On the contrary. Given that a need to review 'consumer credit legislation has long been recognized', as policy documents revealed (DTI 2002, 2004), stringent efforts have been made since South Africa's democratic transition to regulate and control the lending of money at interest. These efforts resulted, in 2007, in the passing of an ambitious new piece of legislation: the National Credit Act, which set out far-reaching reforms and established the National Credit Register as part of its remit.

One illustration of the deeply 'political' character of the credit problem and its proposed solution was the fact that numerous groups of actors from across the board had been consulted in successive draftings of the Bill that eventually passed into law. Broadly speaking, those consulted divided into lenders and borrowers respectively; corresponding more or less with the classic Marxist division between the sphere of capital on the one hand and labour on the other. Perhaps not quite as clearly aligned, but tending overall to represent borrowers (and labour) more than the reverse, there was input from an important civil society/human rights organisation, the Black Sash.

This then is part of the longer history – showing that the relation between debtors and creditors concerns 'politics' and not simply 'the market' – behind the Marikana massacre. But there is a further dimension as well: one which highlights the caution that is necessary before simply shoving South Africa (and perhaps any country) into the category of a 'neoliberal' state or regime. To understand this point is also to grasp that the story of a struggle between capital and labour, while certainly true, needs some qualifying. South Africa's economy came to be dominated, during the 20th century, by well-established sectors of Afrikaner capitalism ('maize') and English capitalism ('gold'). Having participated differentially in the processes of proletarianisation that created a cheap black labour force, the two then had a decades-long struggle over which would have preferential access to that force. (Both are now being in part replaced by a more ethnically hybrid, if still mostly white dominated, capitalist sector of 'finance'.) At the same time, a succession of governments with nationalist agendas, first Afrikaner (post 1948) and later black African (post 1994) have needed to keep themselves close to, and ensure the upliftment of, parts of the electorate not easily classified as either capital or labour. This has been ensured, in both cases albeit in different ways, by the clientelistic distribution of jobs: especially in the civil service (O Meara 1983; Southall 2012) and in state-owned enterprise. Showing yet further 'distributional' or 'redistributive' tendencies has been the widespread distribution of social grants (Seekings and Nattrass 2006; Bahre 2011). Finally, albeit smaller in scale, intermittent attempts have also been made, particularly during the 21st century, to accommodate the needs of that increasingly large section of the electorate bent on making its own living in the cracks and interstices of the system. Now that the era of state capitalism has passed and that of liberalisation has arrived, these operators are framed, and encouraged, as 'small to medium-sized entrepreneurs'. But their activities, law abiding and otherwise, have long been tacitly tolerated in a 'dual economy' where brokers and commission-based agents mediate mostly white-dominated capitalist enterprise and the largely black world of workers, the unemployed and the poor. These latter are also the major consumers and – increasingly – users of credit.

The wellsprings of credit reform

In the small Knysna office of the Black Sash, South Africa's premier human rights organisation which offers paralegal advice, I talk to Xolela May, a well-known consumer rights activist and lawyer. He is one of a small network of people spread across South Africa whose strong sense of indignation about the credit conundrum, and whose commitment to the cause of the indebted, have driven him to play a key role in designing and implementing arrangements to help alleviate their plight, and to regulate the activities of lenders. These measures were aimed, in particular, at tackling the often unscrupulous and frankly illegal procedures used by creditors to get their hands into debtors' bank accounts.

He recalls the origins of his activism. Having grown up in the black township of Langa, Cape Town, he says it was a daily occurrence for neighbours, having got themselves into debt, to have property repossessed by creditors. He would observe the sheriff of the court arriving and doing an inventory of the neighbour's possessions prior to confiscating these, while the neighbour stood by helplessly. Although Cape Town was host to several law clinics and human rights law organizations, Langa residents had no idea how to contact any of these: their plight was an ‘issue of powerlessness’.

He later rose above his humble origins to study law, worked for a while at an NGO called Legalwise, and eventually joined the Black Sash. At the time, he tells me, a still wider variety of providers were feverishly extending credit to people formerly denied it. Debtors were being taken to court in record numbers. Property was also being seized and auctioned to a greater extent than Xolela had seen in his youth. But he had also noted a newer phenomenon. Instead of merely having their furniture reclaimed, defaulters were signing agreements, as instructed by the clerk of the magistrates’ courts, to have parts of their wages deducted by their employers and paid over to their creditors. (These were the ‘emoluments attachment’ or ‘garnishee’ orders, much feared by their recipients and soon to become infamous, of which more will be said below.) In the process, he noticed how legal practitioners acting on behalf of creditors – ‘likely to go to the last stage, so they can have profit’ – were routinely ignoring particular sections of the relevant legislation, the Magistrates Court Act of 1944, passed four years before the apartheid regime officially began, which might have afforded some protection to debtors.

On the basis of his experiences with indebted people in Knysna, Xolela applied in 2001 to the Department of Justice to house a help desk in their offices, on behalf of the Black Sash. The matter with which he concerned himself most thoroughly was a particular section – Section 65 – of the Magistrates Court Act.

It makes a provision that before any court order can be made in respect of the financial attachment of the emoluments – which is the wages of the debtor – the court has to make it a point that that debtor has remained with sufficient means in order to maintain himself and the family.

This section of the existing legislation provided debtors with greater rights than were normally recognized, and Xolela’s crusade was to advise them of these rights. Given their unfamiliarity with court proceedings, they were being intimidated into agreeing to unsustainable debt repayments. It was this same problem that newspapers reported as having afflicted the miners at Marikana: having become indebted and voluntarily submitted themselves to astronomical levels of repayment, they had nothing left to live on.

Engaging with these issues while also negotiating with the lawyers concerned, Xolela was able to build ‘good networking relationships, which we still have with our local attorneys’, on the basis of which he and other Black Sash officers started advising these attorneys against the unsustainable pursuit of debtors unable to fulfil their obligations:

this person is unemployed therefore there is no way you can proceed with the matter. You can suspend any legal action on this matter, because, if you continue, what will be the point of you proceeding with the action while you know at the end of the day you are not going to recover anything? It’s a waste of your resources.

While Xolela was still operating the Black Sash help desk at the Department of Justice, he was also playing an important role in the consultations that were under way to draft, conduct consultations on, and eventually pass, the key piece of legislation that was intended to remedy many of these ills: the National Credit Act of 2007, with its system of ‘debt review’ and ‘debt counselling’.

He gives me a frank account of both the advantages of the Act and its unexpected – and often undesirable – outcomes. With great canniness, many lawyers, less able after the passing of the Act than previously to earn money from pursuing penniless debtors on behalf of creditors, ‘have changed their hats to own … debt counselling agencies’. Others doing a similar switch of role are those, previously acting as ‘debt collectors’ or ‘debt administrators’ (as stipulated by the Magistrates Court Act), who now practise as ‘debt counsellors’ (as stipulated by its intended replacement, the National Credit Act). Underlying this opportunistic change of ‘hats’ is the existence of ‘unscrupulous individuals who wanted to benefit’ by exploiting the desperation of poor people.

Spotting the imminent end of the old and the onset of the new, they have joined the rush to take advantage of a new business opportunity.

My encounter with Xolela gives me an insight into the dogged and dedicated reforming zeal which motivates a number of activists: those who might, in a previous era, have concerned themselves with what appear to be more fundamental human rights abuses but in the current one have homed in on consumer rights – and in particular the rights of those in debt – as a key issue of concern. It illuminates the character of the legal arrangements that previously prevailed. Showing which aspects of these were deemed to require reform or abolition, it also elucidates the personalized, entrepreneurial, episodic, and often piecemeal character of the steps taken to put the new arrangements in place. These often generated unintended consequences, producing new problems that in turn required fresh legislative arrangements to remedy. Reforms were always thus – but there is something about the character of the state and the law in South Africa that marks them off as particular. There is great readiness to produce innovative policies in the name of social justice and equality, often on the basis of lessons learnt from elsewhere. But entrenched interests, not only those of big business but also of a number of smaller intermediaries and self-styled entrepreneurs with few other ways to make a living, often find ways to dress up in new clothes, dodging the potential restrictions that reforming initiatives aim to put in place and taking advantage of these to create new opportunities.

Runaway liberalization and belated regulation

The process through which lenders, although having for half a century had recourse to recoup their money from borrowers' bank accounts, suddenly started doing so in earnest, is a key part of this story. It is the South African version of a broader global trend, in which, 'as lenders re-toughen their terms in an effort to cover their costs while reaching smaller-scale, poorer borrowers, older and more familiar issues about where usury begins also resurface' (Shipton 2011:231). Ostensibly 'to open up the market for small borrowers', previously excluded from opportunities to start small enterprises because of their inability to borrow money from the big banks, existing legislation restricting the interest rate was removed in 1992. Removing the restriction would enable lenders – in theory equally small – to run viable businesses catering to the needs of such borrowers, thus creating opportunities for both. The then Minister of Trade and Industry 'signed into law an exemption to the Usury Act' of 1968, 'which removed price control on small loans' of under R6000 and with a duration of less than 36 months (Porteous with Hazelhurst 2004:77, 83). Putting a ceiling on the interest rate, as the Usury Act had previously done, was allegedly making it impossible for legitimate micro-lenders to collect their debts and cover their expenses by imposing a 'full cost recovery interest rate'. The rationale was that such small lenders, some of whom had already started emerging in the 1980s, unable to stay in business with a restricted interest rate, would then close up shop or go underground and turn into 'loansharks' offering more expensive credit. It would be to the unsavoury practices of these illegal lenders that the poor would then be exposed and vulnerable (Daniels 2004:846-7).

Out of this action arose one of the 'most dramatic developments in the landscape of access over the past decade' (Porteous with Hazelhurst 2004:77). Instead of borrowing to set up businesses, the previously deprived population started taking out loans aimed at helping them engage in consumption. According to Mark Seymour, a spokesman for the micro-finance industry, 'a host of lower-income individuals in South Africa who couldn't access formal credit from the banks' were now able to borrow from a sector 'that could price for the perceived risk of granting credit to these people'.

The opportunities were not limitless, nor were the intended 'smaller' lenders the principle survivors: this initial period of 'breakout' was followed by one of 'consolidation' when several of the retail banks opened up micro-lending arms, other small operators merged to become big ones, and several lenders went out of business (Porteous with Hazelhurst 2004:79). But there was a general sense that a feeding frenzy was under way. An anecdotal account from someone who observed this process at the time describes the situation in terms that are vivid if not entirely complimentary:

A large number of unscrupulous lenders piled into the market. Later, an outfit called ABIL (African Bank Investments Limited) bought out these and other small microlenders. There was a case of someone who borrowed R20 000 from his father and started extending loans at a bus depot. He lost the first R20,000, then told his father he had figured out how to do it properly and borrowed a further advance. Within a short time he had made enough money to buy a house in Johannesburg's up-market suburb of Sandton, for cash. (Fieldnotes 27th July 2008).

David Porteous, who at the time was in charge of the DfID-funded Finmark Trust with its intended aim to 'democratise finance', puts his finger on a key feature of this new credit landscape. Although it might on the face of it sound unstable, even 'bubble'-like, lenders were *not* in fact unduly exposed to the risk of non-repayment (Porteous with Hazelhurst 2004:77). This is because they were able, with state sanction, to collect debts through the payroll (especially, in the case of civil servants, via the 'Persal' system), or from borrowers' banks by taking their ATM cards and using their PINs: a practice widespread at the time and only later outlawed.

The 'recklessness' of this newly burgeoning credit industry was much criticized. The results were certainly negative for the many consumers who had started responding to offers of cheap credit. They were borrowing not only or even principally from 'micro-lenders' but also from clothing and up-market grocery stores and car dealers, while still continuing the earlier-established practice of buying on hire purchase from furniture retailers. If we match this narrative with Xolela May's account, it becomes clear that many of those 'debtors unable to fulfil their obligations' for which he set up his help line came from exactly this group of newly-enabled borrowers. The overall result is generally agreed to have been detrimental to the financial 'wellness' of many (Cash 1996, cited in Bahri 2008; Crous 2008). This glib-sounding phrase conceals some very serious effects: a deep sense of helplessness, and social ills such as suicide, divorces and homelessness.

There is an ethnic/racial dimension to the tale. If anxiety about problem borrowing was focused on the newly enfranchised members of South Africa's public service, the attempted regulation of supply focused in particular on a group whose establishment of small-scale lending enterprises had been a response to its own recent disenfranchisement – that is, members of the white Afrikaans-speaking minority, mostly supporters of the apartheid government, who had been rewarded with civil service jobs in an earlier period. Being offered retrenchment packages to leave the civil service, many invested these in establishing micro-lending businesses. It was to curb the excesses of these newly-established entrepreneurs – to which the removal of the exemption clause in the Usury Act had initially given rise – that the Act was later formulated. To state matters simply: the public service had been newly restaffed by black Africans, leaving many of its former white/Afrikaner employees to seek alternative ways of making a living. Many of them did so by moving into the microfinance industry (James 2012; Krige 2012). State moneys were flowing into the bank accounts of black civil servants, from which the new entrepreneurs were making efforts to divert them.

These runaway developments and their unintended consequences led, in turn, to the state's clamping down in 1999. A notice revising the initial exemption to the Usury Act was promulgated. It outlawed the deduction of employees' wages directly from the payroll (thus leading to the collapse of a building society, Saambou, whose extensive micro-lending arm had relied on precisely this process, and to the near-collapse of another large bank), and outlawed the use of Chip and PIN to recoup loans from borrowers. It also established the MicroFinance Regulatory Council (MFRC) and initiated the process which eventually led to the passing of the National Credit Act, effective as from June 2007, which capped the interest rate for unsecured loans at 31% as part of its aim of curbing 'reckless lending': a phrase used to characterize all creditors but initially aimed in particular at the behaviour of this new microlending industry.

Debating the Bill

During debates on draft versions of the Bill, key arenas of policy debate and argumentation came to the fore. Allegedly governed by the impersonal character of the 'free market', topics like the 'interest rate', 'credit scoring' and the like became fulcra on which fierce moral contestations turned (see Shipton 2011:226; 232). While financiers and business representatives asserted 'the self-evident' truth, in the interests of sustainability and economic growth, that 'all loans and repayments should cancel each other out' (Shipton 2011:217), consumer rights groups, trades unions and those claiming to represent the interests of the workers (alongside the poor and unemployed), challenged this, demanded protection from usurious practices, and even requested debt amnesties.

Blurring the boundaries between these two opposing sides, those speaking on behalf of business frequently framed their arguments so as to make them sound more concerned with the interests of workers and the impoverished than with their own. Nowhere was this more evident than in ongoing disputes about whether the capping of the interest rate would be to the benefit (by reducing 'recklessness') – or conversely disadvantage (by distorting the 'free market') – the interests of consumers. This came to the fore in discussions about the bill's provision for 'emergency loan provision', which would allow a person with a high debt level, faced with an unanticipated life event, to take out a further loan. Business representatives argued strenuously that allowing such extra loans ought not to be counted as 'reckless'. In order to allow such loans, the interest rate, in their view a neutral, quasi-scientific instrument which enables the competition of the market to provide for self-regulation, ought to be 'uncapped' once again, and to remain unregulated. Failure to do so, far from protecting borrowers, would 'distort supply' and (re)create the very same 'dual credit economy' which it was imperative to eradicate, said Johan de Ridder of African Bank Investments Limited. In similar vein, the clothing retailers' submission maintained that the 'capping' of the rate to which their sector is currently subject 'restricts' their 'ability to take on more risk by offsetting the additional losses with the improved interest income'. They asked to be allowed to charge rates similar to those of UK stores like Harrods, where the interest rate is '28.9% pa', on the grounds that

A customer who was not happy with the interest rate from one provider could obtain funding from another provider to settle the debt with the original provider and in so doing reduce the cost of credit to the consumer. This approach will stimulate competition in the market place and will reduce the cost of credit to the consumer.

Supporting stringent regulations and the capping of the interest rate, the trade union COSATU (Congress of South African Trade Unions) aimed to protect its wage-earning worker members from the rapaciousness of unscrupulous lenders. Where industry submissions use the shadowy figure of the loanshark (*mashonisa*) as their ultimate weapon, threatening that capping of the interest rate will once again drive borrowers underground and put them at the mercy of this demonic figure, the COSATU submission counters that it is precisely the lack of regulation which is likely to cause microlenders to engage in exploitative lending practices. They warn of the danger that 'these registered microlenders and other credit grantors' might 'capture the market of unregistered microlenders; that is, they will start to charge ' "*mashonisa* rates", increase their interest rate on loans, and further exploit the vulnerable and poor, but legally so!' (White) microlenders – with their 'captive audience and no competition', pricing interest rates 'to what the market will bear', and practising 'poor disclosure to a vulnerable consumer segment' – are the villains in their account; the (black) moneylender or *mashonisa,* both informal and technically illegal, appears as a more community-minded figure (see Krige 2011; James 2012).

Contestation, implicitly moral in tone, was also fierce over ‘credit worthiness’. Members of South Africa’s governing tripartite alliance (ANC, SACP and COSATU) had long held that those with existing debts had the right to have these expunged, thus allowing them a fresh start concurrent with the Act’s coming into law, with COSATU demanding ‘access for all, to financial services, including an amnesty for those listed by credit bureaux’. Citing the undesirability and destabilizing effect on the financial sector of having ‘millions of citizens excluded from access to credit, many for trivial amounts and because of exploitative interest rates, lack of affordable credit, discrimination or joblessness’, the union stated that ‘apartheid credit practices and massive exploitation of the poor did not end with the fall of the apartheid regime – they flourished after 1994 and so did credit blacklistings’. Since rich people formerly transferring assets offshore had recently been offered an amnesty allowing them to repatriate these, COSATU maintained it would be fair to offer an equivalent amnesty to the ‘two million blacklisted adults’ – many of them COSATU members – whose status was creating a ‘serious national problem’. Protesting against the fact that credit bureaux were ‘selling information to agencies to screen potential employees’, the union maintained that this was unacceptable and unconstitutional, since it threatened to increase unemployment and to relegate ‘jobseekers to further economic hardship’. They thus demanded that credit information be sold only for the purposes of assessing creditworthiness and that sale or use of credit information for other purposes should be an offence.

Submissions on this topic by the business community, including the Credit Bureau Association, had a predictably different thrust. They maintained that the bill was already biased in favour of debtors and against the interests of creditors. Arguing that credit is not a ‘right’ but a ‘market instrument, access to which must be earned’, they point to how impairing the ‘free flow’ of credit information would be injurious, ultimately restricting credit itself. They objected in particular to the section of the bill which required that, once a clearance certificate had been issued recognizing a consumer’s having ‘satisfied all obligations’, the ‘credit bureau must expunge from its records … the fact that consumer was subject to debt re-arrangement’. This, they claimed, would have the unintended consequence of removing

risk predictive behaviour data … there will be no way for a credit provider to establish if a consumer has a pattern of non payment and of having his/her debts restructured. Lender confidence in the information held by credit bureaux will be low, resulting in lenders devising other means of protecting themselves against the risk of bad debt.

This was disingenuous, however. During the credit feeding frenzy of the 1990s, lenders had already ‘devised other means’ of protecting themselves against such risks: that of gaining direct access to borrowers’ bank accounts in one way or another.

A further area of disagreement concerned the ambiguous aims of the Act: it was intended not only to protect vulnerable and financially uninformed borrowers from ‘reckless’ lenders, but also, in the new spirit of affirmative action or ‘Black Economic Empowerment’, to open up new possibilities for black business in fields which had previously been dominated by whites or members of ethnic minorities from South Asia or elsewhere. Such opportunities included those of debt counselling itself. (Less intentionally and often unscrupulously, they would also turn out to include microlending, and also to the dodgy debt administration that Xolela had described). But such opportunities would themselves require regulation and consumer protection. One of these, already long existing as a livelihood strategy in the black community, was ‘direct selling’ on credit (and on commission) by salesmen visiting employees’ places of work. A submission to the Bill vigorously defended the rights of such sales agents, pointing out that the reason why they visit the ‘work places of potential consumers to enter into loan agreements’ is largely because such ‘consumers are not able during office hours to attend at the credit provider’s physical premises’, and that worldwide trends in direct selling indicate that ‘it is certainly convenient, speedy and efficient both for the credit provider and the consumer for the loan agreement at times, to be concluded at the consumer’s work premises'. Prohibiting such a practice, the submission anticipates, will result in the closure or complete (and costly) restructuring of 'many small credit operator businesses relying solely on agents to sell their goods and/or products to employees at their work'.

The thousands of agents currently operating within the South African framework would immediately lose their jobs resulting in catastrophic implications for their families and extended families. …by preventing business being done at work or at home a large section of the economy will effectively be destroyed overnight.

These claims starkly illustrate the contradictory character of the legislation. For every piece of protection offered to borrowers, one of the semi-formal income-generating opportunities so characteristic of those 'formerly marginalized' might be forfeit.

Overall, then, members of the business community were reiterating the familiar claim that only by securing market freedom can consumers best be served. The countervailing position was that consumers require protection, even – perhaps – from their own profligacy. Business interests prevailed when it came to the demand for a 'credit amnesty', but in other respects the Act as passed maintained the appearance of an uneasy truce. Unresolved issues, already partly addressed by 'other means', would need to be further addressed by these.

New legislation, old scams

In what appears as a classic opposition between market forces and state regulation, between capital and labour, some complicating factors belie the stridency of the claims made by both sides that were debating the National Credit Bill. The spectre of the 'loanshark' is condemned by business as the figure of illegality against whom all ought to be united, but defended by the unions as a communally embedded persona, striving to make a living, and even offering protection against the worst ravages of retail credit. More ambiguously, the community-based direct seller selling items on credit and earning a commission seems to epitomize the figure of the 'small scale entrepreneur' whose efforts the government has been keen to promote. Her lending is a by-product of the way she makes a living, which is barely sufficient to distinguish her clearly from those to whom she sells (and lends).

What complicates matters still further is the behaviour of yet another set of actors that makes its living by enterprise, in a manner whose borderline legality – or fullblown abuse – seems easier to condemn, yet which might be regarded as equally and inextricably a part of the system, especially since they operated with impunity under the rubric of the previously-existing laws. The existing legislative framework of the Magistrates Court Act was much more detailed and restrictive (albeit as Xolela told me poorly understood or executed) whereas the new legislation, in the modern legal spirit of mediation, was often imprecise about legal procedures. It was the fine-grained specifications of the earlier legal arrangements that opportunistic and canny operators had used for their own advantage. Legislating against these illegal and opportunistic practices – and not only against the 'reckless' provision of 'credit' – had been one reason why the Act was drafted and implemented. But if the existing laws were barely enforced, what were the chances of the new Act's being any better implemented?

The protagonists of these practices ranged from lawyers who had been struck off but who were nonetheless operating as debt administrators, through unregistered 'credit repair companies' fraudulently offering to expunge the names and records of consumers from the credit bureaux but failing to do so, to mainstream retailers selling furniture or clothes on hire purchase, apparently legitimately but engaging in unsanctioned and illegal practices in order to collect outstanding repayments. After the passing of the Act, the establishment of debt counselling, one of the key remedies proposed, led in turn (according to the law of unintended consequences) to the establishment of rogue companies and/or individual operators that offered such services. As indicated by Xolela, it is in many cases the fraudulent 'debt administrators', operating in the loopholes offered by the previous set of laws, who have adjusted to the new regime by retooling themselves as 'debt counsellors'.

In essence, these illegal practices centre on the 'other means' identified above, which protect creditors from 'the risk of non-repayment' (Porteous with Hazelhurst 2004:77) by enabling them – and commission-based field agents, debt collectors, or intermediaries acting on their behalf – to reach into debtors' bank accounts. One of these was the 'emoluments attachment' or 'garnishee order' by means of which outstanding debts were being collected directly from a debtor's salary. Granted by a magistrate and served on the employer of the debtor by a sheriff, it requires that the employer enable a creditor, at a 5% charge to that creditor, to take a monthly repayment directly from the salary of the defaulting debtor who is in his employ. The debtor gives his signature on the 'consent to judgement', as proof that he has agreed to the arrangements. Describing the system as one with 'terrible irregularities', legal aid expert Frans Haupt assures me that 'if you have a legally and financially illiterate consumer he will sign anything, especially if you harass him at work.'

The impact of such an order on employee wellbeing has caused great worry, not only to workers but also to employers. Making matters worse, when debts accumulate, with debtors borrowing from new sources to pay their original creditors, so too do the number of orders. Another member of Frans Haupt's team, Anneke Smit, bears out Xolela's earlier observations: 'It is not long before another creditor follows the same route', resulting in a situation where 'a large part or even all of the consumer's salary goes to the creditors, leaving the consumer with no or insufficient means to pay for his living expenses and support his family' (Smit 2008:2). As orders proliferate, so too do the negative effects on the 'wellness' of employees: including 'absenteeism, stress-related illness, pilfering, theft, violence, family problems, reckless gambling, alcohol abuse, unfounded demands for pay increases, resignation from employment in order to obtain access to pensions' (Haupt and Coetzee 2008:82) in order 'to settle all their debt' rather than retaining these for use in retirement (Smit 2008:2). Some employees, such as BMW (with funds from the German Development Funding Agency GTZ), had designed 'employee financial wellness' programmes as part of their packages of corporate social responsibility, commissioning Haupt to investigate the 'undesirable processes' being engaged in by creditors (ibid:83). These practices included the forging of signatures by debt collection agents who were paid on commission, the signing of documents by witnesses but not by the debtor, and the deliberate use by debt collectors of courts that were inconveniently situated, thus making it impossible to have the order rescinded without incurring huge travel costs and/or legal fees. Although the area of jurisdiction is clearly spelled out in the Act – 'it is where the employer conducts his business or resides, the idea being that the employer can assist his employee going to that court to have this emoluments attachment order amended or set aside', the debt collectors exploit the 'lack of knowledge among the clerks of court' of this fact. Even when granted legitimately, the use of such orders by queues of creditors, together with other kinds of debit orders placed on wage-earners' incomes, has been much decried as contributing to the general unsustainability of life among indebted people in South Africa. Daphney Smith, an NGO community education officer, tells me that many people have been driven simply to abandon their bank accounts and to open new ones: a practice that had become endemic and was often repeated as creditors continued to pursue them from one account to the next.

Also enabling ready access to debtors' bank accounts was the system of 'debt administration', in theory supplanted by but often in fact co-existing with that proposed by the National Credit Act once it was passed. Introduced into South Africa's Magistrate's Court Act on the basis of a precedent from the UK, and applicable in the case of debts of less than R50,000, its original intention was to provide a system less drastic than bankruptcy or sequestration by granting the debtor 'a statutory rescheduling of his debts', stopping harassment by creditors and allowing debtors some breathing space in which to make payments while also making it impossible for them to get further into debt (Smit 2008:2, 5-6). The problems which administration was designed to remedy arose, in the first place, from the readiness with which creditors could request consents to judgement and procure emoluments attachment orders allowing access to the debtor's salary or wage stream. Yet the remedy simply consisted of more of the same, resulting in debtors' going further into debt. Administrators, once appointed, would be paid by means of yet another such order, diverting funds into a trust account for the purposes of 'distribution'. From this account the administrator would, in theory, pay the various creditors. But administration orders, themselves, had grown 'into an industry' (Smit 2008:1-2), whose rewards arose largely from malpractice and inadequate policing of the law. Administrators, unqualified and unregistered, often overcharged their clients, or failed to pay creditors as they had undertaken to do, with outstanding interest from the unpaid debts then accumulating to the detriment of the debtor. In one case, administrators extended a loan to one of their clients, added themselves as a creditor and 'distributed the better part of the client's installment to themselves and the remainder to the client's other creditors'. In others 'administrators were attorneys who were struck off the roll or were themselves under administration.' (Smit 2008:14).

Illustrating the prevalence of small incremental payments creamed off by intermediaries, and further depleting debtors' pay packets, commissions were awarded to the administrators for each payment. The charging of fees was not in itself illegal, but in practice there was 'fundamental distortion' of the legal framework as originally intended. Despite the court's having ruled in 2005 that only one 'collection fee' of a restricted size was legitimate, fees in fact far exceeded these, and administrators added to these the fees they were able to glean when granted (yet another) emoluments attachment order on the salary of the debtor for the purposes of transferring money into the 'distribution' account. This, in turn, would be paid to the creditors in question. In sum,

since judgment debt may also be included under administration orders, an administrator will in many instances pay the creditor's attorneys who will collect 10% of the installment before the money is paid over to the creditor. By now the employer took 5%, the administrator 12.5% and the attorneys acting on behalf of the creditor 10% (plus VAT if registered for same). At this rate it is not surprising that administration orders cause debtors to go further into debt (Smit 2008:11).

It was precisely these circumstances that had led to Xolela May's concern, echoed in the Black Sash submission, that consumers ought not have to make repayments that leave them with an income below the minimum subsistence level.

Undaunted by the array of problems, the architects of the reforms pressed bravely on. Under the leadership of Gabriel Davel, an accountant with a background in development finance who was appointed 'micro-lending regulator' and later became the CEO of the National Credit Register, a new set of procedures was pioneered. Key among these was the process of debt review as put into place by debt counsellors. Intended to fulfill the Act's aims – 'to provide for debt-reorganisation in cases of over-indebtedness' – it would bypass the crookery and sharp practice of debt administration, while promoting 'a consistent enforcement framework relating to consumer credit'. It would also bring to book those credit providers that had lent 'recklessly' and that, in competition with rival creditors, had been queuing up to place garnishee orders on debtors' accounts – or had employed debt collectors, field agents and administrators to so this.

Warnings had been issued, however, against expecting miracles to result from 'wonderful legislation'. The Black Sash pointed out that the 'promising aims' of such reforms are frequently not realized due to the cost of implementing them; the Furniture Traders' Association worried about the 'administrative burden' which the new laws would impose, and a legal practitioner maintained that it would be sufficient to amend, educate the unskilled clerks of the court responsible for, or properly police, the existing framework of the Magistrates Court Act rather than inventing a new one. Perhaps insufficiently noted was the more fundamental question of how to reform a system of 'external judicial control' (Haupt et al 2008:51) over debtors' finances and salaries/wages, to yield one in which individuals, with the help of appropriate advice and guidance, eventually took control over these themselves, in the way normally expected of a modern 'responsibilized' citizen (Chipkin 2003). Davel's perhaps idealistic philosophy was that 'regulation works best when it persuades players in the industry to accept responsibility for their own decisions' (Porteous with Hazelhurst 2004:94), and much effort was subsequently expended by state and non-state actors in implementing systems of financial education and 'wellness' in order to persuade *borrowers* to take such responsibility. Making *lenders* accept it might require more stringent means. It was hoped, for example, that credit agreements found to have been 'reckless' from the outset might be suspended and made unenforceable by the courts, thus freeing debtors from eternal bondage, but existing inequalities between borrowers and lenders – not least in access to good legal advice – made this extremely difficult. The Act, albeit informed by a conviction that might be summarized thus – 'lenders, like borrowers, should earn their trust' (Shipton 2011:232) – would not on its own be equipped to make them do so.

Debt counselling – a brave new world

Discussions with debt counsellors, although giving me some insights into just how idealistic the expectations were of this 'wonderful legislation', also reveal that the cards were not automatically stacked to privilege either borrowers or lenders. Some cases demonstrate a touching and earnest desire by the debtor to fulfill the terms and stick by both the letter and the principle of the law, but show that the process of getting numerous creditors to agree on an acceptable payment schedule by which a debtor might also abide would prove difficult and time-consuming. Others manifest extreme levels of recalcitrance on the part of both creditors and debtors. In sum, the submissions cited earlier, with their claims either that the legislation would end up serving the interests of the market, or (contrarily, and more predominantly) that it was 'weighed towards the interests of credit users with limited regard to the interests of credit providers', must be read with circumspection. The complex processes were not skewed in either direction: what they achieved, instead, was a stalemate. The 'credit users' they ended up serving, however, were not predominantly those – low earners, workers, and the self- or unemployed – originally intended as the primary beneficiaries of the Act.

When I visit Thusong Debt Counsellors, run by Sisinyana Pholo and Richard Mutshekwane at their modest offices in Midrand, they fill me in on the processes involved. The counsellor is required to go through clients' basic needs to identify that all-important amount required, in Xolela's words, 'to maintain himself and the family', setting this aside before deciding on a realistic set of repayments to be offered to credit providers. The providers are required to respond within 5 days. Often, they send a 'counterproposal'. The debtor, once officially under debt review, must be allowed 60 days' grace from harassment by those providers before the final schedule of payments is agreed and put into practice.

I discover from them and other informants that national coverage of debt counselling is patchy, and often worst in rural areas. Debt counselling was initially thought of as most appropriately provided by the non-government, charity or donor-aided paralegal sectors: by offices such as the Knysna Black Sash where Xolela May works. This idea was later jettisoned, partly on the grounds of inadequate capacity – 'Law Clinics and NGOs simply would not be able to manage', Frans Haupt tells me – but also on the grounds that it is an activity from which a living might be made rather than one offered by charities. This was one topic on which submissions by ANC MPs and party members were voluble: in a setting of unemployment, debt counselling ought to provide income-generating opportunities. The requirement that debt counsellors have at least two years' experience – in legal or paralegal services, consumer protection, complaints resolution, consumer advisory service, or accounting or financial services – would exclude too many, as one ANC member said in his submission on the Bill. The restrictions were lifted, eventually leaving only the paltry requirement that candidates undergo four days' training and sit an examination on the fifth. As a result, Frans Haupt tells me, those targeting the higher-end market possibilities offered by this activity – the 'richer indebted' – have operated offices as 'an add-on to an attorney practice, a financial advisor practice, a book-keeping practice: those people have a lot of background and experience. So for them a week-long course is fine … they have the capacity, they understand the system'. Those, on the other hand, who target the indebted with lower incomes or fewer resources, and/or who operate in more remote or marginal areas, are often poorly trained:

we have had people taking consumers' money as a deposit … and debiting it away as a fee, and without the job being done. Then we have complaints about people who had to wait a very long time, and in the meantime they are still being harassed by the credit provider, and they didn't hear anything from the debt counsellor. The normal problem that you have when you start a practice is you take on too much because you want to make money, especially in the beginning when your overheads are high – investing in hardware and software, computers and stuff. So they tend to take on a lot of clients, and they can't really service them properly. And then a few examples of proposals, and even court applications, that were simply not up to scratch.

If debt counselling was as much a means of livelihood as a means of relieving financial stress, and if in rural areas the setting was already one of poor regulation and borderline illegality, it is perhaps not surprising that those formerly benefitting opportunistically from the indebted in one guise were reconfiguring themselves to do so in another. But even this shift of occupation has been slow. Confirming the claim of 'patchy provision' made by Frans Haupt and others, there is a commonly shared perception that this 'law has not reached' the rural areas. No-one has heard of any debt counsellors in my rural fieldsite in Mpumalanga. What are still much in evidence, instead, are makeshift posters advertising the services of those who – usually fraudulently – claim to be able to consolidate your debt or 'expunge' your records from the credit bureaux.

Reflecting the general importance of the pay cheque, those most likely to get into debt, and certainly those most likely to seek counselling are those – both white and black – who are in receipt of regular salaries. Even those seeking debt counselling from sources other than the up-market offices and law firms described above – from the humbler offices like those of Thusong, for example, or from the few offices that offer free advice to those of slender means, like the Pretoria University Law Clinic – were generally members of the civil service, upwardly mobile, or middle class as broadly conceived. There is no indication, for example, that any of the miners at Marikana sought, or received, debt counselling.

Hearing about the difficulties that cause clients to go into debt, counsellors find themselves going far beyond the technical skills of debt rescheduling to embrace the role normally associated with advice of a more therapeutic kind, as I hear from Thusong's counsellors. 'Just when you think you've discussed everything – "here are all the creditors, this is my payslip", etc.', Sisinyana tells me, 'you find that the real stories start to pour out: there's a divorce pending, or the children are giving me a hard time, or this and that'. While counsellors are supportive in such cases, they can also become impatient where there is recalcitrance.

Richard confirms that 'the system has been so crafted that it gives everybody a chance' and insists that debtors ought to act in good faith. Its even-handed fairness is built on the assumption that undertakings for repayments made by debtors – and the responses by creditors – are made 'in good faith'. And indeed, there are occasions when the requisite spirit of collaboration is in evidence. In part because the law is thought to favour counsellors – and their clients the debtors – over creditors, the latter have been forced to take serious notice of what the counsellors say. Equally, however, there can be evidence – from both parties – of lack of 'faith'. In the case of credit providers, Sisinyana complains, they come back with proposals. I mean, you've got ten creditors to satisfy, this one tells you 'no, I'd rather not have R50, I'll have R53'. But why must I change the whole agreement? Or they will say 'go ahead and do a proposal based on this'. … So I go ahead and I do it. Then they say 'you had no right to go and reduce my interest rate' and I say 'tough luck. This is according to the rules that *you* wrote.'

Considerable efforts were necessary to exact compliance from not only lenders, but also those who borrow from them – who often proved recalcitrant. 'We forget', says Richard, 'that these people are the worst insofar as committing to anything'. Counsellors find themselves alternately threatening borrowers and morally blackmailing them in their efforts to get them to co-operate. 'You have to tell them', says Sisinyana, that

'the moment I reject you and the creditors know, you lose the house, you lose the car, they can do anything they want. They can sell everything, they can even sell your clothes. They've got the right to do that'. But you need to constantly remind them that these are the powers you have. …And you can just say to the client, 'why do I have to phone you, beg from you? You are not acting in good faith. You don't deserve to be on the programme.'

Even where clients do not prove to be unreachable, others make their rescheduled payments for only a short while, stopping after two or three weeks, and clients' files are often closed on the basis of no co-operation.

Although the Act involved consultations with both creditors and debtors, it is recalcitrance by the latter which debt counsellors find themselves addressing. This is, in part, because the far greater muscle of creditors makes it difficult to 'reform' them without recourse to robust legal proceedings, in which these creditors – usually large banks or retailers – have the edge because of being able to hire top lawyers. Reform of legislation, then, was turning instead into the attempted reform of persons, especially those who owed money. In their attempts to rectify debtor behaviour, debt counsellors used a rhetoric emphasizing ideas like 'merit' or the quality of being 'deserving', and pointing to the way a reformed debtor 'ought' to behave. Conversely, they celebrated cases where debtors comported themselves appropriately – in compliance with these injunctions.

In one case, as I am told by Mareesa Erasmus of the Law Clinic, the debtor was 'not taking responsibility'. She had 'retail accounts, personal loans, bank accounts. And with every possible institution she has a credit card … sometimes more than one at the same place.' In negotiations with the relevant credit providers, Mareesa had challenged them for their original profligacy in having extended credit to this woman:

'don't tell me you guys are not guilty'. But they say 'Oh, it was before the Act'. …I asked one guy 'what happened in 2006? She has a number of new credit agreements starting just then'. …What happened in 2006 was, they would send invitations, send credit cards to clients. A lot of these … came to her, she was too weak to reject them. She said that if *they* thought she could afford it, maybe she could.

In this and other similar cases of clients earning a relatively good income, 'credit has been just dropped at her door'. Mareesa calculated her to be 85% overindebted. Initially, she was

paying accounts with accounts. … So she would rotate the money. Take the ABSA Credit Card to pay Nedbank, take Nedbank Credit Card to pay the Standard Bank, and so on. She'd turn them around until she got to a point where she realized this was not going to work any more.

But even after this client's application for debt review, it was difficult to get anywhere with the case: the client was 'not doing anything to reduce her expenditure', was 'still living a luxurious lifestyle – not abiding by the suggestions … made when we drew up the proposal'. Frustrated by the client's non-compliance, Mareesa's only option was to go to court to request a reduction in the interest rate on the client's behalf, yet she knew that without a visible sign of commitment to reduce expenses this would not be granted.

Keen to get some rulings made and some precedents established in this all-important piece of legislation, Mareesa knew that whatever case she did take to court would need to be selected with care. Rather than featuring a debtor wilfully living in an unsustainable manner, it would have to involve one for whom – for example – sudden and unexpected changes in circumstances had been the cause of overindebtedness, and who was now making strenuous efforts to reduce her owings and expenses.

The client who seemed to fit the bill was a black woman who, having earned a decent salary, had lost her job after four years, had remained unemployed for 6 months, and had got a new job earning only half the salary. The principle problem was that she still owed money on her car. In marked contrast to the multiple card-holder, above, she had made efforts drastically to reduce her living expenses – but, having no other way of getting to work, was reluctant to give up the car. She had been paying a third of her monthly income in repayments to Wesbank, the vehicle finance company, leaving approximately another third to distribute to her other creditors. After she had approached Mareesa to help with debt rescheduling, the two of them had worked out a proposal for Wesbank – who rejected the offer, demanding that it be almost doubled

I have a lot of problems with vehicle finance, in terms of making a suitable offer … but at the same time not being unfair towards the credit providers. Other credit providers are more reasonable. I discussed this with my client and she said 'is that their final offer?' I told her 'I think we should take it to court, but there is a risk'. For her, the most important thing is keeping the car. So she instructed me to continue, she wanted to take their offer, pay the amount, keep the car, and see what she could do with the other credit providers. …

'Now', Mareesa tells me, 'she is trying to get extra income' by doing extra lecturing work. 'Because she now realizes that the only way she is going to get out of this is to improve herself. .. And that is something in which we try to motivate the clients, as well. Sometimes, we say "you can do better" '.

Having been subject to the vagaries of fate, combined with a demonstrated willingness to 'tighten the belt', made such a client appear more deserving, less recalcitrant, and enhanced the chances that she would have her argument accepted in court. In this case, Mareesa had calculated carefully that the chances of success were much better than they might have been in others – such as the multiple cardholder, above.

In a case like this, where the client has done everything possible, and we've worked together, and really tried to …. It is not like she is living in luxury, she is living on the minimum. In a case like this, the court will recognize what is going on and make an order that is fair.

Small successes, and ways forward

While these cases might suggest that debt counselling was having little effect on the problems for which it was designed, its small achievements ought not to be denied. Given that many of these problems had arisen from inadequately policed legislative arrangements already in place, some of the minor victories won were those addressing the shortcomings of the old by applying the new. While practitioners bemoaned the fact that the existing apparatus was proving difficult to integrate with novel frameworks, and regretted that magistrates often knew so little about the act that they often asked the counsellors for advice on how to apply it, canny counsellors aiming to get around this problem made efforts to select only those magistrates who *had* made it their business to learn the new procedures.

One initiative taken by protagonists of the new legislation to curb the worst excesses of the old was in the case where debt administrators simply 'changed their hats' to become debt counsellors.

Existing frameworks were proving to have considerable staying power, allowing the exploiting of them to fraudulent ends. Personnel at the Law Clinic were acting on behalf of a debtor, to prevent a single creditor – the mortgage provider – from jumping 'to the head of the queue' by obtaining a garnishee order on the debtor's salary. Had the creditor succeeded, this would have unfairly prevented the *other* creditors from getting their fair share. Indeed, it would have been unfair to the client himself, since it would have taken his home loan out of the reckoning and ultimately made his debt review implausible. The lawyers planned to oppose the summary judgment application which that creditor – the provider of their home loan – had made to the clerk of the magistrate's court.

In another case, Law Clinic personnel acted against a fraudulent administrator. They did so after having been approached by a client newly seeking relief through 'debt review/counselling', who had previously done so through 'debt administration'. Not only this client, but two others, it turned out, had been put under debt administration via the same administrator. Despite being paid directly from the salaries of these clients into his trust/distribution account, the administrator had made none of the requisite payments to the clients' credit providers. The Law Clinic acted, attempting to repossess the property of the administrator, only to find (in the case of his office furniture) that another creditor had already done so and (in the case of his household effects), that these did not belong to him and thus were not eligible to be removed. The administrator was reported to the police for fraud. He was being dealt with, in this case, using the means normally deployed against recalcitrant debtors. The game-keeper, in a reversal of the old proverb, had become the poacher: and the new regime was being used to survey and sanction him.

In solution of the initial problems that had arisen from the fundamental clash between the interests of creditors and debtors, thus causing early difficulties to debt counsellors, I hear from Sisinyana – a year later, in 2009 – that 'the various parties have got together and agreed on some rules,' that both a mediating agency and a special tribunal have been set up to keep cases away from costly litigation and out of the clutches of undertrained magistrates, and that new forms of software have been developed to enable paperless operations. She complains, however, that so many new debt counsellors have been registered that her office is losing work. In a manner not unlike the old administrators, some of these turn out to be rogues. Two, she tells me, have been prosecuted for taking people's money. 'Different people do this job for different reasons, but the good ones … and the NCR in general will get a bad name because of these bad ones.'

Taking a step back from this level of detail, and looking at the broader picture, might it be said that the reforms had achieved their aims? When I interview consultant Marlene Heymans about this in 2009, she shows me data from the NCR which indicate that the amounts of credit being offered have drastically reduced. Mortgages and unsecured credit have both halved. Banks are reining in, either refusing credit where they previously offered it, or giving it at much higher rates of interest – around 15 or 20% per month for a short term loan. This is having the effect of reducing the extent of borrowing, and hence indebtedness – at least from those in the formal sector.

We discuss the extent and effects of debt counselling. Figures gathered by the NCR indicate that, whereas previously only 3,000 were applying per month, three times as many were now doing so – although not all were accepted. The amount of indebtedness being accounted for by debt review and debt counselling had increased sharply. Whereas in June 2008 there had been a 'structured redistribution' of indebtedness of R11 million per month, in March of 2010 the figure had climbed to R160 million per month. (At the same time, the number of credit impaired consumers had grown considerably.)

Not all these changes, however, can be traced to the legislation. Given that the global recession hit at around the same time that the act became effective, 'the whole picture is distorted by the loss of jobs,' 'This', Heymans tells me, 'is what is leading people to fall behind on their payments, and this leads to the increase of people going to debt counselling.' Having even less demonstrable impact is that aspect of the Act relating to

reckless lending …which states that you must check up on the financial means of your client, the prospects, etc, do a credit bureau check … For around half of credit providers, they have taken it to heart. But for the others, it's a case of 'what chance is there of being found out?'

Such attitudes are fostered by the fact that the courts have failed to rule definitively on the matter or to provide any case law. In one case where debt counsellors took creditors to court, they used a local and inexperienced lawyer, whereas the banks brought in 'four senior counsel'. The court found against the debt counsellor, awarding the considerable costs to the banks. By 2010, there was only one case in which the court had found against a creditor – ABSA, one of the 'big four banks' – for having 'recklessly' extended a home loan to a person who was soon to retire and would clearly have no means to repay it.

The act's lack of bite in regulating lenders has become generally accepted. Rather than trying to police them, Sisinyana's approach has now become one of reforming borrowers:

The person *must* pay back, and must make an effort to do so. Don't look at it as 'They had no right to extend the loan' – this is beside the point. Instead, I try to encourage people to pay back. Make an effort – it *has* to be a painful process. Otherwise they won't learn the lesson. You need to make sacrifices. Forget about movies, eating out 3 times a week. The only way is to pay in as much as I can. This way I get a lot of acceptance from creditors. I try to practise a system that makes sense.

Conclusion

The story of credit reform has been quintessentially South African. Attempts to liberalise the economy and provide opportunity, coupled with the promise of freedom (that included the right to consume), unleashed a feeding frenzy of credit provision. Both borrowers and lenders initially seemed to benefit from liberalisation, but things soon became unsustainable. Subsequent, belated, efforts were made by the state to curb the worst excesses. They embodied a spirit of democratic engagement by opening the doors to comment from widely divergent constituencies. But these seemed only to represent in starker form the irreconcilability of the interests of borrowers and lenders, of regulation and the market – with a tendency to veer towards the interests of the latter, in denial of the moral claim that 'lenders, like borrowers, should earn their trust' (Shipton 2011:232). Mediating that stark opposition, however, there were the continual reminders that many not-so-well-off people were making an opportunistic living in the zone in between them. Nevertheless, agents of change were determined to proceed. They were optimistic that, with perfectly designed planned intervention, the thin but steady trickle of credit essential to a liberal vision of wellbeing might be sustained without transforming into something that might impair financial wellness. In a setting where 'neoliberal means interweave with and facilitate redistributive ends' (Hull and James 2012:16), the thing most likely to sustain that 'trickle', however, proved to be the processes of redistribution, enabled by the receipt of salaries paid regularly into bank accounts.

The sophistry of earlier arguments about the precise level at which limits to 'the interest rate' ought to be set, or whether such limits ought to be set at all, turned out to be misguided in the longer term. The people originally targeted for their recklessness – small informal borrowers and the small micro-lenders whose entrepreneurial energies had been unleashed by the initial liberalisation – were not those whose borrowing or lending ended up being curbed (if anyone's was) by the Act. But perhaps these had been the wrong target in the first place. Those intended ought instead, perhaps, to have been wage- and salary-earners, those gradually climbing up the ladder of class mobility, whose greater earning power often meant that they were supporting poorer relatives. If they were the ones in greatest need of rescue, however, they were also sustaining the most intense demands on their salaries – and most likely to need to borrow.

The questions that had ultimately remained unresolved despite thoughtful submissions by stakeholders to the Bill, were those that were now being left to debt counsellors to resolve. Counsellors in individual cases of debt review hoped to be able to have magistrates settle the interest rate 'by law'. Reduced to reforming persons rather than the system, they hoped that once supplicants had shown themselves willing to tighten their belts, this might make for a less unbearable debt burden. Repentant debtors might at least stand a chance of repaying this, thus rehabilitating themselves. But magistrates, schooled in the old legislation and too little acquainted with the new, proved unwilling or unable to take such action. Even in higher courts, where action might have been possible against the 'reckless' excesses of credit capitalism which had failed to take heed of what the credit bureaux were telling it, the greater legal muscle of that capitalism was holding sway. Small successes by legal activists and 'cause lawyers' exploited areas of uncertainty between the old and the new, but none of these had yet proved sufficiently robust to qualify as 'reform'. A few refashioned citizens, a few small-time commission agents and debt collectors punished, seemed to be the most these efforts might yield.

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References

Bähre, E. (2011) 'Liberation and Redistribution: social grants, commercial insurance, and religious riches in South Africa' *Comparative Studies in Society and History* 53(2):371-92.

Bahri, G 2008 'Ensuring personal financial wellness: a range of intervention measures and the role of voluntary approaches' in Crous, E (ed) *Employee financial wellness: a corporate social responsibility* Pretoria, GTZ (Deutsche Gesellschaft für Technische Zusammenarbeit).

Chipkin, I. 2003 '"Functional" and "Dysfunctional" Communities: The Making of National Citizens'. *Journal of Southern African Studies* 29(1):63-82.

Crous, E (ed) 2008 *Employee financial wellness: a corporate social responsibility* Pretoria, GTZ (Deutsche Gesellschaft für Technische Zusammenarbeit).

Daniels, R. (2004) 'Financial intermediation, regulation and the formal microcredit sector in South Africa' *Development Southern Africa* 21(5).

DTI (Department of Trade and Industry)/Reality Research Africa (2002) Credit contract disclosure and associated factors, Pretoria.

DTI (Department of Trade and Industry) (2004) Consumer credit law reform: policy framework for consumer credit. Pretoria.

Graeber, David (2011) Debt: The First 5,000 Years New York, Melville House.

Haupt, F and H Coetzee 2008 'The emoluments attachment order and the employer' in Crous, E (ed) *Employee financial wellness: a corporate social responsibility*, Pretoria, GTZ (Deutsche Gesellschaft für Technische Zusammenarbeit).

Haupt, F, H Coetzee, D de Villiers and J-M Fouche 2008 *The incidence of and the undesirable* *practices relating to garnishee orders in South Africa*, Pretoria, GTZ (Deutsche Gesellschaft für Technische Zusammenarbeit).

Hull, Elizabeth and Deborah James (2012) 'Introduction: local economies and citizen expectations in South Africa' *Africa* 82(1): 1-19.

James, D 2012 'Money-go-round: personal economies of wealth, aspiration and indebtedness' *Africa* 82(1):20-40.

Krige, D 2012 Fields of Dreams, Fields of Schemes: Ponzi Finance and Multilevel Marketing in South Africa *Africa* 82(1):68-90.

Krige, D. 2011 'Power, identity and agency at work in the popular economies of Soweto and Black Johannesburg', Unpublished D.Phil dissertation, Social Anthropology. University of the Witwatersrand, Johannesburg, available online at http://wiredspace.wits.ac.za/handle/10539/10143.

O' Meara, D 1983 *Volkskapitalisme: Class, Capital and Ideology in the Development of Afrikaner Nationalism, 1934-1948*, Cambridge, Cambridge University Press.

Porteous, D. & E. Hazelhurst (2004) *Banking On Change: democratizing finance in South Africa, 1994-2004 and beyond*. Cape Town: Double Storey Books.

Seekings, J. and N. Nattrass. (2006) *Class, Race and Inequality in South Africa.* Yale: Yale University Press.

Shipton, Parker (2011) *Credit Between Cultures: Farmers, Financiers, and Misunderstanding in Africa*, New Haven, Yale University Press.

Smit, Anneke 2008 'Administration Orders Versus Debt Counselling', LLM dissertation, University of South Africa.

Southall, Roger (2012) 'The ANC: Party Vanguard of the Black Middle Class?' in Arianna Lissoni, Jon Soske, Natasha Erlank, Noor Nieftagodien, Omar Badsha (eds) *One Hundred Years of the ANC: Debating Liberation Histories Today,* Johannesburg, Wits University Press.